

TRANSFORMATIVE JUSTICE, VIOLENCE  
AND CRIME, AND CIVIL SOCIETY IN  
POST-TRANSITION SOUTH AFRICA

A CASE STUDY BASED ON THE  
KHAYELITSHA COMMISSION

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For my parents.



# ABSTRACT

Post-transition countries are often challenged by increasing levels of violence and crime, inequality, and weak institutions. In consequence, calls have been made for a holistic model that addresses broader transformation in post-transition societies through the use of transformative justice. By addressing socio-economic and local needs, and establishing effective channels for genuine participation, transformative justice aims to contribute to a more positive and social form of peace; that is, through tackling the structural causes of conflict and the entrenched systems of inequality. However, transformative justice is a fairly new concept and lacks empirical research and practice.

The thesis aims to advance the conceptualisation of transformative justice through making both empirical and theoretical contributions. It will do this by probing and applying its main elements to a case study and researching the state of post-transition South Africa with a particular focus on structural inequalities, violence and crime, and civil society activism. Moving from a case study of local needs and civil society responses to violence and crime in Khayelitsha, South Africa, the research interrogates transformative justice's claim to contribute to tackling structural inequalities as the causes of violence and crime.

The research elaborates on how inequality, in terms of accessing justice and security, is a result of the structural inequalities that impact people's needs and responses in relation to violence and crime. In consequence, local security and justice approaches range from the preventive to the punitive, and even include violent measures. Moreover, the thesis finds that there is a continued divide between the world of rights and retribution in Khayelitsha. Finally, the research shows how the heterogeneous landscape of local civil society actors who are active in the field of justice and security, both limit and contribute to the implementation of a successful transformative justice approach.

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# DECLARATION

I confirm that this dissertation submitted is the result of my own work and that appropriate credit has been given where reference has been made to the work of others. This work has not previously been presented, in part or whole, for an award at this, or any other, University, for any degree, diploma or other qualification. No parts of this thesis have been submitted for publication.

Vera Paulina Riffler

May 2018

# 1. INTRODUCTION

*It is important therefore to remind ourselves that throughout the workings of this Commission of [I]nquiry, lest we all forget, as we perform our various roles towards its proper functioning[,] that this Commission is about the interests of the real people who have names, families, aspirations, and are entitled to the same constitutional protection as you and I. The members of [the] Khayelitsha community who have been directly and indirectly affected by police inefficiency are too many to call out by name. They include Zoliswa Nkonyana, Makhosandile Qezo, Angie Peter, Nandipha Makeke, Lona Mlofana and their families and friends. Some of these families are here today. They wish to tell this Commission that although it is maybe too late for Zoliswa and Nandipha to enjoy the most basic of human rights, [including] their right to life, human dignity, equality, freedom and security of person, it is not too late for their families and fellow members of the Khayelitsha community.*

Transcript, 23.01.2014, pp. 20-21  
Khayelitsha Commission Hearings' Opening Statement by the Civil Society  
Organisation representatives

I was sitting in a crowded hall in Look Out Hill, Khayelitsha, South Africa when the opening statement above was read out. The hall was filled with people, the atmosphere one of excitement and expectation. This was the first day of the public hearing for the Commission of Inquiry into Allegations of Police Inefficiency and Breakdown in Relations between the South African Police Service and the Community in Khayelitsha (hereafter known as the Khayelitsha Commission). This Commission had been preceded by over 10 years of civil society struggle for justice and security for the people of Khayelitsha, starting as a landmark success for those civil society organisations (CSOs) involved in the mobilisation of the Commission. It certainly also meant much to the victims' family members, as well as the victims themselves, some of whom had experienced the most horrendous crimes. It was for these very people and their inability



to achieve justice for these crimes that, over the years, civil society organisations had begun to mobilise and advocate for the establishment of a commission of inquiry. It was also their attempt to contribute to prevent more crime and violence in the future. As for this moment, these families and community members of Khayelitsha were about to tell their stories, make their voices heard, and achieve access to justice for the very first time. While this was a clear victory for justice itself, in its course, the Khayelitsha Commission was also able to reveal some of the gross injustices and inequalities that continue to exist around the right to justice and security, 20 years following the end of apartheid. However, the Khayelitsha Commission also exposed that the quest for legal justice was not the only demand for justice existing in Khayelitsha, rather, it existed alongside a number of different and local understandings and practices of justice and security. With this, the Khayelitsha Commission provided a glimpse through a South African kaleidoscope, one that shed light on many more complexities around past and present forms of structural inequalities, violence and crime, as well as the pursuit of justice and security and the varied involvement of civil society. This thesis attempts to unpack some of these complexities, with research that seeks to understand the contribution of transformative justice<sup>1</sup> in addressing structural injustices, in particular, the root causes of violence and crime and their impact in post-transition South Africa.

## 1.1. Research context

Since the abolishment of apartheid and the first free elections in 1994, South Africa has undergone major changes, epitomised by the Truth and Reconciliation Commission (TRC)<sup>2</sup> and the promise of a ‘rainbow nation’ - a country of diversity, equality and reconciliation. However, in many aspects, the transition has remained mainly political, leaving the country’s socio-economic structures intact. Post-apartheid South Africa is

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<sup>1</sup> Chapter 2 will elaborate further on transformative justice and the different understandings of this concept. As an example, Gready and S. Robins (2014, p. 340) define transformative justice as a change oriented process that is concerned with local agency and challenging power relationships and structures of exclusion. Further, Evans (2016, p. 9) considers transformative justice as a conceptual frame for advocacy, policy-making, action and for assessing government responses “particularly in the context of the need to address structural violence and socioeconomic rights issues that precipitate, and are produced and reproduced by, conflict and authoritarianism”.

<sup>2</sup> The TRC was established in 1995 to promote reconciliation and contribute to national healing and unity. The TRC finished its work in 2003, producing a seven-volume report (TRC, 2017c). The TRC is considered one of the largest and best funded truth commissions that has ever existed worldwide, an assertion triggering a lot of international and national attention (Fullard, 2004).

haunted by social disparities, economic inequality, violence, crime and vigilantism. At the same time, the country is celebrated as a rainbow nation based on the value of *ubuntu*<sup>3</sup> for achieving reconciliation through the TRC.<sup>4</sup> The contradictions between being heralded as a prime example of reconciliation, transitional justice and a pluralist civil society, while social inequality and rampant crime rates prevail, has led to the need for a critical inquiry into South Africa's transitional justice process.

Transitional justice is thought to achieve reconciliation, retribution and justice, coming to terms with the past and offering accountability for past abuses, as well as contribute to the establishment of the rule of law and a democratic regime (Sriram, 2005; United Nations Secretary General, 2004). However, the increasing proliferation of transitional justice,<sup>5</sup> has not led to peaceful and more just societies, strong democratic governments or overall stable development per se.<sup>6</sup> Contrarily, post-transition societies often experience continuing inequalities, weak state institutions, lack of socio-economic broad-based development and high levels of crime and violence, as is the case in South Africa (Gready et al., 2010; Godoy, 2005; Simpson, 2004; Neild, 2003; Call, 2000). Despite efforts to reconcile communities, establish security and peace and come to terms with the past through transitional justice, a comprehensive peace often remains elusive. In consequence, a critical reading of transitional justice that analyses transitional justice shortcomings broadly, as well as scrutinises specific transitional justice mechanisms,

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<sup>3</sup> Ubuntu is a commonly referred to as a South African value. Simpson (2002, p. 248) refers to it as the “mainspring of the African humanist world-view, an attitude of tolerance and empathy grounded in the interdependence of the individual and the collective”. According to Oxford Dictionaries (2017a), it is “[a] quality that includes the essential human virtues; compassion and humanity”.

<sup>4</sup> The data on South African development and crime confirm this outlook. The Human Development Index for South Africa is 0,666, ranking it 119 out of 188 countries (United Nations Development Programme, 2016). The Gini coefficient reaches 0.69, making South Africa one of the most unequal countries in the world (World Bank, 2017). The homicide rate of South Africa shows 31 homicides per 100,000 inhabitants, five times higher than the global average of 6.2 homicides per 100,000 inhabitants (United Nations Office on Drugs and Crime, 2013, p. 12, p. 33).

<sup>5</sup> Tacking stock of two decades of transitional justice proliferation, Backer (2009) demonstrates how common its trademark interventions have become: with around 24 trials and tribunals, almost 30 truth commissions, approximately 17 compensation and remuneration programs, 14 lustration and vetting processes and a dozen amnesties world-wide.

<sup>6</sup> Research suggests that the impact of transitional justice on different socio-political indicators is often rather weak. Studies on the effects of transitional justice mechanisms are unable to prove a clear positive impact or causal relation to different variables such as democracy, human rights, and the duration of peace (see for example Olsen, Payne and Reiter, 2010; Brahm, 2007; Lie, Binningsbø, and Gates 2007).

country cases or contexts, has emerged (Sharp, 2012; Waldorf, 2012; Robins, S., 2011a; 2011b; Lambourne, 2009; Pasipanodya, 2008).

In response to these shortcomings, calls were subsequently made for re-orientating transitional justice towards more developmental, holistic and transformative models (Gready and Robins, S., 2014; Lambourne, 2009; Laplante, 2008; Mani, 2008). This new focus has thus triggered a “transformative turn” (McAuliffe, 2017) whereby the idea of transformation has become an important area of inquiry (Sandoval, 2017, p. 176), causing the coining of the term “transformative justice” (Lambourne, 2009; Daly, 2001).

The calls for a more transformative approach – referred to as transformative justice – aim to address the identified shortcomings. This approach deals with questions of how broader long-term change can be achieved; how structural inequalities<sup>7</sup> can be redressed holistically; and how, in order to contribute to change, effective channels for genuine participation and advocacy can be established (Gready and Robins, S., 2014; Evans, 2013a). Most transformative justice approaches share two main propositions: the need to tackle the structural inequalities, including socio-economic inequalities, that act as drivers of conflict and oppression; and the need to ensure local civil society participation, agency and empowerment, in order to challenge entrenched systems of inequality and power structures (e.g. Gready and Robins, S., 2014; Lambourne, 2009; Laplante, 2008; Mani, 2008).

Challenging post-transition scenarios, such as in South Africa, indicate a need for further transformation. Focusing on violence and crime, its impact on communities and civil society organisations’ responses to it, this thesis interrogates the claim of transformative justice. Transformative justice suggests that it is necessary to address structural inequalities and challenge power structures through genuine participation and a focus on local needs, in order to mitigate post-transition challenges such as rising levels of violence and crime.

Violence and crime is a useful thematic focus that contributes to the further conceptualisation of transformative justice, as its occurrence is considered indicative of

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<sup>7</sup> Structural inequalities refer to a concept shaped by Galtung (1969) which describes inequalities that are engrained in systems and structures, impacting people’s everyday lives in tangible and harmful ways. Section 1.4. will introduce this concept further.

the shortcomings involved in addressing structural inequality (Mullen, 2015; Mani, 2008). Along these lines, Mani (2008, p. 259) finds that

*[w]e cannot divorce criminal violence from social injustice, from the rising inequality, discrimination and economic stagnation that breed despair on one side and stoke intolerance on the other. We must be deeply concerned with how the patterns of violence that emerge during conflict rapidly become endemic and normalized in a postconflict society.*

For this reason, several authors (Gready and Robins, S., 2014; Eriksson, 2009a; Mani, 2008; Harris, 2005; Dixon, 2004; Simpson, 2004) have argued that violence and crime, in and after transition, deserve close analysis as they are “rooted in the intersections between the past and the contradictions of the transitional present” (Gready et al., 2010, p. 7).

Yet, transformative justice is conceptually still developing and has yet to set out what it means for and in practice. This research aims to contribute to a further conceptualisation and interrogation of transformative justice in both practice and theory. Through this, the research aims to generate a better understanding of why the concept of transformative justice might be needed and what it contributes to. At the same time, the research analyses the implications of unaddressed structural inequalities for post-transitions. The research therefore aims to respond to the following main research question: *To what extent can the concept of transformative justice make a contribution to addressing structural inequalities as the root causes of violence and crime?*

The research also addresses the following secondary research questions:

- *How does structural inequality relate to violence and crime in Khayelitsha?*
- *What are the local needs in addressing violence and crime in Khayelitsha?*
- *What is the role of CSOs and local activism when responding to violence and crime in Khayelitsha?*

The research is based on a case study located in Khayelitsha, South Africa. Khayelitsha is an urban, deprived area close to Cape Town and testimony to apartheid’s spatial divisions, while it is equally a testimony to unsuccessful post-apartheid social and economic policy. High levels of unemployment; large areas of informal housing exhibiting limited access to electricity, water and sanitation, transport and in general a

low standard of living, as well as very high levels of violence, crime and vigilantism describe this area. Thus, Khayelitsha is a microcosm of the disparities, inequalities and contradictions that characterise post-apartheid South Africa generally. These features make South Africa, and Khayelitsha more specifically, an appropriate location for researching themes related to structural inequality, access to security and justice and civil society activism.<sup>8</sup>

The case study analyses local needs and demands for justice and security as well as civil society and local responses to violence and crime. The case study draws on the mobilisation for, and the data that emerged from, the Khayelitsha Commission. The research includes data from the Commission hearings, background documents and personal interviews, in order to examine the way structural inequalities impact on violence and crime; how this shapes local needs and approaches to justice and security; and the role of civil society in addressing violence and crime.

## 1.2. Objectives, findings and contributions

This section lays out the main objectives, findings and contributions<sup>9</sup> of this research.

### Objectives

The research has four main objectives:

1. To discuss transformative justice propositions using the case study findings, and to advance the conceptualisation of transformative justice;
2. To provide insights into South African post-transition challenges related to structural inequalities with a focus on security and justice;
3. To map the role of local actors and CSOs in the area of justice and security, along with their different demands, approaches and responses to local needs in Khayelitsha;

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<sup>8</sup> Chapter 3 will provide a more detailed account of the South African context in relation to its transitional justice process, criminal justice reform and the role of civil society organisations; Chapter 4 will introduce Khayelitsha and the Khayelitsha Commission, providing the necessary local background to this case study in more detail.

<sup>9</sup> The findings and contributions will be detailed and discussed more fully in Chapter 8.1. and 8.2., complementing the summary in this section.

4. To analyse the mobilisation and findings of the Khayelitsha Commission.

The overarching research objective is to advance the conceptualisation of transformative justice via a theoretical and critical exploration of the transformative justice concept, including its critique and gaps, which will be addressed in Chapter 2. Furthermore, by using an empirical case study highlighting the challenges and opportunities that a transformative agenda encounters in practice, this objective is empirically pursued in Chapters 5 to 7.

### Findings

Chapter 5 is the first empirical chapter and it discusses the mobilisation of the Khayelitsha Commission, showing how a group of CSOs strategised to get the Khayelitsha Commission established. The chapter demonstrates how these CSOs used escalation, critique and collaboration to achieve their aims, drawing from experiences of social justice activism in other campaigns. The section finds that party political interest in the area of security and justice has had a major impact on different organisations' ability to engage in the process. There is a further discussion on how party politics contributed to a divided civil society actor landscape and contested positions over demands and approaches to security and justice. This also prevented the Khayelitsha Commission from becoming a truly inclusive exercise, despite its contribution to addressing structural inequality. Nevertheless, the chapter finds that civil society activism is a way to unmask structural inequality, to allow for access to justice, to voice concerns and to challenge the state and hold it accountable, making it an important contribution to transformative justice. The Khayelitsha Commission itself is also considered a transformative justice intervention through its capacity to investigate the intersections of justice, security and social justice, providing a space for victims to be heard and its comprehensive recommendations and findings which open the door for policy and advocacy to improve people's lives.

Chapter 6 explores the connections between structural inequalities, violence and crime, and security and justice in Khayelitsha in two ways. On the one hand, the chapter reviews how these connections manifest themselves in Khayelitsha by revisiting the central drivers identified in the literature (namely environment and infrastructure, socio-economic drivers, and access to legal justice and public security), and on the other, through providing people's perspectives and lived experiences around structural

inequalities in relation to violence and crime. The chapter establishes that structural inequality limits access to security and justice in manifold ways, for example, through unequal access to policing resources and outsourcing of security functions to the community. This is a source of pain, affecting reliance and trust in, as well as knowledge of, practices with democratic procedures, such as criminal justice processes. In consequence, legal justice is perceived as something distant, while access to justice and security is considered an entitlement rather than a right. The chapter therefore confirms that transformative justice is a useful concept, in particular as an analytic lens that allows to draw connections between more manifest issues such as the occurrence of violence and crime, the lack of access to justice and security, and structural inequality and injustice. Transformative justice can be used as a lens to understand and analyse the intersections between structural inequalities and concrete policies and practices, such as resource distribution in policing, access to judicial information or the, code of conduct of public policing for example. This lens also allows for identifying the ways in which inequality is produced and reproduced and how it impacts on people's lives in tangible and less tangible ways. In consequence, policy as well as advocacy can be designed and targeted at alleviating these inequalities. In addition, the chapter supports the transformative justice claim that there is a need to address structural inequalities in order to mitigate conflict and further violence.

Chapter 7 analyses justice and security needs. The point whereby punishment and compensation or restitution constitute important elements of justice, while also contributing to, and becoming, part of local security enactments, will be discussed. It is argued that needs for punishment and compensation are essential elements because they alleviate socio-economic pressures, and furthermore also serve as a source for restoring dignity and power. As such, it is maintained that demands for punishment and compensation are a reflection of the structural inequalities identified earlier, as well as the lack of trust in state justice processes. In response to these needs, there are a variety of local actors that provide access to local justice and security. The chapter continues by introducing these actors and discussing their roles. Also discussed will be how these actors respond to these needs in an effective, intimate, yet often violent manner, and how they are being entrusted and legitimised by parts of the community. In consequence, the chapter allows us to understand that there is a sustained divide in Khayelitsha, that is, between demands for rights and demands for punishment and retribution, and this divide is also reflected in CSO approaches. Both are a result of structural inequalities. The

demands for immediate, tangible, and swift justice and security emerges out of need and indignity, whereas rights based advocacy is the intention of NGOs and social movements in terms of addressing inequalities by holding the state accountable. CSOs are therefore important actors tackling structural inequalities and engaging with transformative justice. At the same time, this chapter demonstrates that the claim transformative justice formulates about the capacity of both the local level and civil society to provide agency, participation and empowerment, needs to be dealt with more cautiously. A unanimous role of CSOs in advancing transformative justice cannot be taken for granted. This research indicates that there is a need to be cautious in analysing the different roles and functions different civil society actors fulfill in relation to transformative justice.

### Contributions

Based on the analysis of the literature and the qualitative content analysis of the case study, this work maintains that there is a case and need for transformative justice in post-transition countries. It reaches this conclusion, in part, by shedding light on structural inequalities. It is argued that transformative justice has the potential to contribute by operating as an analytical lens through which inequality can be highlighted. For example, the case study shows how structural inequalities strongly affect exposure to, and occurrence of, violence and crime, and also substantially limits access to security and justice for (previously) disadvantaged communities. This in turn shapes local needs and responses. As such, transformative justice provides a particularly useful lens, for not only acknowledging the shortcomings of the current government and policies, but for drawing connections as to how past and present inequalities may jointly reinforce structural inequalities in the South African context.

However, the research also finds that transformative justice needs to respond to the criticism it has evoked. In particular, this research confirms criticism in relation to (normative assumptions) about civil society and local participation, especially in terms of complexity at the local level. The complexities, tensions and divides for different actors demonstrate that there is not a unified, nor inherently good local approach. While CSOs played an important role, for example, in mobilising for the Khayelitsha Commission, the research shows that not all civil society and local based demands and approaches are necessarily transformative or targeted at wide-reaching social change. Hence, the research will question the unanimous role and contribution of civil society and rather point to the



divide between demands for and practices of rights and revenge (Wilson, 2001) that continues to exist within Khayelitsha and across different civil society actors.

The research also highlights the general challenge for transformative justice in lacking a recognised approach and practice. Setting out what transformative justice means in practice is still work in progress and continues to be debated academically (Gready and Robins, 2014; Evans, 2013a; Eriksson, 2009a). By using analytical insights of this work and examples from the case study, this research is able to make suggestions on what a broader set of transformative interventions might look like. The Khayelitsha Commission and the mobilisation for it, for example, can be understood as a social justice and transformative exercise, yet it was limited by both its mandate and its reach. At the same time, it is acknowledged that the lack of a clearly defined transformative justice practice is a challenge for the institutionalisation of such a concept. Therefore, the research critically engages with elements of transformative justice, pointing to the strengths and weaknesses of this concept in both practice and theory.

In addition, the case study provides particular insights into South Africa and the challenging post-transition state it finds itself in. The research provides insights into the grossly protracted structural inequalities that exist around access to justice and security, and are caused by, for example, the systemic unequal distribution of resources. The research also maps out local actors and their responses to violence and crime as well as their inability to access justice and security, demonstrating that political division, as well as a disconnect between rights and retribution, shapes their approaches. The research demonstrates that the continuation of structural inequalities has severe implications for post-transition South Africa, for example, in terms of the lack of a full immersion in the democratic rule of law for parts of the community. As such, the research provides an extended reading of the consequences of apartheid, the long-term impacts of transitional justice and the current shortcomings for addressing structural inequalities and facilitating transformative justice. Thus, it intends to provide a post-transition reading of the implications of unaddressed structural inequalities and transitional justice ambiguities. The analysis of the diverse field of CSOs and their involvement in advocacy, such as the mobilisation for the Khayelitsha Commission, as well as the implementation of responses to violence and crime, form further contributions to knowledge.

Finally, the research also makes relevant empirical contributions by using and researching in more depth the analysis of the mobilisation for, and findings of, the Khayelitsha

Commission. Few studies have so far engaged with the comprehensive data source provided by the Khayelitsha Commission (Super 2016; 2015; 2014; Dixon, 2015b; Freeman and McDonald, 2015; Newham, 2015). Rather, they have focused on policing issues, with little investigation into the intersections of structural inequalities, security and justice and civil society in depth.<sup>10</sup> Nor have any of them academically analysed the mobilisation process of the Khayelitsha Commission.

### 1.3. Methodology

This section introduces the research design of the thesis, discussing the case study and case selection, data collection and data analysis, as well as providing an overview of the data sources. Section 1.4. is concerned with highlighting the research limitations.

#### Research Design

The dissertation is based on a qualitative case study design. This should be understood as a comprehensive research strategy involving the study of a particular case, but which also stretches beyond it (Yin, 2003). A case therefore is always more than just one thing (Ragin and Becker, 1992, p. 41), rather, “[a]t a minimum (...) it is an analysis of social phenomena specific to time and place” (Ragin and Becker, 1992, p. 2). Emanating from this analysis, the case study research design enables the investigation of a phenomenon where the boundaries, processes and causation are not fully understood (Yin, 2003; Ragin 1987). It offers in-depth analysis of multiple and conjunctural causation and complexity (Gerring, 2004; Ragin, 1987). In particular, a case study allows for emphasis of a contemporary phenomenon in a real-life context (Yin, 2003, p. 13). Given these specifications, a case study approach was chosen to respond to the research questions.

A case study may lead to the derivation of new hypotheses, the building of theory, the exploration of causal mechanisms, and the modelling of complex causal relations (George and Bennett, 2005). In this context, Stake (1995) refers to an intrinsic case as one where the understanding of a particular case is the main focus of research, and an instrumental case as where the case serves a wider purpose, like the building or refining of a theory or

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<sup>10</sup> Super’s (2016; 2015; 2014) work focuses on vigilantism and draws on some of these elements, addressing poverty, inequality and civil society in relation to vigilante activities. However, her focus is more targeted at analysing vigilante violence in an era of neo-liberalism. This thesis will refer to her work where appropriate.

hypotheses. The present case study can be considered as an exploratory type of case study, as the exploration of the case is based on theoretical foundations and aims to provide feedback from case to theory (Kaarbo and Beasley, 1999). It is a case study that has intrinsic (focusing on the Khayelitsha context and the Khayelitsha Commission) as well as instrumental value (aiming to advance the conceptualisation of transformative justice).

The case study of this research thus focuses on local needs, along with local and civil society responses to violence and crime based on the insights provided through the Khayelitsha Commission and the civil society mobilisation for its establishment. In 2010, a group of CSOs (hereafter known as the complainant organisations) mobilised for the establishment of a commission of inquiry into police failure and high levels of violence and vigilantism in Khayelitsha. The Khayelitsha Commission was thus established in 2012 and tasked with investigating Khayelitsha's high levels of crime, violence and vigilantism, police inefficiency, and break-down of community police relationships.

The case study itself offers a two-fold path. It analyses the process of CSO mobilisation for the Khayelitsha Commission, additionally, the insights from Commission hearings, background documents and additional personal interviews are analysed whilst mindful of the main themes and questions of the research. The units of analysis include the CSO network that was mobilised for the Khayelitsha Commission, other relevant CSOs and local actors involved in justice and security in Khayelitsha, as well as perceptions on justice and security, violence and crime from the Khayelitsha community.

#### Data selection and collection

This research builds on empirical data collected during five months of research in South Africa. It draws from three sources of data: (1) semi-structured in-depth interviews; (2) data generated by the Khayelitsha Commission (hearing transcripts, full end report, background documents); and (3) additional accompanying, complementary sources. A full overview of the different data is provided in Appendices I, III, IV and V.

The first type of data consists of semi-structured interviews. This type of data collection was chosen as interviews can be prepared in advance, yet leave flexibility for change (Wengraf, 2001, p. 5). Semi-structured interviews also allow for the establishment and use of pre-specified key themes, while including enough flexibility to adjust and elaborate on new emerging topics, allowing for the issues to be explored in a discursive manner

during the interview (Gibson and Brown, 2009, p. 88 et seq.). In general, semi-structured interviews are also well suited for providing direct insights into case study topics (Yin, 2003).

Twenty-two in depth, semi-structured face-to-face interviews with open-ended questions were conducted with twenty-four representatives of seventeen different organisations and institutions. The organisations and institutions were selected based on their engagement with and relevance for the Khayelitsha Commission - all complainant organisations working as the main drivers for mobilising the Khayelitsha Commission were selected as interview partners. Member organisations of a wider network working on a campaign for safe communities were also selected due to their support of the Khayelitsha Commission. In addition, further organisations were selected based on their focus areas being related to the themes of this research – in particular those working or researching on social justice, access to justice, policing, transitional justice, and violence and crime prevention. Finally, a few government entities responsible for working on safety and security were selected to complement the civil society perspective.

However, not all relevant organisations were available for interview (e.g. Free Gender, members of Community Policing Forums and the Khayelitsha Development Forum). It is worth mentioning, that the police force itself has not been interviewed either. At the time of the field research, the Khayelitsha Commission was about to start after a year-long legal battle between the police and the provincial government of the Western Cape over the Commission's constitutionality (see Chapter 4.4.), which was lost by the police. Hence, the police were highly critical of the Khayelitsha Commission and the atmosphere was politically loaded. Indeed, there was a great reluctance from the side of the police to engage in anything related to the Khayelitsha Commission. In consequence, it was extremely difficult to gain access to the police regarding this matter. In addition, given that the main focus of this research is on the role of civil society and local responses to violence and crime, the police could have provided additional insights, however, it was not an indispensable interview partner. At the same time, the Khayelitsha Commission does provide a wealth of information and evidence, for example, in the form of affidavits, public hearing testimonies or additional reports (see Table 1) from over twenty police officials, KDF and CPF representatives, as well as further civil society organisation staff (see Appendix III). References to the police and the other organisations who were not interviewed, are therefore made on the basis of the Khayelitsha Commission hearings,

hearing transcripts, affidavits and background documents. The issue of the unavailability of certain interviewees is acknowledged and further discussed as a potential limitation of this research in the next section, 1.4.

All interviews were recorded and transcribed. All interviewees were anonymised and assigned a code to ensure confidentiality. Interviewees could also choose not to disclose their organisational affiliation, in which case organisational names were anonymised as well. A list of the organisations<sup>11</sup> that provided interviewees, including interview dates and the interviewees' code, is included in Appendix I.

The second type of data source relates to the output from the Khayelitsha Commission. The Khayelitsha Commission generated a full knowledge base. The whole process was well documented with all information generated and used being publicly available online (Khayelitsha Commission, 2012a). This type of data source consisted of the Khayelitsha Commission's hearing transcripts, including over 8,000 pages of commission hearing transcripts (Khayelitsha Commission, 2012b). These public hearings include over 100 witness testimonies from various members of the community, community leaders, victims and perpetrators of crime, violence, and vigilantism, CSO staff and members, researchers from academia and think tanks, practitioners, government officials and members of the South African Police Service (SAPS).

The Khayelitsha Commission held its public hearing over 37 days, between December 2013 and May 2014. During the research stay, the researcher attended 27 out of the 37 public hearing days.<sup>12</sup> Data was collected through note taking while attending the public Commission hearings in Khayelitsha and through accessing the fully transcribed and translated transcripts,<sup>13</sup> and related affidavits and background documents provided by the Khayelitsha Commission (2012b; 2012c) after the hearing, for more in-depth analysis.

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<sup>11</sup> For those organisations that consented to be named.

<sup>12</sup> The Khayelitsha Commission also held three days of preliminary hearings on the 29.10.2012, 13.11.2013, 29.11.2013. These were mainly concerned with discussing procedural matters (see Khayelitsha Commission, 2014, p. 28; 2012g).

<sup>13</sup> Hearings were held in English and isiXhosa. Transcripts based on the hearings were transcribed, translated from isiXhosa (one of the official languages in South Africa, predominantly spoken in Khayelitsha), where necessary, and provided in Word- and PDF-Format online by the Khayelitsha Commission (2012b). Citations of transcript excerpts in this thesis are based on these original transcripts as provided by the Khayelitsha Commission. As the transcript represents the original voices of the people, corrections to grammatical errors have only been made where absolutely necessary for the purpose of clarity.

The background documents accompanying the hearings included additional affidavits, police files and dockets, research and expert reports, presentations, and statistical data<sup>14</sup> (Khayelitsha Commission, 2012c) along with a final report of 580 pages (Khayelitsha Commission, 2014). The Khayelitsha Commission established a full record, structured in so called bundles, to include these background documents. This comprehensive knowledge source provides rich narratives and community voices on the main themes related to this research.

The third type of data consists of additional and accompanying material complementing the Khayelitsha Commission documents, for example, additional civil society reports or websites, concerned with the Khayelitsha Commission and the themes of this research.

The variety of data collection, of data sources and interviewees allows for triangulation. Triangulation refers to a method that establishes validity in qualitative research through using two or more points of reference within the same piece of research (Moran-Ellis et al., 2006). Different forms of triangulation include data, methodology, theory, investigator and environmental triangulation (Creswell and D.L. Miller, 2000), meaning that for each area more than one item will be used or applied. Data triangulation, for example, thus implies the use of different sources of data such as different informants (Guion et al., 2011, p. 1). Triangulation is a way to improve the constructed validity of research; this is concerned with assessing if the methods of empirical findings are valid through using the correct measures for the concepts and constructs used in the research (Moran-Ellis et al., 2006; Yin, 2003).

In this research, using a mix of different data collection methods consisting of interviews, as well as field notes, and analysing different types of Khayelitsha Commission documents and additional sources, allowed for within-method triangulation. In addition, in order to capture different perspectives and to apply data triangulation, interviews with different stakeholder groups were carried out (CSOs, academia, government) and interview data alongside Khayelitsha Commission and background documents were analysed. The triangulation assisted in mitigating the weaknesses of individual data

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<sup>14</sup> For an overview of parts of the additional material, see the Khayelitsha Commission Report (Khayelitsha Commission, 2014, pp. 469-502) or visit the website (Khayelitsha Commission, 2012a) which gives access to the full record (Khayelitsha Commission, 2012b; 2012c).

sources. In addition, both forms of triangulation can increase the quality of the research design, through providing construct validity.

### Data analysis

Data was analysed and interpreted through the use of qualitative content analysis. Qualitative content analysis is a research method known for “the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh and Shannon, 2005, p. 1278). This method was used as it allows for the identification of patterns and themes also using larger amounts of data.

The success of content analysis is dependent on the coding process (Hsieh and Shannon, 2005). This process helps reduce the gathered material to its main content and those statements identifying common developments and trends, as well as outlier perceptions. Categories are at the centre of this analysis (Mayring, 2010). These are established on the basis of the related theories of research, research questions and hypothesis and are revised in the analytical process (see Mayring, 2000; also see Bos and Tarnai, 1999; Weber 1990). These categories help to establish a coding scheme.

In the data analysis process of this research, as a first step of the coding process,<sup>15</sup> broader categories were highlighted in the text. For the second step, the highlighted sections were coded by predetermined codes (deductive process) and new codes (inductive process) for areas that did not fit the initial coding scheme (see Bernard, 2011). As a final step, patterns and themes were derived from the coding process.

The quality of the content analysis is determined by its reliability and validity. Three types of reliability can be accounted for: reproducibility, stability and accuracy<sup>16</sup> (Krippendorff,

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<sup>15</sup> Coding was carried out by NVivo 10, a computer assisted programme for coding and analysing qualitative data. Computer assisted qualitative data analysis (CAQDAS) has the advantage of enabling a transparent, systematic and accurate form of data analysis. It helps to organise, structure and visualise data and coding in a flexible and iterative manner, while contributing to the rigour and quality of the analysis, for example, through easier category verification (Welsh, 2002; Bos and Tarnai, 1999). The CAQDAS can only be considered a technical support, however, the ability of making sense of the patterns, themes and relationships is based on the analytical skills of the researcher.

<sup>16</sup> According to Weber (1990, p. 2) “[s]tability refers to the extent to which the results of content classification are invariant over time. (...). Reproducibility, sometimes called inter-coder reliability, refers to the extent to which content classification produces the same results when the same text is coded by more

2013, pp. 270-272). Reproducibility can be increased through re-coding of the text by another researcher. However, re-coding could not be applied to this research as a result of time constraints and resource limitations. Furthermore, re-coding would have required substantial knowledge of the research topic, making it more suitable for a co-authored research project. In this research, the stability and accuracy of the coding scheme was provided by coding the material more than once and comparing the re-coded material. Coding validity for the coding scheme and the interpretation of the content was supported by discussing the coding scheme, patterns and themes in a peer review process (Yin, 2003).

In addition, descriptive validity (concerned with data accuracy and representation of the original statements) was guaranteed as the interviews were recorded. The hearing transcripts are available at the Khayelitsha Commission (2012b), with the transcripts based on written and signed affidavits, making them a validated and easily verifiable data source. Interpretive validity (concerned with interpretation of the data and the reflection of what was meant by the interviewee) was facilitated through the provision of verbatim quotes and by referencing the original data sources (for example, referring to publicly available transcripts).

#### Reference to data sources

All in-text citations are clearly marked in this thesis. As outlined above the research uses three main data sources,<sup>17</sup> providing six different types of references: (1) interviews; (2) Khayelitsha Commission hearing transcripts; Khayelitsha Commission background documents consisting of (3) written opening statements and closing legal arguments, (4) bundles,<sup>18</sup> (5) a final report; and (6) accompanying complementary sources. The table below provides an overview of the data sources used in this research and how each source is labelled in this work. A labelling example for easy orientation is also provided. All

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than one coder. (...). Accuracy refers to the extent to which the classification of text corresponds to a standard or norm”.

<sup>17</sup> The research uses (1) semi-structured in-depth interviews; (2) Khayelitsha Commission hearing transcripts and background documents appertaining to the Khayelitsha Commission; and (3) additional accompanying, complementary sources as explained in the previous section on data collection.

<sup>18</sup> The bundles section of the Khayelitsha Commission (2012c; 2012d) consists of all additional sources the Commission used during their functioning. The bundles include, for example, information and documents such as affidavits provided prior to the Commission hearings, research reports, presentations, maps, police files and academic and newspaper articles.



Khayelitsha Commission sources referred to in this work are available online (Khayelitsha Commission, 2012a).

| <b>Data Source</b>                                 | <b>Label</b>  | <b>Example</b>                              |
|--|---|---|
| Personal interviews                                | Interview, followed by code for anonymised interviewee and year of interview  | Interview, 14B, 2014                        |
| Khayelitsha Commission hearing transcripts         | Transcript, followed by hearing date, and page number where applicable  | Transcript, 06.02.2014, p. 1792             |
| Khayelitsha written opening and closing statements | Type of statement, followed by the statement party, date, and page number or paragraph where applicable                     | Closing Statement, SAPS, 29.05.2014, p. 217 |
| Khayelitsha Commission bundles <sup>19</sup>       | Bundle, followed by the bundle number, sub-number, file number, and item, paragraph, year, and page number where applicable | Bundle, 2 (1.1), file 84, 2013, p. 2        |
| Khayelitsha Commission Report                      | Khayelitsha Commission, year, and page number where applicable  | Khayelitsha Commission, 2014, p. 10         |
| Complementary, accompanying sources                | Various, using standard referencing (for further information see Appendix V)  | NA (According to source type)               |

**Table 1: Overview of data sources**  
(Source: Author's own presentation)

## 1.4. Limitations

There are limitations with regards to the scope of the study, the obtained data, and its generalizability, which will be discussed in continuation.

### Scope

The research focuses on the way that the concept of transformative justice may make a contribution in response to issues surrounding violence and crime and in relation to structural inequality, as well as to the role of civil society organisations. Given this angle,

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<sup>19</sup> This label order is equivalent to the Khayelitsha Commissions own structure of ordering documents, information and records into bundles for easier orientation and navigation within the Khayelitsha Commission database (Khayelitsha Commission, 2012c).

the thesis does not engage with the question of how to effectively tackle violence and crime, rather, it is concerned with impacts to structural inequalities in relation to violence and crime, and the role of different actors in addressing them. This issue would be a valuable research project on its own, creating opportunities to engage with questions on the limitations of the criminal justice system in addressing violence and crime, and the ability to look into potential tools for transformative justice based initiatives.

In addition, the research does not offer an in-depth analysis of the different local actors, and the relationships and intermediation occurring between local actors, CSOs and the community. Therefore, this could also be a point for further research, for example, in assessing the possibility for collaborative approaches or transformative change.

### Data

While data saturation<sup>20</sup> can be assumed, one limitation has to be raised in terms of data. Not all the relevant actors were interviewed in person, and this includes the police, the KDF, CPFs, NWs, taxis and street committees, as explained in the previous section. The research instead relied solely on the testimonies of these actors based on the Khayelitsha Commission hearing transcripts and additional affidavits. In addition, interviewees referring to the actors mentioned above, and background documents, for example, expert reports were taken into account. While this offered sufficient material for addressing the issues highlighted by the research, targeted interviews would have added additional insights into specific questions. In particular, specific demands, positions and interactions with the complainant organisations and the Khayelitsha Commission could have been interrogated further. This would have also allowed for better insights into the positions and activities of sub-structures of the KDF and CPF member organisations, for example. However, access to these actors was not possible; some organisations were very reluctant to speak to outsiders, while others were not responsive to interview requests. Further

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<sup>20</sup> Data saturation refers to the point where sufficient data is available to conduct research. There is no one indicator to assess when data saturation has been achieved, and PhD projects have been reported to use an average of 30 sources, with the lowest example being 1 and the highest 95 (Mason, 2010, Table 1). Fusch and Ness (2015, p. 1409) see data saturation occurring in a combination of rich and thick data, where thick data refers to a lot of data and rich describes detailed, deep and multi-layered data. They (Ibid.) also point out that data triangulation is a way to guarantee data saturation. Data saturation for this research project can be assumed, given the extensive database of the Khayelitsha Commission.

research engaging more closely with these actors is, however encouraged, in particular, as this research and that of others (Freeman and McDonald, 2015; Super, 2014; Buur, 2003) show its importance.

In addition, while archival data, like the Khayelitsha Commission full data record, constitutes a very strong data source, providing much stable and precise data (Yin, 2003, p. 80), there are also limitations involved. First, although the investigation of the Khayelitsha Commission was broad and comprehensive, the data was still limited by the official mandate of the Khayelitsha Commission. Second, while the Khayelitsha Commission aimed to be as inclusive as possible, some voices went unheard, for example, those of the taxi drivers, who did not want to participate, and possibly also some victims of crime, who might not have wanted to come forward to testify in front of a formal body for a number of issues, such as sensitivity of the case or shame. Third, affidavits and testimonies may have been exposed to lost information or meaning, that is, either by actual faulty translations from IsiXhosa<sup>21</sup> to English and vice versa or due to transcription errors. These limitations were addressed through complementing the Khayelitsha Commission sources with interviews and by cross-checking Khayelitsha Commission testimonies with affidavits and expert reports in a bid to triangulate the data.

### Generalisability

Limitations for the quality of the research depend, among other things, on the reliability and validity of the research design (Yin, 2003). Internal validity is concerned with the credibility and trustworthiness of the research, whereas external validity refers to the level of generalisability of the findings (Ibid., p. 33 et seq.). Different methodological limitations and mitigation strategies were discussed in Chapter 1.3, and include the use of data and method triangulation, measures to increase coding reliability and means to address descriptive and interpretative validity.

Concerning external validity or generalisation, case studies are prone to criticism because of limited generalisation and the reduced ability to draw conclusions for a wider universe of cases (Collier and Mahoney, 1996). In response to this criticism, in his article on the

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<sup>21</sup> IsiXhosa is one of the eleven official languages of South Africa. The majority of Khayelitsha residents speaks IsiXhosa.

“Five misunderstandings about case-study research”, Flyvbjerg (2006, p. 10) elaborates that

*formal generalisation is only one of many ways by which people gain and accumulate knowledge. That knowledge cannot be formally generalized does not mean that it cannot enter into the collective process of knowledge accumulation in a given field or in a society.*

He also (Ibid., p. 12) asserts that “(...) formal generalization is overvalued as a source of scientific development, whereas ‘the force of example’ is underestimated”. One major value of in-depth case studies is based on their ability to provide rich narratives (Flyvbjerg, 2006). In a similar vein, Punch (2014, p. 124) states that case studies are also relevant in their own right, providing a “fuller understanding of a complex social phenomenonas” that contribute to the learning process.

This particular study does not allow for generalised conclusions on the needs of local communities, and the composition of CSOs and local actors in other areas of South Africa. Actors, approaches and needs will necessarily vary in other areas, even between different communities in the same area. However, this research does consider allowing for two types of generalisation. The first type is generalisation through case to case transfer (Firestone, 1993). Case to case transfer means that “a person in one setting considers adopting a program or idea from another one” (Ibid., p. 17). The transfer of research findings is facilitated to another case by providing “a rich, detailed, thick description of the case” (Ibid., p. 18).

While it is acknowledged that Khayelitsha is a particular place with a particular set-up, for example, when it comes to ethnicity, historical development and civil society composition, South Africa counts many urban, deprived areas that exhibit a similar infrastructure, socio-economic reality, and challenges, as well as high levels of violence and crime alongside little access to justice and security. As much as Khayelitsha is a unique place, unfortunately, its features of marginalisation and levels of inequality, violence and crime are shared among many other townships in South Africa. Shared features across South Africa also include the skewed resource distribution of policing (Social Justice Coalition, n.d.(b)), the relation between politics and security (Fourchard, 2011; 2012), and the prevalence of vigilante violence and related needs and demands in different parts of the country (Buur, 2008; 2003).

Indeed, the research suggests that similar contexts may experience similar levels of structural inequality in relation to violence and crime as well as similar limitations in terms of access to justice and security, and everyday life experiences, as well as certain responses by local actors. It remains to see how this then shapes the needs of the respective community and the approaches of civil society actors. This research thus invites the use of the findings on structural inequality in relation to violence and crime, security and justice. It also invites a closer examination of the role played by CSOs, the experience of local needs, and the way structural inequalities play out in other settings. This may reach beyond the location of South Africa, and be applied to other systematically and historically marginalised urban dwellings in post-transition countries.

Second, this research aims to contribute to analytical generalisation with the use of “higher-order abstraction” (Polit and Beck, 2010, p. 1453); that is, through interrogating elements of transformative justice using an empirical case study. Thus, analytical generalisation can happen through “the extraction of a more abstract level of ideas from a set of case study findings” (Yin, 2013, p. 325). As such, the thesis aims to provide an application of propositions to an empirical case, probing elements, while discussing the opportunities and constraints of transformative justice through the use of a case study. While this does not allow us to draw ultimate general conclusions that reject or confirm elements of transformative justice, it does allow us to point to the potential of the concept, discuss weaknesses and strengths, and call for further research into identified gaps; for example, on the role of CSOs, the dilemma that may emerge from local needs or the calls for further research on mechanisms and a practice of transformative justice.

## 1.5. Concepts

This section will define the two relevant concepts of violence and civil society in relation to their use throughout this thesis in order to provide a common understanding of the meaning of these terms. This research engages with concepts of violence that include violence and crime and structural violence. It further refers to civil society organisations broadly, as well as specific types of CSOs such as Non-Governmental Organisations (NGOs), and less formal structures like vigilante actors.

## On violence, crime and structural violence

The research will refer to violence and crime mainly as conjuncture, focusing on expressed and experienced violence and crime at the micro-interactional level, including delinquent deeds, common crime such as robbery and assault, for example, and homicide and rape. However, violence and crime are interwoven, as Moser (1999, p. 3) maintains:

*Violence is generally defined as the unlawful exercise of physical force, while crime is an act (usually a grave offense but not necessarily violent) punishable by law--the breach of a legal prohibition. However, distinctions become blurred because perceptions about which crimes are violent, or which types of violence are unlawful, differ widely. Further, violence differs in terms of level, spatial area and type, and the range is daunting.*

As such, this research refers to both violence and crime, acknowledging that the distinctions are not always clear cut.

In addition, this research works with the concept of structural violence, also referred to by the term 'structural inequalities'. The concept of structural violence ties back to the work of Galtung (1969), which can be considered key to the debate on persisting dimensions of structural inequalities, or what he calls 'structural violence'. According to Galtung (Ibid.), structural violence is the deprivation of the full potential of a person through established and structurally cemented inequalities – often engrained in institutions, systems of power and society at large. Farmer et al. (2006, p. 1686) consider structural violence in a similar vein, that is, as a term

*(...) describing social arrangements that put individuals and populations in harm's way (...). The arrangements are structural because they are embedded in the political and economic organization of our social world; they are violent because they cause injury to people (typically, not those responsible for perpetuating such inequalities).*

In its concrete manifestation, structural violence can lead to physical harm and even death. For example, poverty as a consequence of structural violence can lead to malnutrition, disease and starvation. Farmer (2004, p. 307) summarises how, “[i]n short, the concept of structural violence is intended to inform the study of the social machinery of oppression”. This includes in particular the examination of “enabling conditions of structures that are both ‘sinful’ and ostensibly ‘nobody’s fault’” (Ibid., p. 307).

Structural violence is also closely related to the dimension of everyday violence. Everyday violence can be understood as a less visible, more implicit form of violence, that of “the production of social indifference to outrageous suffering through institutional processes and discourses” (Bourgois, 2007, p. 2). This implicit form is expressed through organised, and routinised institutionalised practices (Scheper-Hughes, 1997, p. 471; also see Scheper-Hughes, 1996). Everyday violence also refers to the trivialisation and institutionalisation of the use of violence as a way of dealing with everyday life (Steenkamp, 2005, p. 254).

From the idea of structural violence, Galtung (1969) derived the concepts of negative and positive peace. Negative peace denotes the absence of war, which means the end of the use of physical violence, whereas positive peace also includes ending structural inequalities and achieving a socially just society - “which is a positively defined condition (egalitarian distribution of power and resources)” (Ibid., p. 183). Therefore, positive peace goes beyond a ceasefire or a political transition, but instead calls for harmful power relations to be addressed, allowing for everyone to realise their potential in the context of an equal and just society.

Structural violence and positive peace are both important concepts for transformative justice. For example, transformative justice argues for the need to address structural inequalities in order to achieve positive peace, which will be discussed further in Chapter 2. In addition, as has been outlined briefly in Section 1.1., violence and crime are considered symptoms of structural inequalities.

This thesis will make use of the term and concept of structural inequality, which is considered to be interchangeable with structural violence, in order to establish a clear linguistic difference between violence as something physical and violence as something structural.

#### On civil society organisations

Transformative justice approaches suggest an important role for local actors in the pursuit of transformative justice endeavours. This is because these organisations are considered to promote the articulation of local needs, facilitate empowerment, and support the challenge of power structures. CSOs are considered as drivers of change in terms of contributing to the alteration of state behaviour or power structures (Gready et al., 2010) and to challenging broader political structures. CSOs are further thought to be important

for advancing human rights by incorporating such rights in their struggle for social justice (Evans, 2013a; Robins, S.L., 2008; also see discussion in Section 2.1.2.). For this reason, one of the ways to inquire about the contribution transformative justice can make is to examine its key elements, such as the involvement of civil society.

In this context, the term ‘civil society organisation’ can be understood as an umbrella concept encompassing different categories of social organisation. For this reason, a broader CSO definition guides this research, as it allows for the necessary flexibility, while also leaving room for different forms of civil engagement. The wider definition acknowledges that “it may make more practical sense to adapt an approach that tries to come to terms with this breadth, not define it away” (Fischer, 2006, p. 23). This research uses Merkel and Lauth’s (1998, p. 7) definition of a “realistic concept of civil society” (Ibid., p. 7 et seq.), where CSOs are located in a non-state sphere consisting of a plurality of different and voluntarily composed associations and organisations, all organising and articulating their specific material and normative interests autonomously. The research will generally use the term CSO to refer to the broader category of organisations. However, where needed, necessary and relevant distinctions between the different categories (as outlined below) will be made by referring to the specific organisational type.

The organisations that form part of this case study range between social movement organisations (SMOs), NGOs, Community-Based Organisations (CBOs) and vigilante formations – their degree of formality and categorisation being ambiguous. The diversity of (social) actors involved in security and safety in general vary from NGOs and social movements, to grassroots organisations, and less formalised structures, such as activists, street committees or neighbourhood watches.

These diverse types of organisation have different characteristics. Social movements are less formal, less institutionalised networks created to mobilise and problematize shared ideas and ideals – often on conflictual issues (Della Porta and Diani, 2006). They play an essential role as “[t]heir existence, successes, failures and more generally their dynamics, though all incredibly difficult to read and interpret, allow us to gauge the workings of the broader political structures of our society” (Crossley, 2002, p. 9). In contrast, NGOs are often labelled as far more organised and professional, with paid staff and institutionalised, organisational structures. In an attempt to approximate a definition of NGOs, Martens (2002, p. 282) concludes that “NGOs are formal (professionalized) independent societal



organizations whose primary aim is to promote common goals at the national or the international level". Alternatively, CBOs are organisations that work at the community and local level, and are often occupied with improving the social issues that exist there, ranging from health care to education or environmental issues. CBOs are less formalised and more locally rooted. Often CBOs experience challenges around organisational, capacity, funding and networking deficits (Ranchod, 2011).

## 1.6. Thesis structure

The thesis is structured through the use of eight chapters, including this introduction. The second chapter provides an overview of the theoretical framework of transformative justice and related debates. Chapter 3 discusses the South African context in relation to its transition, criminal justice reform and civil society. The fourth chapter introduces the case study location, and provides information on Khayelitsha, the Khayelitsha Commission, and different local and civil society actors. Chapters 5 to 7 discuss the empirical findings of this research. The final Chapter 8 ends with a conclusion and provides recommendations.

Following this introduction, Chapter 2 discusses the relevant literature. Using transformative justice as the overarching framework for the research, the literature review first introduces the criticism that transitional justice has received as an antecedent leading to the development of transformative justice approaches. The literature review outlines the criticism of transitional justice and how identified shortcomings relate to structural inequalities in post-transition settings. It introduces transformative justice as a response to this criticism. The chapter elaborates upon the main propositions of transformative justice, namely the need to address structural inequalities and the need for genuine civil society and local participation to facilitate change. The literature review also elaborates on the criticism received on the different, normative underpinnings of this new concept.

Chapter 3 introduces and discusses the following: relevant debates on the South African transition related to criminal justice reform; transitional justice critique; structural inequality and violence and crime; vigilantism; and the analysis of CSOs. The chapter demonstrates how South Africa provides a suitable country location for the case study and is an appropriate context for interrogating the concept of transformative justice.

Chapter 4 provides an introduction to the case study context of Khayelitsha. It provides a short historical and political background – both very relevant for assessing the current status quo in Khayelitsha. The chapter continues with an overview of demographic and socio-economic data, and provides data on violence, crime and policing. Then the Khayelitsha Commission is introduced. The chapter terminates with mapping out the relevant actors addressing violence and crime in Khayelitsha.

Chapter 5 to 7 are the empirical chapters. Chapter 5 discuss CSOs activism and mobilisation for the Khayelitsha Commission, the tension among CSOs on the establishment of the Khayelitsha Commission, as well as their demands for security and justice. Chapter 6 analyses the intersections between violence and crime, access to justice and security, and structural inequality. The chapter also provides insights into people's experiences with criminal justice and public security in Khayelitsha and how this experience shapes perceptions of justice. Chapter 7 then moves on to examine local justice and security needs and demands, as well as local responses to these demands and needs. The chapter discusses different local civil society actors' approaches in security and justice enactments.

The final Chapter 8 summarises the main findings, discusses the contribution and then formulates recommendations for research. In addition, the conclusion highlights particular findings on the South African context. Finally, the conclusion encourages further research on transformative justice in particular, as its practice still needs further elaboration.

# 2. FROM TRANSITIONAL JUSTICE TO TRANSFORMATIVE JUSTICE

*Ultimately, if the rhetoric of reconciliation is to be translated into reality in South Africa, we will have to go beyond formal political and constitutional change to tackle the deep-seated social imbalances that underlie the culture of violence at the most fundamental, structural level.*

Simpson, 2002, p. 247

Transitions from authoritarian to democratic regimes, and from war to peace, are challenged by the task itself and the need to transition out of violence, injustice, inequality, and oppression and into a more peaceful, just and equal society. Over the last forty years, transitional justice has become an increasingly popular response to these challenges, becoming the norm in post-transition and post-conflict settings (see discussion in Miller, Z., 2008). Yet, many post-transition societies are haunted by high levels of inequality, social tensions, violence and crime, as well as vigilantism. The emerging transformative justice literature therefore argues that a failure to address structural inequality may lead to protracted war, the re-emergence of conflicts, and social unrest (Baker and Obradovic-Wochnik, 2016; Eriksson, 2009b; Laplante, 2008).

To explore the role of transformative justice for addressing violence and crime further, this chapter analyses three main bodies of literature: transitional justice critique; transformative justice conceptualisation; and ideas of local participation. In exploring these themes, this chapter also critically discusses the key elements of this rather new concept. The chapter therefore aims to introduce transformative justice as a new concept, one that is relevant for challenged post-transition contexts like South Africa. By discussing the main propositions, the critically debated aspects, and the current gaps in the concept of transformative justice, this chapter identifies areas that are in need of further exploration. As such, the literature review lays the groundwork for interrogating the key themes of transformative justice and its critics using civil society mobilisation, the Khayelitsha Commission and related community perceptions as the case study.

The literature review is structured as follows: Section 2.1. introduces the critique of transitional justice as a basis for understanding the emergence of transformative approaches. Section 2.2 discusses the main propositions of transformative justice, namely, the move from transition to transformation; the call for addressing long-term structural inequalities; and the need to focus on local participation, agency and need. The section also engages with criticism on transformative justice. Section 2.3. discusses the gaps in the literature and illustrates how the present research aims to address them.

## 2.1. The blind spot of transitional justice: addressing structural inequality

Transitional justice describes a practice based on a range of mechanisms which are often formulated as policy interventions, these are deployed during or shortly after transitions to deal with massive and systematic human rights violations (Duthie, 2017, p. 10). These mechanisms include truth commissions, trials, reparations and lustrations' programs among others, and also entail judicial, semi-judicial and non-judicial practices. Transitional justice gained particular prominence with the "third wave of democratisation" in Latin America and Eastern Europe evolving as those "policy choices made by regimes emerging from armed conflict and/or authoritarian rule with regard to accountability for past abuses, ability, reform, and democratization" (Sriram, 2005, p. 101).

Transitional justice encompasses a variety of aims to address the social divisions and conflicts of the past; to contribute to reconciliation and social healing; to provide justice and retribution; to create an historical account of the past; and to reform institutions in terms of strengthening the rule of law, among others.

But transitional justice is not only defined through its mechanisms and practice, it can also be considered as

*(...) a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future. (Bickford, 2004, p. 1045)*

As such, transitional justice combines practice but also inquiry, with the academic debate focusing on both. Through becoming a default response and norm in many transitional contexts (Miller, Z., 2008), transitional justice has developed its own academic field, drawing from different disciplines.<sup>22</sup> In summary, both practice and inquiry are concerned with activities and research on ways to overcome past human rights violations and avoid repeating the same mistakes in the future (Hayner, 2002).

However, post-conflict and post-transition settings often experience numerous challenges, such as unrest, high levels of violence and crime, poverty and inequality (Neild, 2003). Consequently, transitional justice has been subjected to critical inquiry due to its mixed success in practice. This has also caused critical analysis, given that an ‘industry’ of transitional justice (along with peacebuilding initiatives) (Waldorf, 2012, pp. 1-2), and an array of experts (McEvoy and McGregor, 2008) have not achieved what they were mandated to do – namely establish lasting peace through reconciliation, justice and reform (see Bickford, 2004; United Nations Secretary General, 2004). Scholars and practitioners, however, have engaged with analysing and discussing the shortcomings and possible new avenues for redressing these challenges (Waldorf, 2012; Gready et al., 2010; Servaes and Zupan, 2010; Lambourne, 2009; Laplante, 2008).

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<sup>22</sup> These include politics, history, criminology, philosophy, sociology among others, and research ranges from single country case studies to quantitative impact studies on specific mechanisms, including philosophical debates on truth and justice, for example (for an overview see Fletcher and Weinstein, 2015; Bell, 2009).

This has led to a broadening of the debate around the scope of transitional justice, shifting the academic debate to suggest a stronger focus on structural inequalities as the root causes of conflict, violence and oppression, and on the need for local participation, agency and resistance. The aim here is to achieve real transformation, sustainable peace and a just society. As a result, transitional justice scholars have become more concerned with structural inequalities and local needs (Mullen, 2015; Balint et al., 2014; Sharp, 2014).<sup>23</sup>

In 2010, the United Nations Secretary General (2010, p. 7) acknowledged this broader understanding of transitional justice:

*Successful strategic approaches to transitional justice necessitate taking account of the root causes of conflict or repressive rule, and must seek to address the related violations of all rights, including economic, social, and cultural rights (e.g., loss or deprivation of property rights). Peace can only prevail if issues such as systematic discrimination, unequal distribution of wealth and social services, and endemic corruption can be addressed in a legitimate and fair manner by trusted public institutions.*

Critiques of the “dominant script”<sup>24</sup> (Cavallaro and Albuja, 2008, p. 126) of transitional justice, hence, see the need to address the structural inequalities engrained within systems, institutions, attitudes and people. Transitional justice has been criticised on the basis that its mechanisms, targets and outcomes are not sufficiently concerned with the structural inequalities that contribute to, and are constituent of, oppression or conflict (Gready and Robins, S., 2014; Mani, 2008; Laplante, 2008; Daly, 2001).

Four main shortcomings of transitional justice have been highlighted with regard to structural inequalities. These are, in particular: (1) the narrow legal focus of transitional justice; (2) the emphasis on institutions and the state; (3) the preference of focusing on political and civil rights over socio-economic rights; and (4) the focus on top-down and elite driven initiatives.

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<sup>23</sup> This debate was accompanied by discussing the overlaps between transitional justice, peacebuilding and development, see, for example, discussions in Baker and Obradovic-Wochnik (2016), Lambourne (2014), and Sharp (2014). The shifts in the debate as well as the criticism towards this new “turn” hence also draw from this broader range of literatures.

<sup>24</sup> Cavallaro and Albuja (2008) refer to the dominant script in transitional justice as one that focuses on mechanisms and on the individual, civil, and political rights. They indicate that this is a default – the blue print and dominant narrative for what transitional justice needs to look like.

Firstly, the narrow legal approach has been criticised for being distanced from people's lived realities, relying on the law to solve social harm, while pushing structural inequalities to the periphery of transitional justice initiatives (Nagy, 2008). Due to the use of this legal lens, it is argued, that transitional justice mechanisms such as truth commissions and human rights trials have often focused on individual guilt and accountability, as well as exceptional violations, instead of shedding more light on "entire socioeconomic and political infrastructures" (Mullen, 2015, p. 471) along with "the more routine and hence 'invisible' damage stemming from unjust societal arrangements" (Balint et al., 2014, p. 199). This has also led to omitting the discussion around collective responsibility (Gready, 2005). In addition, such a narrow legal focus has tended to exclude alternative forms of knowledge and actors related to transitional justice endeavours (McEvoy and McGregor, 2008), instead emphasising the need for "grandiose" and costly institutions such as truth commissions or courts (Martin, 2016, p. 404). Hence, the legal focus has dominated transitional justice, overshadowing a more social and structural perspective.

The second criticism maintains that transitional justice initiatives tend to be fairly state centric, emphasising the reform and strengthening of state institutions (Mullen, 2015; Sharp, 2014; McEvoy and McGregor, 2008). Consequently, precedence is given to establishing the constitution and courts, the carrying out of elections, and providing the provision of civil liberties –thus producing a focus that illuminates state institutions and state processes. Mullen (2015, p. 475) notes that reforming institutions does not alter their power structures, rather it reforms or establishes institutions which create new dependencies based on their power and ability to protect. He finds that reformed institutions may thus continue to be a source of marginalisation or victimisation (Ibid.). Furthermore, such an institutionalist approach has been put under scrutiny as it foregrounds the political and civil rights agenda (McEvoy and McGregor, 2008), while often limiting transitional justice outcomes towards democratic minimalism. In addition, McEvoy (2008, p. 28) argues that such a legalistic institutionalist approach risks casting "victims or violence-affected communities as constituencies which must be managed, rather than citizens to whom they [n.b. the actors within institutions] must be accountable".

Thirdly, transitional justice has been criticised for emphasising political and civil rights, giving less importance to socio-economic rights (Gready and Robins, S., 2014; Arbour,

2007). Sharp (2014, p. 159) claims that justice is imagined as “something that can, to some extent, be engineered and delivered through legal mechanisms and reforms. Seen through these more lawyerly optics, justice is primarily about rights and not social welfare and well-being per se”. In consequence, socio-economic inequalities remain untouched, which has been found to contribute to continued grievances, conflict and marginalisation where “[m]ore-of-the-same economic development policy has meant that the social justice issues of yesterday linger in most post-TC [n.b. truth commission] countries” (Laplante, 2008, p. 339). Z. Miller (2008) stresses the need to address the economic causes of conflict, and highlights that economic justice has often been limited to reparations. She argues that an analysis of the way economic structures intertwine with institutions of oppression is an important task, but one that is excluded and made invisible by transitional justice processes.

Finally, it is argued that transitional justice mechanisms tend to be elitist and expert driven, detached from the realities on the ground (Martin, 2016; Gready and Robins, S., 2014; McEvoy and McGregor, 2008). It is acknowledged that transitional justice aims to examine patterns of violence, with its mechanisms often presented as for and about societies. It is also criticised that, transitional justice often fails to encompass people-centred analysis; this is due to its legal limitations, among other reasons (Mullen, 2015; McEvoy, 2008). Where local participation is in place, it is often limited to well-established NGOs, which does not necessarily strengthen local agency or local voices in the transitional justice process (Lundy and McGovern, 2008a; 2008b). Instead, it can be argued that well-established NGOs are masters of the art of the ‘transitional justice game’. This includes mastering legal languages and donor discourses that are detached from the way a community may usually engage and formulate their needs and demands (see Gready and Robins, S., 2014). Baker and Obradovic-Wochnik (2016, p. 292) also find that

*(...) international intervention and peacebuilding practices can inadvertently set up political systems in which victim and survivor groups must become efficient lobbyists and pander to local power games in order to achieve transitional justice goals such as reparations or specific laws. Transitional justice here reveals itself as not just subject to competing interpretations but as wholly dependent on a number of dynamics not originally envisaged as part of its normative aims, such as bargaining,*



*negotiating, accessing capital and engaging with local politics which are often (...) a site of illiberality or oppression.*

This elitist nature has been criticised as a default response that excludes local voices and people's real needs, while undermining genuine participation (Gready and Robins, S., 2014; Evans, 2013a; Gready et al., 2010; Lundy and McGovern, 2008a).

This section introduced the main criticism of transitional justice, providing the background for movement in the debate, that is, from transitional to transformative justice. This section allowed us to understand the calls for a revision and broadening of transitional justice, moving instead towards a concept of transformative justice. By calling for a thematic broadening of transitional justice, addressing structural inequalities, and extending the timeframe and sites of approaches, the re-conceptualisation and partly new concept of transformative justice aims to address the shortcomings and criticism that this section has outlined.

## 2.2. Addressing the criticism through transformative justice

The critique of transitional justice has contributed to the emergence of transformative justice. Advocates of the latter emphasise the need to address structural inequalities and changing structures of power (Gready and Robins, S., 2014; Laplante, 2008). Social peace ought to be achieved through addressing inequalities and creating a more just society, as well as by addressing the genuine needs and concerns of the people, which can be realised through a focus on local and civil society participation and change.

The academic discussion regarding a more holistic response is not entirely new (Daly, 2001), but, it has recently become more prominent, with a variety of scholars engaging with transformative approaches from different angles (Sharp, 2014; Gready et al., 2010; Lambourne, 2009; Mani, 2008). McAuliffe (2017, p. 285) finds that this has extended to a “transformative turn” in transitional justice, whereby

*[t]he normative case that transitional justice should address the structural causes of conflict like underdevelopment, maldistribution and systematic denial of socio-economic rights has become increasingly prevalent in transitional justice discourse. It may become the mainstream position, if it has not done so already.*

This turn is a result of different factors. On the one hand, transitional justice research and practice is in its third decade and after years of expanding ambitions, aims and areas, finds itself in a phase that foregrounds critical inquiry (McAuliffe, 2017). On the other hand, the challenging of dominant frameworks such as a western, liberal discourse also influences a more critical assessment of transitional justice paradigms (Ibid., p. 54-55).

This section outlines the main key themes or prepositions of transformative justice. Transformative approaches share two key features which this research will focus upon, namely (1) addressing structural inequalities and (2) including local, civil society actors and genuine participation. The idea that a new concept is needed for addressing post-transition challenges is interrogated in this research. The discussion of the main proposition and main criticism of this concept is therefore essential, as it outlines the main themes and issues to be discussed in the empirical chapters.

The first theme of addressing structural inequalities will be outlined in the next section, while the second theme on the inclusion of local, civil society actors, local needs and participation will be addressed consecutively. The next section will also discuss the main dividing lines between transformative justice advocates, concerning whether transitional justice should become transformative or whether it should have a concept of its own. Finally, though transformative justice has emerged as a response to transitional justice critique, it is not free from criticism. The two sections, will therefore also discuss critical considerations of the transformative justice concept.

### 2.1.1. Integrating structural inequalities

The call to focus on structural inequalities and integrate them in the discussion on transitions aims to address a variety of social, political and economic inequalities, established and institutionalised in the past, but still impacting on the present and future developments of post-transition countries. This goal is formulated in response to the previous criticism on the limited reach of transitional justice's narrow legal and institutional focus and the emphasis of transitional justice on civil and political rights. In consequence, addressing poverty and socio-economic inequality is one of the overarching targets in terms of tackling protracted structural inequality. This shift to address socio-economic needs and related structural inequalities has gained popularity in theory and practice (see discussion of Waldorf, 2012). This new focus may include addressing natural resource distribution and socio-economic inequalities in relation to conflict

(Gready et al., 2010); gender-based violence and the cultures of patriarchy and dominance (Durbach, 2016; Boesten and Wilding, 2015); or the redistribution of property and land (Evans, 2016; 2013a; 2013b; Pasipanodya, 2008).

While there is a strong consensus for the need to address structural inequalities and socio-economic justice, there are different positions on when and how this should be achieved. While some authors see the need to develop a more comprehensive version of transitional justice, hence rather placing it within a transition timeframe (Lambourne, 2014; 2009; Laplante, 2008), others have argued for a new model that also allows for the inclusion of late post-transitional settings or even established democracies (Evans, 2016; 2013a; 2013b; Gready and Robins, S., 2014; Gready et al., 2010). Additionally, some authors see the response occurring between those two strands, arguing for the use of transitional justice mechanisms but detaching them from a transition period timeframe (Balint et al., 2014; Sharp, 2014).

Those scholars that argue for a broadening of transitional justice in order to respond to a transformative agenda, either call for a reorientation of transitional justice more broadly or for the integration of transformative justice into specific transitional justice mechanisms. Lambourne (2014, pp. 28-29), for example, suggests a combination of different elements of reparations of past injustices, as well as distributive socioeconomic elements to bring about prospective justice. In her view, transitional justice should encompass political, psychosocial, socio-economic and legal aspects, while also establishing a more long-term perspective (Ibid.). She considers transitional justice to be transformative when it is situated within peacebuilding efforts that aim to achieve sustainable, and hence, positive peace.

While this is a broad approach to transitional justice, other authors target more concrete transitional justice mechanisms, relying on an integration of socio-economic considerations into those mechanisms (Laplante, 2008; Mani, 2008; Nagy, 2008; Pasipanodya, 2008). Laplante (2008), for example, suggests integrating the analysis of socio-economic drivers of conflict and recommendations of how to address them into the analytical work of truth commissions. She argues that the findings of such a truth commission could be used to influence policy and long-term social agendas, serving as a powerful lobbying and advocacy tool for CSOs, while also legitimising their civil protest. Others argue for reparations as the means and mechanisms for redistribution. This can include community reparations (Pasipanodya, 2008) or transformative reparations, for

both victims and initiatives, addressing the underlying structural inequality that caused the violence in the first place; for example, in the case of gender-based violence (Rubio-Marín and De Greiff, 2007).

A number of scholars have, however, questioned whether transformative justice should be addressed through transitional justice mechanisms (Gready and Robins, S., 2014; Waldorf, 2012). Waldorf (2012, p. 9), for example, questions the capacity of transitional justice mechanisms to broaden their agendas and mandates as they are “already over-stretched and under-funded”. He (Ibid.) also reminds that the relatively short time span of these mechanisms is ill suited for long-term socio-economic change. He (Ibid., p. 9) further notes that

*(...), transitional justice is inherently short-term, legalistic and corrective. As such, it should focus on accountability for gross violations of civil and political rights. This is not to deny the importance of addressing past and present socio-economic inequalities as a matter of both justice and potential conflict prevention. But that should be done through democratic politics and distributive justice (...). Well-meaning efforts to have transitional justice tackle socio-economic wrongs will simply freight it with yet more unrealizable expectations.*

In a similar way, Sandoval (2017, p. 166 et seq.) argues that there is a need to carefully assess what transitional justice can feasibly address, due to the gap between the normatively desired aims of transformative justice, and what transitional justice and its mechanisms can accomplish in practice.

Therefore, some scholars suggest transformative justice is a separate concept from transitional justice, which consequently also means a separate practice. Gready and S. Robins (2014) argue that transformative justice is a concept that seeks to complement transitional justice rather than overburden it. Following this idea, Gready and S. Robins (Ibid., p. 340) define transformative justice as the

*transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level.*

Additionally, Evans (2016; 2013a, p. 100 et seq.) underlines that transformative justice is distinct from transitional justice despite recognizing an overlap between the two. He

considers transformative justice as counteracting a legalistic, elite driven approach and the short-term change offered through transitional justice (Evans, 2016, p. 8; 2013a, pp. 99-100). In his view, transformative justice should be concerned with pursuing structural outcomes and involve affected communities in shaping these.

This is a remarkable point in the discussion as it extends the field of transitional justice towards models of transformative justice. It moves away from (1) limited timeframes (as in the early post-transition years), (2) a clearly defined process (like political transitions from authoritarian to democratic regime), and (3) established mechanisms associated with transitional justice (such as truth commissions and pre-determined outcomes that include legal sentences or commission reports).

Gready et al. (2010, p. 2) argue that transformative justice “should be expanded to societies normally perceived as at peace, recognising that the state of peace should signify more than the absence of large scale organised violence”. Hence, they (Ibid., p. 340) consider that transformative justice can be applied anywhere and at any time if it addresses structural inequalities. Balint et al. (2014) further develop this idea by calling for a structural justice model that also accounts for past colonial harms, and the continuous structural injustice emerging from them. The temporal limitation and space of transitional justice for addressing injustices related to recent conflicts and regime changes is discarded here. In this regard, Balint et al. (2014, p. 199) found that “[w]hile structural injustice may originally be caused by a specific enterprise or experience (such as colonialism), it endures beyond the moment of violation, shaping and constraining the conditions of life experienced by both the dominant population and particular groups”.

Sharp (2014, p. 158) also notes that transitional justice is no longer limited to what he calls “paradigmatic transitions” but can be applied to “normative transitions”:<sup>25</sup>

*In this sense, transitional justice as a transition to positive peace might come to suggest not a specific destination, and not a project for the backward rest rather than the liberal West – a moment that occurs at the ‘end of history’ – but something that all societies will need to revisit at multiple junctures. As (re)conceptualized, transitional justice would be as*

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<sup>25</sup> Paradigmatic transitions in Sharps’ (2014, p. 156) understanding are transitions from authoritarian to liberal democratic rule. He (Ibid., p. 156) describes normative transitions as transitions without a regime change where liberal regimes address historical injustices.

*relevant to addressing historical injustices in consolidated democracies like Australia as it is to the immediate postconflict context of Liberia or Sierra Leone.*

A shift in time and space is also accompanied by suggesting a move away from defined transitional justice mechanisms to a different sort of practice. Balint et al. (2014) note that transitional justice mechanisms would need to be transformed in order to serve their cause. This would involve a turn from state strengthening towards altering power and property structures. Balint et al. (Ibid.) thus call for a shift away from classical transitional justice mechanisms, such as the truth commissions and trials that strengthen the state but miss out on distributive challenges. Instead, they call for initiatives that analyse harms, altering power structures and future orientation, including indigenous mechanisms. Yet another suggestion is to focus more on the processes necessary to induce change (Gready and Robins, S., 2014).

The transformative justice concept therefore provides a more open and flexible vision. In this sense, transformative justice can be understood as an approach that aims to achieve change through different processes of resistance, advocacy and alternative space (Gready and Robins, S., 2017; 2014; Evans, 2016). At the same time, it also places more responsibility on successor governments as it allows the review of, not only the way in which structural injustices have shaped the past and need to be remedied following regime change, but also how successor governments may be aggravating these injustices in the present, as will also be discussed in the empirical chapters.

Yet, a more transformative form of transitional justice and the separate concept of transformative justice have both been criticised, on the one hand for being too broad and loosely defined, on the other for overestimating its practicality and impact. Opening up timing, process, tools and outcomes mean that transformative justice runs the risk of becoming a broad concept that is very hard to grasp (Sandoval, 2017; Waldorf, 2012).

To counter these criticisms, Gready (2011) suggests a clear conceptual demarcation of transformative justice. In this regard, Evans (2016, pp. 8-9) notes that transformative justice needs to target the structural injustices that emanate from conflict or authoritarianism to avoid conflation with broader ideas of social justice, including “attention to the historical and structural roots of contemporary injustices” (Ibid., p. 9). Balint et al. (2014, pp. 213-214) second this notion with their understanding of “transition from unjust relations to just relations” emphasising that

*(...) the purpose here is not to suggest that transitional justice become conflated with the general pursuit of socioeconomic redistribution through equitable governance. Rather, our model seeks to build on the field's key concerns – namely to acknowledge and redress mass harm as a matter of justice and as a means of grounding a shared future (...).*

While these authors are aware of the need to demarcate the need for addressing structural inequalities from quests for broader social justice, they fall short of providing more concrete guidance on how this can be achieved in practice. In particular, drawing a line involving contexts where the consequences of former injustices and current inequalities reinforce each other, is a challenging task.

McAuliffe (2017, p. 35 et alibi) critiqued this “transformative turn” on the grounds that both transitional justice and more transformative approaches often overestimate their impact. He (Ibid., p. 287) notes that this turn “is based on the fundamental assumption that the structures of post-conflict societies are malleable if only we understand the nature of socioeconomic injustice comprehensively”. Basing his criticism on political economy theory, McAuliffe (Ibid.) argues that economic power structures are shaped by a combination of institutional set-ups, powerful local actors, and the international financial system. They are often the result of an early bargain made during peace negotiations, which take place behind closed doors. As such, he considers transitional justice and transformative justice initiatives mainly unable to alter these structures and agreements; that is also because these initiatives lack institutional power, due to what is often their non-legal nature. Furthermore, he argues that opposition to changes of socio-economic bargains and related power structures is very strong due to the high stakes involved, and will in some cases involve the use of violence in defence of economic and political interests. McAuliffe (2015, p. 181) sees the contribution of transitional justice and transformative justice as relevant where it is equipped to trigger meaningful change, namely: strengthening civil rights and contributing to representative governments, providing input to constitutional reform, and making analytical contributions through truth commissions.

McAuliffe's (2017) comprehensive analysis of the political economy of post-transition settings and the related criticism of transitional justice are based on valid arguments. Nevertheless, McAuliffe (Ibid., p. 296), referring to Williams and Nagy (2012), remarks

that “second-best justice is better than nothing at all, and it is better to do what we can, even if imperfect, than to permit injustice to stand entirely unaddressed”.

Transformative justice can thus be understood as an endeavour that tries to address the shortcomings and criticism of transitional justice through an attempt to not let structural injustices stand unaddressed, while not being completely free from critical inquiry either. In particular, conceptual criticism is concerned with where to draw the boundaries of transformative justice, whereas, more practical concerns focus on the question of how structural inequalities can actually be addressed. This research contributes to the ongoing debate by analysing transformative justice claims such as the need to address structural inequalities. In addition, by discussing certain practices in Khayelitsha in relation to what a practice of transformative justice could actually encounter, the research is able to contribute to the more practical concerns.

### 2.1.2. Bringing in local participation, needs and agency

The second important element of the transformative approach entails a strong emphasis on local participation, agency and needs. Transformative justice concepts and discussions on broadening transitional justice emphasise the importance of the ‘local’, focusing on genuine participation and needs-based-approaches by, with and for, affected communities (Evans 2016; 2013a; Gready and Robins, S., 2014; Sharp, 2014; Lambourne, 2009). This emphasis responds to critiques of elite driven transitional justice initiatives and their inability to take the real needs of people into account. It is grounded in three main arguments: (1) the importance of local needs; (2) the local being empowered through participation; and (3) the capacity of the local to challenge and alter power.

The first argument on the inclusion and importance of local needs emerged from transitional justice, peacebuilding literature and development studies. This argument is based on the observation that local needs in the aftermath of regime change or conflict are often very tangible and related to everyday challenges, like access to water, shelter, health care or education, rather than to the abstract aims such as reconciliation, retribution, rule of law and human rights, which are associated with transitional justice (Baker and Obradovic-Wochnik, 2016; Martin, 2016; Sharp, 2014; Waldorf, 2012; Gready, 2005). The focus on the local corresponds to an emphasis on addressing socio-economic and other structural inequalities; it is argued that local needs stem from these inequalities (Baker and Obradovic-Wochnik, 2016; Martin, 2016).



For example, in his research on transitional justice in Nepal, S. Robins (2011a; 2011b) found that victims often prioritise economic support or access to healthcare and employment over judicial punishment. Martin's (2016) analysis of Sierra Leone demonstrates the importance of normality. She (Ibid., p. 400 et alibi) considers practices of normality, like joint agricultural or religious activities, part of what she calls "unrecognizable transitional justice mechanisms", which can be understood as the embodied practice of needs. This is complemented by Waldorf's (2012, p. 5) observation "that everyday injustices rooted in historical inequalities may be as important, if not more important, for many survivors than the extraordinary injustices of gross human rights abuses".

Eriksson (2009a; 2009b) provides a detailed account of community based restorative justice in Ireland using nonviolent alternative practices and interactions between community and police, which she presents as a case study for transformative justice. She (Ibid.) particularly finds that operating outside the formal criminal justice system provides the necessary flexibility to allow for a needs-based practice that contributes to transformation. She sees a need for these grassroot initiatives, as they allow for the overcoming of limits of the formal justice system, and take into account the structural causes that foster conflict. She (Ibid.) further stresses that the role of locally generated justice and responses to violence, such as crime control and prevention in transitional societies, have not received sufficient attention. In these and other studies, the integration of people affected by past injustices, along with their specific needs, are placed at the centre of the concept of transformative justice (Gready and Robins, S., 2014).

A second argument for the inclusion of the local is that bottom-up initiatives increase agency and empower participants, which in turn enhances their legitimacy (Evans, 2016; 2013a; Gready and Robins, S., 2014; Eriksson, 2009b). The assumption is that participation per se is empowering. In the peacebuilding literature, Paffenholz (2015, p. 859) describes this as the

*first local turn (...) [which] emphasised the necessity of empowering local people as the primary authors of peacebuilding instead of externally designed and driven peace interventions. The main assumption behind this shift was that ultimately only local actors from within the conflict context would be able to build sustainable peace in their own countries.*

McEvoy and McGregor (2008, pp. 2-5) see three traits in what they call “transitional justice from below” that is: engines of change through the voices of the directly affected and their creative energy; historical struggles through mobilising power and resistance against powerful hegemonic political, social and economic forces; and actor oriented perspectives fuelled by a sense of agency to the dominated and oppressed. Being part of the process allows for a more direct identification of the relevant challenges related to structural inequalities, allowing those affected to position themselves. However, the main assumption of participation as empowerment has received criticism, which will be discussed below.

Third, local participation is considered as a way to challenge the power and hierarchy entrenched within structural inequality (Gready and Robins, S., 2014). Grassroot activism and local resistance can be a means of addressing those (Ibid.). This is because the local is considered a site of resistance and restructuring (Gready and Robins, S., 2017) and because empowerment as a “transfer of power” may result in challenging those in power (Lundy and McGovern, 2008a, p. 109). In addition, collective action can become a way to re-imagine democracy and challenge dominant scripts and mainstream paradigms, giving space for new, transformative agendas (Gready and Robins, S., 2017). Therefore, locally initiated and informed engagement is considered part and parcel of the power struggles which can contribute to transformative change. Hickey and Mohan (2004, p. 14) see this transformation both as a radical project and as a change that can be achieved through strengthening bargaining power across social relationships.

However, the emphasis on the local has been subject to criticism, with the critical peacebuilding literature and development studies scrutinising the ‘local turn’ for a long time, with the most vocal critics (McAuliffe, 2017; Paffenholz, 2015; Hickey and Mohan, 2004; Cooke and Kothari, 2001). Three implicit normative assumptions stand at the centre of their criticism: (1) the homogenous local, (2) the good local, (3) the powerless local. The call for grassroots participation and local agency to enable transformation does imply a degree of normative idealisation and homogenisation. The local focus is, for instance, considered as necessary, as part of the resistance, as a means to identify real needs, as empowerment, or as an amplifier of legitimacy (Evans, 2016; 2013a; Gready and Robins, S., 2014; Lundy and McGovern; 2008a). Although transformative justice claims an ability to move away from normative assumptions of transitional justice or peacebuilding

literature, it is argued that neither is it free from normativity (McAuliffe, 2017; 2015; Paffenholz, 2015; Cleaver, 2001).

The first criticism of the homogeneity of the local turn argues that there is little clarity as to what the local entails, and that the concept is missing definitional boundaries. Hughes et al. (2015, p. 818) observe that the

*'local' is both an extraordinarily flexible and a highly contested term. It is inherently relational, defined through its relationship to other political scales, primarily the national and the global (...). [I]t may refer to a range of more or less codified relationships, practices and sites that are somehow 'below' the level of the national state. (...). Being local implies combining political representation of the voice of the people with cultural appropriateness.*

McAuliffe (2017, pp. 241-242) adds that the local “is a social construction, more a ‘floating signifier’ used and produced through practices of representation than a clearly defined concept”.

As argued by Hughes et al. (2015), the local is often defined in relation to something else. This relation is often formulated in binaries: the local in contrast to the national, to the elite, to the top-down or to the technocratic approach, for example (McAuliffe, 2017; Cooke and Kothari, 2001; Mohan, 2001). This binary presentation, it is argued, cloaks diversity within the local (Paffenholz, 2015; Cooke and Kothari, 2001; Mohan, 2001).

Indeed, there is little clarity around what the local level and local participation involves. Some authors see the more classical CSO, NGOs, social movements and CBOs as those advancing transformative justice, articulating structural justice concerns on behalf of those affected (see discussions in McAuliffe, 2017; and in Paffenholz, 2015; Evans 2013a). Other scholars associate the local with the individualised level of the poor and their everyday struggles (Mohan, 2001). Others still describe it as the ‘grassroot’, ‘bottom up’, ‘from below’ (Hughes et al., 2015; McEvoy and McGregor, 2008), something that is located between the individual and the organisational level. This lack of definitional clarity is problematic when assessing the potential contribution of local agency for transformative justice.

The second normative assumption whereby local agency, participation and civil society is inherently good and civil is challenged by pointing to problematic approaches and

values associated with the civil society and the local level (Kopecký and Mudde, 2003; Chandhoke, 2001; White, 1996). Local developments can be driven by violence, unruly activity, and unrepresentative and oppressive power structures (Paffenholz, 2015; Mohan, 2001). Gready and S. Robins (2014, p. 349) also recognise this issue by stating that, “it is important not to romanticize the local, which can be a site of competing victims’ claims, discriminatory practices (e.g., against women) and low capacity”. Using the particular context of the Arab Spring, S. Robins (2015, p. 188), for example, discusses how it is necessary to find ways for transitional justice to accommodate community norms that follow a different set of (local) values and cultural rooted norms. Particularly, where “the engagement with the everyday realities of those affected by rights abuses remains highly limited, however, constrained by a commitment to a rights lenses that excludes other worldviews” (Robins, S., 2015, p. 188). He (Ibid., p. 189) further points out that transitional justice has to engage with ‘uncivil societies’ which might not share the liberal rights discourse but which are important actors and drivers of transition, nonetheless.

This criticism can also be linked to assumptions of the homogenous local and powerless local by pointing to local manifestations of diversity. These may range from good to bad, civil to uncivil, liberal to illiberal, and powerful to powerless (Paffenholz, 2015). Recognising that the local and civil society more broadly needs to be dealt with cautiously, and that these broad terms may accommodate a range of things and values, several authors suggest that something referred to as the ‘local’ (Hughes et al., 2015; Paffenholz, 2015; Hickey and Mohan, 2004) actually contains a low degree of homogeneity. Cleaver (2001, p. 45), who discusses the local within a community setting, asserts that “[m]ore realistically, we may see the community as the site of both solidarity and conflict, shifting alliances, power and social structures”. The criticism of the good local questions the homogeneity of values and aims associated with local agency. This suggests that local and civil society values and aims exist on a continuum, and this may therefore be flexible and open to change. Addressing transformative change through local agency and participation thus requires an understanding of such diversities and fluidities.

Finally, the focus on local participation and its mainstreaming in development projects in particular has been criticised for its assumed contribution to issues of empowerment; more specifically, because empowerment indicates a situation or starting point of powerlessness. This also assumes that participation is empowering, as pointed out previously. Different authors have highlighted that the local level is also constituted by

power, and it works with power relations in a similar manner to that at higher aggregated institutional or political levels (Kothari, 2001; Mohan, 2001). The focus on local participation has often ignored those local compositions of power. Hughes et al. (2015, p. 821), for example, allude to power in the local by asking:

*Who controls wealth and power distribution locally? Who gets to decide what is local and what is not? Who speaks for local culture or local community? Who determines who is an outsider and who is an insider? These questions are at the heart of politics everywhere, and the answers to them are determined by distributions of power.*

In consequence, these critics find that participation and local agency may reinforce existing local power structures or imbalances (McAuliffe, 2017; Baker and Obradovic-Wochnik, 2016; Lundy and McGovern, 2008a; Mohan, 2001). In addition, it has been argued that the binaries of the local and the powerless, the national level and the powerful, have also failed to represent the complexities of the situation, not only in relation to local power structures but also the local agency that operates outside formal structures (Mohan, 2001).

Addressing local needs and ensuring local participation have become the central demands of transformative justice advocates. This trend is a response to transitional justice critiques, and is also based on case study findings as well as normative assumptions (Gready and Robins, S., 2014; Evans, 2013; 2016). The scholarly debate, however, shows that there is a lack of conceptual clarity as to what the local entails. At the same time, there is some disagreement as to how the local level may contribute to transformation. This calls for a closer examination of the contribution of transformative justice to instil change through local participation and agency. This research will, in particular, critically assess ongoing civil society and local level engagement addressing violence, crime and social injustices, examining their potential for transformative justice approaches.

### 2.3. Addressing critique and research gaps

This chapter provides a number of conclusions and points to the gaps that this research aims to address. First, the literature suggests that there are a number of shortcomings and limitations to transitional justice. In particular, it is argued that structural inequalities, which are considered the underlying root causes and drivers of conflict, violence and oppression, have not been comprehensively addressed. This is considered a serious

impediment to the post-conflict and post-transition positive peace that is characterised by a peaceful and socially just society. Second, as a response to these shortcomings and limitations it is argued that a more transformative approach needs to be adopted, which takes into account structural inequalities and addresses them; for example, through a shift in focus on socio-economic grievances, and a change of power structures, initiated through local civil society activism and genuine participation.

The transformative justice literature formulates the assumption that a transformative approach might contribute to mitigating the conflict, unrest, violence and tension that unaddressed structural inequality creates (Gready and Robins, S., 2014; Laplante, 2008; Mani, 2008). Transformative justice as a concept aims to address the structural inequalities fomented in the past that continue to impact the present – in particular, where they are aggravated by the current (democratic) state. As such, it aims to provide an approach that goes beyond analysing present developmental challenges or new social inequalities, instead offering a way of drawing connections between past and present injustices (Evans, 2016; Gready et al., 2010; Mani, 2008).

Yet, the relatively new conceptualisation of transformative justice is not free from critical assessment. The close analysis of the key themes of addressing structural inequalities and emphasising local participation has exposed a number of criticisms. This chapter has discussed some of these, for example, transformative justice becoming an overly broad concept lacking clear boundaries; the limitations for changing (economic) power structures; and the heterogeneity and problematic nature of the concepts of local empowerment and participation.

The criticism is complemented by a lack of empirical research and implementation examples, as empirically and comparatively, transformative justice is currently little analysed (Sandoval, 2017; Evans, 2016; Gready and Robins, S., 2014; Eriksson, 2009a). In addition, there is a big gap as to what transformative justice could look like in practice (Sandoval, 2017; Waldorf, 2012); how it could be implemented and through which tools (Sandoval, 2017; Evans 2016). It can be argued that, in practice, there is not one single recognised transformative justice approach. The question of how broader structural and socio-economic inequalities can be addressed through a transformative justice practice therefore remains a challenging work in progress (McAuliffe, 2017; Waldorf, 2012, p. 9). Sandoval (2017, p. 192) for example finds that the need for a bottom-up approach has to be analysed further instead of just being postulated. In particular, she (Ibid.) sees a need

for further clarification of the practice of transformative justice. Gready and S. Robins (2014, p. 361) therefore state that: “[t]hicker descriptions and assessments of transformative justice in relation to specific groups (e.g., victims and survivors, women, indigenous groups) and geographical settings are now needed”.

The claims, criticism and gaps point to the need to probe elements of transformative justice in practice and review its assumptions by applying them to empirical cases. Engagement with the criticism that transformative justice has raised and the need for practical examples are crucial, in particular, to develop a more unified concept of transformative justice with somehow clearer boundaries that identify which measures fall inside it and which do not. The empirical chapter will thus engage with key elements of transformative justice, those of addressing structural inequalities and local needs and agency in addressing violence and crime in Khayelitsha. The following empirical chapters build on the literature discussion and analyse the main elements of transformative justice. On the one hand, by underlining the importance of the concept of transformative justice, providing empirical evidence on the contribution transformative justice can make as an analytical lens highlighting structural inequality and its impact on violence and crime. On the other, by exposing both the constraints and opportunities for the elements of transformative justice discussed here, demonstrating for example that local actors’ approaches can be highly problematic, whilst also carrying the potential to advance social justice and transformative aims.

The next chapter will engage more deeply with the analysis of structural inequalities, their relation to violence and crime, and their impact on accessing security and justice in South Africa. This requires discussing criminal and transitional justice, as well as structural inequalities and civil society within South Africa. The chapter provides a background for the South African context and illustrates why South Africa has been chosen as a case study.

# 3. SOUTH AFRICA'S UNFINISHED TRANSITION

*There is no rainbow in our nation.*

Madonsela, 2017, n.p.

South Africa is branded as a rainbow-nation, which implies a successful transition and reconciled nation. In recent years, however, this branding has come under scrutiny. In August 2012, a police massacre against striking mine workers which resulted in over 30 deaths and around 80 injured gave new impetus to the debate over whether South Africa has ever been the reconciled 'rainbow-nation', it presents itself as (Dixon, 2015a; 2013). Whilst it is still considered a prime example of an internationally celebrated transitional justice and reconciliation process, it experiences very high levels of violence (e.g. vigilante violence, sudden outbursts of xenophobic attacks, high levels of sexual violence) contributing to a worrisome post-transition image.

This chapter's particular focus is on the context of post-transition South Africa and the challenges of its transitional justice process. Key questions include how violence and crime were addressed during the transition phase; how the role of the justice and security sector played out in this; how both impacted understandings of the democratic rule of law; how structural inequality relates to violence and crime; and how civil society has responded to violence and crime. This chapter lays the groundwork for discussing the empirical findings, particularly Chapter 6, which elaborates on the way past and present interact regarding access to security and justice and how this can be read as a story of structural inequality. This chapter thus shows how transformative justice is linked to



security, justice and civil society activism in South Africa, and why South Africa is a suitable case study for addressing the research questions of this thesis.

The first section provides an overview of security and justice during apartheid and post-apartheid reform efforts. The second section discusses the shortcomings of transitional justice in relation to violence and crime. The third section focuses on structural inequalities' impact on, occurrence of, and exposure to, violence and crime and regarding access to justice and security. The fourth section discusses the role of vigilantism in South Africa. In the fifth section, the evolution of a critical, yet highly diverse civil society in South Africa is introduced. The final section provides a conclusion and discusses how South Africa is a suitable location for the case study of this research.

### 3.1. Criminal justice limiting access to public security and justice during apartheid and beyond

The criminal justice system in South Africa was part and parcel of the apartheid system, re-enforcing apartheid logic by limiting access to justice and security for the black population, and thus creating a system of inequality. During the years of apartheid, access to justice was limited and the judiciary functioned in line with apartheid law. The “rule of law” was a highly unjust and discriminatory one, with the judiciary under apartheid contributing to legitimise a system of injustice (Gordon, A. and Bruce, 2007; TRC, 1998b, vol. 4, p. 100, para. 28). The judiciary claimed to be independent and guided by the rule of law, which was sought to provide legitimacy to apartheid's unjust legal order. Instead, the judiciary enforced discriminatory and racist laws established by a minority government promoting inequality and division (Gordon, A. and Bruce, 2007). By operating within an unjust system enforcing unjust laws, the judiciary thus discredited itself and the legitimacy it ought to have provided.

Different authors have pointed out how the judiciary failed to make use of the (little) room for manoeuvre they had to promote equality and liberty (Dugard, 2007). Dugard (Ibid., p. 980) concluded that “[t]he historical record reveals that the apartheid judiciary did not view its role in terms of securing a better society for all South Africans, nor did it utilize what room it had for progressive adjudication in the context of a racially divided, politically unjust system”. More so, judicial work was often in favour or defence of apartheid injustices, rather than challenging or mitigating the impact of apartheid laws

and policies (TRC, 1998b, vol. 4, p. 100 et seq.). In particular, police violence was often defended and went unpunished (Ibid.). In consequence, “upholding blatantly discriminatory and unjust legislation, the judiciary functioned as part of the apartheid legal order and contributed to legitimising and sustaining it” (Gordon, A. and Bruce, 2007, p. 11). In addition, there was little initiative to make justice more accessible for the black population (TRC, 1998b, vol. 4).

Judicial injustice was complemented by apartheid policing. As Shaw (2002, p. 11) finds: “If racial segregation meant crime prevention, then along the divide between the races stood the police”. Access to security was not only limited, it was virtually non-existent for black people. In the foreground of apartheid’s provision of security stood the fight against ‘terrorism’ and the ‘communist threat’ associated with black resistance and opposition. In the background, stood the control and repression of black people and their exclusion from the economic, cultural, social and political life created for whites. The police force was central to both elements of counter-terrorism policing as well as order and control (Bruce, 2002; Shaw, 2002). The police became a very important source for enforcing the order of apartheid and a force that used increasingly extraordinary levels of violence and brute force, in particular, against the political opposition (Brogden and Shearing, 1993).

The TRC found the police force guilty of various gross human rights violations, such as abduction, torture, sexual violence and killings (TRC, 1998a, vol. 3, p. 165 et seq.). In addition to the extraordinary violence involved, many police members considered the discriminatory laws a mere excuse for everyday verbal and physical abuse (Bruce, 2002, n.p.). Brogden and Shearing (1993, p. 16) attest that

*[s]uch policing has ensured that sustained brutality has been a central feature of black South African experience. South African policing has not simply promoted an order that has devastated the lives of black South Africans but has been an essential part of that order.*

The police had little concern with providing policing as a service to black people. Policing was instead skewed towards ‘white’ areas, including services and resources – with 75% of police stations placed in white areas (Shaw, 2002). Bruce (2002, n.p.) concludes that “(...) with the general provision of state services, black people were provided with a wholly inferior set of services which failed to meet their needs for safety and protection”. Black South Africans were thus left alone with the challenges offered by ordinary crime

and violence, in townships that often did not receive any policing support around crime prevention and crime detection (Shaw, 2002).

Therefore, the judiciary and the police had little meaning in the everyday lives and struggles of the majority of South African citizens. It did little to protect or defend them, rather it contributed to legitimise and sustain the order of apartheid. The early emergence of vigilante groups and vigilante violence can be understood within this particular order of apartheid policing and absence of access to criminal justice, as will be discussed in Section 3.4. This absence is relevant for analysing the current, local responses to violence and crime, as it once marked the understanding of state justice and public security, which remains a similar dynamic today as the empirical chapters will discuss.

With the end of apartheid, the aim was to reverse these experiences. The reform efforts within the criminal justice system underwent different stages, with the initial euphoria and motivation to change the core and nature of these institutions dissipating with increasing crime and violence, and public pressure (Neild, 2003). Indeed, the phase of initial optimism was followed by disillusionment and a retrograde trend.

The basis for a new South Africa and criminal justice system was guided by the new Constitution. The latter meant a break with the past and the introduction of a value system based on social, political and economic equality and human rights.<sup>26</sup> The main challenge in the aftermath of transition was to give life to the Constitution, transferring its spirit to the institutions that had embodied the exact opposite for the last decades, in particular, criminal justice institutions. The task at hand was not only to make reforms of a substantive and procedural nature, but also to alter the criminal justice system, converting it into an array of truly democratic and trusted public institutions that were also perceived as such (Bruce, 2002).

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<sup>26</sup> The guiding principles of the Constitution of the Republic of South Africa (1996) are as follows: healing; social justice, democratic values, and fundamental human rights; equal protection by law; improvement of quality of life of all citizens; and democratic unification. The South African Constitution is considered as one of the most progressive in the world.

One of the major cornerstones was the reform of the police force, from the ‘regime policing’<sup>27</sup> characterised by repressive activities to ‘democratic policing’<sup>28</sup> with a strong preventive nature. This required a change from the extreme of ‘fighting terrorists’ and containing the majority population to a police service oriented towards helping and assisting the population (Bruce, 2002). This reform included the challenge of adapting policing to meet very varied needs and situations, as well as acknowledging diverse challenges regarding violence and crime in different areas of the country and even within cities (Bruce, 2002, n.p.). Providing crime prevention in informal areas, for example, was a new task on the list. This change was not smooth and the reforms were met with resistance from within the police force itself (Bruce, 2002; Shaw, 2002).

Important elements of the first phase of police reform were increasing transparency and oversight, alongside more community participation to decrease mistrust and enhance collaboration. The SAPS Act (No. 68 of 1995) and the first National Crime Prevention Strategy (SAPS, 1996) oriented the police towards crime prevention, where they could consider and address crime as a social problem (Gready, 2011; Plessis and Louw, 2005). A number of institutions and bodies were subsequently created. The Independent Police Investigative Directorate (IPID)<sup>29</sup> was established to address police misconduct and to provide the oversight of policing behaviour. Community Police Forums (CPFs)<sup>30</sup> were set up in order to secure civilian oversight, but also to establish links between communities and police, thus generating trust between them.

However, Rauch (2007, p. 185) found that the overall trend was established on paper rather than on the ground:

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<sup>27</sup> Regime policing refers to the type of policing that exists under authoritarian regimes and is characterized by those police forces which support the political regime, do not require public legitimacy nor accountability, and who work against political opponents to the prevailing system (Neild, 2003).

<sup>28</sup> Democratic policing entails a police service that follows democratic principles, is oriented towards society and based on accountability, transparency, respect for human rights, codes of good conduct and efficient and effective implementation of tasks (Caparini and Marenin, 2005).

<sup>29</sup> The objects of the IPID are laid out in the IPID Act (No. 1 of 2011), including independent oversight and investigation of SAPS.

<sup>30</sup> Section 18(1) of the SAPS Act (No. 68 of 1995) establishes that CPFs are to establish and maintain a partnership between the police and the community, in particular to improve the police service, accountability and transparency.

*Adherence to human rights standards in criminal procedure is an area where the intersection between past and future is most stark. Ambitious legislation and human rights standards created the illusion of “overnight change” in the way the security and justice systems would approach human rights; however these changes remained largely at the policy level.*

With a perceived increase in crime over the following years, public panic and the politicization of crime as an issue for political campaigns also spread. “Crime and not the police [was] now seen as a threat to democratic order. The result [was] an increasingly harsh response to lawlessness” (Shaw, 2002, p. 119). In 2000, the preventive criminal justice approach was subsequently changed to a tougher approach that was enacted through a crime combating strategy. This new strategy focused more on law enforcement; high density policing; and increasing number of arrests (Plessis and Louw, 2005). With the shift to harsher responses the initially softer initiatives (such as the CPFs) which aimed to create transparency, trust and participation, lost drive and support. Indeed, within a short time CPFs for example became less important and less functional (Gordon, D.R., 2007). Alongside this development, human rights started to be discredited as rights for criminals while communities were left alone with the consequences of crime and violence (Neild, 2003).

In 2010, police reform deteriorated further, with the decision to re-introduce military-style police ranks. This move caused debates asking if authoritarian policing was finding its way back onto the national stage (Singh, 2016; Steinberg, 2014). Steinberg (2014, p. 174) remarks:

*How interesting, then, to discover that these newly labelled bottles contained old wine. Under the aegis of such soft-sounding names as crime prevention and community policing, the old paramilitary model of exerting unilateral control over urban space quickly re-emerged: night-time invasions of township neighbourhoods by squads of heavily armed men backed by airborne support; the indiscriminate arrest of young men by the truckload; widespread police violence both against detainees and on the streets. By 2010, barely a decade and a half into the democratic era, even the new labels and bottles were gone. Police ranks were remilitarized, signalling a naked return to an apartheid practice.*

This analysis was further supported by incidents such as the Marikana massacre, mentioned in the introduction to this chapter. This most lethal use of force by the SAPS

following apartheid was considered a turning point in South African policing (Dixon, 2015a; 2013). Readings of this incident considered that the police had failed to reform and that “in the absence of significant social change to remedy the structural inequalities bequeathed by apartheid, the SAPS has not been able to transcend its colonial inheritance, leaving the business of police reform begun over 20 years ago unfinished” (Dixon, 2013, p. 1).

The courts initially also intended to rebuild trust in their system through lay assessors which meant participating in legal decisions and linking people with the new judiciary. This aimed at increasing knowledge about the criminal justice system (Gordon, D.R., 2006). With the shift in policing, the judiciary also adjusted and applied fast-track trials and heavy sentences. At the same time, the system was more and more overwhelmed with both its case load and crowded prisons (Samara, 2011; Rauch, 2007). The case load for the judiciary had become extremely high, while convictions remained low in comparison, often due to lack of proper investigation and evidence (Rauch, 2007). Nevertheless, overcrowded prisons were another result of these measures, and which carried their very own set of problems (see Super, 2013).

It has been argued that attempts to reform the criminal justice system lacked consistency and hasty adjustments left unfinished reform (Plessis and Louw, 2005; Dixon and Van der Spuy, 2004; Bruce, 2002). Bruce (2002, n.p.) concludes that “the style of policing has not necessarily changed all that much while in cases of abuse black people, and particularly marginalised black groups (...) have continued to be the primary victims”. Therefore, two key institutions of the apartheid regime, the police and the courts, have a mixed trajectory of change and reform, as they did not take up the transformative potential of the early post-apartheid years.

This section outlined the way that the criminal justice system under apartheid contributed to injustices and discrimination, as well as how the reform process has still not comprehensively transformed the institutions of courts and police. The systemic discrimination and inequality in terms of accessing public justice and security during apartheid, as well as the lack of a fully-fledged consistent reform of these key institutions, has arguably shaped both the continuation of limited reliance on state services and inequalities of access, as the empirical chapters identify.

This development also calls into question the impact of transitional justice on criminal justice reform, as will be discussed in more detail in the next section. Furthermore, it also put into question whether a clear rupture with systems of past injustices had actually taken place (International Council on Human Rights Policy, 2003). This trend underlines the transformative justice argumentation of protracted inequalities, therefore making the South African context relevant for researching transformative justice themes.

### 3.2. The Truth and Reconciliation Commission and its meaning for post-transition justice

A central endeavour for tackling injustices, discrimination and human rights violations under apartheid was the transitional justice process of South Africa, with the TRC at the epicentre. This process had the task of establishing national unity, enabling “South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation” (TRC, 2017a). However, rampant crime rates and very high levels of violence in the aftermath of transition led to a critical assessment of transitional justice and its contribution to a more peaceful and equal society. Shaw (2002, p. 120) describes how “the world was noticing that the country which had succeeded in making a peaceful transition to democracy has produced a violent society”. In consequence, calls for an evaluation of the efficacy of transitional justice mechanisms in light of “transmuting patterns of violence” in post-transition societies were made (Simpson, 2002, pp. 244-245). This section will therefore analyse criticisms of transitional justice, in particular its dealing with violence and crime in South Africa, and consider how past and present forms of violence and crime relate to the transitional justice process.

There are four strands of criticism relating to violence and crime in the transitional justice process in South Africa: (1) the separation of past and present forms of violence and justice; (2) the unequal applications of amnesty provisions in the TRC and the opaque messages regarding access to justice emerging from the transitional justice process; (3) the lack of analysis of everyday forms of violence and oppression and structural violence; and (4) weak criminal justice reform – as discussed in the previous section.

First, one of the criticisms of the TRC is its lack of thorough analysis of the complexities and intersections of different types of violence and crime (Gready, 2011; Harris, 2005; Simpson, 2004). These complexities, for example, led to “damage (...) inflicted by a

criminal state that criminalised normal behaviour and normalised criminal behaviour” (Ramphela, M., 1999, n.p.) during apartheid. Instead, the transition resulted in two separate processes: one for dealing with political violence of the past through the mechanisms of transitional justice; and one for the violence of the present, regarded as merely criminal, and addressed through the means of ordinary criminal justice (Gready, 2011; Simpson, 2004). Simpson (2004, p. 3) argues, “that such artificial boundaries are entirely dysfunctional to the task of learning what truly can be learned from attempts to achieve justice within South Africa’s transition to democracy”.

At the same time, there seemed to be no clear distinction between criminal, economic and political violence during apartheid, rather, different interests often collided, with political violence being used for economic gain and vice versa (Kynoch, 2005). A closer analysis of these intersections was limited in the transition process, which was criticised as a missed opportunity for setting out a common understanding of the causes of violence and crime (Simpson, 2004; 2002; Posel and Simpson, 2002).

Wilson (2001, p. 213) further argues that the TRC also missed out on analysing and engaging with a long history of legal pluralism, township justice and the occurrence of vigilantism, finding that

*[t]he TRC was often blind to these historical factors, and in its urge not to assert a rupture with the apartheid past, acted as if it were in an historical vacuum, and as if all previous forms of ordering and retributive understandings of justice could be swept aside in order to create a new utopia of ‘the culture of human rights’.*

Rather, the TRC tried to reduce legal pluralism and transform local notions of retributive justice through a vision of human rights based on the moral and theological values of forgiveness and reconciliation (Ibid., p. 213, p. 230). In Wilson’s (Ibid., p. 211) view, this attempt damaged the value of human rights for post-apartheid criminal justice, as it missed the opportunity to link local understandings of justice to the criminal justice system. He (Ibid., p. 156 et alibi) argues that this missed opportunity led to “relational discontinuities” between formal and informal instances of justice; the TRC preached reconciliation, but at the community level, practices of retribution prevailed. In consequence, this created a division between practices of human rights at the national level and practices of revenge at the local level (Ibid., p. 227).



The second major criticism focused on amnesty provisions by the TRC<sup>31</sup>. The mentioned division between criminal and political violence caused one of the main dilemmas for the TRC. Simpson (2004) found that deciding on a case by case basis whether a violent act was political or non-political as part of the amnesty provision was one of the main TRC failures. This led to the TRC carrying out ambiguous, incoherent and unequal amnesty decisions. Simpson (2002) maintains that this also overshadowed an analysis of the role of race, class and gender in relation to violence, crime and human rights violations.

In addition, the amnesty provision in itself sent a number of opaque messages. On the one hand, this was because it was providing amnesties for some of the most cruel human rights violations, while the new criminal justice system had started to crack down hard on crime, imposing harsh penalties on the ordinary criminal (Gready, 2011). On the other, the TRC prioritised reconciliation, truth telling and amnesty over the right to access justice (Simpson, 2002). The constitutional court decided to favour amnesty and the possible full disclosure of crimes over the right to justice, which denied the victims of apartheid crimes the ability to take the perpetrators to court (Ibid.). In addition, large scale vetting and lustration of public officials was excluded from transitional mechanisms, and as a consequence, the apartheid police body remained mainly intact after transition. Only around 300 out of 140,000 police members applied for amnesty (Bruce, 2002). The transition process thus only affected a very small number of police and mainly those in higher level positions (Rauch, 2007). At the same time, perpetrators of human rights violations were using the new Constitution and legal system to oppose the need to testify at the TRC. Both demonstrate the complexities and bitter irony produced by the TRC in relation to justice, in particular, because the perpetrators of human rights violations used the rights regime to avoid exposure (Simpson, 2002, p. 237). Simpson (Ibid., p. 247) thus identifies amnesty provision as jeopardising the credibility of the criminal justice system and encouraging criminality through the creation of a sense of impunity.

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<sup>31</sup> The TRC is known for its “‘truth for amnesty’ deal” (Fullard, 2004, n.p.), which established amnesty for perpetrators of political violence conditioned to the full disclosure of their past crimes. A total of 7,112 people applied for amnesty (TRC, 2017b) and almost 22,000 came forward to tell their story (Fullard, 2004).

As a third point, the TRC was criticised for not addressing structural inequalities comprehensively. It has been argued that structural inequalities, as well as the everyday experiences of violence, discrimination and oppression remained largely beneath the surface. Nagy (2008) finds that the TRC is symbolic of the failure to account for structural violence:

*Although the TRC clearly recognised apartheid as a crime against humanity, its mandate narrowly defined victims and perpetrators as those who had suffered egregious bodily harm. Apartheid thus featured as the context to crime rather than the crime itself. The everyday violence of poverty and racism—and consequently the ordinary victims and beneficiaries of apartheid—were placed in the background of truth and reconciliation. (Ibid., p. 284)*

She (Ibid., p. 284) maintains that this has impacted strongly on “perceptions of justice and racial reconciliation” and has generated continuities of violence, racism, inequalities and suffering. Supporting Nagy’s argument, several authors have criticised the way in which police violence during apartheid, and the lessons and recommendations for criminal justice reform, were framed (Rauch, 2007; 2001; Dixon and Van der Spuy, 2004; Bruce, 2002). Widespread brutality, misconduct and violence resulting in everyday police abuse remained relatively untouched by the TRC (Dixon, 2015a; Rauch, 2007).

Finally, the recommendations of the TRC for the security and justice sector were considered weak as they were put together within a short time frame, lacked strategic value and relied on new, yet already existing, policies to guide the different sectors (Rauch, 2007; Dixon and Van der Spuy, 2004; Bruce, 2002). Rauch (2007) finds that the TRC had consequently limited impact on the criminal justice sector.

A comprehensive analysis of the complexities and blurred lines between different types of violence and crime as well as notions of justice could have assisted in the transition by providing a more nuanced narrative. It can also be argued that the way justice in transition operated, led to a very ambiguous picture of the democratic rule of law. In a sense, the South African transitional justice process provided a missed opportunity for both establishing a reference point for the concept of justice as a fair, equitable and coherent process, and for using transitional justice to unmask structural inequalities in depth. These issues are important for setting a baseline for justice and security in post-transition South Africa and impacting on demands and needs for justice and security, as will be discussed

in the empirical chapters. These challenges further indicate that there is a need to address shortcomings emanating from the transitional justice process, making the assessment and further conceptualisation of transformative justice as one possible means for this.

### 3.3. (Structural) inequality in relation to violence and crime

High levels of violence and crime in South Africa and elsewhere have been viewed as indicative of unaddressed structural inequalities (Mullen, 2015; Mani, 2008). This is one of the arguments used to push for a transformative justice agenda, one that aims to tackle structural inequality. However, less emphasis has been put on analysing the way in which, more specifically, structural inequality contributes to, and impacts upon, violence and crime. This section discusses three main connections: (1) socio-economic inequality as a driver of violence and crime; (2) socio-economic inequality contributing to vulnerabilities and exposure to violence and crime; and (3) socio-economic inequalities limiting access to justice and security.

First, income inequality and high levels of unemployment are possible drivers of violence (Seedat et al., 2009; Moser, 1999). In the South African context, one study by the Centre for the Study of Violence and Reconciliation (CSV, 2008) found that socio-economic inequality as a result of the apartheid regime can be identified as a driver of violence and crime for several reasons. Economic policies and lack of access to education are among the main causes of high levels of unemployment (Ibid.), while exclusion from economic productivity can be identified as one cause for engaging in crime. In addition, the study also stressed the psychosocial dimension containing feelings of exclusion, frustration, humiliation and broken expectations, which often result in violence (Seedat et al., 2009; CSV, 2008). According to the CSV study (CSV, 2008), it can be argued that the consequences of economic and educational exclusion and marginalisation during apartheid, and the failures of current post-apartheid policies to mitigate these (for example, through black economic empowerment), contribute to violence and crime, as well as victimisation and a lack of redress and protection.

Second, people living in poverty are more vulnerable and more likely to be exposed to crime and violence. Poverty contributes to vulnerability and insecurity through lack of financial assets, which includes material assets such as income, housing and labour, but

also non-material assets such as social capital (Moser, 1999). The physical environment plays an important factor as it limits opportunities to build up these assets, for example, by being badly connected to main places of work or by a lack of social cohesion. The break-up of social capital and relations through apartheid dislocation and the separation of families has created long-term damage for social cohesion, as authors like Moser (1999) and Cole (2013) emphasise. Once forced into the townships during apartheid rule, township (dis-)location and underdevelopment has become a contributing factor to exposure to violence. A vicious circle between inequality, poverty, violence and crime has thus been created, making dispossession and dislocation important drivers of victimisation, and violence and crime occurrence.

In addition, infrastructure is poor in the South African townships: with a lack of street lighting, lack of access to in-house sanitation, lack of solid housing and lack of access to transport (Meth, 2016; Robins, S.L., 2014). These infrastructure weaknesses occur on the side of both geographical design and service provision, promoting the occurrence and exposure of violence and crime, and are a source of insecurity (Samara, 2011, p. 154). As a consequence, people's daily routines leave them open to vulnerable situations, which often affect women more than men (Jacobs, 2017; Meth, 2016; Ndifuna Ukwazi, 2014a; 2014b). At the same time, structural inequality is also perpetuated through these infrastructures' shortcomings. For example, the likelihood of contracting diarrhoea or other diseases due to lack of access to water and sanitation is high, this serious health hazard can contribute to physical harm (Smit, 2006).

Third, inequality is also reflected in the imbalance of access to security and justice. This research will demonstrate how access to public security in South Africa is limited for the poor and thus contributes to people's vulnerabilities, allowing them to more easily become victims of violence and crime. In particular, previous research has focused on the inequality that access to private security generates. In this regard, it has been noted that access to private security has deepened the divide between those who are able to protect themselves and those that do not have the means to do so (Lemanski, 2004). Gready (2011, p. 141) adds to this assessment that "[s]ecurity remains a tool used by white against black, rich against poor, a service for clients who can pay (commodity) rather than an entitlement for all citizens (a public good)". This is an important observation, as the guarantee and provision, of (social) state services is an important promise and realisation

of rights (Farmer et al., 2006, p. 1689), not a commodity. Therefore, according to Farmer et al. (Ibid., p. 1689), lack of guaranteeing these rights perpetuates structural violence.

In consequence, due to unequal access to security and the issues of geographic dislocation, crime more often affects poor households, as they are easier to target (CSVR, 2008). Being a more regular victim of crime in turn increases inequality as poor people have less means to resituate the damage or harm done (Ibid.).

In addition, socio-economic disadvantage and dislocation also play out in the access to justice (United Nations General Assembly, 2012). There are many obstacles for poor people accessing justice, including financial costs, access to courts, and legal illiteracy or stigma (Sepúlveda Carmona and Donald, 2015; United Nations General Assembly, 2012). Furthermore, becoming a victim of violence and crime is an expensive exercise. An overburdened and often inefficient criminal justice system, with very low conviction rates, makes it almost impossible to hope for any justice through legal avenues. Consequently, poor people are exposed to several limitations when making use of their right of access to justice (United Nations General Assembly, 2012).

The inequality in accessing justice and security alongside high levels of, and exposure to, violence and crime impacts people's perspectives on justice and security, as the empirical chapters further elaborate. In an analysis of the interplay of democracy, rule of law, and violence in Brazil, Caldeira and Holston (1999, p. 709) found that "the judiciary has historically been little more than a source of humiliation" for the marginalised. They further analyse that (Ibid., p. 709)

*[t]his abusive rule of law embodies a double discrimination that is a "rule of thumb" in Brazil: the poor suffer criminal sanctions from which the rich are generally immune, while the rich enjoy access to private law (civil and commercial) from which the poor are systematically excluded. This double bias pollutes the entire field of law, discrediting the judiciary and the law generally as a means to justice. Thus, the courts do not provide a genuine forum within which contemporary social conflicts can be engaged with a sense of fairness and equality befitting a democracy.*

In the case of Brazil, lack of access to security and justice has led to a situation where, "[f]rom the perspective of most citizens, the right to justice as a key civil right and matter of law lacks both institutional consolidation and personal practice" (Caldeira and Holston, 1999, p. 711). Caldeira and Holston (1999) refer to Brazil, but it can be argued that this

analysis fits the South African context quite neatly and that this assessment also applies to Khayelitsha, where the failure to provide access to justice and information has also contributed to lack of practice and institutionalisation, as the empirical chapters will demonstrate (Chapter 6 and 7).

This section has highlighted the way structural inequalities affect violence, crime, and access to security and justice. The lack of addressing socio-economic inequalities can fertilize physical violence, while both can interdependently enforce each other (Oré Aguilar and Gómez Isa, 2011). In consequence, both constitute consequences of prevailing structural inequalities, while additionally, weakening both civic trust and reliance on public institutions (Caldeira and Holston, 1999).

### 3.4. The role of vigilantism in South Africa

One of the responses that regularly surfaces in light of violence and crime and the absence of access to justice and security, as well as the lack of reliance on public institutions is vigilantism.<sup>32</sup> Vigilante actors play a role in responding to violence and crime, whereas the broader notions and occurrence of vigilantism provides insights into the underpinning of these responses. This research will show how vigilante action is one of the responses to violence and crime in Khayelitsha that is partly supported by the population as it corresponds with community demands and needs (Chapter 7).

Post-transition societies often experience an increase in vigilante violence alongside an increase in violence and crime (Godoy, 2006; Neild, 2003; Hamber, 2000). Its occurrence deserves a closer analysis as its manifestation is often associated with past and present forms of violence in a transitional society (Thomas, 2012; Godoy, 2006). It is argued that vigilante violence reproduces patterns of violent behaviour from the past which are often appropriated and adapted to the new challenges that arise from transitions. In addition, a common reading of the occurrence of vigilante acts consider it as a form of security for the poor (Shaw, 2002; Caldeira, 2000; Hamber, 2000), a response to increasing crime

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<sup>32</sup> In general, vigilante violence can be defined as a “reaction to the transgression of institutionalized norms by individuals or groups (...). Such acts are focused upon crime control and/or social control.” (Johnston, 1996, p. 232). These acts often include the use of force or violence. However, as Super (2016) notes, vigilantism and vigilante violence are not constant forms of expression or motivation, rather they exist as fluctuating forms specific to local context, and also local conjuncture.

rates accompanied by a relative absence of police and ‘state’ (Godoy, 2005; Sekhonyane and Louw, 2002; Dixon and Johns, 2001).

South Africa has a long history of vigilantism occurring as an element of social ordering and justice based on retributive practices (Wilson, 2001). This history is marked by a plurality of institutions, actors and practices that developed during the colonial state and apartheid period. These arose in response to, and interacted with, the state’s absence in providing justice and policing. These actors and institutions have at times been supported by the state, and at other times suppressed by it (Ibid., p. 189). The academic analysis on trajectories of vigilantism during apartheid views it as a political instrument (Thomas, 2012; Gready, 2011; Buur, 2010; Nina, 2000), while in the post-apartheid years vigilantism has been identified as an alternative order to the state (Buur and Jensen, 2004; Oomen, 2004). More recently, the analysis has become more varied, also taking into account issues of socio-economic inequality (Super, 2016; Buur, 2008).

During apartheid, vigilantism formed part of apartheid politics. As outlined in Chapter 3.1., during apartheid there was little access to justice and security for most South Africans, while policing emerged as a tool of politics, serving the apartheid state. During apartheid, the term ‘vigilante’ was associated with the right-wing violence carried out by African leaders and groups or what has been called the ‘conservative vigilantes’ (Buur, 2010) who at times supported the apartheid regime (Thomas, 2012). Vigilante violence often served to suppress resistance in black townships and homelands by identifying political opponents and publicly punishing or even killing them. It also served to establish a reactionary, moral order (Wilson, 2001). The black opposition and ordinary residents also came to use vigilantism as a means of resistance to the apartheid system. In particular, during the years of late apartheid, people’s courts and street committees were the most famous and popular vigilante structures, serving the double purpose of establishing security and order and showing resistance by providing local security and justice to the communities. This occurred in townships where the apartheid state used crime and violence to weaken social cohesion (Nina, 2000). The people’s courts helped to address the challenges of crime but also responded to state negligence by using their own means of justice – sentencing wrongdoers and imposing punishment upon them (Ibid.). They thus became a means of political resistance.

As political battles intensified, in particular, during the last years of the apartheid government with its culture of extreme oppression and the state of exception, the use of

vigilante violence became very strong, including extreme violence against political enemies of both sides (Kynoch, 2005). The emergence of vigilante violence in apartheid South Africa was thus intrinsically tied to the political realm, but often entailed elements of ordinary crime and crime fighting (Gready, 2011).

With the end of apartheid, the direction of vigilantism changed. It became a means by which to provide an alternative to the post-apartheid state that was now bound by human rights and unable to install a desired, although sometimes reactionary, order. Vigilantes no longer opposed an unjust, discriminatory regime but reacted to the high levels of crime and a new, democratic government that was unable to support the communities' quest for security and justice (Oomen, 2004).

Case studies of Mapogo a Mathamaga (hereafter, Mapogo) and People Against Gangsterism and Drugs (PAGAD) – two of the early post-apartheid vigilante organisations<sup>33</sup> – show that such formations were seen as alternatives to the state as a provider of security and justice. In these studies, the state was considered to be compromised by human rights, and thus unable to deliver the same type of control (Smith, 2015; Oomen, 2004). In this context, vigilantism as an alternative to the state is also considered as producing social orders built on the strict control of crime and morality. In this understanding, vigilantism is described as an “alternative to constitutionalism” and characterised by its conservatism, morality and instances of harsh corporal punishment (Buur and Jensen, 2004, p. 146 referring to Oomen, 2004). While vigilantism was considered an alternative to the state, it did assist the state in implementing an order that the state was unable to provide because of the limitations set out in the Constitution and by human rights legislation.

Recently, academic discourse on vigilantism has diversified (Buur, 2003). This more recent analysis recognises the changing nature of vigilantism, as it is considered to express both contestation and collaboration with state actors (Super, 2016; Thomas, 2012; Buur, 2010). In particular, a certain degree of collaboration between vigilante actors and the police, often taking place at the local level, is noted here (Super, 2016; Buur, 2010;

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<sup>33</sup> PAGAD and Mapogo are vigilante organisations established in 1996. Both have a high degree of organisation, and both were designed to fight criminals, drug dealers and gangsters, mainly through violent means. For more in-depth analysis on both groups see Desai (2006), Oomen (2004) or Dixon and Johns (2001).



Steinberg, 2009). This type of collaboration often works on the basis of tacit agreements, where vigilante actors contribute their share to police work, for example, by tracking the alleged criminal down and finding stolen goods (Super, 2015). This often happens with the use or threat of use of violence. The police turn a blind eye to this, as long as it contributes to their positive crime detection statistics and as long as it is implemented without creating any official complaints (Buur, 2008). Here, vigilantism can be considered as something in between, as “local forms of sovereignty (...) nested within state forms of sovereignty, where they retain a domain with control over life and death” (Buur, 2008, p. 583).

The diversification of the debate and more in-depth ethnographic research on current occurrences of vigilantism in different parts of South Africa provide a closer analysis of the particularities of vigilante acts themselves (Super, 2016; Fourchard, 2012; 2011; Buur, 2008); pointing to the importance of socio-economic factors. While organisations such as Mapogo and PAGAD were strongly associated with the wish to (re-)establish a conservative social and moral order, more recent work has also pointed to the importance of the socio-economic situation and structural inequalities (Super, 2016; 2015; 2014; Buur, 2008). Super (2015, p. 12), for example, finds that punitive populism is rising in situations of inequality, poverty and marginalisation, as its aim is to mitigate the risks of the politics of resource allocation, a finding that this research confirms. As an example, the punitive techniques of vigilante actors are used to find stolen goods, a practice that this research also identifies. Vigilantism is considered as a means of risk mitigation in the face of scarcity (Super, 2015; Buur, 2003). Buur (2003, p. 23) argues that punitive techniques support the “production of moral beings, and the socialization and reordering of a whole range of identity formations that make it possible to cope with socioeconomic marginalisation”.

The element of social ordering hence remains a stable common feature of vigilantism in all these analyses, as well as the use of punishment to achieve it. Yet, more recently, the importance socio-economic conditions and the complementary function of the state have been added. The importance of socio-economic conditions for the occurrence of vigilantism will be interrogated further in the empirical chapters, shedding light on how vigilantism may reflect on certain needs and conceptions of justice. The research will further elaborate on how vigilante practices prevail when responding to the effects of structural inequalities.

### 3.5. Civil society organisations' activism (on justice and security)

South Africa can be considered as having a vital and vibrant CSO landscape, with over 76,000 non-profit organisations officially registered (Department of Social Development, 2011). This vibrant landscape is a result of South Africa's history of civil society formation and mobilisation, with community organisations and anti-apartheid movements who challenged the apartheid state (Madlingozi, 2007). Recently, CSOs have also become more involved in activism concerning access to justice and security as will be discussed in continuation. In contrast, vigilante actors have a long history of providing security and justice and engaging with the state, as outlined in the previous section. However, this has seldom been understood as a civil society response. Yet, both are important actors for analysing local level responses towards structural inequalities as this research will argue. To complement the analysis of the previous section, this section will briefly introduce civil society organisations in the realm of justice and security.

The above-mentioned plurality of CSOs needed to mature in the aftermath of transition. Coming out of an oppositional and conflictive relationship with the state, the reconfiguration of engagement of CSO and state, was a particularly difficult task – more so as the new government was constituted by former members or allies of the same CSOs that had formed part of the liberation struggle (Habib, 2005; International Council on Human Rights Policy, 2003). Old loyalties with former compatriots and colleagues from the drive for democracy, who became part of a new government after democratisation, often prevented CSOs from continuing or assuming their role as 'watchdogs' or critics (Bell and Keenan, 2004).

As a consequence, in the early post-apartheid years, opposition to the ruling party the African National Congress (ANC) was not very popular, rather, civil organisations collaborated closely as they set up the new Constitution and established the TRC (Wilson, 1997), as well as socio-economic policies like the Reconstruction and Development Programme (Ballard et al., 2006). Indeed, in the initial post-apartheid years, there was a vacuum of political opposition (Ballard et al., 2006). However, with the ongoing development of the South African government's neo-liberalist project, there was the realization among CSOs that a radical socio-economic change was being brokered for political transition (Robins, S.L., 2008; Madlingozi, 2007). Continuously high levels of

unemployment and poverty (Seekings, 2007; 2014b)<sup>34</sup>, and rising levels of inequality (Seekings, 2014b), as well as demands to further improve access to water, sanitation and housing all contributed to a shift in the positioning of CSOs (Robins, S.L., 2014; 2008; Madlingozi, 2007). The position of CSOs slowly changed and relations with the state began to diversify. CSOs started to take a more critical stance; in particular, those social movements aimed at supporting the struggles of the marginalised poor (Ballard at al., 2006). At the same time, CSOs started to have less access to political agendas and policy making (Ibid.).

As well as becoming more critical, CSOs began to diversify. More recently, new social movements have become increasingly vocal and active around a range of social justice concerns (Madlingozi, 2007). These include the struggle of the poor to access housing, health, education and also safety and security. S.L. Robins (2014) sees the more recent developments occurring through these new social movements particularly tied to the shortcomings of the transition:

*Responding to the limitations and failures of the democratic transition, social movements of the urban poor (...) have sought to create the conditions for the emergence of new understandings of transitional social justice and what it means to be a citizen in a democratic state with much unfinished business. (Ibid., p. 498)*

He (Ibid., p. 499) further argues that the “more systemic problems of structural violence, chronic poverty and racialized inequality” that were left unaddressed by transitional justice and the TRC in particular are “precisely [the] issues that have continued to animate popular politics in the post-TRC period”. The fight of these SMOs is shaped by what he (2009, p. 647) calls the politics of life “defined by struggles for rights to health care, shelter, clean water, food, and so on” with the aim of pursuing a new form of “transitional social justice” (2014, p. 485 et seq.).

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<sup>34</sup> Trends in income poverty have been debated among scholars (Seekings, 2014b). There are indications that since the year 2000 poverty declined. However, it is also acknowledged that though the poverty gap may have slightly reduced, the absolute number of people living in relative poverty might have increased (Seekings, 2014b, p. 8; Statistics South Africa, 2017, p. 14). It is also recognised that despite a decrease in absolute poverty, overall poverty remains very high with over 50% of the population being considered poor (Statistics South Africa, 2017, p. 14). This is accompanied by an increasing level of income inequality, with a rise in the gini-coefficient from 0.66 to 0.70 between 1993 and 2008. (Seekings, 2014b, p. 8).

The involvement of CSOs in addressing security and justice as a form of social justice and human rights struggle is a rather recent development. CSO engagement in the area of criminal justice has been particularly focused on human rights compliance within the criminal justice system, that is, in response to harsher law and police enforcement in the aftermath of political transition with an increase in crime rates (Neild, 2003). Therewith, CSOs involved in activism was traditionally centred more on human rights compliance within the criminal justice system (International Council on Human Rights Policy, 2003; Neild, 2003).

Recently, CSO activism has become more focused on holding the state accountable, not only in terms of upholding human rights in criminal justice procedures, but also by advocating for a state's responsibility to protect its citizens (Davis, D.E. and Denyer Willis, 2013; Neild, 2003). This is a rather new role for CSO activism as the focus is also on the right to be protected by the police rather than simply on the right to be protected from the police.

The engagement of local actors in the area of violence and crime is however not limited to the more formalised CSO activism, but also to the different ways in which vigilante actors respond to violence and crime; actors who are often overlooked when it comes to analysing civil society. Vigilante actors have rarely been placed within a framework of civil society work and activism. These formations are not often associated or analysed in conjuncture with CSOs, but instead are more often considered as separate entities, for example, they are often referred to as non-state actors (Albrecht and Buur, 2009; Davis, D.E., 2009). This divide between vigilante actors and CSOs also leads to separate analysis and discussion.

Vigilante actors have frequently been discarded as an ungovernable mob, however, vigilante activities are often coordinated or implemented through established civic structures such as neighbourhood watches, street committees and community policing initiatives (see Super, 2015). These are often (formally) recognised structures, enabled to deal with security and justice issues and sometimes working in collaboration or accordance with the state (Buur, 2010). Some authors have made the connection, for example, and changed the reference to these entities from non-state actors to anti-crime social movements (Davis, D.E. and Denyer Willis, 2013) or vigilante social movements (Desai, 2006). Super (2014), for example, argues that vigilante structures such as street committees have to be considered as part of civil society. Fourchard (2011) complements

this assessment as he attests to a blurred line between vigilante actors and formal CSOs or NGOs.

CSOs responding to violence and crime, as well as vigilante actors, constitute important actors in local responses to violence and crime, and will be important units of analysis for this research. Both deserve a closer analysis that aims to understand the role of the local level in addressing structural inequality in relation to violence and crime (Chapter 5 and 7). A transformative justice approach emphasising the local level therefore invites for an analysis of vigilante actors and nascent CSO activism responding to violence and crime. That is, in relation to structural inequality, as both are expressions of local activism, agency and participation.

### 3.6. South Africa as the case study location

The chapter has provided the background on South Africa's transition and discussed the roots of post-transition South Africa in relation to security and justice and civil society engagement. The chapter discussed that transitional justice in conjuncture with post-transition reforms and weak implementation has contributed to a criminal justice system that might not be able to demonstrate what the right to access to security and justice based on a democratic rule of law, actually signifies in practice for parts of the population. This weak departure was aggravated by incomplete reforms within the criminal justice system and a 'crisis of crime'. The underlying red thread of structural inequality remained largely untouched by the political transition and post-transition policies, contributing to the occurrence and exposure of violence and crime. As a consequence, 'everyday' and other forms of violence along with their underlying structural causes remain un-addressed and un-prevented (Harris, 2005, p. 29). Vigilante and civil society actors respond to violence and crime and they have started to address inequalities.

The chapter suggests how South Africa's post-transition setting provides a suitable case study for this research. This chapter shows how South Africa allows for the probing of transformative justice elements, as the country went through a transition and used transitional justice to come to terms with the past. Yet, the country lacks wider social transformation, and high levels of violence and crime could be a consequence of this lack. At the same time, varied civil society and local activism aims to respond to the challenges of crime, violence and (structural) inequality. The limitations of transitional justice, unaddressed structural inequalities, the related occurrence of and exposure to violence

and crime in the country, as well as the varying roles of CSO activism, make South Africa a relevant case study for discussing transformative justice.

Transformative justice facilitates the analysis of violence and crime as consequences of past structural inequalities and of the shortcomings in addressing them during transition and post-transition in South Africa. At the same time, this analysis calls for further investigation of violence and crime and its relation to structural inequality, as well as the role of CSOs and vigilante actors and their possible contribution to transformation. Post-apartheid South Africa therefore allows for the probing elements of the concept of transformative justice, and the querying of its meaning in both theory and practice.

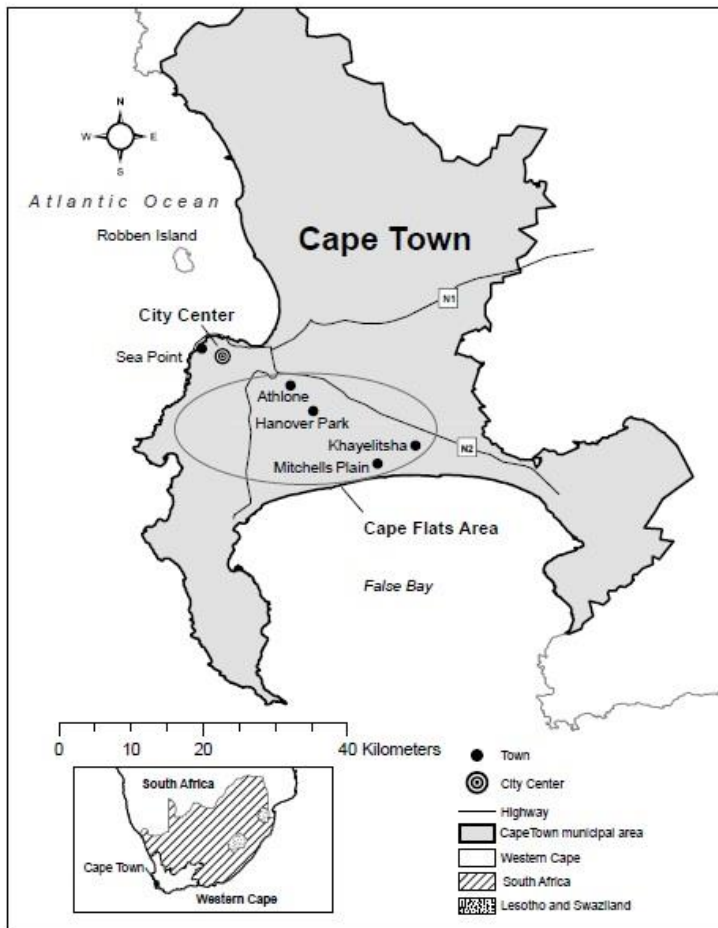
# 4. SETTING THE SCENE:

## KHAYELITSHA

*Living in an informal settlement area, a place with no lights, which is dark at night where sometimes you have to go and relieve yourself in the bushes. Sometimes, you have to go and get water from a different street which is not your street. That is also not safe. Also, not seeing police – even if they're not in a car but just the police to come in so that people can see or be visible. Also, when there is a fire in the area, the community and the fire brigades are very far from where the fire is taking place because they can't drive through or come into the area; those things are really not safe and that is why I'm saying that people that have not lived or experienced that would not know what it feels like. Also, growing up in my community, seeing people die or people being assaulted until they die while you are young, those are the issues I'm talking about.*

Transcript, 07.02.2014, p. 2034

Khayelitsha is situated outside Cape Town, approximately 30 km from the city centre (see Figure 1 below). It is a residential suburb, commonly referred to as a township. A township is an area formerly designated to black, Indian and coloured South Africans under apartheid law. The township set up was mainly created during apartheid to make use of people as a work force, while pushing them to locate their lives on the periphery of cities (Samara, 2011, p. 48, p. 51). Townships remain predominantly populated by black South Africans and continue to be exposed to numerous developmental challenges, such as poor infrastructure, limited access to water and sanitation, and high levels of violence and crime, to name just a few (Bond, 2008).



**Figure 1: Cape Town and Cape Flats<sup>35</sup> area map**  
 (Source: Samara, 2011, xi)

In order to establish the scene for this particular case study context, this chapter will briefly introduce Khayelitsha, and the main local civil society actors addressing violence and crime, before engaging in an empirical analysis. The chapter will first give an overview of the historical background of the area, and then detail current developments. The following section provides demographical figures and a brief synopsis of the socio-economic situation. The third section will summarise data on violence and crime and policing. In continuation, in section four, a closer description of the Khayelitsha Commission will be provided. Finally, the most important civil society actors who are active in the field of security and justice will be introduced.

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<sup>35</sup> The Cape Flats are composed of several townships, such as Khayelitsha. The term describes a geographic area that was established during apartheid to reallocate people from forced removals in other areas.



## 4.1. Background and current political landscape

Khayelitsha was established through the forceful relocation of black residents from other areas in Cape Town, such as Crossroads and Gugulethu. It was established during the apartheid regime of the 1980s, under the Native Urban Areas Consolidation Act (No. 25 of 1945). This act established residential locations for black South Africans and through the so-called Pass Law Act (No. 67 of 1952) and the Group Areas Act (No. 41 of 1950) controlled the movements of people and settlements. This meant bringing manpower into the City of Cape Town, but at the same time forcing their social lives to its margins. Therewith, Khayelitsha presents a socio-geographical design of apartheid ideology (see Cole, 2013; Du Toit and Neves, 2007). In this context, therefore, the Khayelitsha Commission (2014, p. 30) acknowledges that “its geographical location serve[s] as a constant reminder of apartheid”.

This spatial separation has been maintained and the logic of labour extraction can still be witnessed during rush hour, when a never-ending flow of cars make their way into the city in the morning and out of the city in the evening. It has been noted that still

*Khayelitsha is “in” but not “of” Greater Cape Town, both sides of that paradox — both its connections with urban economic life and its spatial separation (...) are parts of the overarching political logic of the township’s racially differentiated spatial and social incorporation into Cape Town. (Du Toit and Neves, 2007, p. 18)*

However, as a rather late establishment of the apartheid era, Khayelitsha is also strongly marked by the development and politics of the post-apartheid state. Seekings (2013, p. 3) explains that “whilst profoundly shaped by the legacy of apartheid-era urban planning, racial segregation, and influx control, the character of Khayelitsha today also reflects post-apartheid urban policies to a greater extent than for most apartheid-era townships”.

Therefore, understanding post-apartheid Khayelitsha requires it to be contextualised within the current political landscape. Since the first free elections in 1994, the ANC has been the ruling party of South Africa, governing with an electoral majority. This has made them the dominant party in the National Assembly, and effectively turned South Africa

into a system of ANC party dominance.<sup>36</sup> Since 2009, the Western Cape, however, is the single province, out of nine, that is ruled by the Democratic Alliance (DA) party also constituting the strongest opposition party at the national level.<sup>37</sup> The DA has been in power in the capital city of the Western Cape, Cape Town, since 2006. In the Western Cape during the 2011 municipal elections, the DA won with over 60% of the votes, while the ANC received over 32% of the votes (Electoral Commission of South Africa, 2017). Hence, the Western Cape and Cape Town can be considered an oppositional stronghold of the DA against ANC dominance.

However, in the municipal elections of 2006 less than 1%, and in 2011 a little over 6 % of voters, voted for the DA in Khayelitsha (Fakir and Holland, 2011). While this represents a substantial increase in votes for the DA between 2006 and 2011, nevertheless, far over 90% of the voters voted for the ANC in both municipal elections in Khayelitsha (Electoral Commission of South Africa, 2017). Conversely, in the ward<sup>38</sup> of the Central Business District of Cape Town, the picture is the opposite, for in the 2011 election, only over 2% of votes were cast for the ANC, while almost 95% of votes were cast for the DA (Ibid.).

These voting figures demonstrate how politically divided the Western Cape is. On the one hand, there is internal division, as different parts within the same metropolitan area vote very differently, while on the other hand, there is an external division that exists between the provincial Western Cape DA government and the ANC national government. This particular political set up influences the political realm and any political topic is subsequently much contested. This political intensity in general is an important feature of the Western Cape and of Khayelitsha (Thompson and Nleya, 2010) but has also been observed as an important theme in local safety and security responses (Fourchard, 2012; 2011) – this will be discussed in further detail in the empirical Chapter 5.

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<sup>36</sup> Since 1994, the ANC have secured over 60% of the votes in all five elections.

<sup>37</sup> The DA received over 22% of the votes in the 2014 national election, and over 16% of the votes in the 2009 national elections (Electoral Commission of South Africa, 2017).

<sup>38</sup> A ward is a subdivision of a municipality.

## 4.2. Demographics and socio-economic development

Khayelitsha is ethnically homogenous with the absolute majority of the population being black, isiXhosa-speaking people (Khayelitsha Commission, 2014, p. 37). Initially laid out to accommodate 120,000 people, today over 400,000 people<sup>39</sup> live in Khayelitsha (Ibid., pp. 33-34). This makes it one of the most densely populated areas in the metropolitan area of Cape Town and the largest township in the Western Cape Province.

Khayelitsha faces a number of infrastructural challenges, including insufficient street lighting, proper access, and developed, paved roads in the informal areas (Khayelitsha Commission, 2014, p. 39, p. 87). Situated between highways, ocean, wetlands and sand dunes the geographic environment poses additional environmental challenges, such as floods, strong winds, winter frosts and unstable surfaces, which are common in the Cape Flats<sup>40</sup> area. This limits the possibility of geographic growth for Khayelitsha while also exposes challenges to the living conditions.



**Figure 2: Khayelitsha informal settlement**  
(Source: Booley, 2014a)

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<sup>39</sup> Estimates range from 400,000 to 1,000,000 inhabitants, see Seekings (2013) for a discussion of different estimates.

<sup>40</sup> See Figure 1 for an overview of the geographical location of the Cape Flats.

Khayelitsha consists of formal and informal areas, with the highest density particularly visible in the informal areas, where a seemingly endless colourful sea of tin shacks sprawl over sandy and dusty terrain. About half of the population live in shacks, either in informal settlements or backyard settings (Seekings, 2013). Shacks are often built out of corrugated metal, and are ill equipped against extreme weather conditions such as floods, storms and frosts, while also being open to potential disasters due to the fire risk inherent in these high density set-ups (Meth, 2016). In addition, they are very vulnerable to crimes such as burglaries (Ibid.). These building structures also collapse easily, and they often come with limited or illegal access to electricity and limited access to water and sanitation.



**Figure 3: Narrow street between shacks in Khayelitsha**  
(Source: Booley, 2014b)

About 40% of the population have no access to water or sanitation (Seekings, 2013), relying instead on shared communal water taps and underserviced portable toilets. 33% of the residents share communal taps and around 28% of the population do not have permanent on-site flush toilets (Bundle, 8(8), item 3, 2014; Seekings, 2013, p. 8). In 2011, 8,000 households in Khayelitsha were using bucket toilets and 12,000 had no toilet at all

(Khayelitsha Commission, 2014, p. 39). Due to the set-up, infrastructure and environmental challenges, the informal areas in particular, are difficult to service.



**Figure 4: Khayelitsha communal toilets**

(Source: Booley, 2014c)

The socio-economic situation in Khayelitsha is also weak and overall infrastructure developments still very limited. About half of the population is unemployed. Youth unemployment is particularly high and over 50% of the population have not completed grade 12 (Khayelitsha Commission, 2014, p. 37). Half of the population has per capita income of less than 1,600 ZAR<sup>41</sup> per month (Seekings, 2013; Simkins, 2013). Between 46-75% of the population live in poverty according to different poverty indicators<sup>42</sup> (Seekings, 2013, p. 46). But these figures do not represent all of Cape Town, rather, the area's socio-economic development varies substantially in different parts of the city. The socio-economic poverty index of the Western Cape Government Provincial Treasury (2013, p. 30) draws a mixed picture. Their figures clearly indicate where the urban peripheries and townships are located with the lowest level of socio-economic

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<sup>41</sup> The amount is equal to approximately 106 GBP according to the average exchange rate in 2013.

<sup>42</sup> The variation depends on the definition of the poverty line. In 2011, the upper value for poverty corresponded with 614 ZAR (53 GBP) per person per month and the lower value corresponded with 331 ZAR (29 GBP) per person per month (Simkins, 2013, p. 35).

development.<sup>43</sup> But they also shows that while socio-economic development in Khayelitsha is one of the lowest, it is not uniform either and varies between very low to middle low indicators.

It is important to understand the various socio-economic, infrastructure and environmental challenges in Khayelitsha, whilst also highlighting the fact that Khayelitsha is not a homogeneous place. Rather, there is a mix of different levels of socio-economic development (see Khayelitsha Commission, 2014; Brunn and Wilson, 2013; Western Cape Government Provincial Treasury, 2013, p. 30). In this regard, Brunn and Wilson (2013, p. 285) note that Khayelitsha

*(...) is also a settlement that many lifelong white residents of metropolitan Cape Town have never visited, or probably wish to visit (...). Khayelitsha is probably considered by outsiders as a homogeneous Black township, a place of rampant poverty, high rates of HIV/AIDS [n.b. human immunodeficiency virus/acquired immune deficiency syndrome], violent crime and lawlessness, squatter settlements, fear, confusing and disorganized street patterns, poor services and infrastructure and a destination for many new refugees. While many of these descriptions have some degree of accuracy, even casual observations driving through and around Khayelitsha reveal the township is far from uniform. There are some good and new government housing areas, a shopping center, a visitors center and small industrial plants, but also large areas of shacks, absent play spaces, extreme poverty and informal economies.*

Figure 5 visualises this contrast. Lookout Hill overlooks Illitha Park, a neighbourhood in Khayelitsha and an area where proper built houses and streets display an orderly image of a proper suburb. Lookout Hill itself is a developed business hub with a big conference hall, a restaurant, and some little shops. It is a popular tourist destination with a viewpoint that overlooks Illitha Park. These and other similar developments are a result of post-apartheid policies, urban planning and a developing middle class.

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<sup>43</sup> The socio-economic index is calculated based on different weighted indicators such as access to water, lighting and toilet facilities; illiteracy and school and university degrees; dwelling type and room density; and employment and income (Western Cape Government Provincial Treasury, 2013, pp. 28-38).



**Figure 5: Khayelitsha's Lookout Hill**  
(Source: Riffler, 2014a)

With the end of apartheid, the City of Cape Town started implementing different programmes and initiatives,<sup>44</sup> and addressing issues such as public housing, water and sanitation, and community development, in order to improve the conditions of township life (Ngxiza, 2012). While these programmes were implemented with some success, critical voices argue that more needs to be done in terms of responding to issues around local economic and infrastructure development (Ngxiza, 2012; Samara, 2011). Ngxiza (2012, p. 186) notes, for example, that the “challenges of unemployment, poverty, backlogs in service delivery, and economic underdevelopment are embedded in Khayelitsha, therefore radical transformation of the structural and systemic features must be implemented”. In addition, he (Ibid.) finds that although numerous programmes have been implemented, coherent strategies with particular emphasis on infrastructure and industrial growth as drivers for economic development and employment, are still missing. In a similar vein, yet more drastically, Samara (2011, p. 181) finds that a “neoliberal urban governance regime” purposely creates a divided city. She argues that while urban development and renewal target affluent, predominantly white areas and the Central

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<sup>44</sup> Programmes include the Urban Renewal Programme, the Khayelitsha Community Trust or the Violence Prevention through Urban Upgrading Programme. For more information, see Ngxiza (2012).



Business District of Cape Town, the Cape Flats area only receives “piece meal” interventions (Ibid., p. 181).

The Khayelitsha Commission (2014, p. 38) attests to both improvements and challenges in their analysis of Khayelitsha:

*There has been a significant expansion in service delivery to Khayelitsha households since 1996. Between 1996 and 2011, the number of households using flush or chemical toilets<sup>[45]</sup> doubled, as did the number of households using electricity and the number with water on site. However, given that the number of households almost doubled in the same period, there are still many households without access to basic services.*

In summary, although some positive changes and developments in Khayelitsha can be acknowledged, the overall living conditions remain dire.

### 4.3. Violence, crime and policing

Khayelitsha also experiences high levels of violence and crime. The township has gained the unpopular, yet catchy, title as one of the “murder capitals” of South Africa (see for example Lee, 2014; Feni, 2006; Merten, 2005), and the statistics confirm this. One expert for the Khayelitsha Commission found that “Greater Khayelitsha has the highest numbers of murders, attempted murders, sexual offences, assault with intent to do grievous bodily harm and robbery with aggravating circumstances nationwide” (Khayelitsha Commission, 2014, p. 44). In 2012/13, 15,795 crimes were recorded in Khayelitsha, amounting to 43 crimes per day. From 2012 to 2013, the crime statistics recorded 354 homicides for Greater Khayelitsha,<sup>46</sup> which translates to 91 homicides per 100,000 inhabitants. Additionally, there were 617 sexual crimes recorded in the area, which corresponds to 157 sexual crimes per 100,000 inhabitants (Ndifuna Ukwazi, 2014b, p. 13). Both numbers are substantially higher than the national average, which, in 2012/13

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<sup>45</sup> A chemical toilet is” [a] toilet that is not connected to a sewage system but has a compartment in which waste is treated with chemicals for temporary storage” (Oxford Dictionaries, 2017b). In 2013, the City of Cape Town made accessible a total of 11,000 portable flush toilets and 5,000 shared communal chemical toilets (Khayelitsha Commission, 2014, p. 39). The City of Cape Town is responsible for maintaining and servicing these. Figure 4 in Chapter 4.2. displays an image of the public toilets in Khayelitsha.

<sup>46</sup> Greater Khayelitsha consists of the three police precincts, Khayelitsha, Harare and Lingulethu West. For a geographical overview see Figure 6.



was 32.1 homicides per 100,000 people (Institute for Security Studies, 2015), and 127 sexual offences per 100,000 people (AfricaCheck, 2014). It is also much higher than the global average homicide rate of 6.2 per 100,000 population (United Nations Office on Drugs and Crime, 2013, p. 12). Table 2 provides an overview of major crimes recorded over the last ten years.

| <b>Years</b>                      | 2003/4 | 2004/5 | 2005/6 | 2006/7 | 2007/8 | 2008/9 | 2009/10 | 2010/11 | 2011/12 | 2012/13 |
|-----------------------------------|--------|--------|--------|--------|--------|--------|---------|---------|---------|---------|
| <b>Crime type</b>                 |        |        |        |        |        |        |         |         |         |         |
| Murder                            | 358    | 344    | 410    | 430    | 383    | 283    | 290     | 310     | 360     | 354     |
| Attempted murder                  | 395    | 304    | 223    | 230    | 187    | 179    | 188     | 225     | 264     | 342     |
| Kidnapping                        | 62     | 30     | 18     | 20     | 4      | 11     | 17      | 41      | 71      | 83      |
| Sexual crimes                     | 588    | 681    | 736    | 618    | 613    | 555    | 631     | 643     | 648     | 617     |
| Robbery                           | 1484   | 1678   | 1639   | 2168   | 1890   | 1429   | 1249    | 1222    | 1571    | 1932    |
| Common assault                    | 2020   | 2018   | 2100   | 1991   | 1753   | 1649   | 1866    | 1483    | 1557    | 1742    |
| Residential burglary              | 1621   | 1543   | 1207   | 1024   | 1046   | 1150   | 1254    | 1104    | 1105    | 1261    |
| Non-residential burglary          | 62     | 41     | 70     | 210    | 134    | 172    | 236     | 294     | 247     | 357     |
| Motor vehicle theft               | 272    | 321    | 302    | 347    | 386    | 335    | 405     | 340     | 295     | 244     |
| Shoplifting                       | 159    | 134    | 90     | 169    | 141    | 305    | 370     | 320     | 469     | 387     |
| All crimes recorded <sup>47</sup> | 16500  | 16025  | 13793  | 14659  | 12935  | 12269  | 13401   | 13102   | 14690   | 15795   |

**Table 2: Crime Statistics for Greater Khayelitsha**

(Source: author's own presentation based on the information in Bundle, 7(1), file H, item 10, 2014, n.p., Figures 6, 9, 11, 12)

In addition, Khayelitsha also records high levels of vigilante violence. Between April 2011 and June 2012, 66 cases of vigilante violence were identified by the police as part of a special report (Khayelitsha Commission, 2014, p. 215; Bundle, 8(4), file 4.1, item 3.23, 2012). This report recorded cases where severe assault, bodily harm and murder seemed to be the result of vigilante violence, hence involving a number of people (sometimes referenced as a 'mob') committing a crime against the victim in retaliation

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<sup>47</sup> This category also includes crimes not listed in the table, e.g. arson, etc. For the full list see Bundle, 7(1), file H, item 10, 2014, Figure 11 and Figure 12.

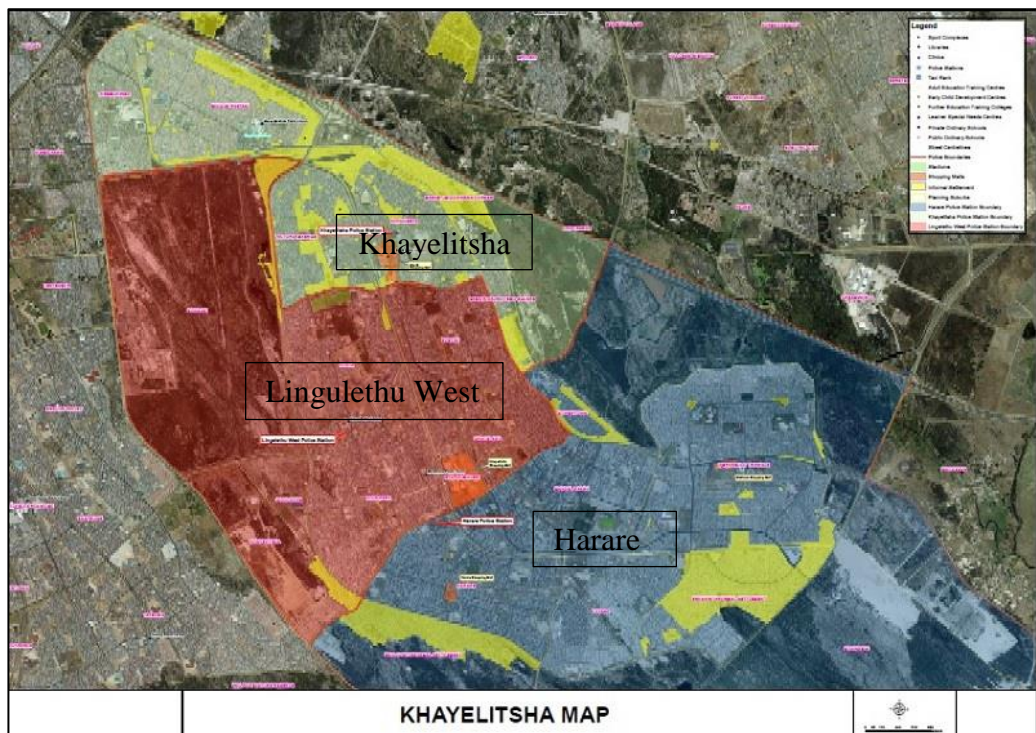
for an alleged crime committed by the victim. By 2014 only two out of 66 cases had resulted in a conviction based on murder charges (Khayelitsha Commission, 2014, p. 215). There is no crime category classified as vigilantism in the SAPS crime statistics and, besides the above mentioned one-off report there are no formal police statistics available regarding vigilante incidents that occur on a regular basis (Ibid., p. 386). Therefore, it is not possible to trace general trends over the years. However, vigilantism does feature prominently in newspaper coverage (see Bundle, 1(2), n.d.; Consolidated Indexes (15), n.d.) and was addressed as a major concern of the Khayelitsha Commission (see Khayelitsha Commission, 2014, pp. 138-140; pp. 275-276; pp. 342-346; p. 456). In the words of the Premier of the Western Cape, the Khayelitsha Commission was established to, among other things, address the “plague of vigilante killings”, (Khayelitsha Commission, 2014, p. 2). Several testimonies to the Khayelitsha Commission indicated that vigilantism constitutes part of the everyday realities of life in the township (Transcripts, 11.02.2014, pp. 2648-2666; 07.02.2014, pp. 2022-2080; 31.01.2014, pp. 1061-1073; 30.01.2014, pp. 859-888; 27.01.2014; pp. 273-329).

In their final report on crime and violence, the Khayelitsha Commission (2014, p. 45) was able to conclude:

*that the residents of Khayelitsha are faced with extremely high levels of serious contact crime, which include murder, sexual offences and aggravated robbery. It also concludes that reported crime rates, particularly of offences such as common robbery and theft, probably significantly understate the number of such crimes that take place in Khayelitsha, by as much as 40%. (...) The Commission concludes that it is not surprising, given these levels of crime, that a very high proportion of residents in Khayelitsha feel unsafe.*

The Khayelitsha Commission (2014, p. 386) further states, that although there is no registry of vigilante violence, reports indicate that these incidents are common and contribute to the situation of insecurity experienced in Khayelitsha.

To address violence and crime, vigilantism, injuries and matters of justice, Khayelitsha has three police stations, one hospital and one magistrates’ court. The three police stations each cover one police precinct, which is marked in colour in Figure 6: Harare precinct in blue, Lingulethu West in red and Khayelitsha in grey. The areas marked in yellow identify informal settlements.



**Figure 6: Khayelitsha map with the three police precincts**  
 (Source: Khayelitsha Commission, 2012h [adjusted])

While challenged with the highest crime rates country wide, Greater Khayelitsha has less police personnel than the national average of 283 police per 100,000 inhabitants. In 2011, Greater Khayelitsha had, on average, 192 police per 100,000 inhabitants - Harare police precinct having the lowest number of police in the Western Cape with 111 police per 100,000 inhabitants. Wealthier, predominantly white middle and upper-class suburbs have a ratio of 853 (Camps Bay) or 960 (Wynberg) to 100,000 inhabitants. Cape Town City Centre tops the list with 1,545 police per 100,000 inhabitants (Khayelitsha Commission, 2014, p. 315). As a result, the Khayelitsha police service is hugely understaffed.<sup>48</sup>

Because of these staff shortages, there is an ever-increasing accumulation of cases that the police need to deal with in Khayelitsha. For example, detectives in Greater Khayelitsha carry on average between 131 and 160 dockets, while a normal case load would not involve more than 50 dockets per person at any given time (Khayelitsha Commission, 2014, p. 309, p. 365). A number of officers even deal with over 200 cases

<sup>48</sup> For special inquiries on resources and personnel allocation schemes, see transcripts, 12.05.2014, pp. 6744-6834; 25.03.2014, pp. 5401-5503; 03.02.2014, pp. 1173-1234.

(Khayelitsha Commission, 2014, p. 199). In addition, there is a tremendous backlog of general cases, ranging from between 8,800 to 4,600 of pending cases across the three different police stations, with a steady inflow of new or incoming cases ranging from 650 to 960 (Khayelitsha Commission, 2014, p. 365). At the same time, the police are also underequipped and under-resourced financially and not trained to address the specific needs of Khayelitsha. The consequences of these major shortcomings resulting in a lack of access to justice and security will be discussed in more detail in Chapter 6.

#### 4.4. The Khayelitsha Commission of Inquiry

The case study focuses on and draws particularly from the Khayelitsha Commission. The Khayelitsha Commission was initiated by the Premier of the Western Cape and leader of the DA party, Helen Zille, and mandated to investigate the inefficiency of the police, the breakdown of relationships between the community and the police, and to formulate solutions to the challenges identified (Khayelitsha Commission, 2012a).

The Khayelitsha Commission was established through the mobilisation of a network of six civil society organisations,<sup>49</sup> the complainant organisations, based on a provision in the Constitution.<sup>50</sup> The complainant organisations are a close network of originally six CSOs consisting of two NGOs, three SMOs and one CBO. Their goal is to promote safe communities for all people. They focus on education about the criminal justice system and constitutional rights; monitoring and advocacy for a safer environment (lighting, sanitation, public space, youth facilities); advocacy work; and stress participation in consultative government processes as well as engagement in submissions to draft policies concerning safety and security (Ndifuna Ukwazi, 2014b; Social Justice Coalition, n.d.(a); n.d.(b); n.d.(c)). The individual organisations do not all have a background in security

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<sup>49</sup> The complaint was handed in by the Women's Legal Centre on behalf of the Treatment Action Campaign, Equal Education, Free Gender, Triangle Project, and Ndifuna Ukwazi. Free Gender later withdrew from the complaint. The Legal Resource Centre became the legal representative for the complainant organisations for the Khayelitsha Commission hearings.

<sup>50</sup> The organisations developed an official complaint and demanded the establishment of the Commission on the basis of a provision in the Constitution. The complaint was made in terms of Section 206 (5)(a) of the Constitution of the Republic of South Africa (1996) and Section 66(2)(a) of the Constitution of the Western Cape (1997), which stipulate that a province “(a) may investigate, or appoint a commission of inquiry into any complaints of police inefficiency or a breakdown in relations between the police and any community; and (b) must make recommendations to the national Cabinet member responsible for policing”.

and safety issues but rather come from a diverse field. For this reason, they also represent the particular interests of their constituency with regards to safety and security and access to justice (for example, from the perspective of learners, the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, and people living with HIV).

Their single largest campaign was the legal complaint and lobbying activities related to participation in the Khayelitsha Commission. In their initial legal complaint calling for the installation of a commission of inquiry, they focused upon (among other themes), three main issues: the failure of effective, visible policing and the wider criminal justice system; the breakdown of community-police relationships; and the socio-economic conditions that contribute to violence and crime (Social Justice Coalition et al., 2011).

The establishment of the Khayelitsha Commission took a long time (see Social Justice Coalition, n.d.(a)). In 2010, the CSOs started campaigning for a commission following a number of individual murder and crime cases that had been affecting their members for years. They contacted the provincial Minister for Community Safety on the matter and had the first fruitful meetings (Interviews, 13B, 2014; 10B, 2013). When a new Minister came into position, the process stalled. In 2011, the complainant organisations formulated an official complaint to the Western Cape government to officially demand a commission of inquiry based on constitutional provision. The complaint was made in November 2011 and handed over to the Premier of the Western Cape, who is mandated to set up a commission. As a consequence of the complaint, the Premier requested a response to the allegations from the ANC National Minister of the Police, Nkosinathi Mthethwa. When a proper response regarding unresolved cases and the general issues identified by the complaint was not forthcoming from the National Minister of Police, the Premier of the Western Cape instituted the Khayelitsha Commission in August 2012.



**Figure 7: Demonstration at the Khayelitsha Commission Hearing**  
(Source: Riffler, 2014b)

The Khayelitsha Commission was then stopped by an appeal made by the national Minister of the Police in November 2012. He argued that the mandate of the Khayelitsha Commission was too broad, stretching beyond the scope of authority of the Premier of the Western Cape. It was further argued that the Premier of the Western Cape was failing “to give effect to the principles of cooperative government and inter-governmental relations” (Ndifuna Ukwazi, 2014b, p. 49). The National Minister of the Police went through two levels of jurisdiction<sup>51</sup> but was eventually halted by the final judgement of the Constitutional Court in October 2013, who decided in favour of a commission of inquiry. The interruption through legal appeal carried out by the National Minister of the Police has to be understood within the party-political context that was laid out in Chapter 4.1. The SAPS falls under the responsibility of a national ANC-led government, while the DA-led Western Cape government initiated the Khayelitsha Commission. The establishment of the Khayelitsha Commission, therewith, was perceived as a political move by the DA against the ANC (Davis, R., 2012; Johns, 2012).

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<sup>51</sup> The application was first submitted to the Western Cape High Court and consequently to the Constitutional Court of South Africa.

In light of this politicised process of the establishment of the Khayelitsha Commission, and the ensuing struggles over competencies between the DA-led provincial government and the ANC-led national government, the complainant organisations were regularly attacked for being politically biased and politically close to the DA (Interview, 10B, 2014). The complainants emphasised their political neutrality (Interviews, 4B, 2014; 13B, 2014; 14C, 2014; 10B, 2013). This party-political dynamic led to contestation between different CSOs and is also visible in the different approaches addressing security and justice as will be discussed further in Chapters 5 and 7.

The Khayelitsha Commission was finally able to continue its work in December 2013 after the Constitutional Court ruling. It consisted of six members: the chairperson and commissioner, Justice Catherine O'Regan; the commissioner, Advocate Vusi Pikoli; the evidence leaders, Advocate Nazreen Bawa and Advocate Thembalihle Sidaki; the Commission secretary, Amanda Dissel; and the administrator, Khangelani Rawuza. The Premier of the Western Cape appointed these members and provided the Khayelitsha Commission with complete independence of working (Interview, 11B, 2014). However, the budget administration – excluding the budget power – was placed within the Western Cape Department of Community Safety (DOCS) for administrative reasons (Interviews, 2B, 2014; 11B, 2014).

The appointment of the heads of the Commission, namely Justice Kate O'Regan and Advocate Vusi Pikoli, was well received due to their work experience and positive reputations. Justice O'Regan had served as one of the first judges in the South African Constitutional Court for 15 years. "She is recognised as one of the finest legal minds in South Africa" (Armstrong, 2014, n.p.). Advocate Pikoli was an advocate of the High Court, who had also worked as director of Public Prosecutions for the National Prosecuting Authority and "is recognised for his independence and integrity" (Underhill, 2014, n.p.). The appointments to the Khayelitsha Commission were considered important as they indicated the independence of the Commission from political interests.

The Commissioners themselves saw the role of the Commission as one of oversight and accountability (Khayelitsha Commission, 2014, p. 11), in particular, in support of improvements to policing (Armstrong, 2014, n.p.). The Commissioners also stated a commitment to the belief "that all South Africans have a right to a secure and safe environment and that being free from crime is an important constitutional right" (Underhill, 2014, n.p.).

The Commission set up office in Khayelitsha, as they considered it important to be located in an area inhabited by the people affected by this investigation (Khayelitsha Commission, 2014, p. 18). The office was open for ordinary work from September 2012 until the end of June 2014. Residents were invited to come forward to the office and “give evidence about [their] experiences with the police in Khayelitsha” (Khayelitsha Commission, 2014, p. 19). The offices were officially open to the public for complaints and affidavits from 11 September 2012 to 9 November 2012 and from 21 October to 29 November 2013 (Ibid., p. 18). However, outside of this time and when the Khayelitsha Commission was already holding public hearings, people still came forward to testify and the Commission still took their statements, in order to acknowledge the peoples’ effort and will to testify (Interview, 2B, 2014). Throughout this process, 95 statements were recorded from members of the public (Khayelitsha Commission, 2014, p. 19).

In order to have a wide reach and to be representative of a wide range of views and perceptions on policing and safety in Khayelitsha, the Khayelitsha Commission ran a comprehensive outreach campaign (Khayelitsha Commission, 2014, p. 19; Interview, 2B, 2014). Part of this campaign included the distribution of 200,000 pamphlets and posters, both in English and in isiXhosa, advertisements in local newspapers, and radio interviews (Khayelitsha Commission, 2014, p. 19-21; Interview, 2B, 2014). The Khayelitsha Commission also engaged with a wide range of government agencies, academics and local civil society representatives to explain the purpose of the Khayelitsha Commission, its functioning and to encourage participation (for a full overview see Khayelitsha Commission, 2014, pp. 19-21). In addition, the Khayelitsha Commission established a website “to ensure that its proceedings were well publicised, transparent and accessible” (Ibid., p. 19; Khayelitsha Commission, 2012a).

The Khayelitsha Commission held public hearings according to a pre-defined schedule lasting 37 days and taking place between December 2013 and May 2014. As mentioned in Chapter 1.3., during this time, around 100 witness testimonies from members of the community, CSO representatives, academics, government officials and members of the SAPS, were heard. The final report of 580 pages (Khayelitsha Commission, 2014) was officially handed over to the Premier of the Western Cape in August 2014.





**Figure 8: Khayelitsha Commission Hearing**  
(Source: Riffler, 2014c)

The report included background information on Khayelitsha and the SAPS; comprehensive summaries of testimonies, expert information and additional documents; an analysis of policing inefficiencies and community police relations; and comprehensive recommendations. The report expressed 20 wide-ranging recommendations (Khayelitsha Commission, 2014, pp. 439-468). These included the adoption of a community policing commitment in consultation with local residents; the instalment of a monitoring team to eradicate identified inefficiencies; the formulation of guidelines on visible policing in informal neighbourhoods; the establishment of strategies to improve community – police relationships; revision of the system on human resource allocation; measures to address vigilante violence; and the introduction of community based mediation to resolve conflicts, among others (Ibid.).<sup>52</sup>

The implementation of the recommendations of the Khayelitsha Commission is still a work in progress, as it has advanced at a very slow pace (Furlong, 2017; Western Cape Government, 2016; 2017). After a short phase of euphoria and excitement, the complainant organisations started to mobilise, campaign, advocate, protest and litigate

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<sup>52</sup> Further recommendations included for example the establishment of a change management processes to address inefficiencies; improvement and strengthening of independent oversight through the IPID; development of measures to address backlogs; and revision of employee health and wellbeing. For the full overview see the Khayelitsha Commission, 2014, pp. 439-468.

again with the purpose of achieving the implementation of the recommendations (Social Justice Coalition, 2017a; Social Justice Coalition and Equal Education, 2016). The developments that took place in the aftermath of the Khayelitsha Commission are further discussed in Chapter 5.3.

#### 4.5. Local actors addressing violence and crime in Khayelitsha

In order to provide a basis for the empirical chapters, this section introduces the most relevant actors in terms of responding to violence and crime, and provides a brief overview of the complexity and diversity of these actors. The empirical Chapters 5 and 7 will delve deeper into the interests and agendas of these actors, as well as the political divides, including more in-depth descriptions. The overview of different actors is based on data gathered during the Khayelitsha Commission hearings and the semi-structured interviews that have informed this study. These were complemented by desk study research. Quotes from the primary data are provided to underline the key issues that these actors engage with. The actors listed here are the most prominent ones for engaging with security and justice matters and providing responses to violence and crime. Either they were mentioned frequently in relation to security and justice matters or they were actively involved in the Khayelitsha Commission and its related activities. However, this list is by no means inclusive and it does not capture the huge sector of CSOs operating in Khayelitsha more generally.

| ACTOR  | BACKGROUND   | PARTICIPANTS  | APPROACHES  | TYPE OF ORGANISATION  |
|--|--|---|---|---|
| <b>Statutory Body</b>  |  |   |   |   |
| <b>Community Police Forums</b><br>“Yes, I could say CPF is the eyes of the police because CPFs work between the community and the police” (Transcript, 12.02.2014, p. 2676).   | <ul style="list-style-type: none"> <li>- Based on Section 18, SAPS Act (No. 68 of 1995)</li> <li>- To improve police – community relationships and to increase accountability</li> </ul> | <ul style="list-style-type: none"> <li>- Consists of the elected executive committee, station Commissioner, local CSOs and community members</li> </ul>         | <ul style="list-style-type: none"> <li>- Consultation, collaboration and oversight</li> <li>- Joint planning of security initiatives and policing plans</li> <li>- Coordination of neighbourhood watches</li> </ul> | <ul style="list-style-type: none"> <li>- Formally mandated</li> <li>- Functioning and consistency depends on executive committee</li> <li>- Varying degree of institutionalization</li> </ul>   |
| <b>Local security and justice actors</b>   |  |   |   |   |
| <b>Street Committees</b><br>“(...) the street committees would definitely do something about it [n.b. the criminal suspect]. (...) Either they demolish the house or they chase the person away (...)” (Transcript, 24.01.2014, p. 270). | <ul style="list-style-type: none"> <li>- Local grassroots community structures, often at neighbourhood level</li> <li>- Came into existence during apartheid</li> </ul>                  | <ul style="list-style-type: none"> <li>- Respected members in the community, elders</li> <li>- Members are often residents in a given area or street</li> </ul> | <ul style="list-style-type: none"> <li>- Deal with community matters</li> <li>- Use authority and mediation</li> </ul>  | <ul style="list-style-type: none"> <li>- Differing degrees of formality and organisation</li> <li>- Varied responsibilities, agendas and tasks</li> <li>- Some organised under the South African National Civic Organisation (SANCO)</li> </ul> |
| <b>Taxi Drivers</b><br>“Although these perpetrators are afraid of taxi drivers they are not afraid of the police at all, taxi drivers will beat up the perpetrator” (Transcript, 21.01.2014, pp. 4312-4313).                             | <ul style="list-style-type: none"> <li>- Business</li> <li>- Important security actor in the area</li> </ul>   | <ul style="list-style-type: none"> <li>- Taxi and mini-bus drivers</li> </ul>   | <ul style="list-style-type: none"> <li>- Patrols, curfew</li> <li>- Corporal punishment</li> <li>- Recovering goods</li> </ul>  | <ul style="list-style-type: none"> <li>- The taxis are mostly organised under taxi associations (e.g. CODESA), yet there involvement in security provision is neither organised nor mandated</li> </ul>   |

| <b>ACTOR</b>   | <b>BACKGROUND</b>  | <b>PARTICIPANTS</b>   | <b>APPROACHES</b>  | <b>TYPE OF ORGANISATION</b>   |
|--|--|---|--|---|
| <b>Neighbourhood Watches</b><br>“The reason I established a neighbourhood watch in Khayelitsha I saw that the police officers are working alone whilst (...) we just watch them (...)” (Transcript, 23.01.2014, p. 110). | <ul style="list-style-type: none"> <li>- Local security and justice actors</li> <li>- Officially organized and mandated through the Western Cape Community Safety Act (No. 3 of 2013)</li> </ul> | <ul style="list-style-type: none"> <li>- Community members (unpaid, armed/unarmed, trained/untrained)</li> </ul>  | <ul style="list-style-type: none"> <li>- Patrols</li> <li>- Apprehension, interrogation</li> <li>- Punishment of criminals</li> </ul>  | <ul style="list-style-type: none"> <li>- Formality varies substantially</li> <li>- Some organized under the DOCS; others independent</li> <li>- Some coordinated through CPFs</li> </ul>        |
| <b>School Security Volunteers</b><br>“I think they need to change the security people there so that it’s not people from the older days who don’t know the situation at hand” (Transcript, 07.02.2014, p. 2048).         | <ul style="list-style-type: none"> <li>- Official provincial government program started in 2003</li> <li>- Part of the national government’s Expanded Public Works Programme</li> </ul>          | <ul style="list-style-type: none"> <li>- Volunteers (receive a stipend)</li> <li>- Often unemployed women or elderly people (untrained)</li> </ul>  | <ul style="list-style-type: none"> <li>- Unarmed patrols in schools</li> <li>- Reporting of incidents</li> </ul>   | <ul style="list-style-type: none"> <li>- Coordinated at school level</li> </ul>   |
| <b>Civil society organisations, networks and bodies</b>  |  |   |  |   |
| <b>Khayelitsha Development Forum (KDF)</b><br>“We are standing for the development of Khayelitsha which we think will always include and need the South African Police Services” (Transcript, 20.02.2014, p. 4207).      | <ul style="list-style-type: none"> <li>- Concerned with development and advancement of Khayelitsha</li> </ul>  | <ul style="list-style-type: none"> <li>- Businesses, shop owners, churches, youth groups, women’s associations, local civil society organisations</li> <li>- Ward councillors ex officio members</li> </ul> | <ul style="list-style-type: none"> <li>- Lobbying</li> <li>- Representation of interests</li> <li>- Addressing development issues in eight sectors</li> <li>- Local projects and programs</li> </ul> | <ul style="list-style-type: none"> <li>- Umbrella body of local organisations</li> <li>- Organized along the municipal ward structures</li> <li>- Consists of eight sectorial forums</li> </ul> |

| ACTOR   | BACKGROUND  | PARTICIPANTS   | APPROACHES   | TYPE OF ORGANISATION   |
|---|---|--|--|--|
| <p><b>Campaign for Safe Communities</b><br/>           “We aim to create safe communities for all people in South Africa regardless of nationality, race, occupation, gender, sexual orientation, age or disability” (Social Justice Coalition, n.d.(c)).</p>   | <ul style="list-style-type: none"> <li>- Network established to support the initiative for the Khayelitsha Commission</li> </ul>  | <ul style="list-style-type: none"> <li>- Network of ten civil society organisations (SMOs, NGOs), members of the SMOs</li> </ul> | <ul style="list-style-type: none"> <li>- Advocacy</li> <li>- Campaigning</li> <li>- Protest</li> <li>- Education on constitutional rights</li> <li>- Research on security and justice</li> <li>- Support for the Khayelitsha Commission</li> </ul> | <ul style="list-style-type: none"> <li>- Loose network of registered organisations</li> </ul>  |
| <p><b>Legal Resource Centre (LRC)</b><br/>           “We are not just coming to talk and just hear things. We actually want to get an investigation (...). So the commission wants to make a finding on that complaint to say, (...) there is indeed a break-down of communication between the Khayelitsha community and the police” (Interview, 8B, 2014).</p> | <ul style="list-style-type: none"> <li>- Established in 1979</li> <li>- Public interest litigation, human rights law clinic</li> <li>- Legal representative of the complainant organisations</li> </ul> | <ul style="list-style-type: none"> <li>- Staff, interns, volunteers</li> </ul>   | <ul style="list-style-type: none"> <li>- Social justice and human rights focus</li> <li>- Public interest litigation</li> <li>- Advocacy for law reform</li> <li>- Educative initiatives</li> </ul>  | <ul style="list-style-type: none"> <li>- Works nationwide</li> <li>- Offices in Johannesburg, Durban, Grahamstown and Cape Town</li> </ul> |

| ACTOR  | BACKGROUND  | PARTICIPANTS  | APPROACHES   | TYPE OF ORGANISATION   |
|--|---|---|--|--|
| <p><b>Treatment Action Campaign (TAC)</b><br/>           “In our view making sure that the criminal justice system works is the way that actually gonna get us the furthest quickly” (Interview, 14C, 2014).</p>   | <ul style="list-style-type: none"> <li>- Founded in 1998 as a HIV activist movement mobilising for access to free HIV treatment country wide</li> <li>- Complainant organisation</li> </ul>   | <ul style="list-style-type: none"> <li>- Member-based SMO consistent of community members, volunteers, staff</li> </ul> | <ul style="list-style-type: none"> <li>- Advocacy and human rights activism related to HIV/AIDS and health</li> <li>- Public interest litigation</li> <li>- Protest</li> <li>- Education</li> </ul>    | <ul style="list-style-type: none"> <li>- Professionalised SMO with over 8,000 members country wide and 182 branches</li> <li>- Branches with approximately 1,000 members in Khayelitsha</li> </ul> |
| <p><b>Social Justice Coalition (SJC)</b><br/>           “We strive to promote the rule of law; promote accountability and transparent governance but promote active citizenship where communities are able to stand up for their rights and use the law in order to advance their social standing” (Khayelitsha Commission, 2014, p. 104).</p> | <ul style="list-style-type: none"> <li>- Founded in 2008, in particular as a response to xenophobic attacks and to address social justice matters such as access to water and sanitation</li> <li>- Complainant organisation</li> </ul> | <ul style="list-style-type: none"> <li>- Member-based SMO consistent of community members, volunteers, staff</li> </ul> | <ul style="list-style-type: none"> <li>- Campaigning and advocacy for sanitation, urban land and policing</li> <li>- Social audits</li> <li>- Protest</li> <li>- Public interest litigation</li> </ul> | <ul style="list-style-type: none"> <li>- Grass root social movement based in Khayelitsha</li> <li>- Approximately 2,000 members in Khayelitsha</li> </ul>  |

| <b>ACTOR</b>  | <b>BACKGROUND</b>   | <b>PARTICIPANTS</b>  | <b>APPROACHES</b>  | <b>TYPE OF ORGANISATION</b>   |
|---|---|--|--|---|
| <p><b>Equal Education (EE)</b><br/> “(…) we had to be involved in the Campaign for Safety mainly because of our core membership. (…). The bulk of Equal Education members (…) live here” (Interview, 4B, 2014).</p>                               | <ul style="list-style-type: none"> <li>- Founded in 2008 as a democratic movement</li> <li>- Complainant organisation</li> </ul>  | <ul style="list-style-type: none"> <li>- Member-based SMO consistent of students, teachers, parents, community members, volunteers, staff</li> </ul> | <ul style="list-style-type: none"> <li>- Campaigning and advocacy for equal access to quality education</li> </ul>   | <ul style="list-style-type: none"> <li>- Social democratic movement represented in five provinces</li> <li>- Approximately 5,000 members countrywide</li> <li>- Strongest membership base in Khayelitsha</li> </ul> |
| <p><b>Ndifuna Ukwazi (NU)</b><br/> “One of the recommendations we are making is for a five-year safety plan for Khayelitsha, which can hopefully be the basis for a five-year safety plan for the country as a whole” (Interview, 10B, 2013).</p> | <ul style="list-style-type: none"> <li>- Established in 2012 to provide leadership education and legal and research support to other organisations</li> <li>- Complainant organisation</li> </ul>                   | <ul style="list-style-type: none"> <li>- Staff, volunteers</li> </ul>  | <ul style="list-style-type: none"> <li>- Activist organisation Currently focusing on urban land justice</li> <li>- Public interest litigation</li> <li>- Research</li> </ul> | <ul style="list-style-type: none"> <li>- NGO based in Cape Town City Business District</li> </ul>   |
| <p><b>TRIANGLE</b><br/> “I expect recommendations in terms of how to address the situation of (…) disinterest, lack of an understanding of the police being servants of the public. They are a service!” (Interview, 15C, 2014).</p>              | <ul style="list-style-type: none"> <li>- Founded in 1981 initially by a group of homosexual men</li> <li>- Stands for the full realisation of human rights for LGBTI</li> <li>- Complainant organisation</li> </ul> | <ul style="list-style-type: none"> <li>- Staff, volunteers</li> </ul>  | <ul style="list-style-type: none"> <li>- Support services for the LGBTI community</li> <li>- Research</li> <li>- Awareness raising and outreach campaigns</li> </ul>         | <ul style="list-style-type: none"> <li>- NGO, non-profit human rights organisation based in Cape Town</li> </ul>  |

| ACTOR   | BACKGROUND  | PARTICIPANTS   | APPROACHES   | TYPE OF ORGANISATION  |
|---|---|--|--|---|
| <b>Free Gender</b><br>“My colleagues and I have observed over the years many, if not most, police officers in Khayelitsha are homophobic. (...). This had the effect of discouraging LGBT persons from reporting crimes to the police” (Bundle, 2(1.1), item 84, 2013, n.p.). | <ul style="list-style-type: none"> <li>- Established in 2008</li> <li>- Black lesbian organisation</li> <li>- Initially part of the complainant organisations, withdrew from the complaint</li> </ul> | <ul style="list-style-type: none"> <li>- Staff, members</li> </ul> | <ul style="list-style-type: none"> <li>- Support for LGBTI advocacy</li> <li>- Reduce discrimination against lesbians</li> <li>- Community activities and awareness raising</li> </ul> | <ul style="list-style-type: none"> <li>- Community based organisation located in Khayelitsha</li> </ul> |

**Table 3: Actors involved in security and justice in Khayelitsha**

(Source: author’s own representation)

As can be seen from Table 3, numerous actors are involved in addressing issues around violence and crime in Khayelitsha. The field of actors in this research is also very diverse, ranging from informal vigilantes and local, small-scale, community based formations, to more formal, regional and national social movements and NGOs. The organisational form and degree of institutionalisation is equally diverse. Additionally, the different organisations have a varied history and complex thematic backgrounds that inform their approaches to justice and security. The empirical chapters will engage with the chosen variety of actors and discuss their different views on and approaches towards safety, security and justice measures.



## 4.6. Khayelitsha takeaways

This chapter highlighted six important traits of Khayelitsha which are very relevant for the research and the context of the empirical findings. (1) Khayelitsha as a place of relative marginalisation and overall low socio-economic development is a consequence of apartheid politics, yet current policies fall short in redressing this incriminating heritage. (2) Therefore, Khayelitsha is exposed to a number of socio-economic, developmental and infrastructure challenges, such as high levels of unemployment, poor housing, lack of water and sanitation, for example. (3) One major challenge related to the aforementioned shortcomings in this context is also the very high levels of violence, crime and vigilantism. The empirical Chapter 6 will discuss in more detail how the challenges of Khayelitsha relate to the high levels of violence the area experiences. (4) The figures demonstrate that, although Khayelitsha has one of the highest levels of violence and crime, the area is under resourced and understaffed in terms of policing service. In particular, the empirical Chapter 6 will discuss the consequences of this skewed and biased distribution of resources among the population. (5) In addition, Khayelitsha is politically contested as it is a stronghold of the ANC party, while in the Western Cape Province the DA party prevails. This makes Khayelitsha an enclave for ANC politics and an important political site for both parties. (6) Khayelitsha also counts with an engaged civil society responding to violence and crime. The variety of very different actors already indicates varied approaches, which Chapter 5 and Chapter 7 will elaborate upon.

The succeeding chapters will discuss the empirical findings. The next chapter will discuss mobilisation of the Khayelitsha Commission in more detail, analysing CSO strategies, as well as the opportunities and constraints they encountered. The chapter will also elaborate on the political divide that the establishment of the Khayelitsha Commission has caused among CSOs.

# 5. CSOs AND THE KHAYELITSHA COMMISSION

*[The complainant organisations]: The civil society organisations are non-governmental organisations working on a daily basis in Khayelitsha. Whilst the organisations remain focused on different campaigns, they have been compelled to bring this complaint by their shared conviction, gained through their ongoing work with Khayelitsha residents, that the community does not have access to adequate policing or support for victims of crime.*

Social Justice Coalition et al., 2011, para. 8

*[Khayelitsha cluster chairperson responsible for all CPFs in Khayelitsha]: It appears that the Premier [of the Western Cape] trust the views of outsiders to those of the Khayelitsha community on matters affecting the Khayelitsha community. Such trust and belief in the views of outside groupings to those of the community is not justified by any rationality.*

Bundle, 5(4), file 8, item 1, 2013, p. 7

*[The Commissioner of the Khayelitsha Commission]: While the Commission acknowledges that political association is a fundamental freedom that must be protected, it also considers that it would be unfortunate if the goal of community safety in Khayelitsha were to be threatened by political contestation.*

Khayelitsha Commission, 2014, p. 411

CSOs can be an important source of change. Transformative justice concepts assign them a special role in the pursuit of social justice as CSOs facilitate empowerment and participation, allow the articulation of local needs, and rise to the challenge of the status quo (as discussed in Chapter 2.2.). This chapter will analyse the case of mobilisation for the Khayelitsha Commission as a way of exploring CSO activism, along with CSOs demands around security and justice. The chapter will examine CSO activism, participation, and their potential for providing the impetus for transformative change.

The mobilisation of several CSOs for the Khayelitsha Commission was a major joint effort of civil society activism over many years. It forms an exemplary piece of civil society mobilisation and advocacy aimed at achieving social justice, fighting for the right of access to justice and security, and holding the state accountable to its duties. One would assume that it is also an exemplary case of local participation, reflecting local demands and interests. The mobilisation for, and investigation into, the Khayelitsha Commission appears to be illustrative of local civil society activism pushing to tackle structural inequalities. The question emerges whether or not this activism can be a case of transformative action? This chapter finds a varied answer to this question, with CSOs addressing structural inequalities using a rights discourse, but missing out on being truly representative.

The case of the mobilisation of the Khayelitsha Commission reveals how CSOs strategize around collaboration and critique with the state. The mobilisation process sheds light on how CSOs can use their experience of social justice activism and transfer it to the area of criminal justice. Thus, they are able to create a new type of CSO activism that draws a connection between violence and crime, and structural inequality, putting the right to security and justice on the social justice agenda. The chapter also shows how larger, more formal, and professionalised organisations have the opportunity to choose between collaboration and critique, while smaller, more locally embedded organisations, depend more on local collaboration. The findings confirm that power and leverage play a role in CSO activism. While social justice is aspirational, sometimes pragmatic strategies by CSOs do override those aspirations.

In addition, the chapter unpacks further elements of diversity and contestation in the CSO landscape. One of the major sources of tension is the highly politicised environment of Khayelitsha, and the political laden topics of criminal justice, violence and crime. The Khayelitsha Commission itself has become an instance of political contestation, limiting

joint approaches and local to local collaboration. While the Khayelitsha Commission was a unique success for social justice activism and a contribution to transformative justice, as this chapter will argue, political divides were one of the reasons why the Khayelitsha Commission was not a fully participatory exercise.

The first section outlines the mobilisation process of complainant organisations for the Khayelitsha Commission. It will discuss the tactics used by CSOs in the process and how politics were also influential. The second section will highlight which CSOs opposed the process and discuss how party-political interests converted this process into a contested endeavour, limiting participation. The different demands of CSOs with regard to security and justice will be analysed, mainly contrasting the arguments of the complainant organisations with the demands from those opposing the Khayelitsha Commission. The third section will discuss the outcome of the Khayelitsha Commission and the way in which CSOs have followed up these outcomes. The chapter will conclude by discussing its three main contributions.

## 5.1. Mobilising for the Khayelitsha Commission

The establishment of the Khayelitsha Commission is an example of the struggle and mobilisation of a group of CSOs to address the occurrence and impact of crime and violence in a comprehensive manner. It also shows how these CSOs tried to hold both the government and the police accountable using the Constitution and rights based discourse and advocacy. In continuation, the process that led to the establishment of the Khayelitsha Commission will be discussed and the role of party politics in this process will be highlighted. The section will also explain how party politics and the issue of political affiliation opened and closed windows of opportunity.

### 5.1.1. From cases to campaigns – violence, crime and the need for justice

Mobilisation in Khayelitsha regarding demands for a commission of inquiry started with a number of particular crime and murder cases, where family members and the friends of victims did not receive support from the police, the criminal justice system, or other state entities. The victims were either members of, or associated with, social movements in the area (Interviews, 4B, 2014; 10B, 2013; Ndifuna Ukwazi, 2014b; n.d.). Over the years this resulted in these organisations joining forces, recognising the wider failures in the

criminal justice system, strategising and becoming experienced in advocating for the rights to justice and security, and developing a strategy of social justice activism in this area, all of which led to the establishment of the Khayelitsha Commission. This will be discussed in continuation.

Initially in 2003, the TAC started to mobilise and mediate between the family of Lorna Mlofana, a TAC activist who was raped and murdered, and the police. They followed this up with the police and the courts and enquired about the proceedings of the case. One TAC member recalls how, “No-one explained to [her] family what was happening until TAC went and spoke to the investigating officer, spoke to the station commander (...)” (Transcript, 10.02.2014, pp. 2362-2363). The member added further, that there were at least 15 postponements and the whole process impacted strongly on the victim’s family:<sup>53</sup>

*[T]here were too many postponements that caused enormous heartbreak within the family and anger (...) and also trauma among our colleagues and last the fact that no-one took it seriously to go and visit the family and tell them that there was an appeal or that the perpetrator would be released just showed the callousness of the system towards victims. (Transcript, 10.02.2014, pp. 2364-2365)*

Over the years, more horrendous crimes occurred and various cases<sup>54</sup> cumulated in a backlog of unresolved scenarios, all dealt with in a similar manner of neglect (Ndifuna Ukwazi, 2014a; 2014b). Since 2003, these civil society organisations have held several demonstrations, pickets, marches and other forms of protest against the continued failures of the Khayelitsha police and broader criminal justice system (Ndifuna Ukwazi, 2014; n.d.; Social Justice Coalition, n.d.(a)). The organisations also submitted numerous petitions and memorandums to various levels of government in this regard (see Bundle, 7(1), file A, item 2a, 2012). These numerous attempts to approach the police, the courts, and other state officials to get responses were unfruitful. This led to a wider mobilisation

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<sup>53</sup> The case was brought to court in 2006 and two suspects were convicted, one of them received life imprisonment, the other a custodial sentence of seven years. The former appealed against his life imprisonment, and the sentence was reduced. He was later released due to the suspension of part of his sentence. The victim’s family members were not informed of these decisions (see Khayelitsha Commission, 2014, p. 83).

<sup>54</sup> The official complaint focused on eight cases including murder and rape cases (Social Justice Coalition et al., 2011), where over years of mobilisation no legal justice was achieved (Ndifuna Ukwazi, 2014a; 2014b).

around issues of security and justice, and the joining of forces with social movements, NGOs, and one local CBO.<sup>55</sup>

The continuous follow-up on cases revealed a breadth of systemic failure in providing security and justice, subsequently affecting both members and the wider community (Interviews, 4B, 2014; 13B, 2014; 10B, 2013; Transcript, 24.01.2014, pp. 228-271). A staff member from one of the complainant organisations recalled:

*You know the case of Zoliswa Nkonyana,<sup>[56]</sup> so between SJC and the partners, for five or six years we were literally at every court date, meeting with prosecutors, putting pressure on, speaking to the media, dealing with the family and (...) I think those sorts of actions do eventually tally up and do have a positive impact. But a commission that is putting all things in one basket (...) this is in our view one of the main vehicles that can be used to achieve what we are hoping to do. (Interview, 13B, 2014)*

Over time, their inability to achieve any meaningful results did not only lead to a joint response but was also understood as a phenomenon existing within the setting of broader failures by the state, that is, in responding to the challenges of violence and crime. One witness confirmed: “following individual cases, (...) we realised (...) that you needed a strategy of support; a strategy that looks at safety in a broad sense” (Transcript, 10.02.2014, pp. 2374-2375). On the one hand, the complainant organisations then joined forces, allowing them to elicit a stronger response. On the other, through ongoing interaction with the police and the courts, and research on the failures of the criminal justice system, the complainant organisations were able to develop expertise and identify ongoing patterns of violence. These included gender-based violence, vigilante violence and gang violence (Ndifuna Ukwazi, 2014a). Shortcomings related to the resourcing, training and implementation of policing and community safety, and a range of socio-economic weaknesses (see Opening Statement, LRC, 23.01.2014) were also identified.

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<sup>55</sup> Three (TAC, SJC, EE) of the six CSOs are member-based social movements with branches in Khayelitsha. Two (NU, Triangle Project) are NGOs based in Cape Town. One (Free Gender) is a small grassroots community based organisation based solely in Khayelitsha. Free Gender later withdrew from the complaint. A full overview of these actors is provided in Chapter 4.5.

<sup>56</sup> Zoliswa Nkonyana was a lesbian woman who was murdered. During the journey to achieve justice for this murder, the main witness was threatened by the alleged perpetrators and in consequence left Khayelitsha. Two of the accused were released at a later stage because their testimonies were inadmissible and they could thus be discharged (see Bundle, 7(1), file A, item 2a, 2012).

The CSOs were thus able to expand their knowledge in these areas, while also drawing on expertise from their previous struggles for social justice, as will be discussed in detail below.

Therefore, in their quest to achieve justice for individual cases and to address the broader challenges of violence and crime for criminal justice and socio-economic development alike, the complainant organisations decided to combine their efforts and resources to address the broader challenges stemming from these particular issues. They thus formed the network of complainant organisations which led the complaint for the Khayelitsha Commission submitted to the Premier of the Western Cape (as outlined in Chapter 4.4. and 4.5). By joining forces each organisation contributed specific insights, information, skills and resources. This allowed them to draw on different capacities from different organisations, for example, experience in community mobilisation, research skills, access to communities and witnesses. For instance, while EE contributed assessments on the situation of safety in schools, the SJC provided data on the relation between poor sanitation infrastructure and crime (Interviews, 4C, 2014; 13B, 2014). Furthermore, each organisation provided access to witnesses and victims affected by different types of violence, e.g. gang violence, hate crimes or gender based violence. In addition, collaboration also facilitated a broader campaign with a wider reach (Interview, 13B, 2014). A wider network of affiliated CSOs that supported their cause was generated: The Campaign for Safer Communities.<sup>57</sup> Thus, the joining of forces allowed for a stronger response, because these organisations were able to complement each other:

*[T]he Campaign for Safe Communities is an alliance of organisations, so it means to link social movements, who have their community base, with organisations like the African Policing Civilian Oversight Forum, which is more of a think tank. (...) [S]o to link other organisations, like Western Cape Religious Leader Forum and Triangle Project. So linking more of those resources together so that, (...) where the one is weak, they can be*

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<sup>57</sup> The Campaign for Safer Communities was launched in March 2013, with the aim of involving a wider network of different stakeholders interested in supporting community safety. Ten organisations form a key part of the campaign, including the six complainant organisations. The following organisations are part of the campaign, in addition to the six complainant organisations: African Policing and Civilian Oversight Forum, Gun Free South Africa, Western Cape Religious Leaders' Forum and the Right2Know Campaign. For further information see the campaign website (Social Justice Coalition, n.d.(c)) and overview in Table 3.

*complemented by the other organisations and getting that information down to community level. (Interview, 10B, 2013)*

However, the complainant organisations were originally involved in initiatives and activism around a range of social issues other than safety and security, for example, the rights of people living with HIV, LGBTI rights and access to quality education. The shift to focus on security and justice was the result of the organisations and their members being severely affected by violence and crime in one way or another (Interviews, 13, 2014; 10B, 2013; Ndifuna Ukwazi, 2014a; 2014b). The complainant organisations thus started to establish capacities and knowledge in the area of community safety and criminal justice – an area in which they had previously no or little experience. Subsequently, they diversified their portfolio and continued to mobilise and advocate on issues of community safety and criminal justice; this was continued when the Khayelitsha Commission came to an end.<sup>58</sup>

As a consequence, they aimed to address issues beyond individual crime cases, whilst also targeting a wide range of related, unresolved structural root causes for violence and crime (Interview, 4B, 2014; Ndifuna Ukwazi, 2014a; 2014b). The increasing knowledge alongside the organisations' background in social justice issues drew their attention to the structural dimension behind these failures. Sanitation and street lighting, for example, both provided by the City of Cape Town, have been topics of contestation and activism for CSOs in this regard. The Khayelitsha Commission (2014, p. 87) attested that “[b]oth the unsanitary condition of chemical toilets and inoperative high mast lights remain hotly contested issues in Khayelitsha”. In particular, these issues created a number of complaints and amount of CSO activism. CSOs pressured the state into taking responsibility and exposing these practices of social injustice (Robins, S.L., 2014). For example, SJC focused one of their largest campaigns on access to sanitation, next to the campaign on mobilisation for the Khayelitsha Commission (Social Justice Coalition, n.d.(d)). In particular, the complainant organisations related their main social justice activism and claims to the issue of violence and crime. The SJC for example made a strong case for the link between insecurity and the use of public sanitation facilities, arguing that women and children are particularly vulnerable to (sexual) violence due to

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<sup>58</sup> The complainant organisations continued to campaign and also to use litigation, for example, for equal resource distribution in policing (see Chapter 5.3.).



having to use these exposed and unhygienic public facilities during the day and night (Jacobs, 2017; Interview, 13B, 2014; Ndifuna Ukwazi, 2014b; Transcript, 24.01.2014, pp. 228-271).

In terms of their repertoires and tactics, the CSOs could draw from their previous experiences and adjust it to new issues. TAC, for example, had extensive experience and a track record in legally challenging the state through HIV activism work and access to treatment campaigns (Robins, S.L., 2009; Robins, S.L. and Von Lieres, 2004). In his analysis of the TAC's gradual involvement in addressing homophobic violence in 2008, S.L. Robins (2009, p. 643) finds that the TAC made use of their experience in rights talk alongside grassroots mobilisation and, the use of putting public pressure on the government. In a similar manner, the TAC led the mobilisation for the Khayelitsha Commission, drawing on the rich experience of its HIV and social justice activism, which, in this case, was potentiated through collective effort and alliance with other CSOs, as well as the additional experience these organisations brought on board.

In general, these organisations used a range of non-confrontational and confrontational social movement tactics, such as petitions, complaints, marches and demonstrations (see Taylor and Van Dyke, 2004). One staff member explained their general strategy:

*I mean TAC and to some extent Equal Education, SJC and those other organisations all come from a roughly model developed by the ANC in the apartheid struggle which is pretty much branch based. You have lots of branches; you do lots of ground level education in those branches. So, I think that, the first thing about TAC or our strategy is to do ground level education, so people fully understand the issues, fully understand their rights, how they can respond to things, what legal tools are available to them, that is the first thing. The second thing is to do education in a branch system so essentially to mobilise in a very face to face way within branches. (...). And then thirdly if all of that doesn't work we use the law and then the fourth element is the media which we use throughout. So, I think these four elements kind of cover the strategy that we have. I think (...) that's certainly quite unique; you know few organisations have all those elements in place. (Interview, 14C, 2014)*

The tactical repertoires used by the CSOs focused initially on protests, mobilisation, education, public pressure, and litigation (Interviews, 4B, 2014; 14C, 2014). According to them, there had been “sustained and coordinated efforts from various sectors of the

Khayelitsha community for action to be taken by government agencies, including the police, to improve the situation” (Opening Statement LRC, 23.01.2014, para. 2). The CSOs were unsuccessful in engaging with the police, the courts and other state entities in a meaningful way when trying to gain responses to their members’ crime cases and neither did they achieve more collaboration with the police on broader community safety concerns. Thus, they turned away from more collaborative actions like writing petitions, lobbying, and seeking communication, and continued instead to search for other avenues (Interview, 13B, 2014).<sup>59</sup>

The failure to achieve substantial access and results at the local level led to the CSOs choosing a confrontational rather than collaborative approach in the long run, and to escalate to a higher level of government. When small-scale, ground-level initiatives and negotiations were not successful, they were scaled up and escalated up the hierarchy of responsibility until change was finally initiated.<sup>60</sup> The CSOs went from the local to the provincial to the national level. As a final step, the complainant organisations turned to using the Constitution and the courts to make their case. A representative of one of the complainant organisations explained this process: “But we don’t just take massive action, we do start by talking but you know marching, or taking people to court, it is the last option but we do try our best to work with them [n.b. the government] but it’s just not easy” (Interview, 4C, 2014).

This process of mobilisation from cases to campaigns is a process of escalation of civil society engagement that is framed within social justice activism. The complainant organisations’ strategy was based on using rights, politics and mobilisation, a strategy they drew down from previous battles (see Robins, S.L., 2009). The complainants strongly based their activism on a struggle defined by rights. In his affidavit, the coordinator of one of the complainant organisations states in this regard:

*The central aim of this affidavit is to convey the SJC’s understanding that safety and security is not simply a question of better or more policing. Realising the constitutional right to live in dignity free from all forms of*

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<sup>59</sup> Initially, there was some fruitful engagement with police officials of higher ranks; substantial trickle-down from higher to lower police ranks did not take place (Interview, 13B, 2014; Khayelitsha Commission, 2014, pp. 112-114; Transcript, 28.01.2014, p. 481).

<sup>60</sup> See for example correspondence with Western Cape Government and Department of Community Safety in Bundle 7(1), file A, item 2a, 2012, p. 20, para. 1.3.

*violence, whether from public or private sources, must include a range of interventions including social and economic development, as well as urban upgrading. (Bundle 1(5), file D, item 4, p. 4, para. 11)*

In Section 5.2. it will be further discussed how the complainants framed their demands on the basis of rights inscribed in the Constitutions and international agreements. By applying a campaign combining the right to security and justice with other rights such as access to sanitation, for example, the CSOs drew a link between security, justice, and other matters of social justice. This is where their mobilisation and activism in particular can be understood as a contribution to transformative justice. In particular, they “graphically capture[d] and render[ed] legible the conditions of structural violence that characterize informal settlements in Cape Town and other South African cities” (Robins, S.L., 2014, p. 495). Therefore, these organisations also shed light on the structural inequalities shaping these social injustices and highlight how safety, security and justice are not standalone matters but are intertwined with other social justice deficits that developed in the past and still remain untreated.

Their activism in the area of criminal justice can be considered a new type of CSO engagement in this particular thematic field, where CSOs often either focus on service provision or on ensuring human rights’ compliance within the criminal justice system (as discussed in Chapter 3.5.). The type of activism these organisations used drew, for example, on previous experiences in social justice activism around topics such as access to health care and HIV treatment, access to education and access to sanitation. Their social justice activism was extended and translated to the area of criminal justice, framing the shortcomings identified as matters of structural inequality and social justice; this was done using familiar escalation tactics and collaborative as well as confrontational strategies (see Chapter 5.1.2.). In this regard, the complainant organisations noted:

*While our organizations remain focused on different campaigns, we are compelled by circumstances to express our common conviction that many victims of crime (...) 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. (Bundle 7(1), file A, item 2a, 2012, p. 20, para. 1.3)*

Therefore, the mobilisation for the Khayelitsha Commission, as well as these ongoing campaigns, reveal that CSOs are able to expose structural inequalities in relation to

violence and crime; particularly with the main aim of holding the state accountable, as the Section 5.2. will explore further.

It is argued that CSOs are therefore contributing to a transformative justice agenda in their initiative to expose structural inequalities and injustices related to violence and crime, as well as access to justice and security, and in initiatives that are challenging the state and holding it accountable. They do this by making use of the Constitution and the progressive rights it provides (also see Section 5.2.2.). The director of one of the complainant organisations even goes beyond this by stating:

*(...)[A]ll our organisations [n.b. the complainant organisations], what we have in common first and foremost is an understanding that our organisations are about people and their rights and what I mean by that is that rights are not something that a Constitution gives to you. A right pre-exists. The right to life pre-exists; any codification of it. So fundamentally, our organisations are based on everyone's rights. (Transcript, 10.02.2014, p. 2356)*

In summary, the Khayelitsha Commission and in particular the struggle for its establishment can be considered as a transformative exercise – what Famer et al. (2006, p. 1687 et alibi) call a structural intervention or what S.L. Robins (2014, p. 482 et alibi) identifies as transitional social justice, aiming to unmask and address the structural inequalities of everyday life. S.L. Robins finds in this regard that (2014, p. 498)

*[r]esponding to the limitations and failures of the democratic transition, social movements of the urban poor (...) have sought to create the conditions for the emergence of new understandings of transitional social justice and what it means to be a citizen in a democratic state with much unfinished business.*

Therefore, it can be argued that the complainant organisations make a contribution to transformative justice in terms of mobilisation, in particular, as argued above, with the joining of forces and campaigning to made visible the stark inequalities that (continue to) exist. This process also allows for a line to be drawn connecting safety, security, justice, social justice and structural inequalities. In addition, mobilisation of the Khayelitsha Commission that started with cases and cumulated in a comprehensive campaign can be considered as the starting point of a process. That is, a type of process that Gready and Robins, S. (2014; 2017) considers necessary and essential for transformative justice, as it allows for participation and empowerment through the provision of channels for

resistance and contestation, and can be seen as a modelling exercise for justice and rights' vision that is both social and transformative.

### 5.1.2. To critique or to collaborate – a window of opportunity?

For the CSOs a window of opportunity to strategise between critique and collaboration was provided through party-political division and power distribution. This section shows that the complainant organisations were able to use this to their advantage as they pushed for the establishment of the Khayelitsha Commission, but with one exception. One organisation chose collaboration over critique, and individual and important gains for the organisation across a broader, more transformative agenda.

Using the Constitution to demand the installation of a commission of inquiry meant that the complainant organisations would change from taking a rather collaborative approach to implementing a more confrontational approach with the national level government. It also meant that the organisations changed the addressee of their critique by appealing to different state levels, moving from accessing local police, to accessing DOCS at a provincial level, to accessing the Premier of the Western Cape, and finally to accessing national level SAPS (through a court case).

The particular political set up majorly impacted on CSOs' bid to achieve their aims. The political setting of party competition between the ANC and the DA within the Western Cape also created challenges for CSO engagement. As outlined in Chapter 4.1. the Western Cape and the City of Cape Town are under the rule of the DA party, which at national level is in opposition, while the Khayelitsha wards by majority, support the ANC party. This set-up comes with a divide in responsibilities and competencies, as the DA-led provincial and municipal governments are partly responsible for some socio-economic initiatives such as provincial planning, public transport, infrastructure developments, housing and sanitation, while the national ANC government is responsible for policing.

This particular divide in responsibilities caused political contestation around the establishment of the Khayelitsha Commission. As the Khayelitsha Commission was initiated by the Premier of the DA-led Western Cape, and set up to provide what was perceived as an investigation against the police, it was automatically associated with the DA and considered a political project against the ANC (Davis, R., 2012; Phakathi, 2012). Some CSOs and the police suggested that the reasoning for the establishment of the

Khayelitsha Commission might be due to political struggles over power and votes in the Western Cape (Bundle, 5(4), file 8, item 1-4, 2013; Davis, R., 2012; Phakathi, 2012). It gave the provincial DA government an opportunity to showcase the failure of the national ANC government to provide safety and security for their constituencies. One CSO representative asserts “the [Khayelitsha] Commission in a way is a potential political game for the DA as it implies criticism of a national function which is an ANC function” (Interview, 18B, 2014). While the complainants maintained political neutrality, due to their involvement in the campaign for the Khayelitsha Commission, they were associated with the politics of the DA. One interviewee explained that

*[i]t is very difficult obviously working in the Western Cape. It is very difficult politically, you know, with the Campaign for Safe Communities and with the [Khayelitsha] Commission of Inquiry, because it is something (...) that Helen Zille [n.b. DA Premier of the Western Cape] appointed and because obviously we were on the same side as the province and city and the courts. And because the [n.b. ANC] Minister of Police has made its appeals we're seen as DA. (Interview, 10B, 2014)*

Given the politicised nature of the issue of crime and violence and the party-political set-up in both the Western Cape and Khayelitsha, the choice between collaboration and critique became a strategic one. The organisations would normally balance critique and collaboration depending on the subject matter, preferring collaboration where possible (Interviews, 4C, 2014; 14C, 2014). One complainant organisation representative explained their dilemma:

*You know, our stance has always been, we need to be critical and we say harsh things when we think it's right but at the same time we also support and we often get criticised for that because the police says “you can't play both games, first you are shouting at us about bad delivery but then wanting to come and help us (...)”. So, we sort of caught a little bit in the middle and it's a double-edged sword of being a NGO or being in civil society. (Interview, 13B, 2014)*

At the same time, the complainant organisations explained that they were not afraid to seek confrontation if it was necessary in achieving meaningful results for their members. Elaborating on this challenge, a representative of one of the complainant organisations decisively stated:

*We are very clear that our responsibility is to our constituency and if that brings us into conflict with any political party then so be it, or if it brings us in conflict with the state so be it, so that's always kind of the guiding principle that whatever we need to do for our constituency that's what we do. (Interview, 14B, 2014)*

However, choosing to escalate from local level to provincial level to national level also resulted in continued, troubled engagement at the local level for the complainant organisations; this will be discussed in the next section.

Nevertheless, this particular political divide also eventually contributed to the establishment of the Khayelitsha Commission. The 2009 change in provincial government from the ANC to the DA can be considered crucial for the reconfiguration of political power, and as such, it also impacted on political possibility, opening a window of opportunity. The complainant organisations made use of the particular party composition for their own particular purposes – a request for the installation of a commission of inquiry only had a chance under a DA government as it was a critique targeted at one of the core functions of national government policing. Making use of the political party set up therefore contributed to the success of the campaign.

There was one exception in this process of escalation and strategizing between critique and collaboration. That was when one of the initial complainant organisations chose collaboration over criticism but changed the approach during the mobilisation process. The complainant organisation – Free Gender – a local grassroots community based organisation working on lesbian rights, eventually decided to withdraw from the process of mobilisation for the Khayelitsha Commission. The reasons were because they did not want to spoil the beginning of a nascent relationship with the police, feeling too small, and lacking the resources needed to continue with the mobilisation and advocacy process of the Khayelitsha Commission, which was due to the meetings and input requirements. More importantly, the organisation's leader explained that they had already been able to build up some form of frail relationship with higher police ranks (see Transcript, 28.01.2014, pp. 452-490; Bundle, 2(1.1), item 84, 2013).

The access the organisation had gained to higher-ranking police officials was something they did not want to lose over what could have been a broader, but maybe less tangible, success for them as an organisation. Free Gender was afraid that further engagement in the process of the Khayelitsha Commission as an active member of the complainants'

organisation would jeopardise their flourishing relationship with state officials. Interestingly, the organisation was convinced that it could not move ahead with both critique and collaboration. The testimony of the organisation's founder gives an insight into the rationale of withdrawing from the complaint and choosing to move ahead with a more collaborative approach involving the police:

*First of all, our organisation is very small and we didn't want to get into a lot of trouble, but most importantly in 2011 in June we took our cases after we had given up, as we were looking for the Deputy Minister of the Police. We took four [criminal] cases to him that we were stuck with so there was a pledge that we signed that our organisation will work together with the SAPS, that was when we felt that that is where we should spend most of our time. It was the first time in our history that we could move beyond the desk of the police officers (...) to get to the next level. (Transcript, 28.01.2014, p. 460)*

For Free Gender, such access was a landmark achievement and it meant that in the future they would possibly have better general access to police officials. For a local community based organisation with little access to the police force, this was not only a major success, but also very important for their smaller daily struggles, as they followed up, denounced cases and supported the concerns of lesbian women in Khayelitsha. It also meant more security for the members and organisation base, as they were able to directly contact higher ranks of police officials (Transcript, 28.01.2014, pp. 452-490). After years of neglect and discriminatory practices by the police, and many experiences of harassment and violence this was a genuine breakthrough. Direct access to the police and other local stakeholders, such as the CPF, was indeed a very important achievement.<sup>61</sup> The organisation's founder expressed this importance as follows:

*Our lives as gays and lesbians the police are the most important people in our lives, because you must know that we have a problem in our community, we also have problems in our own homes, and therefore that is the most important place to us because there they are objective, they don't take sides so the SAPS or police are very important to us. (Transcript, 28.01.2014, p. 489)*

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<sup>61</sup> Free Gender became an active member of the CPF in the Harare policing precinct of Khayelitsha (Transcript, 28.01.2014, p. 479).



The other complainant organisations were larger SMOs and NGOs with some also active in other provinces. Not all are based in Khayelitsha. In fact, Free Gender can be identified as the only local organisation exclusively operating from, and being based in, Khayelitsha, apart from the SJC with a main office located in Khayelitsha. Being based in Khayelitsha as a community based organisation, has meant Free Gender is also much more reliant upon networks and relations.

The case of Free Gender shows how small-scale, individualised access can be valued over broader, more general and transformative impact. Free Gender depended more on a good personal relationship with the police on the ground than on a broader rights claims campaign. This suggests that the decision between choosing collaboration or critique is also a matter of power and leverage. The importance and necessity for good relationships with the police at the local level limited the room for manoeuvre and power leverage available to Free Gender. This shows how power at the local level can come into play (see Kothari 2001; Mohan, 2001). In this case, the findings particularly demonstrate how power and leverage influence activism. It also shows the different levels of power and room for manoeuvre that exist between different organisations. In the case of Free Gender this meant pursuing direct engagement with the police that corresponded to the needs of their constituency instead of continuing with a high-profile rights-based and social justice campaign.

At the local level, political dynamics soon began creating difficulties for engagement in safety and security issues. While political power struggles suggested a dilemma for CSOs when choosing between collaboration and critique, the complainant organisations placed the demands of their constituency above the tensions this caused. In addition, these organisations were also drawing from their experience of successfully challenging the state on other matters, while simultaneously being able to also maintain cooperation with some state entities. As a consequence, the complainant organisations were not reluctant to choose a critical approach towards national level government and the police when necessary. This was the case for the larger social movements and NGOs not based in Khayelitsha, while one smaller grassroots community based organisation decided not to get caught up in the political contestation, and instead work on building a local relationship with the police. This finding also points to the consideration that not all CSOs at the local level may be able to pursue a social rights and transformative agenda, regardless of the importance of the broader impact of this. In this particular case, the

ability to contribute to a transformative justice agenda therefore also depended on size, resources, power and political conjuncture. Challenging power relations as part of transformative justice is an exercise that might not be open to all local actors. While transformative justice emphasises the participation and empowerment of the local, this section has shown that the actual context can come with real impediments for participation, empowerment and agency.

However, both the complainants and Free Gender strategically choose between critique and collaboration in a manner that provided them with their own unique window of opportunity: for the complainant organisation, the critical stance led to success in establishing the Khayelitsha Commission; for Free Gender, the collaborative approach provided much needed contact with the police at a local level.

## 5.2. Divisions over the Khayelitsha Commission

The process for, and the establishment of, the Khayelitsha Commission created divisions among CSOs, mainly along political lines. This section will show how several local civil society actors felt excluded from the whole of the Khayelitsha Commission. The division also features in the different demands these organisations formulated regarding responses to violence and crime. The section therefore illustrates the heterogeneity of civil society activism and points to the limitations of representation through these bodies.

### 5.2.1. Contested terrain – CSOs, party politics and the Commission

Given the ‘political flavour’ of the Khayelitsha Commission, the mobilisation and establishment of it deepened political tensions and the divide between different actors, particularly at a local level. The Khayelitsha Commission and the complainant organisations were met with some resistance and rejection. This divide shows that the endeavour to achieve social justice through the Khayelitsha Commission was not shared by everyone.

A representative of one of the complainant organisations noted, that “it has become a lot more combative since (...) the [Khayelitsha] Commission” (Interview, 13B, 2014). The Khayelitsha Commission (2014, p. 439) also found: “The work of the [Khayelitsha] Commission was made more difficult by high levels of political contestation regarding its mandate not only at the national and provincial level, but also within Khayelitsha

itself”. Fourchard (2012, pp. 201-202) confirms the importance of party political affiliation in terms of local security initiatives: “The battle over the control of local security structures is probably central in everyday party battles. In this politically-divided landscape, providing security is seen as an important resource for political parties to extend their reach at the local level”.

The establishment of the Khayelitsha Commission was initially rejected by some of the local CSOs, like KDF, CPF members, and also some of the local justice and security actors based in Khayelitsha, such as taxi drivers (Interview, 2B, 2014; Sefali, 2013). KDF and several CPFs were particularly vocal in criticising both the Khayelitsha Commission and the complainant organisations.

Community Police Forums are statutory bodies for establishing, maintaining and coordinating relationships between police and community. They were introduced by the Interim Constitution in 1993 (Section 221(1), No. 200 of 1993). Their role is defined in the SAPS Act (No. 68 of 1995). Beyond police-community relations, CPFs were also envisioned to serve as the tool to promote cooperation; to increase transparency and accountability; and to carry out joint-problem solving. Every police station is required to have a CPF along with an elected executive committee. A CPF consists of the elected executive committee, the station Commissioner of the respective police station as ex officio member and registered civil society organisations, institutions, churches, schools, and youth or business groups from the community of the precinct. CPFs can be considered as quasi-official bodies, while its membership mainly consist of civil society representatives and police officials. Their functioning and consistency depends on the people who chair them and the organisations that are members; they have to write their own constitutions and devise their own rules (See Table 3).

While CPFs were set up with the intention of improving community police relationships and creating some form of civil oversight after apartheid, they soon became a politicised forum, often not fully inclusive of all sectors of civil society (Freeman and McDonald, 2015; Fourchard, 2012). This includes efforts to appoint party political key supporters as CPF chairs (Fourchard, 2012, p. 201), hence rather making the CPF a platform for political interests and agendas.

In Khayelitsha, CPFs have operated with varying degree of institutionalisation (Khayelitsha Commission, 2014, pp. 406-411). The Khayelitsha Commission found that the effectiveness and functionality of CPFs is variable (Khayelitsha Commission, 2014,

p. 129, p. 407 et seq.). There has also been evidence that in some areas, CPFs ceased to function for some time, in some instances no meeting minutes were recorded and not all relevant stakeholders were invited to attend meetings. Therefore, the Khayelitsha Commission assessed CPFs as unable to generate the desired impact on relationships existing between community and the SAPS (Khayelitsha Commission, 2014, p. 411).

In addition, CPFs have themselves become sites of power struggles (Khayelitsha Commission, 2014, pp. 409-410; Transcripts, 07.02.2014, p. 2114-2116; 04.02.2014, p. 1341; 31.01.2014, pp. 924-925; 24.01.2014, pp. 263-264). The Khayelitsha Commission (2014, p. 411) found that CPFs act as local gatekeepers:

*The Commission records that the political contestation around CPFs appears to be of at least two types: inter-organisational rivalries and 'gatekeeper' politics. In the first, members of one or more allied organisations seek to exclude others perceived to be members of, or allied to, other 'rival' organisations. Under the second, group or groups seek to control a range of activities in Khayelitsha, including who may be members of civic organisations such as CPFs.*

Bearing in mind the party political dominance of the ANC and the general trend of CPFs political appropriation, CPFs in Khayelitsha have become associated with ANC interests and politics.

Despite varying functionality, weaknesses, and political agendas, CPFs have been recognised as important stakeholders (Khayelitsha Commission, 2014, p. 411). On the one hand, this is due to their ability to serve as gatekeepers and a political body, but on the other, it is due to their potential role as envisioned in the SAPS Act (No. 68 of 1995). Therefore, the Khayelitsha Commission (Ibid., p. 439) also acknowledged, "CPF's are an important institution in building community partnerships".

The KDF, also a vocal critique of the Khayelitsha Commission, is an umbrella association of local organisations concerned with development themes in Khayelitsha. It is a community based umbrella organisation (Thompson and Conradie, 2011). The KDF is organised using the municipal ward structure<sup>62</sup>, and has been present in all 12 wards of Khayelitsha since 2001. It consists of eight sectorial forums, among them the Khayelitsha

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<sup>62</sup> Municipal wards are subdivisions of municipalities.

Business Forum and the Khayelitsha Safety and Security Forum (Transcript, 20.02.2014, pp. 4184-4185). It is also an important actor counting a broad membership. KDF members are stakeholders in the Khayelitsha area, and include representatives of religious groups, women's associations, youth groups and political parties. In total, the KDF counts over 100 associated organisations (Thompson and Conradie, 2011). Elected ward councillors in a given ward area are ex officio members in all KDF structures.

The KDF presents itself as politically neutral, however, this neutrality has been questioned. Thompson and Conradie (2011, p. 50) assess that “political affiliation and membership of either SANCO<sup>63</sup> or the KDF have (...) been seen as one and the same thing”. This is complemented by Freeman and McDonald (2015, p. 34) finding that “in Khayelitsha, the ANC-aligned KDF and SANCO are particularly powerful, and often come into opposition with Democratic Alliance (DA) supporters and organisations associated with the DA”. The representation of ward councillors as ex-officio members in KDF, which in Khayelitsha are by the absolute majority ANC representatives, further affirms these findings (Freeman and McDonald, 2015; also see Thompson and Conradie, 2011). Furthermore, a number of CSOs suggested that they consider the KDF as representing ANC interests (Interviews, 1B, 2014; 4C, 2014; 13B, 2014; 14C, 2014).

Given its close ties with local businesses and both smaller and bigger enterprises, the KDF is a known and acknowledged actor in the area with some level of “street credibility” (Thompson and Conradie, 2011, p. 49). Additionally, it has well established links with the local police force, CPFs and other local security actors, like the taxi associations (see Freeman and McDonald, 2015; Transcript, 20.02.2014, pp. 4177-4262). Freeman and McDonald (2015, p. 34) argue that the KDF dominate CPFs and “operate as gatekeepers of safety or ‘informal justice’”. They (Ibid., p. 34) further suggest that the SAPS depend on these actors as they are powerful enough to block police work.

In consequence, both the KDF and CPFs are important local stakeholders. They function as intermediaries to local security and justice actors, and have relevance for many parts of the Khayelitsha community (Interview, 18B, 2014; Transcripts, 12.02.2014, p. 2826 et

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<sup>63</sup> SANCO is a civic-movement and umbrella organisation for grassroots activism, direct democracy and development, which was established in 1992 (Buur, 2010). SANCO structures reach from national to provincial to regional and to local level. SANCO claims to maintain over 4000 branches with over 6 million members (Heller and Ntlokonkulu, 2001). Many street committees are affiliated and organised under SANCO constituting SANCO's lowest local level structure.

seq.; 28.01.2014, pp. 478-479). Their local affiliations and political alignment is also an important source of legitimacy and authority for some sections of the community and it provides these organisations with political power and influence.

The Khayelitsha Commission did not gain their support. Initially, the KDF did not want to cooperate with the Khayelitsha Commission and opposed its installation, refusing to participate (Sefali, 2013), although, eventually they collaborated and testified at the Khayelitsha Commission. The CPF representatives were equally critical of the Khayelitsha Commission (Bundle, 5(4), file 8, n.d.). Apart from political loyalties, this rejection was based on organisations feeling excluded from the local mobilisation process and experiencing a sense of alienation from larger SMOs and NGOs such as the complainant organisations.

The KDF, along with local organisations' CPF members and chairs, felt that the complainant organisations lacked legitimacy in Khayelitsha. They criticised failed engagement with local organisations like the KDF, the CPFs and others prior to the establishment of the Khayelitsha Commission (Bundle, 5(4), file 8, n.d.). One CPF chairperson stated that

*the Social Justice Coalition (...) has never attended any imbizos [n.b. gathering, meeting] organized by the CPFs in their respective sector communities. How the views of the Social Justice Coalition can be elevated to fact justifying the appointment of a Commission of Inquiry without consulting the clusters, CPFs and sub-forums about the state of policing inefficiency and a breakdown in trust between the community and SAPS is very difficult to understand. The Social Justice Coalition has organized marches and done issue specific activities, but has never been involved in trying to understand the network of legitimate community structures that are, quietly dealing with community issues involving policing, with the SAPS. (Bundle, 5(4), file 8, item 1, 2013, p. 8)*

The local organisations criticised the fact that they had not been approached or involved in any claims prior to the Khayelitsha Commission. These statements express feelings of relegation and exclusion from an issue where the KDF and CPFs felt competent and important. In particular, they considered safety and security one of the core themes, whereas the complainant organisations were viewed as “lobby groups with a broader social justice agenda than just the state of policing” (Bundle, 5(4), file 8, item 4, 2012, p. 4). The decision of the complainant organisations to mobilise for the Khayelitsha

Commission, leading to its consequent establishment, was perceived as bypassing local knowledge, power and authority (see Transcript, 20.02.2014, pp. 4177-4262; Bundle, 5(4), file 8, item 1, 2013, p. 9; item 2, 2013, p. 6; item 4, 2013, p. 4).

The KDF consider themselves as legitimate and representative actors on safety matters in Khayelitsha, with a KDF representative adding how, “[t]his information on the policing challenges does not require a Commission of Inquiry because everything that needs knowing about policing conditions in Khayelitsha is known by the community itself, which the Premier [of the Western Cape] has chosen to ignore” (Bundle, 5(4), file 8, item 1, 2013, pp. 7-8). The testimonies also emote that the KDF consider their organisation to be the true representative of the people of Khayelitsha (see Transcript, 20.02.2014, pp. 4177-4262; Bundle, 5(4), file 8, item 2, 2013, p. 6).

At the same time, the complainant organisations are perceived with suspicion and as outsiders to Khayelitsha (Bundle, 5(4), file 8, item 2, 2013, p. 9; item 3, 2013, p. 4; item 4, 2013, p. 4). The KDF leader explained:

*Given the failure to consult, the Premier [of the Western Cape] fuelled the perception that the voices, views and opinions of the people of Khayelitsha are somehow less important than those of the views of funded NGOs whose involvement in Khayelitsha has only been recent. (Bundle, 5(4), file 8, item 2, 2013, p. 2)*

Indeed, some of the complainant organisations, such as the SJC and EE, only started operating in 2008. In addition, some of the more visible representatives of these organisations do not reside in Khayelitsha, causing further criticism (Bundle, 5(4), file 8, 2013). The Khayelitsha Cluster Chairperson of CPFs noted in this regard: “We do not know where [the leader of one of the complainant organisations] (...) comes from. He does not live in the community” (Bundle, 5(4), file 8, item 1, 2013, p. 7). The KDF and CPF representatives broached the question of representation and origin, which were seen as connected to local embeddedness.

In turn, the KDF and CPFs are regarded as politically biased by the complainant organisations. The KDF and its subsectors, CPFs, but also some local non-state security and justice actors, such as street committees, are viewed as aligned with the ANC by complainant organisations, other CSOs and social actors (Interviews 4C, 2014; 13B, 2014; 14C, 2014; 10B, 2013). Furthermore, CPFs have been criticised by the complainant organisations for being politically biased towards local party representatives, and for not

being fully inclusive coordinating bodies (Interview, 13B, 2014; Transcripts, 11.02.2014, p. 2415 et seq.; 07.02.2014, p. 2114; 31.01.2014, pp. 913-915).

Consequently, little attempt has been made by the complainant organisations to engage with CPFs, the KDF or KDF sub-structures. One representative of the complainant organisations recalls:

*I don't think we've even been to KDF but we have been to a number of local structures to explain our position. (...) [W]e went there and we presented our reasoning behind it but a lot of these structures are quite politicised, there are quite ANC dominated and because we are in the Western Cape the entire Commission is seeing as a DA plot to undermine the ANC. (...) you can't underestimate the, the role of how politicised some of these places are. (Interview, 13B, 2014)*

Different representatives of the complainant organisation mentioned attempts to engage with CPFs but recognised that these attempts were unfruitful, mainly due to hostility based on political differences (Interview, 14B, 2014; Transcript, 24.01.2014, pp. 228-271). These representatives further admitted that they had not engaged enough with CPFs prior to the Khayelitsha Commission, despite them remaining the main local coordinating bodies for police-civil society interaction. One representative further explains:

*Well, I mean for example with the work with the Commission, we never had a good relationship with the Community Policing Forums before it. But when we lodged our complaint, the CPFs came out and saying "why the hell didn't you come to us and get our permission and do it through us" so I mean that door has certainly been shut in our face. (Interview, 13B, 2014)*

While the need for stronger engagement, and the participation of communities with issues relating to community safety, are genuine concerns of the complainant organisations, engagement with other local actors is very limited, due to political tensions (Interviews, 4C, 2014; 13B, 2014; 14B, 2014; 10B, 2013; Transcripts, 11.02.2014, pp. 263-266; 30.01.2014, p. 786; 24.01.2014, pp. 263-266).

This section sheds light on questions of participation, representation and legitimacy. Different actors consider themselves as representing a variety of community demands, and they draw their legitimacy from these claims. The section therefore has exemplified how CSO activism can create different spaces for participation, but also that these spaces not necessarily represent everyone, and consequently not everyone participates. Being



divided due to political contestation and different thematic goals and approaches, as the next section and Chapter 7 will demonstrate, means that neither of these actors is fully representing community demands and needs.

In Khayelitsha, the political divide and ensuing suspicion from both sides has prevented interaction and collaboration across CSOs, with some organisations feeling excluded and bypassed by the process that led to the Khayelitsha Commission, with such divides deepening through its establishment. This has subsequently led to a situation where some actors, namely the KDF, CPFs and their member organisations, engaging locally with local security and justice actors. Conversely, the complainant organisations are seen to engage with the Khayelitsha Commission to demand state responses on policing using advocacy and human rights based approaches. As will be highlighted in the next section, this divide is also reflected in the very different demands for security and justice.

As discussed in the previous section, the establishment of the Khayelitsha Commission can be considered a transformative initiative that was realised through civil society activism. However, this section reveals that as an exercise it was not fully embraced by all civil society actors and also received some level of rejection. The section therefore exemplifies the diversity and division of local interests, needs and representation. The critical inquiry into local diversity and tension as raised by Hughes et al. (2015), Hickey and Mohan (2004) or Cleaver (2001) is thus well placed. In this particular case, party politics and questions of local predominance constitute a practical limitation for a unified civil society response. The contribution CSOs can make in pushing an agenda for transformative change needs to be assessed bearing these realities in mind.

### 5.2.2. CSOs demands for security and justice

The political contestation over the Khayelitsha Commission also reflects the different foci and demands of CSOs in terms of responding to violence and crime. The complainants focus more on a holistic response, including the improvement of the criminal justice system, in particular, policing shortcomings, but also the tackling of structural inequalities and socio-economic development; whereas other local actors, like KDF and CPF representatives, focus more strongly on infrastructure and socio-economic improvements, defending the polices' work.

The complainant organisations focused on three main demands in their campaigns and complaint to improve access to justice and security. Their demands included the

establishment of an effective and fair policing system and an effective and decisive legal justice system, and targeted measures to address the socio-economic and infrastructure factors that contribute to violence and crime (Ndifuna Ukwazi, 2014a; 2014b; Social Justice Coalition et al., 2011; Social Justice Coalition, n.d. (c)).

Their complaint refers to the Constitution, the legal framework and the broader human rights framework to frame their demands for security and justice.<sup>64</sup> The complainants therewith remarked in their complaint that “[m]embers of the Khayelitsha community routinely experience violations of the rights set (...) in their dealings with the police. [T]he constitutional rights (...) are violated by the police, including the CTMPD [n.b. Cape Town Metropolitan Police Department] and other actors in the criminal justice system, on a daily basis” (Social Justice Coalition et al., 2011, p. 19, para. 48). The complainant organisations) in particular reference “the rights to: equality, human dignity, life, freedom and security of the person, privacy, movement, property, housing, access to courts as well as the rights given to arrested, detained and accused persons” in their legal complaint (Ibid.). This particular reference to rights and the Constitution provides the necessary legal basis to support and advance their advocacy.

The Constitution is a very strong point of reference as the Khayelitsha Commission (2014, p. 15) attests:

*Our Constitution seeks to “heal the divisions of the past, and establish a society based on democratic values, social justice and fundamental human rights” in which “every citizen is equally protected by law” and in which “the quality of life of all citizens” is improved. This powerful language in the Preamble is one of the reasons that the Constitution has been hailed as a “transformative” Constitution, and one which seeks fundamental change in our society.*

The complainant organisations use this “transformative” nature of the Constitution to frame their demands and to push the state to mitigate the effects of structural inequality

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<sup>64</sup> In their complaint in terms of section 206 (5)(a) of the constitution of the Western Cape lodged to the Premier of the Western Cape the organisations refer, among others, to the rights of the Constitution of the Republic of South Africa (1996); the South African Police Service Act (No. 68 of 1995); the Criminal Procedures Act (No. 51 of 1977), the Children’s Act (No. 38 of 2005); the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (No. 19 of 1998); the South African Services Charter for Victims of Crime, 2004; the Constitution of the Western Cape (No. 1 of 1998); and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of the United Nations General Assembly (1985) (Social Justice Coalition et al., 2011).

and to implement the equality in access to justice and security. The complainants remarked in this regard in their opening statement to the Khayelitsha Commission:

*As the Commission begins to look into the issues complained of by this community, it is also important to acknowledge the historic nature of this moment and the process about to unfold. This is the first time in its history that civil society has used the Constitution of the Republic in such a manner. In the advancement of core and central constitutional rights, this is no small victory for the women, men and children who make up the Khayelitsha community, for it is for the protection and vindication of the rights of ordinary individuals that our constitution came into being. (Transcript, 23.01.2014, p. 21)*

The complainant organisations recognised that any provision, as set out in the Constitution and legislation, may provide the grounds for making a case for equal access to security and justice. With this understanding, the complainant organisations' demands concentrated on the legal duties and responsibilities of the state, as well as state capacity for implementing policies (Interviews, 4B, 2014; 13B, 2014; 14C, 2014). They clearly stated on this matter "(...) it is the state's responsibility to provide effective, speedy relief, support, protection and justice when our rights are violated" (Bundle 7(1), file A, item 2a, 2012, p. 21, para. 1.5). The Khayelitsha Commission was their attempt to hold the state accountable and exert pressure for the implementation of those rights.

This meant addressing the systemic failures the complainant organisation identified over the years, including the polices' capacity to effectively patrol and provide visible policing, investigate crime, apprehend criminals, open cases, take statements, and treat the community with dignity whilst collaborating with the courts (Interviews, 13B, 2014; 14C, 2014; Opening statement, LRC, 23.01.2014). The complainant organisations' demands for the criminal justice process also included decisive criminal sentencing, as a consequence of proper criminal investigation and judgements (Interview, 14C, 2014).

The complainant organisation, as well as the organisations within the wider network of the Campaign for Safer Communities, also demanded a more effective legal system, one committed to processing cases in a fast, efficient and meaningful manner (Interviews, 14C, 2014; 15B, 2014; 10B, 2013). As one social movement representative explains it:

*[W]hat we'd want is a police and a criminal justice system that is fully aware of the, firstly the law and that it implements the law properly, and it knows the law and it respects the rights of victims of crime and violence*

*and that is really all we ask and for them to properly prosecute the cases. It shouldn't be too much to ask. But as I say, it is more an implementation problem than a policy problem. (Interview, 14C, 2014)*

Recognising that a functional criminal justice system alone would be unable to solve all the challenges, the complainant organisations began to formulate demands related to socio-economic rights. The complainant organisations were concerned with the interplay between effective criminal justice measures and socio-economic developments. The socio-economic demands included improvements to infrastructure, such as streets, street lighting, transport, sanitation, as well as access to housing, water and sanitation, employment and youth activities (Closing Legal Argument, LRC, 29.05.2014, pp. 225-226; Interviews, 1B, 2014; 13B, 2014; 15B, 2014; 10B, 2013). One interviewee explained:

*(...) no-one ever has looked at Khayelitsha as a whole and policing and crime and socio-economics and all the other things and tried to do something about it and we want to put something together like a safety plan for Khayelitsha not just for proper policing but to create communities, and roads and places where people can walk around and I think that's what we hoping that we will contribute to. (Interview, 13B, 2014).*

The complainants therewith highlight the need to work on safety and security in a comprehensive manner, also in order to address the structural and social inequalities they identified in connection with the lack of access to justice in security. They envision a wide-ranging concept for security and justice including demands for socio-economic improvements. A director of one of the complainant organisations NGOs stated at the Khayelitsha Commission:

*If only the police gets fixed the crime rate will be reduced, but the vulnerabilities of people being exposed to crime will still remain and that we have to address as well so safe schools and so on became part of the agenda of the SJC; safe streets; street lighting and so on. (Hearing Transcripts, 10.02.2014, p. 2376)*

In consequence, the complainant organisations envisioned a holistic concept for security and justice, which they focused on from the beginning of their campaign. One interviewee stated how they started the campaign and how

*(...) the campaign was actually built around not only improving policing in Khayelitsha, but also improving the justice system as a whole: in terms*

*of the access to justice, better courts, putting pressure on the prosecutor to actually properly handle cases and putting pressure on the Western Cape Government to obviously provide better infrastructure in Khayelitsha, so that people could feel safe in their homes and on the street and in public spaces. (Interview, 10B, 2013)*

However, the Khayelitsha Commission was bound by its official mandate and limited to investigating the work of the police, as elaborated in Chapter 4.4. The main addressee of the Khayelitsha Commission was the SAPS, whereas the DA-led provincial and municipal government responsible for the socio-economic development like infrastructure, housing and sanitation was only touched upon during the Khayelitsha Commission investigation, as it had a limited mandate restricted by Constitutional demarcations.

Nevertheless, the complainant organisations did try to address the need for socio-economic improvements during the Khayelitsha Commission, and different witnesses stressed these points (Transcripts, 10.02.2014, pp. 2374-2378; 07.02.2014, pp. 2022-2080; 24.01.2014, pp. 257-260). The complainant organisations also appealed to the Khayelitsha Commission in their final statement, emphasising that “[c]rime is in many ways a symptom of severe poverty and desperation. Both socioeconomic factors and infrastructural factors contribute to the extremely high crime rate in Khayelitsha” (Closing Legal Argument, LRC, 29.05.2014, p. 216). They entreated that they would not lose sight of the need for more comprehensive approaches including cooperation between all spheres of government (Closing Statement, LRC, 29.05.2014, pp. 14-22). In particular, the complainants re-emphasised the responsibility of the government realising the rights of the people by stating:

*This Commission’s terms of reference are confined to the South African Police Service (...). They do not include any other agency of local or provincial government tasked with creating a safe Khayelitsha. (...). However, this Commission has an obligation to make recommendations to the Premier [of the Western Cape] (...) which will enhance cooperation between all spheres of government. Such cooperation between different arms of government will assist in respecting, protecting and advancing the fundamental rights of Khayelitsha residents such as the rights to life, dignity and freedom from all forms of violence. (Closing Statement, LRC, 29.05.2014, pp. 21-22)*

In addition, the complainant organisations continued to mobilise for socio-economic improvements as part of their regular campaigns, for example, campaigns for safer schools and access to sanitation (Equal Education, n.d.(a); n.d.(b); Social Justice Coalition, n.d.(d)).

In their final argument, the complainant organisations also called for the re-introduction of so-called Community Peace Initiatives<sup>65</sup> which were active between 1997 and 2009. These served as a “communal restorative justice platform” offering a separate space for solving safety issues as an alternative to the police or vigilantism (Closing Legal Argument, LRC, 29.05.2014, p. 285). They further suggested establishing a victim’s compensation fund in order to address the demands and needs for compensation that transpired during the Khayelitsha Commission hearings and which will be discussed in Chapter 7 (Closing Legal Argument, LRC, 29.05.2014, p. 226).

In contrast, the KDF, CPFs and members of CPFs, viewed the shortcomings in the criminal justice system as an indicator for a lack of support to the police. They favoured more, better equipped, police staff who have received better training and education in order to upscale policing visibility. They also appeared in favour of more police patrols in Khayelitsha (Bundle, 5(4), file 8, n.d.; Transcripts, 20.02.2014, pp. 4177-4262; 12.02.2014, pp. 2668-2723, pp. 2764-2821; 04.02.2014, pp. 1334-1386).

Apart from a stronger police presence, they continued to call for more support and financial resources for CPFs (Bundle, 5(4), file 8, item 1-4, 2013). The CPFs are considered legitimate bodies for coordinating relationships between police and community, as well as coordinating neighbourhood watch activities, and other non-state security and justice responses by CPF members. One emphasis is therefore to strengthen the CPFs further by embedding them closely with other local structures. One CPF member and member of the CPF provincial board for example suggested linking CPFs more closely with street committees, arguing that “CPFs need to be established “from the bottom up”, starting with street committees that establish neighbourhood watches, then

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<sup>65</sup> These Community Peace Initiatives like Community Peace Committees or Community Safety Forums were put in place to deal with local community conflicts and, if necessary, act as contacts to the police. In particular, some were put in place in response to the weak role of the CPFs and to address crime prevention from a more holistic standpoint, going beyond policing as the only way to respond to crime. They were externally funded and considered successful, however, when external funding ended these initiatives disappeared (Interview, 1B, 2014; Transcript, 15.05.2014, pp. 7627-7633).

sector forums (or sub-forums), and then the CPF for a police station precinct” (Khayelitsha Commission, 2014, p. 126).

Also, the KDF continues to favour locally embedded security responses, including a better integration of local justice and security actors in security governance. In this regard, for example, the leader of the KDF argues “[t]hat the involvement of the taxi industry in crime-fighting doesn’t mean inefficiency of the police but conforms with the entire community involvement in fighting crime” (Transcript, 20.02.2014, p. 4183). He further adds “[n]ow we are not talking about whether the police are effective or not, we are talking about the things that must happen to make Khayelitsha a better place and also mobilising the community of Khayelitsha to police itself” (Transcript, 20.02.2014, pp. 4187-4188). Yet, the responses of the taxi industry is often problematic as it often involves the use of violence and illegitimate coercion or threat, as will be discussed in Chapter 7. With this demand, the KDF mirrors and responds to the state’s rhetoric on outsourcing security and communities’ responsibility for security, which will be discussed in Section 6.2.3.

In addition, the KDF, as well as CPF representatives, also mainly argued that without well-developed infrastructure, service delivery and socio-economic development, no effective crime prevention would exist (Bundles, 5(4), file 8, item 1-4, 2013; 7(1), file G, item 11, 2013); with one CPF member stating that:

*The conditions under which people live in are inhumane and not conducive for human habitation. It is therefore unfair to expect the fight against crime to succeed whilst the biggest crime of not servicing communities is not addressed. (...). The biggest criminals in Khayelitsha are poverty and under-development. (Bundle, 7(1), file G, item 11, 2013, pp. 3-5)*

The KDF has also highlighted the conditions of Khayelitsha’s infrastructure as inhibiting proper criminal investigation, safety and security, further stating:

*The focus on the SAPS, and not the general developmental challenges and excruciating levels of poverty, unemployment, homelessness and debilitating conditions of health, has failed to identify the real challenges facing the Khayelitsha community. We do not suggest for a moment that there are no challenges involving the SAPS but we believe that these challenges are linked to the state of underdevelopment in Khayelitsha, and not SAPS inefficiency. (Bundle, 5(4), file 8, 2013, p. 2)*

The notion that the conditions of Khayelitsha are the main challenge and obstacle for proper police work is shared by other CPF members and KDF representatives (see for example, Bundles, 5(4), file 8, item 1, 2013, p. 4; item 2, 2013, p. 2; item 3, 2013, p. 4; item 4, 2013, p. 10). Sanitation, roads, housing, street lighting, health, employment and youth centres and activities are among the main demands for socio-economic and infrastructure improvements as articulated by these actors (Bundles, 5(4), file 8, item 1-4, 2013; 7(1), file G, item 11, 2013). These actors use similar language and arguments. The clear positioning of the SAPS can be understood as an alignment with, and support for, the ANC and, therefore, as part of the intertwined nature of party affiliations and security agendas, which was highlighted in the previous section. The demands for infrastructure and socio-economic development fall within the mandate and responsibilities of the government of the Province of the Western Cape and the City of Cape Town as discussed before, with both under DA rule. Therefore, the criticism of shortcomings, in particular around infrastructure and socio-economic development, targets the DA government.

While claims on socio-economic development across CSOs are similar, the debate is overshadowed by political interests. The CSOs' addressing of justice and security in Khayelitsha is mainly divided over the question of which level of government holds responsibility for the current situation of shortcomings around justice and security; also, which has the duty to attend to them. The complainant organisations see full responsibility falling to the state, in terms of providing access to justice and security through effective policing and law enforcement. In addition, they see the need for socio-economic improvements, which they continue to advocate for through their advocacy work, given the Khayelitsha Commission's limited mandate. Their claims address provincial and municipal government for infrastructure improvements and national government for policing and criminal justice system changes and broader socio-economic improvements.

KDF, CPF and CPF members see the responsibility for the urban upgrading of Khayelitsha and provision of opportunities for business and infrastructure development mainly falling to the provincial government. The police are considered as facilitators of safety and security who, according to their assessment, work in unbearable conditions. Therefore, they argue that local development is a pre-condition for successful police work. These organisations mainly interact at the local level engaging with and functioning as intermediaries between the police, local security actors and the community. The divide



between CSOs over the Khayelitsha Commission discussed in the previous section extends to the demands these organisations have. It is political affiliation that partly dictates the different focus.

### 5.3. In the aftermath of the Khayelitsha Commission

In the aftermath of the Khayelitsha Commission, the complainant organisations had a positive outlook and were looking forward to better collaboration with the police (Kramer, 2015). One of the results of the Khayelitsha Commission was the establishment of so-called thematic ‘Joints’, specialised sub-forums of police-community interaction designed to analyse and address urgent issues around violence and crime (Safe Khayelitsha, n.d.). Here, CSOs, community and police officials were supposed to work together on specific problematic issues identified during the Khayelitsha Commission, such as vigilante violence, gender based violence, etc. (Safe Khayelitsha, n.d.; Western Cape Government, 2016). Starting as a promising initiative, they eventually came to reproduce the existing divide between different civil society actors instead. Freeman and McDonald (2015, p. 34) suggest that the ‘Joints’ mainly housed complainant organisations, while KDF and SANCO affiliated organisations were absent. With this development, a parallel structure to the CPFs was created, one which did not fully integrate all relevant actors either. This further suggests that the political differences between these actors has not yet been overcome.

The initiative around the establishment of the ‘Joints’ was complemented by a couple of community and police meetings (Knoetze, 2014). At the provincial level there was also one task team set up to look into the issue of youth gangs and another to monitor SAPS inefficiencies (Western Cape Government, 2016; 2017). However, the initial euphoria quickly changed into frustration, in particular among the complainant organisations (Qukula, 2015; Ramphele, L., 2015). While collaboration at the local level seemed to improve, progress at the national level and the addressing of more systemic questions seemed to stall (GroundUp and Chiguvare, 2015). Indeed, many of the challenges and weaknesses identified by the Khayelitsha Commission remained unchanged, like unequal police resource allocation and high levels of violence, crime and vigilantism (See GroundUp and Chiguvare, 2015; Qukula, 2015; Ramphele, L., 2015)

In addition, at the national level, the police took almost a year to draft a preliminary response to the Khayelitsha Commission Report (Western Cape Office of the Premier,

2015). This preliminary and unreleased response by the National Police Commissioner to the Premier of the Western Cape – classified as ‘confidential’ – has been considered an “uncompromising defence of SAPS” (Dixon, 2015, p. 10; also see Chiguvare, 2015). The National Commissioner of SAPS (Phiyega, 2015, p. 21) stated in defence of his service that

*[t]he Commission highlighted what was already known and buttress what the SAPS has been talking about all along and dealing with it. This exercised negatively impacted on and further diminished the public’s perception of the police. The South African Police Service holds the view that the commission of inquiry was not necessary (...).*

Furthermore, the National Minister of Police failed to respond to the Khayelitsha Commission Report and recommendations. So far, the national Minister of Police has also refused to sign a Memorandum of Agreement with the DOCS to implement the Khayelitsha Commission’s recommendations, despite this being demanded by the Premier of the Western Cape (Zille, 2017).

In contrast, the provincial level has committed to the recommendations made by the Khayelitsha Commission (Zille, 2014; 2015). Thus, the Premier of the Western Cape acknowledged positive improvements and a positive collaboration with the Provincial Commissioner of SAPS (Ibid., 2017). Furthermore, the Office of the Premier highlighted many different initiatives where the Western Cape Government had worked on implementing the recommendations, such as the establishment of functioning CPFs, the development of a strategy on awareness rising on crimes against women and children (Zille, 2015), the appointment of additional detectives or the establishment of a monitoring and oversight team, and a case docket backlog team (Western Cape Government, 2017).

The Social Justice Coalition questioned any serious improvements, arguing that according to their information Greater Khayelitsha in 2017 had even less detectives than in 2013 when the Khayelitsha Commission investigation was running (Furlong, 2017). The SJC further highlighted that the number of case dockets per police officer was still too high and that there were still no guidelines on visible policing as suggested in the Khayelitsha Commission report. The complainant organisations therefore concluded that “[t]his sobering reality underscores why we believe progress has at best been incremental. SAPS’s failure as an organisation to make the necessary systemic changes to implement

the recommendations means that progress locally is reactive and might be short-lived” (Furlong, 2017, n.p.). Furthermore, the SJC criticised the Premier of the Western Cape for proclaiming “steady progress” in the advancement of implementing these recommendations. They stated that “[t]he fact that the Premier’s office can frame this as ‘steady progress’ means that the Western Cape Government is failing in its constitutional obligation to exercise oversight over SAPS” (Furlong, 2017, n.p.).

In consequence, the complainant organisations once again locked into a confrontational mode, making use of the outcomes, comprehensive report and recommendations of the Khayelitsha Commission. First, the complainants maintained active in their respective areas, working at the intersections between structural determinants, crime and violence and their particular focus areas. For example, EE being vocal about safe schools, SJC advocating on the issue of sanitation and safety, and so forth (Equal Education, 2016; Ndifuna Ukwazi, 2014d; Social Justice Coalition, n.d.(d)). More recently, three years after the Khayelitsha Commission, the SJC also launched a new campaign on street lighting (Pertsovsky, 2017). Khayelitsha is predominantly lit by high-mast lights which are often defective or broken, as was discussed during the Khayelitsha Commission (Khayelitsha Commission, 2014, pp. 185-186). According to the SJC, this constitutes a security risk, as the lights (or lack of), create dark spots (Mast, 2017; Weyers, 2017). “Around the world, mast lighting is primarily used worldwide to illuminate highways” (Mast, 2017, n.p.). The SJC argue that “[t]hat’s what the apartheid government deemed appropriate for Khayelitsha” (Ibid., n.p.). The SJC therefore indicates that the apartheid government did not bother to provide proper, lower level street lighting for the people living in Khayelitsha, rather they were left with an inferior lighting infrastructure that in other affluent areas of the nation and in other countries would not been used in a residential area. Drawing a connection with these past discriminatory practices that impacted and continue to impact on people’s safety, SJC highlighted that the current government still has not replaced these lights, thus providing the people of Khayelitsha with an inferior lighting infrastructure, tacitly accepting this sub-standard and the related risks and insecurities involved. The activism therefore draws on social injustices and structural inequalities, exposing how the apartheid heritage is being potentiated by the negligence of current government in responding to the Khayelitsha Commission recommendations.

Second, the complainant organisations launched a campaign on resource allocation in policing based on the findings of the Khayelitsha Commission (Social Justice Coalition, 2017a; 2017b). This campaign led to findings that initiated a new legal battle. In 2016, SJC and EE – two of the complainant organisations – in collaboration with a Community Policing Forum from the neighbouring township of Nyanga filed a new court case against the police, demanding responses to the particular recommendations of the Khayelitsha Commission Report (Social Justice Coalition and Equal Education, 2016). In particular, they launched a case “to address the irrational and discriminatory allocation of the police’s human resources across all 1140 police precincts” in the country (Social Justice Coalition, 2017a, n.p.). The applicants used the extensive findings from the Khayelitsha Commission. In addition, the claim was based on further research carried out by SJC and EE on resource allocation and crime rates across South Africa. The case applicants discovered similar patterns of allocation, whereby poor, marginalised and high crime areas are understaffed and under resourced in terms of policing in comparison with wealthier suburbs (Social Justice Coalition, 2017d). In consequence, using this evidence, the court application was made in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act (No. 4 of 2000) (Social Justice Coalition, 2017a). Their main argument being that “the allocation of police resources is both irrational and unfairly discriminatory (on the basis of race and poverty)” (Social Justice Coalition et al., 2016, p. 5).

In contrast, the police argued that such distribution is not racially discriminatory in itself but is rather “implemented in a social environment that is racialised” due to the spatial planning of apartheid (Karim, 2017, n.p.). The result of this dispute is still outstanding and it is currently being processed by the court (Gontsana, 2018; Karim, 2017; Social Justice Coalition, 2017c). The outcome of this case might have wide reaching implications, not only in terms of resource allocation of the police, but also in setting a precedent for what is considered discriminatory practice and policy based on poverty or race. In consequence, if the organisations succeed, unfair discrimination based on poverty will become prohibited by law (Karim, 2017).

These developments in the aftermath of the Khayelitsha Commission point to the challenges as well as opportunities of “structural interventions” (Famer et al., 2006, p. 1687 et alibi) and local social mobilisation aimed at advancing a transformative justice agenda. The Khayelitsha Commission produced very valuable results and

recommendations. However, at the national level this source of information for improvement seems to have been largely ignored. These “structural interventions” (Ibid.) and social justice mobilisation in general are able to “render legible” (Robins, S.L., 2014, p. 495) and shed light on many structural inequalities. However, if they are not equipped with continued leverage, factors such as political will or the capacity to implement a transformative justice agenda will become major obstacles for the realisation of social justice. For example, in this particular case, the recommendations of the Khayelitsha Commission do not have a binding or obligatory nature. Additionally, the different demands and divides existent within civil society have not been overcome through the Khayelitsha Commission. Instead, in its aftermath, different coordinating structures were established, as discussed above (see Freeman and McDonald, 2015).

However, it also shows that such an intervention can create opportunities for the further pursuit of a transformative agenda. The event of the Khayelitsha Commission created evidence that is used for further rights-based advocacy and social justice activism, in terms of holding the state accountable. The ongoing court case for example may potentially create a real precedent in addressing structural inequalities. This particular case also shows that the practice of transformative justice does not rely on a singular event, like a commission, or any other certain mechanism, but rather on a variety of actions and processes. In this particular case, the mobilisation for the Khayelitsha Commission, the Khayelitsha Commission hearings, the ongoing advocacy, additional research and new public interest litigation of the complainant organisations, are all processes that contribute to advancing transformative justice, as will be further discussed in the next section.

#### 5.4. Contributions of social justice mobilisation for transformative justice

Using the case of mobilisation for the Khayelitsha Commission this chapter has demonstrated how CSOs can engage, mobilise and frame their demands for security and justice. The chapter makes three important contributions.

First, the way CSOs are positioned in Khayelitsha is relevant for the way they seek to work on security and justice, choosing their approaches and engaging with the state. During the Khayelitsha Commission, the larger and more professionalised CSOs and SMOs predominantly aimed to hold the state accountable using classical SMO tactics and

a rights-based approach. Their formalised structure, experience in other mobilisation campaigns, and distance from the state allowed them to choose between critique and collaboration, as well as to engage with different levels of government. This form of rights activism within the criminal justice sector, consisting of collaboration, accountability and social justice activism, seems a relatively new form of engagement in this particular field. This emerged as CSOs translated their social justice struggle into the field of criminal justice. Locally based and smaller organisations are more dependent and rely on networks and connections in Khayelitsha, seeking collaboration, which often works through political affiliation or convergence. Power, leverage and politics are therefore decisive factors that can decide whether to engage with a broader based form of social justice activism or stay engaged at the local level. The ability to support a transformative justice agenda therefore might not be always possible for all actors in a civil society.

Second, mobilisation of the Khayelitsha Commission, the Commission itself and what followed, were all very important exercises. Furthermore, each of these exercises were not singular events but rather processes of mobilisation, resistance, advocacy, participation and empowerment. This conclusion is in line with Gready and Robins, S. (2014, p. 358), finding that “(...) transformative justice and transformative participation require more focus on process, on the interface between process and outcomes and on mobilization, and less focus on preconceived outcomes”. The processes of mobilisation, public Commission hearings, and advocacy and public litigation in the aftermath of the Commission contribute to the aims of transformative justice in several ways.

The mobilisation for, and the establishment of, the Khayelitsha Commission can be considered as important contributions to justice and security. The investigation into policing and community safety challenged and unmasked the status quo of structural inequalities in the access to security and justice for Khayelitsha, as will be shown in the next chapter. It also pointed to the wider failures of social justice for community safety, creating a nexus between social and criminal justice. The complainant organisations made an important contribution in this regard. In particular, through social activism making “‘ordinary suffering’ and systemic injustices politically legible to the state, the media and the wider public” (S.L. Robins, 2014, p. 481).

The establishment of the Khayelitsha Commission also can be seen as a great success for the CSO mobilisation effort, that is, in terms of achieving justice for their particular cases and more particularly, adding shortcomings in criminal justice and policing to the agenda.

Some of the victims and victims' families achieved follow up and information on their cases, indeed, due to ongoing mobilisation, some of the cases were brought to court. Out of these, "four of the eight cases, including the three murder cases, resulted in convictions", although there was a major delay (Khayelitsha Commission, 2014, p. 84). Those cases that remained unresolved were followed up while the Khayelitsha Commission was running (Interview, 2B, 2014). Pressure from the Khayelitsha Commission provided the families with access and speedy responses regarding the status of their cases, something that would have probably never been achieved otherwise.

In addition, the Khayelitsha Commission can be perceived as a mechanism of empowerment and participation, providing a platform for the stories of people, allowing them to narrate the physical and structural violence they encounter in their daily lives – stories and voices the police and courts have neglected. In addition, a public apology by the Provincial Commissioner of the Police at the Khayelitsha Commission hearing was given to a hall filled with community members:

*[Advocate]: General, I invite you now on behalf of the organisations that I represent to apologise to Khayelitsha residents, firstly for the unacceptably high levels of crime that they have experienced. Are you prepared to do so?*

*[Provincial Commissioner of the Police]: Well, I am prepared to apologise for the lack of services rendered to address the crime problems in the Khayelitsha area. (Transcript, 01.04.2014, p. 6606)*

Despite causing a number of back and forth arguments between the advocate and the Provincial Commissioner, and despite being brief, this admittance of failure and neglect was nevertheless a much needed gesture for the recognition of endured injustice (Transcript, 01.04.2014, pp. 6606-6608). Particularly as apologies can be important sources of acknowledgment and respect and may lead to further responsibilities and obligations related to publicly recognising wrongdoings (Marrus, 2006, p. 35, pp. 39-40). Given the resistance of the SAPS to participate in the Khayelitsha Commission, the apology was also a recognition of the important and rightful work done by the Commission. However, apologies cannot undo harm done and instead have a rather symbolic nature. Also, they need to be carefully phrased in order to be successful (Ibid.). As Marrus (Ibid., p. 11) argues,

*[g]iven the importance of the symbolic in these transactions, the risk of getting it wrong is considerable, and those seeking to make successful*

*apologies must be highly attentive to what is said or done, and how, and by whom.*

In this sense, the apology of the Provincial Commissioner can be considered one of a double-edged nature, as the Commissioner was prepared to apologise for the lack of service but started to argue over the SAPS' responsibility over high crime rates (Transcript, 01.04.2014, pp. 6606-6608). The argument between the Provincial Commissioner and the advocate therefore created an unclear message as to the full extent of the apology (see for example Eyewitness News, 2014; Presence, 2014).

Also, the comprehensive Khayelitsha Commission Report (Khayelitsha Commission, 2014) and its recommendations are an important source for naming and addressing these injustices. In particular, the identification of the everyday inequalities created through biased resource distribution is an important finding (as further discussed in Chapter 6). The findings are also an important source for some very practical policy and implementation changes that address the structural and tangible causes of violence, crime, police and justice failures. In addition, it is a documented testimony of injustice and a witness for future advocacy and claims. Some steps have already been taken in this regard. For example, in the aftermath of the Khayelitsha Commission, two of the complainants launched a new court case regarding resource allocation in policing, based on the findings of the Khayelitsha Commission (Chapter 5.3.).

These different processes can thus be considered important contributions to transformative justice or what Farmer et al. (2006, p. 1689 et alibi) call "a structural intervention", aiming to address structural inequalities in everyday life.

Third, despite these gains, the Khayelitsha Commission also exposed a number of tensions surrounding the ideal of transformative justice and the possible contributions by CSOs for justice and security. A strong reliance on the state and its legal obligation and duties can be seen to limit the complainants' reach. Particularly, as rights provide the legal social minimum, and not necessarily the needed maximum, and as legal rights enforcement does not necessarily translate into desired rights implementation (see Langford, forthcoming). In addition, rights are not a point of reference for all of Khayelitsha, as will be discussed in the next chapter.

Also, the Khayelitsha Commission highlighted the contradictions, diversity and different interests operating at the local level, confirming the criticism that transformative justice



received in relation to its normative emphasis on and importance of the local level. In sum, this points to the need for transformative justice practice to consider carefully what the local entails, and for whom. The case study for example exposed the importance of party political affiliation and the struggle over the influence of an important matter in South Africa: crime and violence and the criminal justice response. The issue of political rivalry has fundamentally impacted participation, while the Khayelitsha Commission was participatory and empowering for some, it also excluded others. In a setting where the state is not the only role-player, and often not the most relevant one either (Chapter 7), this has led to exclusionary dynamics, dismissing opportunities for other, probably more local based forms of cooperation and joint responses.

# 6. INEQUALITY AND ACCESS TO SECURITY AND JUSTICE

*(...) we can see there are gangs and gangs that fight. We can also see that there are shops where we also witness people going around and being robbed at those shops. We have also witnessed ladies being hijacked so often we wake up and we hear that so-and-so has died (...). So those are the kinds of issues I am talking about that happen in the community. We can also see that men are beating their wives. Fathers rape their children. All those things happen within the community. We see them. We witness them and we hear about them.*

Transcript, 23.01.2014, p. 112

*It is therefore very pleasing to note that the rights of the Victims Charter are being translated into reality within the criminal justice system as a whole. President Jacob Zuma, 10 December 2009.*

*Your rights as a victim of crime*

- 1. The right to be treated with fairness and with respect for dignity and privacy*
- 2. The right to offer information*
- 3. The right to receive information*
- 4. The right to protection*
- 5. The right to assistance*
- 6. The right to compensation*
- 7. The right to restitution*

Department of Justice and Constitutional Development, 2009

This chapter outlines the connections between structural inequalities, and the occurrence and impact of violence and crime in Khayelitsha. This section analyses how structural inequalities impact on people's right to equally access security and justice. This chapter will look at how these inequalities manifest themselves in space through a lack of a safe environment, through economically created vulnerabilities, and through systemic resource inequality and the daily practices of policing and judicial work. Drawing from the Khayelitsha Commission testimonies and findings, these visible and less visible inequalities are contextualised through the perspectives of the people and actors affected by them. The chapter provides insights into the lived experiences of structural inequality, along with the humiliation and emotional pain and distance this causes in people's lives. The findings of this chapter complement and expand the discussion in Chapter 3.3. on the relation between structural inequality and violence and crime. It does this by providing insights into Khayelitsha in particular, the way these affect the people living there and their perceptions of state justice and security. In addition, the chapter suggests that a lack of access to justice and security also constitutes structural inequality.

People living in Khayelitsha have little hope for public security, private commercial protection or legal justice in the aftermath of violence and crime. How structural inequality is perpetuated through continued, systemic biases in resource distribution, will consequently be discussed. In addition, this section demonstrates how the state is trying to push an agenda of security outsourcing towards the private realm, as it allows diversion from the state's own (legal) responsibilities in terms of security provision. This also has consequences for community approaches to security and justice, as Chapter 7 will demonstrate.

First, this chapter argues that infrastructure and environment impact on public security, and analyses how this contributes to feelings of insecurity. The second section demonstrates inequality in accessing public security, as well as inequality in equitable policing, by analysing policing figures; this is complemented by people's narratives of police encounters. The third section displays the impediments for achieving legal justice, in particular, those caused by (structural) inequalities. This section also analyses how perceptions and knowledge about criminal justice are shaped by encounters with the flawed security and justice practices of police and courts. The chapter concludes by arguing that there is a need for the redistribution of resources and a retake on criminal justice reform. This is as both may contribute, not only to equal access to justice and

security, but also to the establishment of shared values and the sense of a more democratic rule of law.

## 6.1. Safe environment and infrastructure

As a location, Khayelitsha continues to suffer from its apartheid related construction as discussed in Chapter 4. At the same time, and equally, it suffers from post-apartheid governments' unsuccessful attempts to overcome its particular unequal design. The failure to address underdevelopment, socio-economic disparities and spatial dislocation, contribute to a continuation of the inherited structural inequality created by apartheid (see Samara, 2011). Chapter 3.3. introduced the challenges that infrastructure poses for addressing violence and crime. Indeed, shortcomings to comprehensively improve infrastructure and economic development contribute to the type of urban designs that expose people to violence and crime.

The informal housing situation is a major contributor to the exposure of crime and feelings of vulnerability (Interview, 14B, 2014), as also discussed in Chapters 3 and 4. The Khayelitsha Commission's findings correspond with the literature in Chapter 3.3., drawing a relation between structural inequality, and violence and crime. Infrastructure weaknesses and geography cause insecurities (see Samara, 2011). Apartheid heritage is visible in this setting, as are the shortcomings of current policies to mitigate the effects of this. The experience of these inequalities shapes the everyday experiences of its residents, also causing responses by CSOs.

In Khayelitsha, this exposure is due to the lack of proper roads, sufficient street lighting, and water and sanitation access at a household level, as well as high density, and areas of informal settlements with over 50% of the population residing in informal housing (see Chapter 4.2.). The Khayelitsha Commission has witnessed many complaints about broken street lighting (Khayelitsha Commission, 2014, p. 39, p. 185), the difficulties related to moving within high-density, informal areas (Ibid., p. 226, p. 232), and the lack of access to public toilets, provided by the City of Cape Town. The Commission found that the latter were often locked, and those "unlocked toilets inspected by the Commission were mostly in an unusable and unhygienic condition" (Khayelitsha Commission, 2014, p. 87).

One NGO interviewee explained that the poor sanitary conditions cause exposure to violence and crime: "[A] lot of people get robbed, raped, murdered or become victims of

crime while they are walking to the toilet, because the toilet nearest to their home is not functional” (Interview, 10B, 2013). Women are particularly vulnerable, and lack of access to water and sanitation means women are more susceptible to becoming victims of rape, crime and violence through daily routines that include fetching water or using toilets (see Ndifuna Ukwazi, 2014a, p. 6, p. 10, p. 14; 2014b, p. 27; Transcripts, 07.02.2014, p. 2034 et seq.; 24.01.2014, p. 239).

Community members experience feelings of insecurity and exposure due to the environmental set up, with one resident explaining:

*When I'm saying that another person of another race will not understand our pain of someone living in a shack, even living in a shack, just living in a shack is not safe. Also, when growing up, when you [see] what the problems are in the area, that is why I'm saying people can say they understand (...) but without living there they will not know what it feels like. Living in an informal settlement area, a place with no lights, which is dark at night, where sometimes you have to go and relieve yourself in the bushes. Sometimes you have to go and get water from a different street which is not your street. That is also not safe. (Transcript, 07.02.2014, p. 2034)*

This testimony is representative of the many voices expressing feelings of insecurity due to their environmental set up, as many testimonies emphasised how feelings of insecurity are related to the environment and infrastructure (Transcripts, 12.02.2014, pp. 2668-2723; 07.2.2014, pp. 2061-2077; 28.01.2014, pp. 554-581; 23.01.2014, pp. 107-140). Witnesses speak about the pain associated with the experience of living in an area that is constantly exposed to insecurity caused by problems with infrastructure, and which at a deeper level is shaped by continuities of structural inequality.

Having to relieve yourself in the bushes, for example, is exposure in different ways: exposure and vulnerability to crime, to humiliation, and to disease. Pain is also created through these exposures, for they bring about a sense of exclusion from access to dignified living conditions. Indeed, in Galtung (1969) and Farmer's (2004) understanding, these exposures represent structural violence. Here, the everyday practice of having to relieve yourself under dangerous circumstances, facing health hazards, humiliation and insecurity is normalised. As Farmer et al. (2006, p. 1686) note, with regard to these normalised practices, “[b]ecause they seem so ordinary in our ways of understanding the world, they appear almost invisible”.

Corresponding to Farmer's et al. (2006) assessment of normalised practices, the everyday need and practice of having to relieve oneself in public space, is a reflection of the interrelation between structural violence, violence and crime, and everyday violence. While historically created, the location of Khayelitsha is still troubled by marginalised sections, and high levels of inequality, poverty and unemployment. These normalised practices constitute the reality for many of the people living in Khayelitsha causing real injuries.

The CSVr study "Adding insult to injury: how exclusion and inequality drive South Africa's problem of violence" (CSVr, 2008, p. 47) talks about the "dehumanisation and humiliation that economic and social exclusion create". The study argues (Ibid., p. 47) that

*in a society founded on the idea of expanding opportunities and equality — an idea constructed in opposition to the ideas that animated social policy in the past — it is hard to exaggerate the extent to which the implicit and explicit promises of our social contract go unfulfilled for the majority of people.*

In particular, the study draws on the connection between humiliation and engagement in criminal violence, arguing that people also engage in violence and crime because of humiliation and broken promises and the frustration this causes as discussed in Chapter 3.3.. These broken promises do not only lead people to engage in violence and crime but they also play out in the exposure to violence and crime that exists because of the structural inequality and continuous neglect that the people experience, piling additional insult on already existing injury, thus affecting their physical and emotional integrity. The lack of access to sanitation, and how this is related to physical and structural violence is testimony to this.

The living conditions and infrastructure expose inhabitants to violence and crime, creating everyday 'injuries and insults', pain and humiliation, all caused by the less visible impacts of structural inequalities, like not having access to sanitation. In consequence, access to a safe living environment is related as much to concerns regarding security as to issues of dignity and structural equality.

## 6.2. Access to security

While location and the socio-economic situation are major factors in producing and reproducing structural inequality in the area of safety and security, the police also contribute to inequality through unequal access to security. The police hold a key position with regards to delivering safety and security. That is, through visible policing; through crime investigations; by being an important part of criminal justice; and by being a visible representative of the state as a whole. The police, as the executing branch of a state's security provision, are at the frontline in their daily interactions with people. Being very visible to the public, police responses greatly shape the understanding of legitimate crime fighting, the rule of law, and perceptions on the capacity of the state to respond to these challenges (see Malone, 2012; Neild, 2003). This section will engage with the inequalities around access to security and justice, in particular, discussing those inequalities that contribute to structural inequalities. The four main factors that limit access to public security and other police services are related to unequal policing resource distribution, lack of access to visible policing, a lack of duty of care, and outsourcing of security, as will be discussed in the next sections.

### 6.2.1. Access to equitable policing

Two major factors of inequality in policing resource distribution that have been identified in Khayelitsha are human resource allocation and access to financial resources for police work. It was revealed during the Khayelitsha Commission that there is unequal access to security with regards to policing resources for different areas of Cape Town. One main indicator for this assessment being the police-population ratio as described in Chapter 4.3. As has been noted there, Khayelitsha has one of the highest numbers of homicides, sexual offences and assaults, and robberies in the country. At the same time, in Khayelitsha more than half its population live in informal settlements, an area which is difficult to police, as it requires more policing staff to carry out foot patrols. That said, Greater Khayelitsha has one of the lowest police-population ratios in comparison to other policing

precincts, with Harare precinct in Khayelitsha having the lowest police-population ratio in Cape Town (Khayelitsha Commission, 2014, pp. 392-394).<sup>66</sup>

The increase in staff for attending to informal areas is capped at 5%.<sup>67</sup> Even if more police is required, there is no further increase beyond 5%. At the Khayelitsha Commission hearing it was suggested to a police official “that this would mean that police stations with large numbers of informal housing would tend to be under-policed. He accepted that such considerations might require a revision of the system” (Khayelitsha Commission, 2014, p. 245). The human resource distribution scheme has been assessed as both “unconscionable and irrational” infringing upon several constitutional rights<sup>68</sup> (Redpath and Nagia-Luddy, 2015, p. 15).

In addition, the financial resource distribution of the police is tied to human resource distribution. According to a high-level SAPS official responsible for physical resource management at the SAPS, “financial resources “follow” human resources. In other words, the number of SAPS members in a station or unit will be the primary driver of resources allocated to that station or unit” (Khayelitsha Commission, 2014, p. 260). Therefore, given the low number of staff and the staff increase cap, the SAPS in Khayelitsha remain understaffed and underfinanced.

There is also a lack of adequate police training, both prior to deployment and in-job. Consequently, police officials are not adequately trained for their duties. During the Khayelitsha Commission, the SAPS confirmed that junior officials with inadequate levels of experience are often placed in Khayelitsha, although this is considered a challenging terrain due to high crime, homicides and rape rates, and hence requiring experienced personnel (Khayelitsha Commission, 2014, p. 189 et seq.). It has also been reported that due to lack of training and knowledge, some police officials have not followed the correct

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<sup>66</sup> As discussed in chapter 4.3. Greater Khayelitsha had 192 police officials per 100,000 inhabitants in 2011, while Harare precinct only counted 111 police officials per 100,000 inhabitants. The national average stands at 283 police officials per 100,000 inhabitants.

<sup>67</sup> The cap is explained as follows: “If between 1% and 2.5% of the population lives in informal dwellings, the police station establishment is increased by 1%. If 10% of the population live in informal dwellings, the establishment is increased by 5%. 5% is the maximum supplement provided for informal dwellings, even if 50% of the residents of a police station precinct live in informal dwellings, as is the case in Khayelitsha Site B and Harare” (Khayelitsha Commission, 2014, p. 245).

<sup>68</sup> Including the rights to freedom and security of the person, equality before the law, life and dignity of the Constitution of the Republic of South Africa Act (No.108 of 1996) and the Promotion of Equality and Prevention of Unfair Discrimination Act (No. 4 of 2000).



procedures for opening dockets (Ibid., p. 359 et seq.). In addition, crime investigation police detectives lack the training units that prepare them for proper crime investigation (Ibid., 2014, p. 251 et seq.). Consequently, the SAPS in Khayelitsha is not only understaffed and underfinanced but also undertrained. One CSO staff member assessed the situation as follows:

*(...) [T]here is a very big discrepancy between police stations, if you go to Camps Bay [n.b. affluent area in Cape Town] and you look at the quality of police there and you go to Khayelitsha, you will see there is a huge discrepancy. And I mean, it is also looking at the way they allocate resources to fight crime as well. There is definitely not a needs-based analysis happening. (Interview, 10B, 2013)*

The lack of needs-based assessment and the shortage of staff and resources has had a major impact on the overall quality of work (Khayelitsha Commission, 2014, pp. 353-399). Police officials are overworked and lack sufficient personnel and materials, such as vans to provide sufficient patrols and to attend to incidents, or gloves to attend crime investigations. The shortage of staff and lack of training has also resulted in a backlog for attending to dockets. There are too many dockets per police official which leads to poor handling of evidence and poor investigation results (see Chapter 4.3.). Bad attendance to victims of crime and lack of procedural correctness are further consequences, as will be discussed in more detail in the following sections of this chapter.

The lack of human and financial resources for policing impacts strongly on the capacity of the SAPS to provide services. One consequence is that not enough visible policing and crime prevention activities are taking place. The SAPS themselves have acknowledged that they do not provide regular police patrols in informal areas as they are too difficult to police and would require more staff. In this regard, one police colonel admitted:

*[Witness]: Although the police station [n.b. in Lingeletu West] has built up areas, older residential areas, a very large number, almost 40% of the station, consists of informal settlements (...). These (...) areas are very labour intensive in terms of policing as vehicle access to these areas in terms of patrols are not possible. The way in which the informal structures have been erected allows for personnel on foot to patrol only. (...).*

*[Advocate]: Now, how would that be affected? How would you give effect to that, or comply with such a duty, given the difficulties that you describe?*

*[Witness]: I will be honest to say that in certain – to a certain degree the policing in terms of those areas are neglected – were neglected for the mere fact of not having the personnel on a continuous basis to patrol. (Transcript, 17.03.2014, p. 4625)*

This means that areas that are prone to insecurities, violence and crime due to poor lighting, weak housing structures, narrow streets, lack of access to sanitation, and high levels of human mobility, are the areas that receive less visible policing attention. These areas are being systematically neglected, in particular, they are denied access to public security through visible policing. Above all, crime investigation in the informal areas requires more staff as “[m]anagement of the crime scene (...) is arduous or even impossible without additional personnel” (Redpath and Nagia-Luddy, 2015, p. 20). One study (Ibid., 2015, p. 19 et seq.) found that in order to facilitate foot patrols in informal areas the policing allocation would have to increase between three to five times.

Both the challenges of the socio-economic situation and the physical environment analysed in the previous section are re-enforced by unequal provision of policing resources. The limitations in access to policing services are experienced by those who need it the most; in turn, they are also those most affected by these limitations. On one hand, the lack of police staff and resources contributes to a lack of visible policing, while on the other, the living conditions and infrastructure of these informal settlements also inhibit easy police patrols – which is yet another example of how infrastructure, inequality, exposure to crime, and lack of access to security intersect.

However, visible policing is considered important, associated as it is, with reducing violence, including vigilante violence. While there is a general perception that the police force is not very visible in Khayelitsha, demands for visible policing remain high (Khayelitsha Commission, 2014, p. 108, p. 121, p. 136, p. 174, p. 287):

*We need to see the police regularly in our society because these youngsters or these people are doing crime in our society. They know that okay, this police they saw this time and then they will see this police in another three hours. Now they do have that gap now to do whatever, but if they can see there is a visibility of police in our society, I am telling you, the crime will be lower. They can patrol with vans. They can also physically patrol in our society (...). (Transcript, 23.01.2014, p. 134)*

Members of the community associate visibility with more than just physical appearance. The police's invisibility speaks to more than just the act of patrolling and contributing to crime prevention. Visibility, presence and positive behaviour are also associated with a sense of empathy. Therefore, it is also seen as a symbol of care by residents of Khayelitsha (Interview, 4C, 2014; Transcripts, 15.05.2014, p. 7818; 07.02.2014, pp. 2054-2055; 23.01.2014, p. 134 et seq.). One academic expert to the Khayelitsha Commission confirms that

*[y]ou must have the police present, but there's also another way of responding to the community in a way that make them feel that somebody cares, you know. We feel a sense of dignity, a sense of being acknowledged. Our pain is being acknowledged. (Transcript, 15.05.2014, p. 7818)*

In turn, there is a strong sense that this needed care is absent, with one community member arguing that

*[i]t is because the police do not care about people. They don't care about what happens to a person. The police don't care. (...). They don't even care if you are injured. They come and they don't even touch you with their hands. They don't even help you when an ambulance hasn't arrived. They just stay inside their cars to wait for an ambulance. They don't even try to help you as a person. (Transcript, 28.01.2014, pp. 548-549)*

Thus, set alongside recognition of the burden of everyday challenges, police visibility and general conduct become a symbol of care and acknowledgement. This acknowledgement can be important in a setting of such undignified living conditions and high levels of violence, with such visibility also contributing to the police-community relationship by increasing trust and the building of better relations. Both are very important principles relied upon by local security and justice actors, as will be further discussed in Chapter 7.2.

The Khayelitsha Commission (2014, p. 349) concluded on the question of equal access to policing services that

*[o]ne of the questions that has most troubled the [Khayelitsha] 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 of SAPS in every sphere of government.*

The Khayelitsha Commission can thus be seen to attest to systemic bias, as well as acknowledge the structural nature of this practice. A lack of visible policing is one of the consequences of unequal resource distribution and thus a discriminatory practice that denies access to both crime prevention and protection, as well as a sense of community care. This neglect exerts a major impact on the criminal justice system as a whole, also impeding the right to access security and justice more broadly. Therefore, the Khayelitsha Commission Report (2014, p. 449) subsequently called for a review of the resource and staff distribution system. Redpath and Nagia-Luddy's (2015) suggestions focus on concrete alternative distribution formulas and an overview of a new allocation scheme; recommendations and expertise that could serve the CSOs advocacy as a pressure towards the police to carry out adjustments.

Therefore, the investigation of the Khayelitsha Commission served to expose these inequalities and show how they affect people's lives, limiting them in their right to experience safety and security. These very findings are used by CSOs to continue their fight for justice and security in a public litigation case, as discussed in Chapter 5.3. It can be argued that the particular findings, such as systemically skewed resource distribution, and the broader pictures drawn by the detailed community narratives, such as pain and lack of access to dignified sanitation, as discussed in Section 6.1., contribute to the advancement of a transformative agenda. On the one hand, this happens by shedding light on some of these black spots. On the other, it takes place by creating evidence that can be used to push for change. The Khayelitsha Commission in its commitment to investigate and provide a clear picture on the situation and needs for improvements in Khayelitsha, therefore makes an important contribution to the advancement of transformation.

### 6.2.2. Access to democratic policing – duty of care and good conduct

Duty of care and conduct are also affected by unequal resource distribution and lack of staff, training and material. The principles of duty of care and good conduct are guided by the Constitution of South Africa (1996, Section 9(2); 12(1); 195(1)), the SAPS Act (No. 68 of 1995), the SAPS Code of Ethics (SAPS, 2014) and Code of Conduct (1997), among others. Equal, fair, impartial, honest and transparent treatment and service form part of democratic policing, fulfilling the necessary duty of care. However, for Khayelitsha, major shortcomings for equitable policing have been highlighted. Witnesses to the Khayelitsha Commission also testified to some unpleasant encounters with the

police which breached the principles of equitable policing and good conduct (Khayelitsha Commission, 2014, p. 104, pp. 128-130). Reported incidents included bribing and corruptive behaviour, unprofessional and rude treatment, lack of transparent investigation, discriminatory practices – in particular against the LGBTI community and victims of gender-based violence –, and lack of impartiality (see Khayelitsha Commission, 2014, pp. 86-130; Transcripts, 04.02.2014, pp. 1134-1386; 28.01.2014, pp. 452-490; Bundles, 1(9), item 2, 2013; 1(1.a), item 13, item 41, 2012; 7(1), file A, item 2a, 2012).

A special case of police neglect is demonstrated in this statement where a community member went to the police to find out about the possible murder of his cousin:

*(...) [H]e [n.b. the police official] said and I quote: “The laaitie [n.b. youngster] was caught with his body halfway through the window of a house breaking in and he was ‘moered’ [n.b. murdered]...” and he further said that there were three accused people (...). I then asked when the accused would appear in court because as the deceased’s family we want a little advice and he told me that I would be wasting money as the deceased was caught in the act [of house breaking]. I informed him that it is for the court to decide, not him telling me that. We argued a bit as I felt that he was not treating us with the respect that we deserve as a bereaved grieving family. (Transcript, 24.01.2014, pp. 171-172)*

The incidence provides an example of the police’s own lack of impartiality and assessment of justice. While the person insisted on his legal right to be informed about the court case regarding an alleged vigilante killing of his family member, the police official discounted this demand, presupposing the guilt of the murdered person. In this particular case, an unjustified assumption undermined the role and legitimacy of the court, with the police official regarding the judgment by the community as proof. Here, the police became complicit in an alternative understanding of justice based on violent, direct punishment (a concept discussed in Chapter 7.1.1.). The police official further disregarded police responsibility in the process of criminal justice, while the family member clearly experienced feelings of injustice and disrespect in this situation.

Another community member gave account of her encounter with the police after a fire that broke out in their shack killed her three children and her niece. The husband of the niece confessed to have committed arson but as the docket went missing he was released and subsequently left Khayelitsha (Bundle, 1(1.a), item 47, 2012). When a relative of the

niece found out that the alleged perpetrator had fled to Johannesburg, she went to the police:

*Because we could see that nothing was happening to the case I took a picture of [the alleged perpetrator]. (...). I took it to the police station. (...) I then met that detective and I gave him this picture. I told him that I had not heard anything about this case. The detective then asked me if I knew where in Johannesburg [the alleged perpetrator] was. I told him that I didn't know exactly where but I heard that he was in Johannesburg, and the detective said to me I should try and investigate exactly where in Johannesburg he was, because Johannesburg is big. That day I left just like that, but my heart was broken, because at this time he was making me do the work of the police. (Transcript, 30.01.2014, p. 855)*

Here again, police behaviour is characterised as careless. Furthermore, the police are described as distant, making the relative feel disregarded in her pain and quest to find the person responsible for the death of her niece and bring him to justice. The testimony expresses the felt humiliation and desperation caused by the police response. The witness thus experienced police neglect in a double manner, on the one hand, because the docket got lost the case was struck off the role, and on the other, in the way the case was further followed up, including how she was treated by the police. Several testimonies to the Khayelitsha Commission indicate similar experiences of police misconduct and neglect (Ndifuna Ukwazi, 2014b, pp. 29-32, p. 45; Transcript, 28.01.2014, pp. 452-490; pp. 548-549; Bundle, 2(1.1), item 84, 2013). What the testimonies also share are feelings of neglect, deception, alienation and mistrust of the police, with those family members and victims expressing their disappointment feeling that the police were able to offer them little care.

These testimonies point to the negligence of policing conduct. The findings of the Khayelitsha Commission furthermore attest to a bias towards particular areas, such as Khayelitsha. The Khayelitsha Commission calls into question a double standard of policing. For example, one incident where community members were injured in police crossfire and which was poorly investigated by the responsible policing oversight body was identified as an example of such a bias and double standard.

*The Commission is concerned at what appears to be a failure to investigate thoroughly the circumstances that resulted in innocent bystanders being injured in circumstances where SAPS' members used their firearms in busy*

*public spaces. We cannot help but wonder whether, if these incidents had taken place near a transport hub in the city centre itself, there would have been such a lackadaisical attitude to their investigation. (Khayelitsha Commission, 2014, p. 85)*

The Khayelitsha Commission suggests that poor investigation and less attention was provided to these incidents given their location. This also suggests different patterns in policing style. Samara (2011, pp. 181-183) confirms this suggestion, she argues that the “city is governed by a distinct, if not unique, politics of security” creating different security territories which determines how one will be policed. This indicates a less rigorous attention to certain locations and populations, which is a discriminatory practice of state services as it constitutes a continuation of discriminatory practice, and contributes to deepen the structural inequalities of formerly disadvantaged communities.

Historically, the police force, as an institution responsible for controlling and violently enforcing a system of injustice, have not been a source of trust. In post-apartheid Khayelitsha, the police have failed to establish a plausible image of a trust-worthy state body, following good conduct while contributing to safety and security. The lived experiences of repeated acts of police misconduct contribute to feelings of disappointment and frustration, as well as a sense of neglect and carelessness. Consequently, trust in the police is low and people are reluctant to report incidents and seek assistance from the police (Bundle, 10(1), file 1.1., item 11, 2014; Khayelitsha Commission, 2014, pp. 403-405). The lack of trust and these lived experiences also influence local responses to security, as will be discussed further in Chapter 7.

The previous section discussed inequalities through skewed resource distribution, while this section points to inequality regarding duty of care and equal standards of policing. Visible policing and duty of care are shaped by inequality; from this perspective, the police continues to be an institution that perpetuates structural inequalities.

### 6.2.3. Outsourcing security and access to private security

Access to security is further undermined by the trend of outsourcing and privatising security. The outsourcing of security through the use of private security firms, business initiatives or vigilantes, as well as the involvement of citizens in the design and development of local security planning, is a popular, global trend, and one often actively

promoted by the state (Marquardt, 2012; Davis, D.E., 2009). As Dammert finds (2012, p. 133),

*(...) at present crime control is not regarded as the sole responsibility of the public institutions traditionally in charge, but has rather become a diffuse and fragmented task placed in the hands of various public institutions, NGOs, private companies, and the community in general.*

However, in a post-transition context with unequal resource distribution, a context suffering the socio-economic effects of structural inequality and neo-liberalism, along with the weak embrace of a democratic rule of law, this trend has strong consequences, as will be discussed further.

Government and state entities in South Africa also re-enforce limited access to public security services by stressing the responsibility of the community in issues of safety and security. The government rhetoric emphasises an approach of individual and communal responsibility to security. In 2008, the former South African President Jacob Zuma publicly called for an engagement of street committees – grassroot community structures dealing with community matters – in fighting crime (see Table 3). Former President Zuma clearly set the tone for the quality of the street committee’s involvement in safety and security, commenting that:

*I warn you not to be lenient with criminals because they do not respect lives. These street committees must not be user-friendly to criminals, but that does not mean that you must kill. Just catch the criminals and hand them over to the police. (Legalbrief Today, 2008)*

In his speech, former President Zuma enforces street committees and their role in apprehending criminals, while supporting harsh handling. The discourse on community involvement and responsibility is also echoed across different spheres of government. For example, DOCS stated that communities

*can take the ownership and the management of that process and the department comes in and support and fund initiatives (...). [W]hen we talk about the increasing of safety its basically the opportunities that are there, that communities can grab and then they can basically run those current opportunities (...). (Interview, 11B, 2014)*

Further expressing that



*[i]t is basically (...), how can you help communities and enable them to come up with their own initiatives but then we need to facilitate that process, we are helping them (...). (Interview, 11B, 2014)*

DOCS' emphasis is on the need for communities to be pro-actively involved in their own security formations. The representatives describe their duty as one of facilitation, creating the right environment and opportunities for community based responses. DOCS thus envision an active role for the community, casting their own role as one of coordinating and oversight. They conceive their stance as embedded in a legal discourse within the framework of the new provincial Community Safety Act (No. 3 of 2013), which defines police oversight and provides regulations for neighbourhood watches. The Act itself is an attempt to institutionalise neighbourhood watches and other community based security initiatives and to have better control over local security initiatives. At the same time, it is also aimed at increasing the number of neighbourhood watches registered under DOCS (Interview, 11B, 2014).

In a similar vein is the City of Cape Town's expansion of their work with neighbourhood watches. As explained by one representative:

*We now do extensive support of neighbourhood watches (...). (...) [E]ven the poorer community can roll out with radios and we got the ward councils to pay for it through the ward allocation budgets so there is no community that has an excuse not to be part of it (...). (...) [T]hey start patrolling with their neighbourhood watch uniform, with all the powers, with firearms later on if they are competent to do so, and then you have the relevant command and control and accountability, so there is less vigilantism, more formal structured community patrolling (...). (Interview, 5B, 2014)*

One employee of the City of Cape Town working on violence prevention underlined this discourse and concept with the following statement:

*For me, I believe in the saying that "crime is everybody's concern and safety is everybody's responsibility" so issues pertaining to crime and safety are to be dealt with by including everybody who has a role to play. Whatever contribution that an individual can bring will bring about a change in the status quo within that particular neighbourhood or environment or community for lack of a better word. (Transcript, 15.05.2014, p. 7604)*

Both statements see the community as being part of the response, moreover, the community is not excused from that task. By providing funding opportunities, guiding structures, and accountability measures, the state entities aim to formalise local security responses and adapt them to state logic. Wilson (2001, p. 198, p. 213) identified a similar process during the transition and early post-transition phase, with the TRC and later the new government attempting to reduce legal pluralism, local security and justice actors through centralisation. He maintains (Ibid., p. 198) that, “[c]entralizing and unifying justice institutions, and ironing out local legal systems, is a common strategy adopted by post-colonial governments in sub-Saharan Africa”.

While it seems counter-intuitive to observe a process of outsourcing alongside attempts to centralise different local security and justice initiatives, it can be understood as a trajectory of state practice to interact with local justice and security actors based on opportunism (see Wilson, 2001). The double process of outsourcing, while attempting to streamline and institutionalise local justice and security initiatives, serves on the one hand to steer away from the states responsibility of providing access to justice and security, placing responsibility upon the community. On the other, as it tries to centralise initiatives through legal frameworks, with limited financial support, the state attempts to make use of local initiatives to support state policing, while being able to exert certain levels of control over these initiatives.

The next chapter will discuss how the rhetoric of outsourcing in light of state absence and lack of civic trust, contributes to problematic local responses. It remains an open question if a process of formalising local security initiatives will succeed, while the root causes of problematic local responses remain untouched. This will be discussed further in Chapter 7.

At a local level, the police also support the trend for outsourcing, although in a different manner. By referring community members to local security initiatives for assistance in certain matters the police have found support for their overburdened system, which has enabled them to lower the number of recorded crimes, with less crime getting into the system (see Buur, 2010). According to testimonies, the police share some of the burden of work by making use of local structures, such as neighbourhood watches, street committees, CPFs and the taxi association (Transcripts, 12.02.2014, pp. 2679-2680; 07.02.2014, pp. 2062-2074; 31.01.2014, pp. 1018-1020; pp. 1022-1030). According to community members, the police refer to the taxi association for assistance in matters such

as theft, as well as in solutions for, or the mediation of, conflict, for example (Interview, 17B, 2014; Transcripts, 07.02.2014, pp. 2062-2074; 28.01.2014, pp. 517-520). This also includes support for the police that may occur through the provision of information, serving as informants, collaboration through neighbourhood watch patrols, as well as active assistance in the apprehension of criminals (Transcript, 12.02.2014, pp. 2679-2680).

Through the intersections taking place between police and local actors, for example, the collaboration between neighbourhood watches and the police or the police's referral to the street committees or taxi association, the police partly interact, support and strengthen these existing actors. Hence, the police partly contribute to their legitimacy. Freeman and McDonald (2015, p. 34) draw a stronger relationship here, as they find that the police depend on the willingness of some of these local actors and their collaboration in order to be able to do their work, and gain access to information and the community. Being recognised by police officials who refer to them for help, and by parts of the community who consider them effective, powerful and trustworthy, these actors are equipped with a sense of authority and legitimacy. This allows them to operate – if not for all areas of Khayelitsha, certainly for some. Consequently, by referring to existing security initiatives, the police actively strengthen, not just their practices, but also their legitimacy and perceived responsibility in terms of security and justice.

The rhetoric and policy plans to outsource security responsibility to the community corresponds with the ever-increasing trend of private security in the more affluent areas of Cape Town. Residents in affluent areas are able to hide themselves away, provoked by a fear of crime and violence. This divide between private and public policing possibilities is drawn along the lines of previous apartheid segregation (Lemanski, 2004). In Lemanski's (Ibid., p. 102) view "citizen responses to insecurity in Cape Town are recreating a city of divisions that exhibits remarkable similarities to the apartheid city". In the more affluent areas, the police force is complemented by an "army" of private security personnel, often three times as large as the public sector (Goodenough, 2007). Security and crime prevention thus becomes a commodity rather than a right or entitlement in such a scenario (Gready, 2011; Samara, 2011; also see Chapter 3.3.). The rhetoric and initiatives for state outsourcing thus tacitly contribute to the commodification of security through an increasing divide between access to private security services, which are paid for, and private security initiatives such as street committees or neighbourhood

watches. As policing resources are unequally distributed, areas like Khayelitsha carry the burden of crime without access to the same ‘amount’ of public or private policing.

The difference between mainly white affluent areas and black neighbourhoods has not gone unnoticed. In light of state rhetoric and the practice of outsourcing security and private security services, community members in Khayelitsha assume responsibility for security provision. One Khayelitsha resident remarked:

*Here is a need of us giving [our] people something like if you go to Somerset [n.b. wealthier suburb of Cape Town] maybe you go somewhere, within five minutes if those people that don't know you - you will see there are the cars there, it is the security cars. If they don't know you they will stop you (...), but in our society, there is nothing like that, you see, so if also (...) we need to take whatever is happening there to implement in our society. You will see the crime it will really go down. Also, our people as well they must take this initiative (...). We need to be safe as well. I am not blaming them. I am not blaming them, but us as African people we also need to do that as well for us to be safe in our township. (Transcript, 23.01.2014, p. 131)*

It also provides a strong narrative on the normality of inequality that the system of private security generates; that is, between those who have access to security and those who do not. The witness considers local solutions for security as a response – one that mirrors, in an altered manner, the private security of more affluent areas. The conclusion that is drawn from this perceived inequality, is not about demanding rights for equal access to security, but a stronger reliance on communities’ ability to find their own solutions. State absence is not mentioned here, rather, it is the importance of finding proper, local ways of securing safety and assuming responsibility over security that is stressed.

In the poorer areas, people are left to their own devices with little private commercial security available and a police force that is under-equipped, under-resourced and understaffed. Private initiatives and local actors fill the void in the absence of the state or commercial responses, encouraged by policies and the rhetoric of outsourcing and ‘everyone’s responsibility’. However, in light of the absence of state provisions for accessing security and justice, along with the dire conditions that lead to exposure to violence and crime, the call for community responsibility and outsourcing of services can be problematic. Indeed, Super (2016, p. 450) highlights that “[a] state’s encouraging of [its] citizens to take responsibility for their own safety, alongside a punitive state

discourse on crime and criminality, creates the space for illegal vigilante style actions to emerge in the shadow of legal crime prevention initiatives”. The next chapter will elaborate on this point further, showing that local, vigilante responses are also a result of local needs, the understanding of justice and security based on experiences with state services in this regard, and the trend for outsourcing.

### 6.3. Access to legal justice

In addition to police failure, and a lack of access to security for people living with less economic means, the South African justice system is also characterised by low detection and conviction rates. Systemic and random failures in procedures along the process chain result in limited access to justice. The failure to provide information on legal processes and outcomes further contributes to the weaknesses around access to justice. This section will discuss how these failures and shortcomings inhibit access to legal justice.

The Khayelitsha Commission revealed numerous shortcomings and failures, both of criminal investigation and the criminal justice processes related to issues such as under-resourcing and SAPS’ staff shortages, as discussed in the previous section. The lack of staff impacts on the amount of work, quality of crime investigation, and the police’s capacity to make a meaningful contribution to the criminal justice process. As highlighted in Chapter 4.3. detectives often carry three times as many dockets as the standard manageable amount. One police brigadier from a police station in Khayelitsha remarked sarcastically, “[y]ou know in the movies (...) you see a team ascending to a crime scene, attending to a docket, but here you have a team of dockets ascending on a detective” (Transcript, 17.02.2014, p. 3506).

The overload and backlog of cases as a result of under-resourcing, understaffing and lack of training has severe consequences for the crime investigation process. The Khayelitsha Commission Report (2014, p. 363) describes an expert to the Commission calling this a “‘fire-fighting’ approach (...) by the detective branch” where only new cases are assisted and investigated. This also contributes to an enormous backlog in processing dockets, as pointed out in Chapter 4.3.

Reported shortcomings to the Khayelitsha Commission included, among others, that no proper crime investigation took place,<sup>69</sup> that statements were not properly taken or statements of witnesses were missing, that case dockets were lost or were not handed over to the court in time, that witnesses were not informed about their court hearing dates; that arrest warrants were not circulated or enforced (Khayelitsha Commission, 2014, pp. 353-380). Several instances were reported where the police never arrived or arrived with substantial delay to a crime scene or conflict situation (Khayelitsha Commission, 2014, p. 360; Transcripts, 28.01.2014, pp. 539-544, p. 515; 27.01.2018, p. 319; 23.01.2014, p. 116). In addition, the police has limited capacities to take on and investigate more cases. Consequently, a large amount of cases are withdrawn from court and struck off the roll (Khayelitsha Commission, 2014, xxiii, xxiv, p. 364, p. 370, p. 382).<sup>70</sup> An internal police report on this matter acknowledged that this “borders on ‘defeating the ends of justice’” (Khayelitsha Commission, 2014, p. 363). In consequence, the inequalities in terms of unequal resource distribution also affect and impede the access to justice.

The following statement by the sister of a murdered man is a representative example of the failures of police work in the criminal justice process:

*[Witness]: I called 10111 [n.b. SAPS emergency hotline]. The police did not arrive. (...). When the police came / arrived, they stood at a distance. They did not come where we were. They opened the window of the van. (...) [T]hey stopped their car very far from where we were. (...). So they yelled, asking what had happened and we asked them: “Why don’t you come and see for yourselves what has happened. Why are you asking us where you are standing?” They started shouting at us telling us that they will just go. They don’t care about that, because we should go to them. As the community, we were still standing there. Eventually they came out of the car and came to us. There were two of them. When they came to us they asked what was happening. We told them that there was a dead body there*

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<sup>69</sup> Examples of improper investigation included: lack of staff or material to conduct crime investigation in accordance with the regulations; lack to call crime scene experts to crime scene; failures to take fingerprints; loss of evidence; failures to send bio samples in time to laboratories, etc. (Khayelitsha Commission, 2014, pp. 362-381).

<sup>70</sup> According to the Khayelitsha Commission Report (2014, pp. 162-163) “between 16% and 36% of serious cases are withdrawn or struck off the roll simply because of incomplete police investigation or the repeated failure to bring dockets to court – this only occurring after multiple postponements”.

*behind the bus stop. After that they went to him and they looked at him and saw that he was stabbed.*

*[Legal representative]: What were they wearing, were they wearing gloves?*

*[Witness]: They were not wearing gloves. They asked who stabbed him. We told them we did not know. (Transcript, 28.01.2014, pp. 539-542)*

The witness's statement continued, stating how the police were not taking statements from community members nor doing any crime investigation at the scene of crime. The witness never heard back from the police and to her knowledge, no one was arrested for the murder (Transcript, 28.02.2014, p. 542).

This experience reflects the multiple failures of the police, along with the multiple humiliations the witness had to endure regarding the loss of her brother while dealing with the police. First, in the way she and her family were unable to get hold of the police, and then in the use of private connections to a higher police official in order to obtain a police presence at the crime scene. Second, in how the police conducted themselves arriving at the crime scene, including abusing their power by threatening to leave again. Third, in the way the police failed to conduct a proper crime investigation that could have contributed to solving the case. And fourth, through the lack of communication regarding the proceedings of the case. The testimony is effectively a statement of injustices encountered while interacting with the police and the criminal justice system on issues of violence and crime. It is yet another testimony of negligence in the quest for legal justice that was presented at the Khayelitsha Commission.

In addition to police failures, the criminal justice system is also overburdened by the sheer amount of cases. This issue contributes to a backlog in processing while impeding fast and suitable access to justice at the court level. The sheer number of criminal justice cases contribute to a slow level of processing. In addition, the Khayelitsha Commission showed that conviction rates have been as low as 0.5% (Khayelitsha Commission, 2014, pp. 233-234).<sup>71</sup> The systematic skewed resource distribution accompanied by staff shortages

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<sup>71</sup> During 2011, in the Harare police precinct there were convictions in 3.38% of cases. The cases that go to court constitute only a small percentage of the cases that were reported in each quarter (30.44% and 23.44% in the first quarter of 2010 and 2011 respectively). In consequence, considering the percentage of cases reported going to court and receiving a conviction, the conviction for all cases reported calculates to only 0.5% (Khayelitsha Commission, 2014, pp. 233-234).

severely impacts the abilities of staff to provide access to legal justice due to lack of proper investigation and process of information in Khayelitsha.

The lack of equal access to legal information and legal services constitutes a further constraint in the context of access to legal justice for people living in Khayelitsha. Victims and families of victims are often not informed about the court decisions related to their cases. Several witnesses confirmed that they were not informed about their cases, including the families related to the initial cases that led to the complaint for, and establishment of, the Khayelitsha Commission (Transcripts, 10.02.2014, pp. 2362-2363; 28.01.2014, p. 499, p. 542; 24.01.2014, pp. 176-177). The Khayelitsha Commission (2014, p. 371) was able to attest that 44% out of 200 individual complaints received by the Commission suffered from a lack of information. Referencing this lack of information, the Khayelitsha Commission Report (Ibid., p. 85) states: “It is almost as if SAPS members see no need to inform bereaved family members of the progress of the criminal investigation. Such an attitude is unacceptable”.

These Khayelitsha Commission findings also indicate shortcomings in terms of addressing victims’ need to be informed about crucial steps in the criminal justice process. The lack of access to information also has implications beyond the victim’s rights and needs – as it shapes perceptions of legal justice. In addition, lack of legal literacy in general is one of the identified impediments for people living in poverty in their ability to access justice (United Nations General Assembly, 2012). As will be outlined in continuation, both lack of legal literacy and lack of information limit the ability to access legal justice, therefore also constituting an impediment for the full recognition of legal justice.

Given the very low conviction rates, many alleged criminals and offenders return to the community without being convicted, often due to receiving bail or because the case was struck-off. Victims, families and community members often have no information about the sentencing of the cases, nor do they have the necessary information through which the alleged perpetrator was judged and released – whether bail, parole, acquittal or withdrawal. In addition, there is also a lack of knowledge and legal literacy about the legal basis and justification for each of these decisions, which adds to further confusion and uncertainty (Interview, 14B, 2014).

Therefore, the release of alleged perpetrators often comes as a surprise to victims and community alike. This has even led to instances where witnesses or victims were



threatened by the alleged perpetrators after their release (Bundle, 1(9), item 2, 2014; Khayelitsha Commission, 2014, p. 102; Transcript, 07.02.2014, pp. 2061-2077). Given the lack of knowledge and information on legal decisions, the release of an alleged perpetrator is often considered as a sign of failure by the police or the courts in carrying out sentencing and dispensing the respective punishment. The conclusion that is drawn from the release of alleged perpetrators in some cases is that the police or courts are not supporting the course of justice.

In this context, one expert to the Khayelitsha Commission found that the representative function of the police for the state can be discredited through uncertainties about legal decisions:

*[A] lot of people that I spoke to said, you know the problem with the police is that when they arrest someone and then they send them to court they just come back again a week later, and some of the police that I spoke to said people don't understand how the criminal justice system works, that we can arrest and even if we do get them to court in 48 hours sometimes they are released on bail, and so it seems like a lot of people are angry with bail mechanism right, and I think that it gets read as a problem of policing. (Transcript, 11.02.2014, p. 2622)*

With another academic expert adding:

*There have been many pieces of research over the years that have shown that people very often don't know the difference between the mandate of the police and the mandate of the prosecution services or the Department of Justice. And this was very much reflected in people feeling that the role of the police was to provide access to speedy and equitable justice in the model. (Transcript, 15.05.2014, pp. 7739-7740)*

The uneven application of the law; lack of access to the criminal justice system; lack of knowledge about the system, procedures and outcomes; and lack of access to information, thus shapes an understanding of law and criminal justice that sculpts it as an incomprehensible process, a black box with uncertain outcomes. One CPF member elaborated on the impact of lack of information in the community:

*If someone commits that crime and then we see them back in our community, now our community members don't understand the difference between the police and the courts, if they are told that someone appeared in court and got bail they assume that it was the police that gave them bail,*

*so to them it was the police that released the person and they saw the person walking down the street. (Transcript, 12.02.2014, p. 2813)*

The police authority and their role in criminal justice is not fully known nor recognised. For many in the community, the police are not the most central or important actor when it comes to achieving justice and security in Khayelitsha. This creates a situation where there is little reliance on the police. In consequence, the police are challenged and disregarded. Freeman and McDonald (2015, p. 27, emphasis in the original) argue that the particular role of the police during apartheid, and particularly in areas like Khayelitsha, has led to a situation where post-apartheid policing “has essentially had to build on a legitimacy deficit. The result has been that police *legitimacy* has come to be linked to police *effectiveness*”.

In light of these uncertainties, local, instant, and tangible solutions are often preferred over abstract, legal, arbitrary and distant solutions, with one resident and social movement member stating:

*If the law could deal harshly with someone who has committed a crime because the problem now is that the person goes in today and tomorrow that person is out. That makes crime continue because that person is now out of prison. The person may be arrested by the police but in court the person will be out. If [we] as a community can make sure that we know and we are aware that Khayelitsha belongs to us, this is our society. (Transcript, 23.01.2014, p. 128)*

This statement talks about dealing harshly with perpetrators. It indicates that dealing harshly or imposing a real punishment will require the dispensing of a prison sentence. It also indicates that the release of an alleged perpetrator is often considered a mistake or failure, sometimes regardless of the legal basis on which this release happens. A release leads to the conclusion that an alleged perpetrator went unpunished. Bail, parole or being struck off as being part of correct legal decisions are not fully recognised. Procedurally correct legal decisions are thus not necessarily considered as a means for acquiring justice. This is problematic as it questions the very functioning and basis of legal justice.

One interviewee of a CSO involved in crime prevention considered that the drivers of vigilantism could be identified in this failure of information and legal practice:

*(...) I think a lot of vigilantism, we would argue, is based on the fact that there is this gap of communication and there doesn't seem to be way to*

*bridging that gap so people feel no point in taking part in sort of normal law enforcement practices because I will victimise myself or may to look a fool and if I do come across something that is serious I won't get support from the police. (...). (Interview, 18B, 2014)*

Legal justice lacks continuity, coherence and equality in Khayelitsha. This has three implications. First, limited access to legal justice and legal information inhibits people's right of access to justice and limiting the rights of victims of crime. Negligence and systemic inequality deny people their rightful access to justice. This impediment in itself constitutes another example of structural inequality.

Second, there is a trajectory of continued lack of access to legal justice. As discussed in Chapter 3, during the post-transition years, the criminal justice system failed to develop these credentials. The experiences that take place within such a system shape local perceptions of the criminal justice system in general and the police in particular. In Khayelitsha, people lack ordinary experience and encounters with just, fair and proportional legal decisions that sensibly allow them to experience, understand and value the purposes and outcomes of legal sentencing; even when those decisions do not lead to punishment. Therefore, the democratic rule of law lacks a track record of credibility and reliability, as well as lacking a practice that works in the everyday lives of and for the people of Khayelitsha. This is problematic as it limits the reach of the rule of law, as already discussed in Chapter 3 (also see Caldeira and Holston, 1999).

Third, this creates a situation where the community relies on other sources of access to security and justice (see Super, 2016). These approaches are based on local needs in the absence of coherent, reliable but also compensatory state justice. In the next chapter, these needs and approaches will be outlined.

#### 6.4. The consequences of normalised structural inequalities in justice and security provisions

This chapter discusses how systemic and structural inequalities in terms of infrastructure and policing resources contribute to inequalities in access to security and justice; it also provides examples of how these inequalities play out in people's encounters with the police or the courts, and how these feature as elements of structural inequality.

Due to past and present failures, people currently living in Khayelitsha are more likely to be exposed to violence and crime; are much more vulnerable to the effects of violence and crime; and are less likely to receive the services of crime prevention, protection and assistance in case of victimisation. As has been discussed, this high degree of inequality, insecurity and injustice is an ongoing source of pain and humiliation for these people.

The collective and individual experiences of histories of injustice, uneven transitional justice measures and the present situations of inequality sit in the background of justice and security issues in Khayelitsha (Chapter 3). Unaddressed structural inequality impacts on the access to security, contributing to an unequal distribution of security and justice provision across the population. At the same time, the current failure to steer policies and practice towards providing equitable services and access to security provisions also contribute to further inequalities. Skewing resource distribution towards more affluent areas constitutes a systematic bias against black communities. This is as much a result of the physical and ideological discriminatory apartheid construct that designed and built these communities and the lack of policing in the past, as it is a failure of the current government to adjust figures and services in a manner that reflects the equality laid out in the Constitution.

The post-apartheid South African government's neo-liberal economic development project has exacerbated these tendencies by constructing a double discourse between outsourcing and commodifying security, shifting the responsibility to the community while at the same time trying to control and manage local initiatives for its own purposes. The state is also juggling a double approach, continuing a trajectory of using security and justice initiatives for its own devices. State outsourcing creates a situation, where on the one hand, the state partly attempts to accommodate local security initiatives by embedding them in a legal framework, while on the other, it reinforces the idea of communities left to their own devices, as it gives the state the opportunity to withdraw further from its legal responsibility to provide equal access to security and justice. Then, security is not understood as an entitlement and a public good by parts of the communities affected, but rather, a logic of private responsibility and commodification is re-enforced (Gready, 2011, p. 141).

Given the lack of access to security and justice provided by the state, this strengthens local responses and legitimises initiatives that are not necessarily in line with the rule of law. Because of the current limitations in accessing justice and security, demands focus

on the more tangible solutions that are embedded in local interpretations of justice and security rather than relying on legal justice and public security services – as will be discussed in the next chapter.

Unequal access to security and the arbitrary provision of security and justice is a normalised experience and many people in Khayelitsha do not expect much else. Mixed messages regarding it being everyone's responsibility to fight crime, lack of personal experience in making use of the law, and a weak implementation of public policing and criminal justice leaves uncertainty about what the state is actually able to achieve. In Khayelitsha, in accessing justice, as well as security, the population lacks practice and experience and there is a lack of institutional consolidation. In addition, among some members of the community, the overall experience of continued structural inequality, accompanied by an incomprehensible logic of criminal justice processes, has contributed to the belief that state law and law enforcement will not necessarily generate the desired just outcome. Consequently, the institutionalisation and embedding of an ideal of democratic rule of law is weak in parts of Khayelitsha.

These findings demonstrate that there is a case for further transformation. Recalling the discussion on South Africa's unfinished transition in Chapter 3, this chapter attests to a continuity of open-endedness that transitional justice left behind. While political change took place, the neglect and lack of access to security and justice also continued to exist – though in different forms and under a democratic government and police service – therefore marking a continuation in the understanding of state justice as mainly absent, distant, careless and arbitrary. Criminal justice institutions albeit reform continue to be sources of structural inequality as they produce and re-produce these inequalities through a lack of access to justice and security, thus magnifying the impact of violence and crime. Therewith, focussing on structural inequality in relation to violence and crime is important because it allows recognition of how these inequalities are present in the occurrence and impact of violence and crime and the consequent access to justice and security. This is an important first step for avoiding a perpetuation of inequalities through “analytic omission” (Farmer et al., 2006, p. 1690). This happens when the analysis of inequalities is excluded from analytical exercises (Ibid.). This chapter has pointed to the limitations and black spots of democratic transition. Transformative justice then becomes a way to understand the limits of both the democratic project and transitional justice alike, by pointing to the stark inequalities that continue to exist.

The chapter additionally confirms the impact of socio-economic drivers on violence and crime, as discussed in Chapter 3.3. In addition, the chapter also points to the negative impact of structural inequalities on people's ability to access security and justice; a relationship that has not been addressed in previous considerations of expanding transitional justice.

The findings therefore support the call of transformative justice to address structural inequalities – in particular, through the redistribution of resources. Calls for a tangible horizon of redistribution, and not just of property, but state services, in particular in the field of security provision, are well placed (see Hornberger, 2013). This research supports this call, and argues that transformative justice approaches should hence not only focus on socio-economic redistribution in a narrow sense, but also include assessments of institutional redistribution of services; to include the means of protection, justice and security, and also issues such as health or education. In addition, there is a need to revisit and continue to reform the functioning of the criminal justice system. In summary, to tackle the lack of access to justice and security, Khayelitsha calls for a transformative justice agenda that is able to address these identified structural inequalities. Both the complainant organisations, in their collective effort to shed light on these shortcomings, and the Khayelitsha Commission officially reviewing the situation and giving voice to the affected, contributed to place these issues within a transformative justice agenda. In particular, by allowing for an understanding of the connections between structural inequality, socio-economic challenges, township location, violence and crime, and lack of access to justice.

# 7. LOCAL APPROACHES TO JUSTICE AND SECURITY

*I think residents of Khayelitsha want exactly the same as residents of middleclass neighbourhoods, in Khayelitsha they want to be safe and they want to live a dignified life and the difference is that the capacity to do that in a township life in Khayelitsha is greatly diminished and so people want to find the most efficient way to try and produce the feeling of safety and the experience of safety in their lives and this is one of the complexities of criminal justice in Khayelitsha.*

Transcript, 11.02.2014, pp. 2634-2635

This chapter will discuss local demands and needs for justice and security, as well as the role of local non-state actors in implementing these. It will highlight how punishment, compensation, and restitution are important local elements of justice and security, while arguing that punishment provides a visible and tangible consequence for wrongdoing. Further, punishment enables victims of violence and crime to regain control, power and dignity in a general situation of powerlessness in accessing local forms of security and justice. It will further discuss how compensation and restitution play an important role for justice in a setting of socio-economic limitations, and in the absence of legal redress. It is shown that these needs contribute to problematic responses. This chapter therefore sheds light on the complex and sometimes problematic nature of local needs and local approaches.

It is maintained that while these are certainly not the only underlying concepts and needs around security and justice, they are central to parts of the community in Khayelitsha, as well as pivotal to explaining some of the local actors' relevance and their approaches. In addition, they point to the importance of underlying structural drivers – for example, in the way economic and social hardships make the restitution of stolen goods or compensation for harm, crucial needs.

The chapter further provides an overview of local non-state actors and their role in providing security and justice. These actors partly fill the void of state services, but further, offer a response to community demands for tangible, immediate results. The overview of local security and justice actors demonstrates their important role, as well as diversity. Some of the actors also make use of violence, which is partly supported within Khayelitsha. In addition, parts of the community imbue these local actors with legitimacy, trust and authority. In contrast, the complainants' organisations and their formulated social justice claims only partly engage with immediate local needs.

The first section discusses the community need for punishment, compensation and restitution in relation to security and justice. The second introduces the different local actors and their respective roles in terms of responding to these demands. The section also elaborates on how these actors rely on trust, close relationships and legitimacy. The third section introduces CSO positions on vigilante violence and punishment. The last section provides a conclusion that also analyses the consequences of these findings for transformative justice.

## 7.1. Community demands for justice and security

This section focuses on the narratives and perceptions of the needs and demands around justice and security. It also aims to analyse how such demands and needs are influential for a variety of local actors and their approaches to security and justice. Two elements have been identified as playing a central role in community needs and demands for security and justice: punishment and compensation/restitution.

### 7.1.1. Punishment

This section finds that different forms of, and demands for, punishment are considered essential to the justice system in Khayelitsha. On the one hand, it is necessary for the victims of violence to 'see justice done' that is immediate and tangible and to regain some



dignity and control; on the other, it remains a means of crime prevention and security implementation, as will be discussed forthwith.

Punishment may involve violent and non-violent, legal and illegal measures. Localised punishment implementation ranges from violent corporal punishment to coercive punishment, like forceful removal, as well as non-violent forms such as the imposition of fines or shaming (Super, 2015). Corporal punishment includes less serious measures, such as being forced to do push ups, being given a slap or being locked up and interrogated, as well as more serious actions, such as the beating of suspected criminals with sjamboks (leather whips) and even murder, as well as very violent forms of lynching such as the practice of necklacing<sup>72</sup> (Super, 2015; 2014; Khayelitsha Commission, 2014, pp. 386-386; Buur, 2010). Essential to its implementation is the ability to carry out such acts swiftly, tangibly and efficiently.

Punishment is a red thread that weaves through many ideas and approaches around justice and security in Khayelitsha. Its role is thus very central. Different types of punishment find support in various parts of the community. Throughout the Khayelitsha Commission, numerous voices, opinions, and stories about punishment were shared (Interviews, 13B, 2014; 10C, 2013; Khayelitsha Commission, 2014, pp. 385-388; Transcripts, 21.02.2014, p. 4312; 11.02.2014, p. 2599 et. seq.; 07.02.2014, pp. 2054-2059; 04.02.2014, p. 1354; 31.01.2014, p. 1055; 23.01.2014, p. 128). The different demands for punishment all require attention, as they shed light on the area's underlying needs relating to local security, justice actors and practices.

One important meaning of punishment is the feeling and need for justice. The statement of a female resident quoted by a research team at the Khayelitsha Commission gives some insight into her position towards justice and punishment:

*We are at a point where we are very angry and fed up with the crime rate. The lack of action from the police and the courts means the only solution is to take justice into our own hands. Sometimes the community does not mean justice to result in death for us it is really about teaching the criminal a lesson. (Transcript, 21.02.2014, p. 4312)*

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<sup>72</sup> “Necklacing is a widely renowned form of extra-legal punishment, whereby a tyre filled with petrol (“the necklace”) is put around the victim’s neck and set alight” (Ball, 1994, para. 1).

Punishment and “teaching the criminal a lesson” are considered acts of justice here. Justice that, as the interviewee claims, the police and the courts are failing to provide. The testimony relativizes the use of violence by pointing to its intention, which is about “teaching a lesson”. The main aim is thus to deliver punishment and deter the alleged criminal from future crime rather than to result in murder. However, the statement suggests that at times murder is the result of punishment

Anger also plays a role in the example given by an alleged perpetrator accused of a vigilante attack - resulting in the death of an alleged criminal who ostensibly robbed a girl. He explains why they punished the alleged criminal by placing him in the boot of a car:

*[Evidence leader]: Why was he put in the car boot?*

*[Witness]: It was done out of anger because the father of the girl that was robbed was getting very angry because this boy was playing the fool with him. (...). At that time everyone was very angry because he had made all of us look like fools and if we took him to the police station we weren't going to get back what we wanted. That is why we put him in the boot. (Transcript, 31.01.2014, pp. 1066-1069)*

Their quest was to find out the whereabouts of some stolen goods, but the alleged criminal would not show them the right place. Out of anger he was consequently placed in the boot of a car, which was a punishment for not being collaborative. The perpetrator considered deprivation of liberty a normal act in the process of recovering stolen goods. The deprivation of liberty assisted as a means of immediate punishment but also as a threat and way to gain access to the truth. Using punishment as a means of inquiry will be discussed further in the next subsection.

The secretary general of one of the complainant organisations and a resident of Khayelitsha, describes how, in a similar way

*in many communities where vigilante attacks have happened it's not about people saying, making a decision that there is no other plan but to kill you, they are angry and they thought there is no other option but to take the law into their own hands because nothing is going to happen. So I don't think people sit in a meeting and say we're going to do this because we feel it's for fun or because criminals plan it I think it's genuinely people with genuine concerns, they're angry and frustrated. (Transcript, 31.01.2014, pp. 910-911)*

Both statements above indicate the way anger can accumulate, particularly in the face of the lack of an official response to violence and crime or assistance by the police. A staff member of one of the complainants' organisations explained "people are really tired by being terrorized by criminals" (Interview, 10C, 2013). Therefore, punishment can also be identified as a means by which to vent anger in a situation of helplessness. It also becomes a way of achieving some sort of justice in the absence of state justice.

In another instance, one community member told the Khayelitsha Commission that if no legal punishment was enacted for the murder of her son, the family would need to take care of the vendetta themselves:

*I would like to tell this Commission that none of my family members are okay. My family is still saying that if the law cannot take its course then they want to avenge my son's death. When I have told them that they must [calm] down because I have heard of another place which is called the [Khayelitsha] Commission and for now I am still in that Commission and I am just waiting to hear what is going to happen. (Transcript, 30.01.2014, p. 888)*

This testimony also considers punishment as justice occurring through retribution or vengeance, with the witness indicating that some type of punishment needs to be applied to retaliate for the murder of her son. The move to wait for the Khayelitsha Commission to take place shows that formal and legal procedures are also accepted if they bring about punishment, but that the murder cannot go unpunished. Legal and non-legal, as well as violent and non-violent measures, are considered here.

In a similar vein, one social movement member of one of the complainant organisations attested:

*I want to agree with both those statements you made, that is, the police could be visible in our communities, and if the community members could trust the police I doubt if there would be any more killings of people, so that if you open a case and you complain against someone and the police apprehend that person and that person is sentenced I don't think we would see more people being killed in Khayelitsha. The reason people get killed in Khayelitsha is number one, the police [is] not visible. (...). The way people are so fed up because of the things that are happening and the way they are happening, because of the way people are being raped in our communities, people being murdered daily, I do agree that people would*

*say that the death penalty is correct. However, if the law could take its course where someone has raped and they get sentenced then [we], as the community members, would not agree with the death penalty. (Transcript, 07.02.2014, pp. 2054-2059)*

The testimony indicates that violent punishment is particularly acceptable because perpetrators often go unpunished and do not receive a legal sentence. This social movement member further suggests that legal sentencing if enforced, might be accepted as punishment. This statement also relates to the discussion in Chapter 6 on low levels of convictions, and high levels of impunity, alongside weak legal knowledge. The lack of knowledge and information about legal decisions and legal decisions such as parole or cases being struck off, often leads to the conclusion that alleged perpetrators go unpunished, as discussed in the previous chapter. A former member of a CPF explains it thus

*[the] community comes to a conclusion that if we don't deal with suspect A no one will deal because we've tried, we've taken him to the police, he went to court, he [is] still not arrested, so the best way is to do the injustice to suspect A. (Transcript, 04.02.2014, p. 1354)*

Here again justice is related to punishment. Both statements indicate that justice is done when punishment is received – using the legal system this requires a legal sentence that results in incarceration as punishment. While not all testimonies saw the necessity of violence in order to achieve justice through punishment, they shared the notion of immediate and tangible results and consequences for wrongdoing and wrongdoers. The failure to achieve some level of punishment thus leaves a lingering sense of injustice, for example, when the alleged perpetrator goes ‘unpunished’ through the receiving of parole (Transcripts, 12.02.2014, pp. 2692-2693; 07.02.2014, pp. 2058-2059; 31.01.2014, pp. 1032-1033; 23.01.2014, p. 128).

Punishment is an important source of justice, but in a setting of marginalisation it is also an important source of control and dignity, with one academic expert to the Khayelitsha Commission asserting:

*[T]here are forces and factors that drive them to commit the acts, and one of which is people are – they feel a sense of losing their lives, or their dignity, because when they are facing thieves or criminals and so on a daily basis, it's almost as if you're taking something that is important to me. You are diminishing my sense of worth. (Transcript, 15.05.2014, p. 7818)*

Justice through acts of punishment provide an opportunity to equalise wrongdoings and wrongdoers through immediate and tangible consequences. The use of coercion is a means of power in this setting. Through this, it re-establishes control for those harmed, and changes the relationship between victim and perpetrator. It also allows the restoration of dignity, as will be discussed in the next section. This process of regaining control is especially important in the absence of reliable and coherent security and justice provision by the state. In this regard, a representative from a NGO notes:

*So, there is that feeling there is nothing we can do so we have to take law into our own hands. (...). There is (...) very few legitimate ways that the community can take ownership in their communities. (...). So, communities are frustrated and they are angry and they feel that the only way they can solve this is by taking the law into their own hands. Because there have been very few legitimate outlets. (Interview, 10B, 2013)*

This then creates the situation whereby, in the view of parts of the community, justice cannot be achieved through using legal avenues. For example, when a legal decision results in parole, acquittal or is struck off, with no tangible punishment applied.

Wilson (2001) considers demands for punishment as a pattern. In his research on the TRC Wilson (2001, p. 213 et seq.) finds a “language of vengeance prevalent among urban Africans” which is based on attempts to establish a certain social order, traditional values, and address the burden of crime. Because he (Ibid.) considers retribution as essential to urban communities like Khayelitsha, he argues that there is a need to emphasise appropriate and proportional punishment, fair procedures and due process, in recognition and response to this prevalence.

This research finds that notions of retribution still prevail. In the continued absence of proportional, fair and swift punishment through criminal justice, these demands and needs may result in a problematic relation with criminal justice and the rule of law more broadly, as legal decisions are simply not fully recognised. However, it remains unanswered if better policing standards and higher conviction rates would lower the demands for punishment, particularly as this research finds that for some parts of the community, an acceptable legal justice outcome would require incarceration as punishment in all cases and not only a fair, just and swift legal process.

In addition to justice, punishment is considered an ordering principle for reducing violence and crime as well as a necessary means by which to enhance security. A woman

explained how a group decision was made regarding the forceful removal of her nephew, an alleged criminal:

*[Evidence leader]: So they were basically complaining that at this house where [the nephew] lived, [that] a lot of trouble came from there, correct?*

*[Witness]: Yes that is correct. That is what they said.*

*[Evidence leader]: Yes, and so they suggested to you as the family that you must remove [the nephew] from the house, correct?*

*[Witness]: They said themselves that they would pack his clothes and they would chase him out of that area because they don't want him there. (...) they also said that once they have packed all his belongings they will call us so that we can see when they chase him out of the area. (Transcript, 24.01.2014, pp. 146-147)*

The testimony demonstrates how the community in the service of both justice and security imposes punishment.<sup>73</sup> Coercive punishment, like the forceful removal of alleged criminals from the area, for example, is implemented to prevent the alleged criminal from further misdoings. In addition, it serves as a deterrent to others. Punishment follows a logic of crime prevention and deterrence, and in consequence, is both a pragmatic means, and an important source of security to community members. The implementation of punishment merges with the implementation of security in this instance.

Examples of this merging of security and justice also include neighbourhood watches that patrol an area where they detain, interrogate and punish suspects. To a certain extent, it could be argued that they execute the functions of police, prosecutor, judge and penal institution (Transcripts, 12.02.2014, pp. 2736-2738; 07.02.2014, pp. 2025-2026; 04.02.2014, pp. 1339-1340). Justice and security become one in this scenario and punishment an element that contributes to both. When these concepts merge, a line between them cannot easily be drawn. As an outcome of these merging, immediate and observable results are achieved, both serving the purpose of swift justice and security (also see Buur, 2003).

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<sup>73</sup> While the community decided to remove the alleged suspect first, the next day he was found burnt to death, which is believed to have been an act of vigilante violence (Transcript, 24.01.2014, pp. 140-164).

Finally, the Khayelitsha Commission exposes that the way punishment is applied is manifold. In this regard, an expert on vigilantism presenting at the Khayelitsha Commission explains:

*So, there are many forms of punishment that play out in multiple spaces and on many levels so the line between what is legitimate and what is illegitimate becomes very blurred and indistinct and easy to cross. (...). It's not blurred from a legal perspective but the problem is that the law, the way the law operates in practice is completely different to what it is in the constitutional framework and it's this gap (...). (Transcript, 16.05.2014, p. 7890)*

The expert carried on giving examples of different forms of punishment that emerged from the Khayelitsha Commission hearings and her own research on vigilante action, including push-ups, corporal punishment, coercion, and verbal threats (Transcript, 16.05.2014, pp. 7889-7896). The expert further referred to this variety as a continuum of vigilante action, where there is no prescription for how punishment is applied or which type of punishment is considered adequate (Transcript, 16.05.2014, p. 7889).

In consequence, the demands for punishment as an element of justice fulfil different functions and needs. These demands emanate from dissatisfaction with the procedures, decisions and failures of the criminal justice system. Indeed, there is a sense of justice that is not satisfied with the application of the rule of law. These dissatisfactions are also a strong reflection of socio-economic, social and symbolic needs. Punishment addresses the need for retribution (vengeance); prevention (teaching a lesson); security (removing alleged criminals); and the restoration of control and dignity (through the use of coercion and power). The way this is done is in flux and varies, however, what the application of punishment has in common is that it follows a different logic than that used for constitutional rights and the rule of law. This section therefore has shown that what Wilson (2001, p. 156) terms, “the relational discontinuities between the language of rights and revenge” continues to endure.

### 7.1.2. Compensation and restitution

In addition to punishment, compensation and restitution are important elements of justice in Khayelitsha, as acts of violence and crime often impact the very existence of people living in such marginalised and poor urban communities. These acts can have an effect beyond the offence itself and continue to impact people's life experience. Violence and

crime involve different economic and social costs as has been discussed in Chapter 3.3. The loss of a cell phone, the robbery of a month's income, the theft of a television that is still to be paid off, transportation to court, missing income due to court attendance, all have direct economic implications. But also, less apparent costs such as going through medical and psychological aid or the loss of employment due to injury or trauma, are common examples that describe the existential risk posed by crime and violence alike.

Due to the living conditions and economic situation of many residents in Khayelitsha there are very limited opportunities to gain insurance to cover these exceptional costs (Transcript 16.05.2014, pp. 7885-7922; see Baehre, 2012; 2011; Ardington et al. 2004; Buur, 2003). While insurance schemes in general have started to expand to the "lower end of the market" (Baehre, 2011, p. 15), household, theft and car robbery insurance, as well as comprehensive health insurance that covers psychological counselling, seem to still be rare (see Baehre, 2012; Ardington et al. 2004). In addition, the ability to be insured depends on income, which makes insurance less achievable for poor households (see Baehre, 2011; Ardington et al. 2004). The way insurance is less accessible when the socio-economic impact of crime is extremely high is another of the more subtle aspects showing how inequalities play out for the already disadvantaged.

One expert to the Commission explained in this regard: "The difference between the well-off and the poor is that the well-off have insurance. So, the poor have greater expectations regarding the police, and these aren't fulfilled" (Transcript, 16.05.2014, p. 7899). In addition to the inability to obtain insurance, there are very limited legal avenues for recovering any of these costs through criminal justice. The likelihood of the police finding evidence in a case or making a warrant search, or the chance of actually making a successful legal claim, are extremely low. Consequently, if someone becomes a victim of violence and crime, all exceptional costs incurred – such as those mentioned above – have to be covered by the victim. One school principal who experienced several crimes went on to explain:

*So in my understanding it has always been like that and we will just report the case and they will investigate and no one will be arrested for a particular crime and life will go on and we'll have to replace those goods and everything that has been damaged. (Transcript, 28.01.2014, p. 500)*

It is for those reasons that compensation or restitution for stolen items, money and belongings are often a central concern in Khayelitsha. The Khayelitsha Commission



revealed from numerous testimonies, that compensation or restitution in the case of victimisation is a very important concern for most residents in the justice process (Transcripts, 16.04.2014, pp. 7898-7899; 12.02.2014, p. 2797; 31.01.2014, p. 1070; 28.01.2014, p. 500; 27.01.2014, pp. 300-317; 24.01.2014, pp. 244-245; Interview, 10C, 2013). Community members often try to achieve recovery or compensation for stolen goods or harm through the assistance of local actors or through the help of the community more broadly, as will be discussed in the next section. These attempts often involve the use of coercion or violence to extract information (Khayelitsha Commission, 2014, pp. 385-388).

One Khayelitsha Commission witness explained how she and her partner were robbed of 2,700 ZAR<sup>74</sup> by a group of young people. The witness was on her way to the funeral of her grandmother and she needed the money to travel to and attend the funeral, which was taking place in a different province. The victim tried to get the stolen money back. As a result of the attempt, the two alleged robbers got caught and were killed by a group of community members. The witness recalls:

*To me the most important thing was to get the money back, since it was after a short while I thought that after we got them [n.b. the suspects] we'll get the money. (...).*

*[Police advocate]: In fact, you took these suspects to their mothers, instead of taking them to their mothers, why did you not take them to the police?*

*[Witness]: The reason we took them to their parents is because they promised that their parents will give the money back and we wanted to go to the Eastern Cape [n.b. the province where the funeral was to take place]. We thought if we can get back the money we were not going to go to the police because we just wanted to leave for Eastern Cape. (Transcript, 27.01.2014, pp. 316-317)*

The loss of this money was very distressing as the money was needed to attend the funeral, a very important event for the victim. She and her partner tried to get the money back by mobilising her family and the community in order to find the suspects, which seemed the fastest and most straight forward process. The victim was under serious time constraints

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<sup>74</sup> The amount equals approximately 178 GBP based on the average currency exchange rate in 2013.

and visiting the police would have taken up that time, whilst most likely not resulting in the recovery of the stolen money. Instead, she relied on calling her uncle, who mobilised community members who eventually caught the two alleged robbers, two young boys (Transcript, 27.01.2014, pp. 316-319). They then went to see the mothers of the youngsters. While they were waiting to see if the mothers could compensate them for the robbery, a group of angry community members separated the victim from the alleged robbers and started assaulting them. In the end, the two boys were murdered. The police advocate examined the witness:

*[Police advocate]: (...) you say that the group started assaulting the suspects did you see the group assaulting the suspects?*

*[Witness]: Yes, I saw them assaulting the suspects because they took them out of the car.*

*[Police advocate]: And you did not call the police.*

*[Witness]: It never came to my mind to call the police.*

*[Police advocate]: Why?*

*[Witness]: Because I was shocked and when we went there I did not expect what happened and I was also sad by being robbed by those people when I was preparing to go to my grandmother's funeral. I just wanted the money so that I can get to the Eastern Cape. (Transcript, 27.01.2014, pp. 317-318)*

The witness adds:

*If you are robbed you will just want your items back and you want to make sure that you get your items back because if you go to the police the police will only laugh at you and ask you many questions so that's why we only want our items back. (Transcript, 27.01.2014, pp. 318-319)*

While the victim witnessed the beginning of the assault she still did not consider contacting the police. She also remarked that she was quite stressed about the situation as the community members also threatened her in order to let them proceed in their assault (Transcript, 27.01.2014, pp. 318-319). At the same time, she felt disheartened by the act of robbery and the robbers, implying that the assault on the suspects was justified to a certain extent. She testified that after the assault started she left and did not inform the police, as they had to leave quickly to travel to the funeral. She justified the non-

involvement of the police and reliance on the community with the need to get her belongings back. It was thus restitution that was of the utmost importance and preferred over anything the police and the court could have achieved.

This testimony is representative of others pointing to the importance of compensation and restitution (Transcripts, 16.04.2014, pp. 7898-7899; 12.02.2014, p. 2797; 31.01.2014, p. 1070; 28.01.2014, p. 500; 24.01.2014, pp. 244-245; Interview, 10C, 2013). The only hope for compensation and restitution is mostly through the use of local security actors or community assistance and coercive means. While this does not necessarily always involve violence, it is the tendency. In this regard, Buur (2003, p. 26) for example also finds that, “the brute facts of socioeconomic marginalization and the requirements for survival themselves lend legitimacy to this kind of [vigilante] violence”.

Compensation and punishment therefore are closely linked, as compensation or restitution is often achieved through the use of force and punishment, for example, in order to find out where stolen goods have been taken. Violence is used as a means to extract the truth as indicated in the previous testimonies, and as also argued by Buur (2006) and Wilson (2001). In an early post-apartheid study of vigilantism and legal pluralism in Johannesburg, Wilson (2001) had already found that punishment was applied to extract the truth from alleged perpetrators. He argued that the people believed that without punishment there is probably no truth. Buur (2006) confirmed this in his study of Port Elizabeth vigilante security and safety structures. A testimony from a local CSO leader from the Khayelitsha Development Forum indicates that this dynamic is also existent in Khayelitsha:

*(...) [W]e talk when we're having beers, we talk about what is the quickest measure to get your thing back when it's stolen by Mr. [B]. Just give him a few knocks and get it back before you go the long route of the police and that. I am just saying; these are the things we say. (Transcript, 20.02.2014, p. 4203)*

The testimony speaks about a “few knocks” – which makes it sound a harmless and a minor offence in light of the greater achievement of recovering stolen items. The witness also points to the limitations of the police, the court and the Khayelitsha Commission. These bodies cannot achieve justice as they cannot recover the goods, neither can they use violence or impose punishment.

However, not all action excludes the police and criminal justice per se. The police for example do become involved, particularly where their involvement is either required or considered complementary.

Reporting fulfils the function of being able to block a stolen cell phone for example (Transcript, 24.01.2014, pp. 244-245), but nothing else is expected from interaction with the police and no other incidents are reported to the police. Reporting therefore is only considered valuable when it serves a specific purpose. The next testimony from a school principal who apprehended an alleged robber at his school lays out how the use of legal and illegal measures interact. It comes from a Khayelitsha Commission interrogation of a security guard at a school who apprehended an alleged robber, calling both the police and school principal during the night. The police did not arrive at the scene. The guard assaulted the alleged robber, and the suspect consequently confessed that he was also responsible for other break-ins at the school and that he had sold the stolen items (Khayelitsha Commission, 2014, p. 118). The school principal assessed the assault as follows: “While I believe that assaulting the suspect was not in line with the rule of law, I do not see how this man would have been restrained and kept in custody until the police arrived” (Ibid., p. 118). The police arrived several hours after they were called, when the school principal and security guard were about to depart with the suspects to find the place where the stolen equipment had been sold. The police let them take the suspect with them on this endeavour. The school principal reflected:

*They [n.b. the police] (...) let us take him, in retrospect, I think they were not supposed to have (...). I mean they are law officers and we are not the ones who are supposed to be dealing with the perpetrator after they have been apprehended, but as I say, we were interested in retrieving [the goods] and knowing exactly who because the person who was actually buying the goods was feeding the habit of the perpetrator. (Transcript, 28.01.2014, p. 517)*

The school principal had experienced many robberies and burglaries at the school and said the items stolen in one year had amounted to 100,000 ZAR<sup>75</sup>. He had reported at least six burglaries to the police, without any results. He testified that “these incidents have

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<sup>75</sup> The amount equals approximately 7,680 GBP based on the average currency exchange rate in 2012, the year in which the robberies occurred.

come at a huge psychological and financial cost to the school's staff and learners" (Bundle, 1(1.a), item 31, 2012).

This testimony also points to the importance of recovering goods, and the high costs associated with crime, which are not only material or financial in nature. The testimony further exemplifies the layered nature of approaches to justice. It shows that legal justice is not always neglected as a measure but can co-exist alongside, even complement, alternative approaches to justice. The school principal had collaborated with the police by opening cases on several occasions, which he also needed to do in order to report the cases back to the education board. So, the reporting was a necessity here too.

He stated that in this particular case, it was agreed that the accused would be handed over to the police once they had recovered the stolen material. Whilst the school principal questioned the use of corporal punishment against the alleged perpetrator and the police's behaviour, at the same time, he rationalised these actions and justified them using the necessity for restitution. Fast restitution of goods was given preference over the legal justice process, which was accepted as following later.

Similarly, as with the notion of punishment, the notion of compensation or restitution also entails an element of dignity and power. Buur (2003, p. 33), for example, in his study on local justice structures in Port Elizabeth, argues that there is more at stake than is implicated economically, with the recovery of stolen goods or compensation in these contexts also having significant meaning for power and status. Super (2015, p. 2) confirms this in her study on Khayelitsha, stressing the importance and meaning of consumer goods in settings of scarcity and inequality. Confirming these assessments, one expert witness investigating vigilante violence gives the following evidence from her interviews with community members:

*One of the people in my interviews that I had here in Khayelitsha, he put it this way, he says we work so hard, we struggle to find jobs, we work so hard to find these jobs, and when we find them, we try to create a life of dignity around us by buying certain things to make ourselves proud that we are working. And then someone comes and steals this. And then he said, it is like stealing our dignity. (Transcript, 15.05.2014, p. 7792)*

This analytical observation and the need for compensation and restitution relate to the way marginalisation plays out in relation to security and justice. Restitution can thus be understood as a bid to regain dignity and re-establish status. This need is mainly addressed

and facilitated through non-legal avenues due to the limitations of the criminal justice system as previously outlined.

Stolen goods, and crime and violence more general, carry a high social and economic burden and impact, with compensation or restitution being a major concern. However, as outlined before, very limited avenues for justice including restitution exist within the criminal justice system. In addition, as outlined in Chapter 6.3., access to legal justice is especially limited. The possibility of gaining compensation through the avenue of criminal justice is low.<sup>76</sup> Approaching the criminal justice system is not generally discarded as a possibility, but is often only considered when it contributes to addressing particular needs (for example, when reporting a crime is a requirement, as in the case of the school principal).

The need for compensation and restitution stem from structural, economic and emotional challenges alike. Compensation and recovery are important demands of justice, with recovery or compensation forming part of the local, often violent, practice, as they provide efficient, fast and tangible solutions to economic and social challenges in a context of marginalisation and inequality (see Super, 2015; Buur, 2003). The actors who respond to these needs will be introduced in the next section.

## 7.2. Local security and justice actors

This section will elaborate on how local needs and demands for justice and security contribute to local actors' (or local security and justice actors') approaches to violence and crime. Local actors implement acts of punishment and compensation, and they provide easy access to and close relationships with the community. In consequence, these actors act with legitimacy and authority in some parts of Khayelitsha. This section will elaborate on how the principles of trust, legitimacy and authority provide these actors with the ability to operate in this area.

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<sup>76</sup> The case for compensation is regulated by Section 300 of the Criminal Procedure Act (No. 51 of 1977). However, compensation orders at court are highly unlikely and usually not considered (South African Law Reform Commission, 2004, p. 83). In consequence, achieving compensation through legal justice is unlikely, often also because the case will not get to court. In addition, it is not very likely for a complainant to be able to make use of the compensation order if the case is presented at court (Ibid.).

Justice, punishment and compensation are important concepts shaping local, non-state actors' formation and responses to violence and crime. The elements of justice, punishment and compensation and restitution – along with the need for security and crime prevention measures – are implemented by a number of local actors. Community members often try to achieve punishment and recovery or compensation for stolen goods through the assistance of these actors. The use of local structures and avenues are common practices and often seem to be the most viable and efficient measures to take. Local actors are known for being able to provide security, impose punishment, and get stolen possessions back, within a considerably short time frame, and without the need for a lengthy, unsuccessful bureaucratic process (Transcripts, 12.02.2014, p. 2722, pp. 2843-2844; 11.02.2014, p. 2611; 31.01.2014, pp. 989-990, pp. 1031-1032; 30.01.2014, pp. 764-765; 28.01.2014, p. 518; 24.01.2014, pp. 270-271).

The relationship between the implementing actors and the community plays an essential role here. Close relationships, local embeddedness and trust are important in Khayelitsha. These are important structuring principles for community safety, including much reliance on local actors, networks and connections. S.L. Robins (2008, p. 6), for example, argues that close community ties are also related to the relative absence of the state and limited reliance on rights:

*While rights may be significant and efficacious in settings where there is a relatively well resourced and responsive state, it may make more sense to invest in social networks, clientelistic relations and communal forms of belonging in places where the state is extremely thin on the ground.*

This and the next section show that rights, as well as close relationships and demands for retribution and punishment, play important roles for local mobilisation in Khayelitsha.

These actors, networks and relationships are particularly relevant, as there is little trust extended to the police (Interviews, 4C, 2014; 10B, 2013; Transcripts, 28.02.2014, p. 467; 12.02.2014, p. 2797; 07.02.2014, p. 2087; 04.02.2014, pp. 1353-1354; 30.01.2014, pp. 780-781). On this, the Khayelitsha Commission (2014, p. 402) concludes

*(...) that the evidence before it shows there to be a breakdown in the relations between the community in Khayelitsha and SAPS in that there are worryingly low levels of trust in SAPS, and its ability to perform its duties in Khayelitsha.*

In addition, they found that “[a]nother worrying figure was that 90% of respondents surveyed in Khayelitsha said they would not feel safe reporting to the police that they had witnessed a crime” (Ibid., p. 403).

These low levels of trust are related to the police’s inability to help people generally, but also their inability to address people’s specific needs or provide access to information, as discussed before. On the one hand, the police are often unable to assist due to the earlier described shortcomings of lack of staff, resources, material, capacities and conduct (Chapter 6.2.). On the other, the police are unable to assist with the particular requests and need for punishment and restitution or compensation. One CPF chairperson elaborates on his discussions with community members:

*What they are saying is that sometimes some of the cases they report the police don’t do anything about it (...). They don’t trust that the police can do their job until they find whatever was stolen from them. So, you see, some of them have already given up completely on the police and therefore they don’t trust them. This is now direct feedback from those people. (Transcript, 12.02.2014, p. 2797)*

The inability to assist, to resolve problems, and to contribute to people’s immediate needs weakens trust in state responses to violence and crime, as well as in the police, in terms of seeing them as implementing bodies of safety and security. There is a lack of trust in police supporting people’s needs. Indeed, the police are often perceived as a rather distant and unknown body, as already highlighted in the previous chapter (Interviews, 16C, 2014; 10B, 2013; Transcripts, 30.01.2014, p. 781; 28.01.2014, p. 548). Low levels of trust and the police’s inability to respond to the needs of people and the community weaken the support for and potentiality of police work. As one academic reflects:

*(...) [T]hey don’t really need the police except for serious issues, most of it is serious, but the taxi association, vigilante groups, street committees, (...), they have legitimacy for communities but not in the eyes of anybody else in terms of dealing with these issues (...). (Interview, 16C, 2014)*

It appears that community members often turn to local actors. This strengthens local responses, relegating legal and state responses and approaches to safety and security to the corner. The role of local justice and security actors is based on security activities and crime prevention, for example, through patrols, the imposition of curfews or the banishment of alleged criminals from an area, as described before. Attempts to achieve



punishment, compensation or recovery can include unlawful practices such as corporal punishment or deprivation of liberty, such as outlined in Sections 7.1.1 and 7.1.2. While some of these roles and activities overlap, some actors are particularly known for one or the other competency around punishment, compensation and security.

Street committees, for example, make decisions concerning community matters and in some cases implement decisions. They deal with a variety of issues, for example, neighbourhood disputes, funerals and regulating influx (Super, 2015; Tshela, 2002). Some street committees can assist with mediation between families or other conflicting parties. They also participate in decisions and activities related to security and justice (Transcripts, 24.01.2014, pp. 270-271; 31.01.2014, pp. 1071-1072; 07.02.2015, pp. 2066-2068). Street committees may decide on the forceful removal of alleged criminals from neighbourhoods and become involved in imposing fines as a form of punishment (Super, 2015).

Street committees are thus considered important social actors, enacting a 'street-level form' of social mobilisation and collective action that feeds into more institutionalised forms of participation (Thompson and Nleya, 2010, p. 226, p. 241). Some street committees have high credentials. This is also because residents of the street or neighbourhood often elect members and they often represent respected elders. One witness to the Khayelitsha Commission working on violence prevention explains:

*In terms of street committees, there are – in our view a most critical part in terms of ensuring the safety and security of the communities. One, they are elected and are respected people by the residents that have elected them and they come in with issues that are affecting the communities that they are serving; and for us it is critical that they need to be involved at all aspects, more especially the issues around safety, so that they can give the necessary support. One, by recruiting people that they trust and ensuring that they'll be maintaining safety where they're staying and also have a voice of the people within the street areas and blocks being heard in terms of safety and security issues. So, for us, they are quite a critical element that should be participating in all these efforts. (Transcript, 12.02.2014, pp. 2843-2844)*

Also, taxi drivers operate with great authority in Khayelitsha and other areas, fulfilling a number of security functions. These include patrol drives; disciplining gang members and learners; inquiring and punishing alleged criminals; intervening and mediating in gang

fighters; imposing curfews; and recovering stolen goods (Transcripts, 20.02.2014, pp. 4208-4210; 31.01.2014, p. 988, p. 1042; Interview, 10C, 2013; Gontsana, 2012). These activities are often in conflict with, and sometimes in violation of, the law and human rights.

The taxi drivers are a set of respected and feared actors. Part of the community consents to, and appraises, these activities, considering them highly effective (Transcripts, 20.02.2014, pp. 4208-4210; 31.01.2014, p. 988, p. 1042; Interview, 10C, 2013). The taxi drivers are also considered very powerful. Part of their power emanates from the use of coercion, as indicated by several of the witnesses (Transcripts, 21.02.2014, pp. 4312-4313; 31.01.2014, pp. 1054-1055; 30.01.2014, pp. 763-765; Interview, 10C, 2013). For example, a young resident living in Khayelitsha states:

*As a result of police inefficiency most of the time the community of Khayelitsha takes justice into their own hands. Our second option after reporting to the police or an alternative to reporting to the police is going to taxi drivers in that area and reporting the crime to them. Taxi drivers are now the go-to group, they are quick to respond to crimes. They have this way of interrogating and investigating that brings about results and they are always able to bring back your stolen goods. (Transcript, 21.01.2014, p. 4312)*

The neighbourhood watches complement this patchwork of local security and justice actors. However, they are very heterogeneous in Khayelitsha, in terms of their degree of formality, procedures, activities and composition. Some groups are registered with DOCS. In some cases, this means they receive training, guidance and material equipment. At the same time, there are also neighbourhood watches that only consist of a loose network of people who live in the same area and who organise themselves on a private basis. The means and approaches of neighbourhood watches also vary substantially (Transcripts, 12.02.2014, pp. 2679-2681; 11.02.2014, pp. 2625-2626; 07.02.2014, pp. 2024-2025; 04.02.2014, pp. 1339-1340). Some groups patrol unarmed to overview and report incidents to the police, and abstain from using violence. Others go on joint-patrols with the police, and some groups patrol more aggressively using arms, force and violence, leading to the apprehension, interrogation and punishment of alleged criminals.

Often neighbourhood watches identify themselves by wearing some type of uniform or vest. Some of these vests are provided by DOCS, while others have been donated or acquired by the groups themselves. The different degrees of formality and the differences

in levels of association with formal state actors, like the police, make it very difficult for community members to know the concrete function of these varying neighbourhood watches. This has caused confusion about status and mandate, as well as about legitimate neighbourhood watch practices (Interview, 11B, 2014; Transcripts, 12.02.2014, p. 2825, p. 2830, pp. 2842-2843; 04.02.2014, p. 1366; pp. 1419-1420). CPFs are the potential coordinating bodies for neighbourhood watches; however, due to lack of consistency and irregularity in CPF meetings and procedures neighbourhood watches often proceed without registration or coordination (Khayelitsha Commission, 2014, p. 411).

One former CPF member explains the work of one of the neighbourhood watches and their violent practices:

*The patrollers were members of the community who were fed-up about crime in the community. They were of the belief that the police are not doing enough to protect them so they took it up on themselves to organise themselves and patrol at night, so it means that they didn't have batons and other stuff so what they will do is that at night any person who is walking after ten o'clock they will attack them and beat them, women, children and elderly people as well, so there were complaints within the community. The community said okay fine, we appreciate your commitment, your contribution in the community, but what we cannot tolerate is your violating our rights because citizens have got a freedom of movement because there are people who working up till late, so when people come back from work they get attacked and others (...). (Transcript, 04.02.2014, p. 1339)*

While in this instance, the community was upset with the violent security enactment and used the language of rights to limit the neighbourhood watch actions, in other areas and instances such behaviour is often tolerated and justified in the name of fighting crime. An academic expert witness explains:

*I had one man who said that - you know he was saying: "No, these patrols are really good, but sometimes they get the wrong person and they beat them, but I don't mind, because in general what they are doing is making sure that there is some sort of control on the streets in the evening particularly after dark." So, he said: "You know I was beaten once when I was coming back a bit drunk from the shebeen [n.b. local, informal drinking place] but it was okay in the end because I know broadly they do good work. (Transcript, 11.02.2014, p. 2625)*

Depending then on how they operate, who constitutes the neighbourhood watch, and what they achieve, they are either supported or dreaded within their area (Transcripts, 07.02.2014, pp. 2024-2025; 04.02.2014, pp. 1339-1340).

This divide and diversity indicates that there is no singular way of achieving justice and security in Khayelitsha (see Thomas, 2012). It also relates to the divide between using rights and the state's action to respond to violence and crime versus local retribution and punishment, through the use of local actors. In this regard, one interviewee of a NGO underlines how

*(...) you mustn't underestimate the complexity and diversity of the Khayelitsha community, it's not a homogenous group of people (...), there is far too many fractures and factions and interest groups that compete and disagree (...). (Interview, 1B, 2014)*

In summary, local actors assume responsibility for security and justice and fulfil important functions. This section has drawn attention to a variety of actors responsive to the needs of punishment and compensation and restitution. One social worker assesses the situation from her observations when working in Khayelitsha:

*I just want to say opening a criminal case is your last resort but it is a resort and at the moment it is not used as a resort. (...). So, everything else is used, so the street community is used, mediation is used, granny and grandpa is talking, everybody's talking and the teachers are involved and everybody is involved – everybody is involved – the taxi owners' association is involved and the community is retaliating by vigilante murders. (Khayelitsha Commission, 2014, p. 1005)*

These local actors are able to build on relationships and trust in a manner that the criminal justice system and the police in particular cannot. These localised responses, through the use of local actors or the community, maintain a competitive advantage over state actors in achieving a feeling of justice and security, generating immediate, tangible results and operating through direct interaction. The police and courts fall short in developing a similar level of legitimacy and acceptance as they are bound by legal procedures. They are also troubled by systemic failures that prevent successful criminal justice.

The elements of punishment, compensation and close interactions, as well as efficient responses, are not satisfied by the current reality of policing and criminal justice. As such, these limits and failures alongside some of communities' particular needs for

compensation and punishment around security and justice weaken state authority and legitimacy. Solutions to the current state of security and justice are unlikely to be achieved without taking into account local security and justice actors. The section therefore demonstrates how local security and justice actors are an important part and practice of justice and security governance and that these actors are also an important part of civil society in Khayelitsha (see Super, 2015). A joint analysis, featuring these local and vigilante actors and more formalised CSOs' responses to violence and crime, is needed. As argued in Chapter 3.5, the separation of these actors into distinct categories is limiting the discussion on the contributions of civil society to addressing violence and crime.

At the same time, this section also points to the heterogeneous nature of these local actors. What these actors share is their contribution to security and justice, and how their implementation corresponds with the need for immediate and tangible results. However, some of these approaches are problematic, in particular, those involving violence. The findings therefore exemplify the dilemmas local initiatives can encompass, as maintained by Hickey and Mohan (2004) and Cleaver (2001). In particular, dilemmas exist in this context because violent enactments find support and are desired by some parts of the community, as they respond to real needs. On the one hand, the use of violence is definitely problematic, as are the related understandings of justice. On the other, the need and reason for retribution, punishment, compensation and restitution must be analysed and tackled, as these are partly symptoms of structural inequality. The complexities and dilemmas that exist at the local level do need to be recognised.

### 7.3. CSO positions on vigilante violence and punishment

This section will elaborate on the tension between formal and informal CSO positions towards the occurrence of vigilante violence and violent security and justice enactments. The different CSOs officially distance themselves from vigilante violence, and in consequence, from violent punishment and violent modes for restitution, yet there is also empathy and understanding for its occurrence. Indeed, different CSOs try to engage at different levels to address violent responses.

The complainant organisations condemn vigilante violence and violent responses as a means to achieve justice. One staff member of a complainant organisation explains:

*But in terms of vigilantism obviously (...) it is a problem and it is not a legitimate way of dealing with violence. It just perpetuates violence and often people who are not the perpetrators of crime get caught up and get, you know, become victims of vigilante violence. (Interview, 10B, 2013)*

The CSOs also try to engage with their members on the topic of vigilante violence in a bid to prevent its occurrence. These organisations state that they actively seek dialogue with their members on this issue (Interviews, 4B, 2014; 13B, 2014; 10B, 2013; Transcripts, 10.02.2014, p. 2362 et seq.; 07.02.2014, pp. 2086-2087). In this context, the leader of one of the complainant organisations explains:

*(...) [T]here was anger in the community and there was anger in TAC and I remember a march that we went to and we marched from the shebeen where she [n.b. Lorna Mwofana - a TAC member openly living with HIV] was killed to the alleged perpetrator's house and people in the community and our own members would have burnt that place down if it wasn't for the fact that we said that we wanted justice, not vengeance, because (...) we wanted the police to deal with [it,] this people would have taken the law into their own hands, but what came afterwards was horror and travesty because Lorna's family (...) suffered an enormous injustice when time after time after time the case was postponed, mostly people weren't explained. (Transcript, 10.02.2014, p. 2362)*

The statement shows a clear sense of frustration with the process encountered during a demand for justice of the murder of a HIV activist. Frustration, grief, anger, pain, humiliation are the emotions that CSOs often encounter, with the injustices of the criminal justice system adding to these, as discussed in Chapter 6. Yet, CSOs demand their members abstain from alternative, and often violent, security and justice approaches, and instead aim at claiming their rights from the state.

The CSOs commit to and demand human rights, which is the framework they use in order to hold the state accountable. Hence, they are obliged to condemn violent practices. Their requests for legal justice, non-violent approaches, and effective policing, causes dilemmas, in particular, within membership based organisations. In this regard, one difficulty for CSOs lies in convincing their members and community to rely on legal justice when the legal justice system does not work properly. Support for vigilante violence and violent punishment among the members of CSOs indicate that they are struggling to overcome this challenge. Being confronted with an inefficient criminal

justice system relying on legal measures often comes at the price of little or no justice and security at all.

In addition, with this emphasis, the very tangible and short-term needs of punishment and restitution remain unaddressed. Simultaneously, some of the local needs, like restitution, are not accommodated in the current criminal justice system either, as discussed previously. For this reason, the complainants suggested a victim compensation fund and the re-introduction of community based mediation forums to mitigate those needs, yet these suggestions again place the responsibility of and solution to these needs firmly with the state. By maintaining the organisation's position and referring to legal justice and public institutions, the CSOs underline their position whereby the state must be held accountable.

CPF and KDF representatives and religious leaders were also seen to distance themselves from vigilante violence, considering it the wrong response (Transcripts, 20.02.2014, pp. 4198-4201; pp. 4244-4245; 12.02.2014, p. 2791). Most see the reason for its occurrence as being the slow response of the police, indicating that a faster police force would prevent violent punishment and vigilante violence. Two CPF members testified as acting as intermediaries between police and community, preventing vigilante attacks when they are informed of them (Transcripts, 12.02.2014, p. 2791; 04.02.2014, pp. 1352-1353). One explains:

*A lot of the time there are signs that (...) community members want to take the law into their own hands but as a result of our relationship with the community the community members do sometimes contact me in a hurry and then they would see me arriving at that meetings, they would call me quickly, sometimes when I am not even invited. Because of that close relationship we are able to fight this kind of act [n.b. vigilantism] because when I am there they know that their plans will not work and, secondly, they know that the police will come shortly after that. (Transcript, 12.02.2014, p. 2791)*

While a clear official position against violent security responses exists among the staff and members of CSOs, one also finds varying views. Empathy with vigilante violence and illegal punishment deviates from the official positioning, but in interviews, representatives and CSO members expressed their empathy for the situation of the people and their choice to engage in vigilantism, and the use of violent punishment (Interviews, 4B, 2014; 13B, 2014; 14C, 2014; 18B, 2014; 10C, 2013).

There is thus some understanding of vigilante violence as a mean for crime prevention in a situation where there is little provision and support by the state (Interviews 4B, 2014; 10B, 2013). The situation of the people is acknowledged, and the use of radical means met with understanding, for as one representative of the complainant organisations expresses in an interview:

*(...) [T]he main thing that we read into the vigilantism in these kinds of things, it is a signal of absolute desperation, the same as most other service delivery protests. It is the wrong response but it is a response that comes from a very legitimate problem. (Interview, 14C, 2014)*

Another representative of one of the complainant organisations adds:

*And we always say we condemn these actions [n.b. vigilante violence], they can't be permitted but we understand why, when people are pushed to their limits and when they see that, maybe killing a criminal is the only possible chance that they have of taking some control over your life in a place where you have very little control over other things. [I]t's the cycle of them [n.b. the police] not responding, not following up, not calling back families, and the justice system not giving people what they deserve, and what they have a right to that causes people to break. And you know, its mums and dads and its grannies and grandfathers and people like you and me, it's not what people would typically consider as some perpetrator. (Interview, 13B, 2014)*

Violent action is condemned but at the same time there is an understanding and justification for the people's choices, for they are – as pointed out – just ordinary people pushed to the limit. The interviewees see the reasons for vigilante violence lying in the failure of the police to respond to people's right to justice and security. Vigilante violence is used as an indicator here and a proof at the same time that the state is failing, in turn, forcing ordinary people into acts of violence (Interview, 4B, 2014).

There is not only empathy for people's involvement in vigilante violence, but also support for it within the membership of some of the complainant organisations. A representative of one of these acknowledged that, “[t]o be honest I am sure there are some (...) members that tacitly support acts of vigilantism for the reasons I have spoken about. But organisationally obviously we don't” (Interview, 13B, 2014). Confirming the previous assessment, Super (2015, pp. 9-10) finds that “[e]ven SJC members support the beating



of ‘criminals’ by ‘community members’ as a technique to retrieve stolen goods, although they claim not to participate in violent activities”.

CPFs and KDF also condemn vigilante violence, yet see the cause of it in socio-economic and infrastructure conditions (Bundle, 5(4), file 8, n.d.; 7(1), file G, item 11, 2013). One CPF member acknowledges the socio-economic impact and pressure in relation to vigilante violence:

*The communities are forced to resort to mob injustice. We must be mindful of the fact that people are poor and unemployed – a person who steals from the poor is merciless, thus the community take drastic measures to correct the wrong by doing a wrong. (Bundle, 7(1), file G, item 11, 2013, p. 4)*

While all CSOs officially reject vigilante violence, different organisations try to navigate and address the issue in variant ways. The complainant organisations try to convince their members and community through rights’ mobilisation, education campaigns, and advocacy work, thus aiming at holding the state accountable. Hence, these CSOs act as intermediaries between the community and the state in the process of accountability and rights’ claims. The difficulty here lies in juggling community needs and demands for punishment and restitution, anger and frustration, with a claim to stay on the legal path, using the police and courts, while these are failing. Members of organisations such as the KDF and CPF want to strengthen local networks and formal and informal security, along with justice enactments and the police. They serve as intermediaries between parts of the community, and local security and justice actors. Their challenge is to ensure that local security and justice actors abstain from the use of violence, and are instead strengthened through interaction and support.

Both criminal justice and policing demands, and positioning towards vigilante violence, reveal the divide between different CSO actors addressing violence and crime in Khayelitsha. This divide runs along political lines, indeed, party political interests cannot be excluded from CSO activism, as Chapter 5 on the Khayelitsha Commission suggested. Politics play a role concerning the demands of the different actors. However, there is also a divide between the demands for rights and state responsibility versus demands for retribution and local responses; this relates to solutions that mainly the state should cater for versus solutions that are created by the community. This means that calls to abstain from violence and use rights based activism instead will only resonate and be heard by part of the community. Those who are more dependent or more inclined towards

retribution, restitution and punishment are less likely be convinced, in particular, because there are actors responding to these demands.

#### 7.4. Local needs and the division between rights and punishment

The needs and practices discussed in this chapter emanate from the failure of the current criminal justice system, incomplete police reform, and the continued marginalisation of urban deprived communities in post-apartheid South Africa. Structural inequality and the situations of powerlessness which contribute to socio-economic inequality, are some of the drivers behind the need for punishment and restitution. As has been argued in this chapter, such need stems from the economic, social, emotional and symbolic costs associated with violence and crime, such as the loss of money, but also the loss of dignity. In consequence, the demands and needs of these communities and the approaches of local actors are a result of past and present inequalities in governing security and justice in South Africa. As such, this chapter reaffirms and reinforces the need for a transformative lens for understanding and addressing violence and crime and security and justice responses and for placing these within a structural inequality framework.

This chapter argues that vigilante violence needs to be situated in this context of structural inequality, rather than only focusing on its occurrence in relation to the state. Some authors have argued that self-justice initiatives, and in particular, acts of vigilante violence are in contrast, opposition or simply outside the state (Godoy, 2006; Nina, 2000; Johnston, 1996). However, Buur (2003, p. 26) argues that “when these township residents take the law into their own hands, they do so in order to “defend” or “help” the new state and the government that most of them voted for”. He further adds (Ibid., p. 38):

*It is not that the ideals of good policing, security, and human rights are not—seen from the bottom of the outskirts—admired, wanted, or even considered a common good. But when it comes to the immediate problems of theft and justice, they have very little to offer.*

In a similar vein, this chapter suggests that local actors respond to local demands for justice and security, and that these demands emanate from the need for pragmatic, tangible and effective solutions in a context of structural inequality. The overall experience of continued structural inequality accompanied by an incomprehensible and incoherent logic of the criminal justice process has generated a situation where the law

often does not provide the solution to these demands; demands which are not necessarily a chosen contestation against the state, but rather a (pragmatic) choice based on need.

Yet at the same time, the criminal justice system is not equipped to accommodate the need for compensation, punishment, control and dignity that structural inequality and exclusion generates. S. Robins (2011b, p. 77) notes how, “[r]ights are by definition universal and make moral and legal claim to entitlements, whilst needs are a product of culture and context and are highly local in nature”. Here, it remains unanswered if fixing the criminal justice system alongside the socio-economic situation would change these needs or if current local responses would be intrinsically preferred. Nevertheless, a way to go about this would include responses to the needs identified at their root. As discussed in Chapter 5.2.2., the complainant organisations suggested two possible initiatives: the establishment of Community Peace Committees as a means of providing support for problem solving within communities; and the instalment of a victims’ compensation fund to provide support to victims of crime. Both initiatives could mitigate some of the most urgent needs around punishment and compensation. However, addressing more long-term structural inequalities remains indispensable to reduce inequalities that not only create sentiments for punishment but also create the conditions for exposure to violence and crime in the first place. Reliable access to justice and security would possibly be acknowledged and respected in a setting where people would not need to depend on immediate results and some sort of justice for their economic survival and emotional dignity.

Local agency, along with participatory and needs based initiatives have been emphasised as essential for a transformative justice approach (Evans, 2016; Gready and Robins, S., 2014; Gready et al., 2010; Lambourne, 2009). This chapter confirms the potential of the transformative justice that emanates from local structures involved in addressing violence and crime. This potential lies in their local nature and ‘embeddedness’ giving them the ability to respond to local needs. For example, local actors can provide an access point for ‘security from below’, where communities are empowered and engage in the issue of security in order to “(...) democratically [embed] a sense of what is right and appropriate in communities” (Abello Colak and Pearce, 2009, p. 13). Using a case study located in Ireland, and based on nonviolent alternatives to what were previously common punishment practices, Eriksson (2009a, p. 305, p. 307) shows that vigilante approaches can be converted at the grassroots level and a new mode of addressing crime and conflict

in transitional societies can be established. She (Ibid.) maintains that the strength of grassroots initiatives lies in communities' local networks and access to power and information. Further, she (Ibid., p. 305) sees the need for local criminal justice responses to be embedded within the "communities, cultures and contexts of conflicts".

However, in Khayelitsha, this potential comes with three caveats. First, certain practices are problematic for democratic values, human rights, and transformative justice. The use of violence stands in clear opposition to these ideals. Thus, some local practices are problematic for the democratic rule of law in post-apartheid South Africa. In addition, these local responses, and the agenda of local actors, are not necessarily interested in transformative change. So, any engagement would require a consensus on justice and security enactment based on democratic principles and human rights, otherwise, it is likely to continue to be violent at times. Eriksson (2009a, p. 307) rightfully remarks this entails a change in values in such a way that it excludes violence and any other behaviour that violates human rights and the rule of law. As such, she (Ibid.) uses her Ireland case study to show how the values of local actors can be changed so that they do not clash with or contradict the formal criminal justice system, but also are not necessarily integrated into it either; this would be necessary if a process of centralisation is to be avoided. This question and exercise would be needed in the Khayelitsha context too, particularly because rights based approaches and local needs are not easily reconciled, and because local actors are not necessarily interested in transformation. This dilemma needs further consideration.

In addition, the very diverse landscape of actors and approaches needs to be taken into account. Any attempt to accommodate local actors and engage with them has to be wary of diversity. Waldorf (2006, p. 10) reminds us that "[t]here is a tendency to romanticize local justice by downplaying its coercive aspects and its function in asserting (or reasserting) social control". While this aspect has only been touched upon in this chapter, coerciveness is clearly used in these local practices, and vigilante violence is often tied to both social control and political interests, as discussed in Chapter 3.4. and this chapter. Hence, the role of coerciveness and political power, along with local responses, need to be taken into account when assessing their potential for transformation.

However, and as a third point, engaging with local actors would require that those local initiatives asked to contribute to criminal justice endeavours can also expect to rely on human rights and the rule of law that they will be bound to for the realisation of their own

rights as well. More so, it would require working on the structural inequalities that contributed to the situation in the first place. A failure to do so is very problematic, as a relative absence of the state alongside the outsourcing of security and justice to the community contribute to violent responses, as has been discussed here and elsewhere (see Super, 2016). Furthermore, a failure to address structural inequality is likely to deepen inequality as it demands a greater contribution from marginalised communities to cater for their own solutions, while at the same time providing them with less access to rights and services. As suggested by Wilson (2001, p. 230), the state plays an important role in this, by providing fair, proportional retributive justice, hence responding to local needs.

Finally, the chapter finds that a divide exists between rights and criminal justice; and punishment, restitution and local justice. Transitional justice, criminal justice reform, and 20 years of democratic governance have not been able to overcome the divide that Wilson (2001) identified during the early post-transition years. In the end, the question as to whether the potential of these local actors will ultimately materialise also depends on the ability to overcome the divide between demands for rights and punishment and retribution.

Outlining these complexities when considering the opportunities and challenges generated by local needs and approaches, and actors that operate based on these needs, for a transformative justice approach, this chapter returns to criticism received from focusing on the 'local' (see Section 2.1.2.). This section has outlined the tension that exists between genuine local needs and practices and the ideal of transformative justice approaches.

The next chapter will conclude this thesis by discussing the concept of transformative justice in light of the findings of the case study. It will also address the research questions, thus highlighting why transformative justice is such an important concept. However, it will also point to the problematic normative assumptions and shortcomings of this concept.

## 8. CONCLUSION

*In 2030, people living in South Africa feel safe and have no fear of crime. They are safe at home, at school and at work, and they enjoy a community life free of fear. Women walk freely in the streets and children play safely outside. The police service is well resourced and professional institutions staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence, and respect the rights of all to equality and justice.*

National Planning Commission, 2011, p. 350

*The Commissioner [of the Khayelitsha Commission]: It's a – there's a paradox here, because at one level the state is very present in Khayelitsha, but on another level, one has a sense that in fact the state has penetrated very little, so that there are systems of authority and political control which are completely outside of the democratic politics of the day. And mainly that is a transitional process, maybe that is something that just takes time in a sense for the inevitable logic, one imagines, or one hopes, perhaps, of democratic politics, will actually root itself.*

Transcript, 16.04.2014, p. 7904

This thesis interrogates the contribution of the concept of transformative justice to address the root causes of violence and crime, in particular, using a case study of one of the townships in South Africa. By applying the concept of transformative justice to the case study of community needs and demands, and civil society responses to violence and crime in Khayelitsha, this research identifies opportunities, as well as potential challenges and tensions for the concept of transformative justice. As interdisciplinary research, the thesis analyses the intersections of transformative justice's main elements, including structural inequality, local needs, and civil society engagement, with a particular focus on violence and crime. Embedding the research in a wider context, the thesis also provides broader

insights into these themes for post-transition South Africa, as well as the implications of unaddressed structural inequalities more broadly.

This concluding chapter consists of four sections. The first section summarises the findings and responds to the research questions. The second section discusses the practical and theoretical contributions to knowledge made by this thesis. This is followed by recommendations for practice and research in the third section. The chapter ends with final remarks.

## 8.1. Findings

This section provides a general discussion of the findings, addressing the main and secondary research questions which follow. The main research question asked “*To what extent can the concept of transformative justice make a contribution to addressing structural inequalities as the root causes of violence and crime?*”. The secondary research questions feed back into the main research question, asking: “*How does structural inequality relate to violence and crime in Khayelitsha?; What are the local needs in addressing violence and crime in Khayelitsha?; What is the role of CSOs and local activism when responding to violence and crime in Khayelitsha?*”.

The findings particularly engage with the different elements of transformative justice in relation to violence and crime, namely structural inequality, local needs and contribution of, and participation through, civil society. The research identifies the positive contributions of transformative justice as a lens through which to unmask structural inequalities and underline the importance of CSOs. The first three sections will discuss these positive contributions. At the same time, limitations also exist within CSOs due to their heterogeneous character, and the tensions and potential implementation of problematic responses. Furthermore, it is argued that a focus on rights can be limiting as well. The last two sections will analyse these shortcomings and challenges for transformative justice.

Transformative justice as a way to analyse and understand structural inequalities

Transformative justice argues for a need to address structural inequalities and considers high levels of violence as symptomatic of a failure to do so (Gready et al., 2010; Laplante, 2008; Mani 2008). This research traces the implications of unaddressed structural

inequalities and their relation to violence and crime more specifically. By so doing, the thesis finds that transformative justice is an important concept and that there is also a need for it in practice.

In particular, the research identifies the contribution of transformative justice in its ability to provide an analytical lens for shedding light on protracted structural inequalities, showing why mitigating them is a necessity. It confirms the importance of considering structural inequalities by displaying how they impact on people's lives. Transformative justice is also important because it allows for the revisiting of the aims and outcomes of transition in a post-transition phase. It may therefore complement transitional justice, and also point out areas left unfinished with the need for further engagement.

First, the research finds that structural inequality relates to violence and crime, as it is a factor that contributes to its occurrence, amplifying its impact as it hits marginalised and poor communities. The already marginalised are thus newly marginalised through this impact. As the thesis confirms, structural inequality, or structural violence, works through infrastructure and poverty as well as through institutions, bureaucratic planning processes and behaviours (Chapters 3 and 6). In particular, skewed resource distribution, skewed police conduct, and lack of access to public security and justice services constitute manifestations of structural violence. This is because they inhibit equal access to justice and security, aggravate the physical and emotional impact and consequences of violence and crime for the population of Khayelitsha, and also limit the ability of its people to be protected or remedied (Chapter 6). Chapter 6 demonstrated how inequalities in access to security and justice shaped by the performance of police and courts aggravate the impact of crime and violence. The thesis further finds that a lack of access to security and justice in Khayelitsha constitutes a source of structural inequality by itself. The research has also discussed the need to address structural inequality, not only because it contributes to violence and crime and further conflict, as argued in the literature and confirmed by the case study, but also because it is a source of emotional grievances including pain and humiliation, injury and insult.

Second, the case of Khayelitsha confirms the importance of local needs, as discussed in the transformative justice literature (Martin 2016; Gready and Robins, S., 2014; Waldorf, 2012). Socio-economic conditions increase the burden of crime, often making access to immediate justice, security and tangible solutions a necessity. In this case study, the findings indicate that the local needs and approaches of local actors respond to these



necessities. Important needs are those relating to punishment, compensation and restitution. They are important because they are tied to conceptions and practices of justice such as punitive retribution. As such, local needs are a reflection of structural inequalities and everyday injustices, such as socio-economic conditions, the impact of violence and crime, and the lack of access to justice and security. (Structural) inequalities shape these local needs, and consequently, also the terms of responses to violence and crime, encouraging violent security and justice enactment through local actors or the community (Chapter 7). A transformative justice lens that is concerned with structural inequalities therefore allows us take into account these different manifestations of inequality and everyday injustices in order to address violence and crime in a more meaningful manner.

Third, the system of injustice inherited through the apartheid regime, transitional justice, and the post-transition phase, have all contributed to a limited establishment of a strong sense of democratic rule of law in South Africa. This research suggests that limitations in embracing criminal justice and consequently not fully embracing the democratic rule of law is related to the fact that neither social nor legal justice have been fully implemented in Khayelitsha. The findings of this research suggest that democratic politics and a democratic rule of law are not self-rooting – as the statement of the Commissioner in the introduction of this chapter suggests – partly because there is a prevailing notion of “relational discontinuity” (Wilson, 2001, p. 156 et alibi), as well as a division between the demand for rights and the demand for retribution or punishment. One reason for such discontinuity can be related to continuing structural inequalities, the absence of meaningful legal justice and access, and any experience with such a practice, as well as the inability to address extra-legal and non-state security approaches in a sensible manner. When rights do not matter in practice – such as access to justice and security – the establishment of a democratic rule of law in communities like Khayelitsha is weakened. A transformative justice lens not only provides this finding, but could also be an important concept for a practice that aims at mitigating these “relational discontinuities” (Wilson, 2001, p. 156 et alibi). For example, by strengthening approaches that try to engage with local security and justice actors while also addressing their needs, for example, through initiatives like peace committees or compensation funds in this particular case (see Chapter 5.2.), and also by bringing rights as forms of entitlement to Khayelitsha.

## The importance of CSOs for transformative change

Transformative justice also assigns civil society and local mobilisations a particular role in addressing structural inequalities. This is because it locates transformative and more radical ideals in these spheres of society (Evans, 2016; 2013a; Gready and Robins, S., 2014). The role and contribution of CSOs in this thesis provides some insight into the assumptions around local agency, participation, and the role of CSOs as drivers of change. This thesis shows that civil society indeed plays a very important role. In particular, civil society activism can be considered an essential part of process-based transformation, as promoted by Gready and Robins, S. (2014), whereby civil society activism is the initiator of processes that contribute to transformation in different ways.

First, the civil society organisations involved in the mobilisation and complaint for the Khayelitsha Commission made an essential contribution in identifying structural inequalities and drawing connections between violence, crime, access to security and justice and social inequalities. Therefore, civil society organisations can play an important role, particularly in providing the necessary information and understanding of structural inequalities and consequently allowing this understanding and information to be framed within a transformative justice agenda.

In addition, a civil society rights-based form of activism that aims to hold the state accountable in its obligations to provide equal access to security and justice is a way to challenge power and the status quo. In the area of criminal justice this is a rather new type of social activism, allowing us to understand the intersections between social and criminal justice and why transformative justice might be an important concept in this context (Chapter 5). Therewith, rights based and social justice activism for mobilising and addressing inequality can be understood as a contribution to transformative justice, one that presents an alternative form of activism concerned with social justice and the tackling of structural inequalities. This thesis demonstrates that there is some potential in CSOs challenging the state and holding it accountable. For example, social justice activism in this particular case can be seen as contributing to the unique and important establishment and implementation of a commission of inquiry – which in itself made various contributions to forwarding a transformative agenda, as will be discussed in the following section.

Finally, civil society and social justice activism can provide access and agency and make the voices of the marginalised heard – as happened in the process of mobilisation for and during the Commission hearings.

Second, vigilante and local security and justice actors in this context have to be considered as part of a civil society that is responding to violence and crime. Indeed, they are important local actors, respected and feared by parts of the community and able to act with some authority. At the same time, there is a range of local and vigilante actors who are active in security and justice enactments, and who are not drivers of transformative change; rather, they implement local demands and needs, therefore achieving more immediate results and change that is based on local principles and needs instead. These local connections and practices are important because they respond to local immediate and tangible needs around security and justice. The local actors constitute a potential resource for further local need driven initiatives, responding to the challenges that violence and crime impose on people's lives in Khayelitsha (Chapters 6 and 7). In particular, they can be identified as important resources due to being locally rooted, with some acting as local gatekeepers or authorities.

Both forms of civil society, those pushing for a human rights agenda, and those implementing justice and security, are important actors and drivers of change of some sort. Thus, it can be concluded that transformative justice is right in emphasising civil society actors and local participation as a source of change – yet, as will be discussed in continuation further below, their role and contribution to transformative change can also be conflictual.

#### Transformative justice interventions

The conceptualisation of transformative justice so far lacks a clear understanding of what a practice might look like as discussed in Chapter 2. One major role for its practice is assigned to local civil society in terms of its capacity to challenge power, provide agency and participation, and bring about change through processes of resistance as outlined above. The importance of processes over events and outcomes has also been emphasised (Gready and Robins, S., 2014).

This research finds that there are processes that contribute to transformative justice and therefore can be understood as transformative justice interventions. In this particular case

study, these processes centre around civil society mobilisation and the Khayelitsha Commission.

First, as discussed in the previous section, local civil society mobilisation in this case study contributed to transformative justice in the process of mobilisation, during the Khayelitsha Commission and its aftermath: “rendering legible” structural inequalities; providing a voice for and access to victims and the marginalised; and by challenging and holding the state accountable to its obligations.

Second, the Khayelitsha Commission itself also made a number of important contributions to transformative justice. Its investigation provided a lot of detailed material on the connections between structural inequality and lack of access to security and justice, such as the unequal distribution of policing resources, for example. Although the Khayelitsha Commission had a limited mandate it made an attempt to provide a full picture of safety and security in Khayelitsha. It thus provided in depth insights on the challenges, limitations and needs for improvements around security and justice and beyond. The Khayelitsha Commission generated valuable access to validated information and produced large amount of evidence for policy and advocacy alike (see Chapters 4.4., 5.3. and 6).

In addition, the Khayelitsha Commission provided a space for victims of crime and violence, of police neglect and abuse of police power, of rights violations and marginalisation, to tell their story and voice their concerns. It also provided access to justice for some of the victims and family of victims for the first time, by providing them with information on their cases and exerting pressure on the police and courts for concluding the cases speedily (see Chapter 5.4.). Finally, the people of Khayelitsha also received a small apology from the Provincial Commissioner of the Police – a symbolic act to acknowledge pain and injustice (Chapter 5.4.).

Additionally, the Khayelitsha Commission produced a very valuable and comprehensive report with recommendations. The report and the recommendation carry some weight, despite the fact that they are not obligatory, for the Commission worked with authority, credibility and respect. As outlined before, the report forms part of the evidence created and can be and is used for policy and advocacy.

Third, in the aftermath of the Khayelitsha Commission several activities and initiatives continued to work in addressing access to justice and security and mitigating inequalities.

For example, the civil society organisations used the findings of the Khayelitsha Commission to expand their research on unequal resource distribution and filed a court case against discrimination based on poverty (Chapter 5.3.). The Western Cape Government installed a task team for monitoring and oversight and the local police improved cooperation. While this has not been considered far reaching enough, and although the national police has not committed officially to the recommendations of the findings of the Khayelitsha Commission, processes pushing for transformative change continue through civil society advocacy.

These different activities, processes and initiatives all contribute to a transformative justice agenda. The Khayelitsha Commission plays a particular important role and therefore can be considered as a particular intervention for transformative justice. As has been discussed previously, transformative justice as a comprehensive aim, is not necessarily achieved with one event or mechanism but rather through a variety of processes that contribute to the advancement of transformative justice aimed at addressing structural inequalities and which allow for the continued work of advocacy, agency, participation and resistance (Chapter 2.2., 5.4.). Mobilisation for and the carrying out of the Khayelitsha Commission, as well as the follow up and ongoing advocacy are all part of these processes of transformative justice interventions.

#### The diverse and conflictual nature of civil society

Transformative justice emphasises the need for local engagement and practices and genuine civil society participation (Evans, 2016; 2013a; Gready and Robins, S., 2014). Yet, the case study points to gaps and shortcomings in assumptions related to its homogeneity, as well as inherently good principles within civil society and its ability to infuse radical change. The research finds that a practice of transformative justice needs to be very aware of the constraints and limitations that exist within civil society.

In this research, there is a part of civil society, namely those actors implementing security and justice, which are also sometimes sources of vigilantism. The main challenge here is that these approaches and practices do not always chime with rights. It is also these different local moral worlds which call into question the one-dimensional role and contribution of civil society for transformative justice, as well as for change more broadly.

While the importance of the role of CSOs is confirmed here, the research has also shown that this is not only based on the positive contributions these actors can make but also on

the influence and importance of different actors for different parts of the community; for example, the implementation practices and political tensions existing within civil society – in this case with regards to justice and security (Chapter 7).

Furthermore, as politics play such an essential role in the South African context, and in Khayelitha in particular, this research confirms the importance of power and interests within this sphere, as well as the division and diversity in positions and approaches. More so, power and leverage might also be a reason why local civil society might want to abstain from processes of resistance and challenging the state, as has been discussed in Chapter 5.1.2. The Khayelitsha Commission itself became a place of political contestation and it was unable to become a fully inclusive exercise. As discussed previously, it made important contributions to transformative justice in different ways and areas, however, at the same time it could not become the body that integrated all actors or engaged with all demands.

In consequence, the key role of CSOs in transformative justice needs to be debated. The way in which transformation ought to be achieved remains less clear, and needs to be queried; in particular, because civil societies' role in pushing transformative change is not straightforward, rather, different actors can be seen to pursue different agendas, not all of them aimed at transformation and not all of them meeting the ends of transformation. This means that in its current form, transformative justice still needs to develop a clear scenario for its practice.

#### The limitations of transformation – when rights don't matter

The transformative justice literature suggests that local needs often relate to demands based on socio-economic rights (Lambourne, 2014; Laplante, 2008; Nagy, 2008). This research finds that the need for justice and security is rooted in socio-economic and emotional grievances, with the demands not always directly tied to rights. Rights therefore are only partly relevant as there is little practical meaning attached to the language of rights in the context of structural inequality, violence and crime or lack of access to justice and security.

Also, local needs, demands and related practices, such as those for punishment, can be problematic for the democratic rule of law. Responding to needs is therefore a challenge. The research speaks for the area of justice and security, yet the divide between local needs and demands and the ability of rights to accommodate these might also be relevant for

other areas of structural inequality and social justice, such as access to health care or land for, example (Chapter 7). These findings point to a gap in the transformative justice literature that needs further debate, in particular, where local demands clash with human rights standards or where human rights are not far reaching enough.

At the same time, the strong focus on the state's responsibility through the use of rights for holding the state accountable for parts of the CSOs, extenuates more radical aims. This is also because rights in themselves can be limiting, as they often operate within the status quo and are not necessarily equipped for radical aims (see Langford, forthcoming). Therefore, the use of rights may also limit transformative ideals as it does not necessarily include the more radical change that is envisioned by some scholars (Gready and Robins, S., 2014; Laplante, 2008). By holding the state accountable, these CSOs are making an important contribution to social justice activism and they point to structural inequalities, but a more radical form of transformation, for example, demanding more radical reforms that reach beyond the mere inscription of rights, remains a more distant aim. Therefore, there is a debate needed on the transformative nature of a practice of transformative justice (also see Section 8.3.).

## 8.2. Contribution

The thesis makes contributions to knowledge in both theory and practice. It makes theoretical contributions in the area of transformative justice and empirical contributions for its practice, using an analysis of the Khayelitsha community and CSOs, and research into the Khayelitsha Commission. The thesis also makes a practical contribution through a range of recommendations.

### On transformative justice

The thesis contributes to transformative justice research by interrogating its contribution on structural inequality and related responses to violence and crime. In particular, one of the main contributions lies in outlining important elements for transformative justice, and providing evidence as to how transformative justice is a useful analytical lens. As such, the thesis advances the conceptualisation of transformative justice. It does this in particular, by providing a case which demonstrates the relevance of structural inequality, both generally, and for its intersection with violence and crime. In addition, the research confirms the importance of local needs, as outlined before. Yet, the research suggests that

we be wary of the role of CSOs in contributing to transformative justice, as well as the limitations of transformative justice more broadly. On the one hand, because rights based discourses have limited radical potential, on the other, as local needs and civil society approaches can be problematic for transformative ideals. As such, the research confirms the relevance of the key elements of transformative justice, but also points to the need to caution, query and further investigate it, as addressed in Sections 8.1. and 8.3. of this chapter.

In addition, the research finds that there needs to be more clarity on the practice of transformative justice. The transformative justice literature assigns a role to CSOs without clearly illustrating what a CSO practice could look like. The assumption is rather based on the CSO role as one of agent of change and provider of local participation. The research has identified the problematic nature and diversity operating within CSOs. The research therefore questions the unanimous role of CSOs for transformative change, both in terms of theoretical discussion and practical implication.

Finally, the research also points to the difficult endeavour of transformative change more generally, which is not straightforward. Setting out what transformative justice means in practice is a work in progress. By pointing to the importance of the concept and highlighting its challenges, this research makes a contribution to this process.

#### On Khayelitsha and South Africa

The thesis contributes to research into structural inequality in relation to violence and crime in South Africa; the diverse landscape of local actors active in security and justice responses in Khayelitsha; and its political and moral divides.

This research has shown the difficulties and complexities involved in grappling with structural inequalities, and consequently with transformation in post-transition contexts. On the one hand, these exist because structural inequalities transcend and impact most aspects of everyday lives. On the other, in South Africa difficulties exist due to inequalities rooted in a past system of inequality. These have become protracted through post-transition policies: that is, in direct ways, such as the outsourcing of security, for example, and in less direct ways, through a lack of more progressive reforms and redistribution of resources as well as services. A joint discussion of South Africa's transition, along with an accompanying data analysis, has shown that inequalities and shortcomings shaped by past and present institutions, effect the occurrence and impact of



violence, crime, and access to security and justice. The thesis leads us to a better understanding of how the latter issues are also matters of social justice in Khayelitsha.

It makes a contribution to the concept of structural inequality, in particular, in its relation to violence and crime and justice and security in Khayelitsha. Specifically, the research extends analysis on structural inequalities by pointing to the role played by lack of resources and police conduct, which in Khayelitsha causes pain and humiliation. There is also a contribution in terms of expanding the research on structural inequalities, considering the way policing and court practices contribute to these, and how everyday practices of structural inequality operate in the context of violence and crime. The research shows how these structural inequalities are a result of past and present governance in South Africa. While apartheid has been abolished, the inequalities it has created still work through spaces, practices and institutions, while at the same time, the current government has contributed to the continuance of some of them, for example, through discussed skewed resource distribution of SAPS.

In addition, the research outlines the landscape of local actors' approaches to security and justice in Khayelitsha. Some local non-state security and justice actors, like taxi drivers, street committees and neighbourhood watches, are also seen to enact and correspond with local needs, for example, by providing punishment through banning alleged perpetrators from an area, and giving status to, as well as enacting, violent forms of punishment. The research also provides an overview of CSOs involved in addressing violence and crime through social justice activism that points to structural inequality in the access to justice and security. The research thus offers a comprehensive overview of the heterogeneous landscape of local actors who are active in the field of justice and security in Khayelitsha, adding to previous research in this area (Super, 2014). It points to a civil society composed of vigilantes, social movements and NGOs alike. This landscape is, however, divided by political contestation and a disconnect between demands for rights and state responsibility and the demands for punishment and retribution. The research therefore provides important insights into the state of civil society composition in Khayelitsha, suggesting that a human-rights based discourse is only relevant for part of the community.

#### On the Khayelitsha Commission

Finally, the thesis is an early and comprehensive analysis of the Khayelitsha Commission and the process that led to its establishment. The process is understood as an example of

social justice activism and can be framed as a transformative justice exercise (see discussion in Chapter 5.4. and Section 8.1.). At the same time, the Khayelitsha Commission was limited by its official mandate and its ability to become a fully inclusive endeavour. Initiatives like the Khayelitsha Commission therefore also need to be analysed critically to understand the extent of their contribution to transformative change. The research did engage with the process and politics that led to its establishment, which is the first analysis of this kind to contribute to current knowledge. It also engaged with the themes that emerged from the Khayelitsha Commission around structural inequality, CSO demands and local needs. Analysing the vast material offered up by the Khayelitsha Commission is also a practical contribution to knowledge. The recommendations will indicate how this source can be used for further research.

#### Practical contribution

The thesis makes a contribution to practice by making recommendations for practitioners, particularly those involved in designing or coordinating local responses to violence, as well as policy makers, for example, government entities and researchers. The findings of this study inform a number of recommendations and suggestions for further research, all of which aim to advance the necessity of identifying responses to violence and crime, and contributing to a more socially just society.

### 8.3. Recommendations

The thesis identifies a number of recommendations for practice and further research, which will be discussed in continuation. The Khayelitsha Commission itself formulated 20 comprehensive recommendations, which merit recognition (Khayelitsha Commission, 2014, pp. 439-468; also see Chapter 4.4.). Due to its mandate, the focus of the Khayelitsha Commission, although not exclusively, remained on the police. The recommendations formulated here focus solely on issues related to this research, and can be considered complementary to some aspects of the Khayelitsha Commission recommendations, whilst also standing alone. Recommendations are formulated for practitioners involved in coordinating or designing local responses to violence and crime, while also allowing for a response to structural inequalities and the design of more transformative approaches (mainly by representatives and programme managers of NGOs and civil society organisations; and planning and implementing officers of state entities). Finally, a range

of recommendations focusing on the main themes of the research are given for researchers.

#### Recommendations for practitioners

- Research on and stakeholder mapping of actors in the area of violence and crime, for example, through in-depth ethnographic studies and synthesis of existing research on civil society actors

The research identified a number of key civil society organisations addressing violence and crime which are of particular importance in Khayelitsha. While it is not assumed that all these stakeholders hold the same relevance for each area within Khayelitsha, street committees and taxi drivers do seem relevant actors, while the complainant organisations, with their wide membership, also count. Having a clear understanding of the different roles, positions and interests of such actors is key for any initiative. It is recommended that all stakeholders be identified prior to any initiative to gain a clear understanding of their roles. This would ideally require independent research and individual, in-depth and ethnographic analysis of the relevant stakeholders, which is partly in place already for some actors (see, for example, Super, 2016; 2015; 2014; Freeman and McDonald, 2015; Robins, S.L., 2014; 2009), as well as a synthesis and mapping of the actors' landscape. Both require resources, time and access.

- Synthesising existing lessons learned about established coordination structures and use of this information for future coordination structures

Attempts to coordinate or make use of the rich landscape of local actors has already taken place through the establishment of CPFs and the so called, Community Safety Forums<sup>77</sup>. These attempts largely failed for a variety of practical reasons, such as the politicisation of CPFs; lack of resources to rent a meeting space, provide transport or equipment, for example; lack of political will and reduction of financial support – among others

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<sup>77</sup> Community Safety Forums were established in 2000 to address shortcomings of the CPFs and address crime prevention in a comprehensive manner. They aimed to also look at other responses, such as the provision of public services, poverty reduction and working with young people. Most Community Safety Forums, despite their success, stopped functioning once external donor funding ended (Interview, 1B, 2014), for more information on the Community Safety Forums see Tait and Usher (2002).

(Khayelitsha Commission, 2014, pp. 406-411, pp. 451-452). Lessons learned from these attempts can, however, provide valuable insights for establishing or supporting more sustainable structures in the future. An analysis and synthesis of lessons learned would require mainly desk research.

- No duplication of coordination structures, instead the need to make use of existing structures and take into account potential political divides

This research has shown that political interests are a real impediment to collaboration and engagement between actors in Khayelitsha, and overcoming party political divides and interests might not actually be possible. On the other hand, while the implementation of closer collaboration and joint working groups might be challenging, the Khayelitsha Commission did demonstrate that there are possibilities and the interest in exchange between different actors. Regular stakeholder meetings or workshops between different local initiatives could therefore act as alternatives to a single joint coordinating structure. The research also suggests that a variety of local actors play important roles. The existing stakeholders, structures and networks are indeed powerful resources. As such, these actors can be identified as providing important sources of information, while existing structures might be good access points for local initiatives, precluding the need to set up new structures. For example, the trust that exists for street committees, and their ability to deal with community conflict, could be prove an entry point for such an endeavour.

- Shared and standardised access to resources, material, training and guidance for those active in security provision

This research strongly suggests that outsourcing the responsibility of security to the communities themselves needs to be reduced, with responses instead viewed as a shared exercise. Rhetoric should reflect such a practice as this is important in strengthening the state's responsibility and legitimacy. Local initiatives that are viewed as supportive to state activities need further resources, training and technical assistance. For example, training for all neighbourhood watches, as well as access to material and accompanying technical assistance for the first months, should be the standard provided by DOCS rather than the exception. This could also include a peer-to-peer training system and learning exchange between different suburbs, which would allow for training to be upscaled, learning to be enhanced and expenditures to be kept low. As this comes at additional budgetary cost, a decision would need to be made as to whether comprehensively

strengthening such initiatives is the way forward or if it would be better to abstain from encouraging them. At the same time, this research raises the question of how local actors should operate, as attempts to institutionalise actors and approaches might not bring the desired results when this is based on a logic of outsourcing, control and punitive rhetoric (also see discussion in Chapters 5 and 7).

- Addressing local needs through the support of local conflict mediation initiatives and the establishment of a victim compensation fund

The local needs identified in this research must be addressed if vigilante violence is to be reduced and the right to access security and justice is to be guaranteed. While there are underlying structural inequalities which require long-term solutions, short-term structural interventions can also help to mitigate these needs. One suggestion is the establishment of a compensation fund to address the socio-economic consequences of violence and crime; while a second suggestion is the re-establishment of local community peace initiatives or even engaging with street committees to strengthen local initiatives in order to deal with local conflict mediation and non-violent punishment. These two suggestions were also made by the complainant organisations (Closing Legal Argument, LRC, 29.05.2014, pp. 225-226) and the Khayelitsha Commission (2014, p. 452) so are seconded by this research. Both suggestions come with comprehensive documentation – in the case of the compensation fund there is a comprehensive feasibility study (South African Law Reform Commission, 2004) that could be reviewed again, in the case of the community based mediation initiatives there is documentation on two relevant experiences available, including best practices and lessons learned (Tait, 2004; Community Peace Programme, n.d.). These sources could be tapped into easily. Both suggested initiatives are subject to political will and available funding.

- Using local CSOs to strengthen legal literacy and understanding of and interest in legal practices and criminal justice processes

The research has pointed out a lack of experience with legal practice, as well as a lack of coherency in the criminal justice process, resulting in lack of legal legitimacy. There is a subsequent need to establish trust in legal processes and decisions. Legal literacy programs and information campaigns, such as Street Law South Africa (McQuoid-Mason, 2008), should be continued and scaled up. Assistance could easily be provided by CSOs, SMOs, and CPFs as well as other local structures that serve as transmitters,

intermediaries or access points beyond schools and teachers, that is, providing access to other parts of the community including security and justice actors. The street law experience is well documented and reviewed and material and expertise are easily accessible (McQuoid-Mason, 2008). However, such an upscale is also subject to political will and the availability of funds.

#### Recommendations for researchers

- Further case studies and comparative studies that engage with transformative justice and its concrete mechanisms

There is further research needed on transformative justice more generally, including the concrete mechanisms for remedying structural inequality, how these mechanisms are promoted, and by whom; in particular, because transformative justice discussions lack practical examples and mainly draw from singular, local initiatives that are considered transformative (see Eriksson, 2009a). This thesis also encourages research into the transformative nature of local responses. In particular, because this research questions some of the assumptions formulated by transformative justice, while also allowing for the potential identification of further transformative justice practices. This research highlights the heterogeneity of local civil society approaches, their tensions and contradictions. Studies that identify the common traits of different local initiatives and civil society could probably allow for drawing a further and more robust conclusion in the ways both local and bottom-up initiatives across a range of cases can be considered transformative.

- Further research on definitions, limitations and the potential of transformation

There is a discussion to be held on how transformative the concept of transformative justice actually is. While this does not suggest it be tied to a narrowly defined framework, as it stands, the concept of transformative justice is currently rather broad. Some research focuses on the addressing of structural inequalities (Lambourne, 2009; Laplante, 2008; Mani, 2008), while others see a need for more progressive way of transformation (Gready and Robins, S., 2014). One particular point of further interrogation includes the limitations of a rights based discourse, as outlined in Section 8.1. of the findings.

- Synthesise and deepen research on local actors addressing violence and crime

The variety of local actors in South Africa, their differences, and singular contributions in terms of addressing violence and crime, as well as their ability to fulfil security and

justice functions, deserves further research. Existing studies on the different actors and their ways of functioning are slightly outdated (Schaerf, 2005; Tshehla 2002), while others focus only on particular entities (Buur, 2010; 2006). Some research has been done to dig deeper into the variety and complexity of these different actors in Khayelitsha (Super, 2016; 2015; 2014), but given that these actors play such an important role, further research is encouraged, for example, placing special emphasis on the roles and functioning of street committees or taxi drivers. Further research is also encouraged on the way that different CSOs interact with community members. This would particularly allow insights into the way the needs and demands of a community are and can be translated into CSO action.

- Using the data of the Khayelitsha Commission to study different types of violence and the role of commissions for transformation

This thesis also suggests further the need for research on the Khayelitsha Commission, along with research based on the extensive database used in the Khayelitsha Commission hearing and findings. The Khayelitsha Commission has made a tremendous effort to draw evidence and background documents together. In extending beyond its purpose of advocacy and policy impact, this data could also be used, and indeed prove very useful, to further research. The Khayelitsha Commission provides insights into intersecting topics with this research and invites the consideration of additional insights on issues such as: masculinity, policing and gender-based violence; the culture of policing; and the emergence of gang violence as identity formation; among other themes. In itself, The Khayelitsha Commission also provides the opportunity for further researching the general roles of post-transition commissions of inquiry for transformative endeavours, although as this research indicates, its role might be ambiguous.

#### 8.4. The need to address structural inequalities

This thesis provides empirical research that probes elements of transformative justice with the aim of adding to its conceptualisation, and gaining a deeper understanding of the intersection between structural inequality, violence and crime, and the role of CSOs. Based on a case study in Khayelitsha, South Africa, analysing civil society involvement, local needs and local actors resulting from violence and crime, the research explores the contribution of transformative justice to responses to violence and crime, as well as improving access to justice and security.

The research demonstrates that transformative justice is a useful analytical lens, in particular, because it allows an understanding of the way in which structural violence of the past and present plays out and impacts on the occurrence of and exposure to violence and crime; and more importantly, how this impacts on people's everyday lives and experiences. What is essential to this research is the way in which historical and current structural violence impacts on people's lives and experience of violence and crime, including their encounters with the police and the courts, and their ability to find responses and solutions in light of limited access to security and justice.

Furthermore, the research also shows how transformative justice interventions can make important contributions to a transformative justice agenda by making visible structural inequalities, giving a voice to people and giving access to justice. This may also be done by challenging and holding the state accountable and by continuously using advocacy and mobilisation to push the realisation of the rights of the people and the realisation of transformation. There is the necessary capacity, energy, and passion in civil society and the people behind it to make transformative justice a reality.

At the same time, the study demonstrates that local needs can stand in conflict with democratic and human rights based approaches – but they cannot be ignored, because if they remain unaddressed some will find other outlets for redress, through vigilante violence, for example. Consequently, if these divides and different worlds do not come together, there is a risk that insecurity and violence, rather than justice, equality and peace, will become an ordering principle.

Finally, the research has also identified the tensions and heterogeneity of local actors and local responses, thus calling for a critical examination of the concept of local participation and agency. If transformative justice is to play a role and make a contribution in addressing and mitigating violence and crime, and addressing and mitigating structural violence, an understanding of these diverse forces is necessary.

Transformation is a process that takes time. As this thesis indicates, change does not come with a set of institutions, rights or reforms, but with the lived experience of the difference these institutions, rights and reforms make to people's lives in the long term. The change therefore depends on the capacity, practices, and processes to address needs, and in consequence, understand how structural injustices can be addressed in tangible ways. There is a need to tackle both structures of injustices and the need for redistribution in order that democratic politics and the rule of law may eventually take root.



# APPENDICES

## Appendix I: Interview table

The author of this thesis conducted all interviews in person on-site. A total of twenty-two interviews with twenty-four individuals in seventeen different organisations were conducted. At some organisations different people in different positions with different capacities were interviewed. No person was interviewed more than once. Only one interview was conducted with more than one person. Interviews are listed in alphabetical order.

| <b>Organisation</b>  | <b>Anonymised Interviewee(s)</b> | <b>Date</b> | <b>Location</b>           |
|--|----------------------------------|-------------|---------------------------|
| African Policing Civilian Oversight Forum (APCOF)          | 1B                               | 27.03.2014  | Head Office, Cape Town    |
| Anonymous  | 17B                              | 14.01.2014  | Office, Cape Town         |
| Centre for the Study of Violence and Reconciliation (CSVR) | 3B                               | 12.03.2014  | Office, Cape Town         |
| The City of Cape Town                                      | 5B                               | 03.04.2014  | Head Office, Cape Town    |
| Western Cape Department of Community Safety (DOCS)         | 11B, 11C, 11D                    | 20.03.2014  | Head Office, Cape Town    |
| Equal Education (EE)                                       | 4B                               | 30.01.2014  | Public Space, Khayelitsha |
| Equal Education (EE)                                       | 4C                               | 04.02.2014  | Public Space, Khayelitsha |
| Gun Free South Africa                                      | 6B                               | 12.03.2014  | Church, Cape Town         |
| Khayelitsha Commission                                     | 2B                               | 05.03.2014  | Office, Khayelitsha       |
| Legal Resource Centre (LRC)                                | 8B                               | 02.04.2014  | Head Office, Cape Town    |
| Ndifuna Ukwazi (NU)  | 10B                              | 11.12.2013  | Head Office, Cape Town    |
| Ndifuna Ukwazi (NU)  | 10C                              | 17.12.2013  | Public Space, Cape Town   |
| NICRO  | 9B                               | 07.03.2014  | Head Office, Cape Town    |
| Social Justice Coalition (SJC)                             | 13B                              | 27.01.2014  | Head Office, Khayelitsha  |
| Treatment Action Campaign (TAC)                            | 14B                              | 06.02.2014  | Public Space, Khayelitsha |
| Treatment Action Campaign (TAC)                            | 14C                              | 26.03.2014  | Head Office, Cape Town    |
| TRIANGLE   | 15B                              | 20.01.2014  | Public Space, Cape Town   |
| TRIANGLE   | 15C                              | 22.01.2014  | Head Office, Cape Town    |

| Organisation  | Anonymised Interviewee(s) | Date       | Location                |
|---|---------------------------|------------|-------------------------|
| University of Cape Town – Safety and Violence Initiative (SaVi) | 16B                       | 07.03.2014 | Office, Cape Town       |
| University of Cape Town – Centre for Criminology                | 16C                       | 27.03.2014 | Office, Cape Town       |
| Violence Prevention through Urban Upgrading (VPUU)              | 18B                       | 31.03.2014 | Office, Cape Town       |
| Western Cape Religious Leaders Forum (WCRLF)                    | 12B                       | 19.03.2014 | Public Space, Cape Town |

**Table 4: Overview Interviews**

(Source: author’s own representation)

## Appendix II: Interview question guide

The semi-structured interview guideline served as an orientation guide during interviews and as a frame of reference to address issues of interest for this thesis. The flexibility of semi-structured interviews was used to leave room for the interviewees to bring in their own ideas and themes. Both questions and topics were adjusted to each interview, and to the issues emerging during the interview. The questions therefore can be understood more as a guide than a technical questionnaire. The questions provided here are sample questions for civil society organisations and NGOs. These were slightly altered and adjusted when talking to other institutions, such as academia or the government.

### On violence and vigilantism

- What do you consider or have you identified as the causes for high crime rates, violence?
- Which are the most pressing problems to be solved?
- What responses would you like to see to these problems?
- Can you explain through which measures, initiatives and actions you addressed the issue of violence and crime in the last years?
- How do you feel the state has addressed the issues that you just identified? What is your view and response to these actions?
- What is your organisation’s view of vigilantism?
- Where do you see the roots of vigilantism?

- How do you feel the government has addressed vigilantism?

On representation and engagement with citizens

- Who is your constituency? Who are you representing?
- How do you guarantee that you are representative?
- How do you gather input and feedback from your constituency on the issue of violence and insecurity?
- How do you see that communities have addressed the issues of violence and insecurity?
- How do you approach and address the issue of vigilantism with the residents in the communities you work with?
- How do you address people's demand for justice and security?
- Which approaches do you take on vigilantism?
- Do you engage with the people in the communities on vigilantism? If so how?
- How do you engage with contrasting approaches to security and justice within your constituency?
- How do you navigate between the different demands and interests in the communities?

On working with the state

- How has collaboration been with the state/government on the core issues that your organisation works for?
- When has collaboration been successful, with whom and why?
- With whom do you cooperate? Which factors play a role?
- What are your strategies?
- What avenues do you choose?
- What do you consider as the relevant factors that positively or negatively influence engagement with the state?

- How have you adapted/do you adapt to the way engagement with the government/state institution unfolds?
- How would you describe engagement with the government on the particular issue of violence and crime?
- Has the work with the government on violence been very different from the other fields/issues you are working on with the government?

#### On the Khayelitsha Commission

- Can you please describe how the initiative for lodging the complaint and demanding the installation of a commission of inquiry came about and what particular role your organisation has been playing in the lodging of a complaint?
- What steps have been taken prior to the “final step” of getting together to lodge the complaint?
- The complaint states that throughout the last ten years there have been several attempts to engage with state officials on the issues of violence, vigilantism and police-community relationships. Have you been involved? What attempts have been made? What strategies have been used?
- What have been the factors that prevented more collaboration? How have you adjusted to them?
- What will be your role while the Khayelitsha Commission hearings are taking place?
- What do you expect from the Khayelitsha Commission?
- What are the long- and short-term goals you would like to see?
- How will you follow up on the implementation of recommendations?
- How has your constituency been involved in the process? Did they engage with the complaint for the Khayelitsha Commission? If so, how?
- What are the demands from your constituency?
- What do they expect from the Khayelitsha Commission?
- What other strategies do you pursue in order to advocate for safer communities?

- Some organisations, like KDF or SANCO are against the Khayelitsha Commission. Have you engaged with them?

### Appendix III: Khayelitsha Commission hearing timetable

This table provides an overview of the Khayelitsha Commission public hearing. The table indicates the dates, witness/es, their affiliation, and in the case of expert evidence, their thematic expertise. The table further indicates the corresponding section in the Khayelitsha Commission transcript for each witness. The table also shows whether a transcript was coded for this thesis. Transcripts were selected for coding based on the main themes discussed during a hearing and its relevance for this research. All hearing transcripts can be accessed at the Khayelitsha Commission website (Khayelitsha Commission, 2012a). The transcripts are found under the section *Information – Hearing Transcripts* and clustered into Phase One Hearings, Phase Two Hearings, and Closing Argument Hearing (Khayelitsha Commission, 2012b).

| Date                                       | Witness, Affiliation  | Page(s) | Coded |
|--|---|---------|-------|
| <b>Phase One Hearing 23.01.-01.04.2014</b> |   |         |       |
| <b>23.01.2014</b>                          | Opening statements: <ul style="list-style-type: none"> <li>▪ Commissioners</li> <li>▪ Evidence leaders</li> <li>▪ LRC on behalf of complainant organisations</li> <li>▪ DOCS</li> <li>▪ City of Cape Town</li> <li>▪ Mr. Motoshi</li> <li>▪ SAPS</li> <li>▪ Women’s Legal Centre</li> </ul> | 4-75    | Coded |
|  | Hearings: <ul style="list-style-type: none"> <li>▪ Mr. Simelane, Deputy Director, Policy and Research, DOCS</li> </ul>  | 75-107  | Coded |
|  | <ul style="list-style-type: none"> <li>▪ Mr. Mtsolo, local bishop, community member</li> </ul>  | 107-138 | Coded |
| <b>24.01.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Ms. Bontshi; Mr. Nteza; Mr. Ntsholo, community members</li> </ul>  | 140-164 | Coded |
|  | <ul style="list-style-type: none"> <li>▪ Mr. Tame, community member</li> </ul>  | 166-180 | Coded |
|  | <ul style="list-style-type: none"> <li>▪ Ms. Cole, expert on the history of Khayelitsha</li> </ul>  | 184-228 | Coded |
|  | <ul style="list-style-type: none"> <li>▪ Ms. Mlungwana, General Secretary SJC, community member</li> </ul>  | 228-271 | Coded |

| <b>Date</b>       | <b>Witness, Affiliation</b>  | <b>Page(s)</b> | <b>Coded</b> |
|-------------------|--|----------------|--------------|
| <b>27.01.2014</b> | ▪ Mr. Simelela, Ms. Simelela, community members  | 273-329        | Coded        |
|                   | ▪ Mr. Magadla, community member  | 329-331        | Coded        |
|                   | ▪ Prof. Simkins, expert on demographics  | 332-357        | Coded        |
|                   | ▪ Prof. Seekings, expert on socio-economics  | 358-424        | Coded        |
| <b>28.01.2014</b> | ▪ Ms. Soldaat, founder of Free Gender, community member  | 452-490        | Coded        |
|                   | ▪ Mr. Mahlutshana, school principal, community member  | 490-509        | Coded        |
|                   | ▪ Mr. Mjonondwana, school principal, community member  | 509-533        | Coded        |
|                   | ▪ Ms. Msongelwa, member of SJC, community member   | 534-553        | Coded        |
|                   | ▪ Ms. Nduna, community member  | 554-581        | Coded        |
| <b>29.01.2014</b> | ▪ Dr. Josias, medical doctor, Thuthuzela Care Centre   | 582-755        | Coded        |
| <b>30.01.2014</b> | ▪ Ms. Dwane, staff of EE, community member   | 756-794        | Coded        |
|                   | ▪ Dr. Kaminer, expert on the impact of violence on children  | 796-826        |              |
|                   | ▪ Dr. Harrison, expert on early childhood development  | 828-845        |              |
|                   | ▪ Ms. Mpekwani, community member   | 845-858        | Coded        |
|                   | ▪ Ms. Thosholo, community member   | 859-888        | Coded        |
|                   | ▪ Ms. Ntsilane, community member   | 891-897        | Coded        |
| <b>31.01.2014</b> | ▪ Ms. Mlungwana, Secretary General SJC, community member   | 902-927        | Coded        |
|                   | ▪ Mr. Burton, expert on police perceptions   | 928-966        | Coded        |
|                   | ▪ Ms. Basson, staff of Homestead, place of safety for children   | 967-1014       | Coded        |
|                   | ▪ Ms. Ncaphancapha, community member   | 1015-1058      | Coded        |
|                   | ▪ Mr. Hendricks, alleged perpetrator of vigilante violence   | 1061-1073      | Coded        |
| <b>03.02.2014</b> | ▪ Mr. Jones, Deputy Director Metro District Manager, Western Cape Department of Health   | 1076-1104      |              |
|                   | ▪ Ms. Thompson, Director, Forensic Pathology Services; Dr. Wadee, Head of Division Forensic Medicine, University of Stellenbosch | 1104-1173      |              |
|                   | ▪ Ms. Redpath, expert on crime statistics and resource allocation  | 1173-1234      | Coded        |
|                   | ▪ Mr. Njozela, Head of Policing Complaints Directorate, DOCS   | 1236-1266      |              |
| <b>04.02.2014</b> | ▪ Mr. Njozela, Head of Policing Complaints Directorate, DOCS   | 1269-1276      |              |
|                   |  | 1304-1322      | Coded        |

| <b>Date</b>       | <b>Witness, Affiliation</b>  | <b>Page(s)</b>   | <b>Coded</b>                     |
|-------------------|--|--|----------------------------------|
|                   | <ul style="list-style-type: none"> <li>▪ Ms. Igglesden, expert on experiences of foreigners in Khayelitsha</li> <li>▪ Mr. Sali, former CPF member, former community member</li> <li>▪ Mr. Loonat, former chair of Community Police Board; Mr. Abrahams, former member of the Community Police Board</li> </ul>   | 1334-1386<br>1393-1472   | Coded<br>Coded                   |
| <b>05.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Mr. Leholo, Acting Head of the Independent Police Investigative Directorate, Western Cape</li> <li>▪ Dr. Lawrence, Head of Department of Community Safety</li> </ul>  | 1477-1590<br>1591-1741   | Coded                            |
| <b>06.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Dr. Lawrence, Head of Department of Community Safety</li> <li>▪ Ms. Harmse, Senior Public Prosecutor</li> <li>▪ Mr. Bosman, Head of Directorate Safety and Security, City of Cape Town</li> </ul>   | 1742-1804<br>1813-1900<br>1901-2013  | Coded<br>Coded<br>Coded          |
| <b>07.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Mr. Zitwana, member of SJC, community member</li> <li>▪ Mr. Gqeku, community member</li> <li>▪ Mr. Makele, member of SJC, community member</li> <li>▪ Prof. Artz, expert on domestic violence</li> </ul>  | 2022-2080<br>2061-2077<br>2081-2119<br>2120-2190                           | Coded<br>Coded<br>Coded          |
| <b>10.02.2014</b> | <ul style="list-style-type: none"> <li>▪ General Schooling, SAPS, retired Lieutenant Colonel Leamy, SAPS</li> <li>▪ Mr. Achmat, Director NU</li> </ul>   | 2198-2351<br>2351-2407   | Coded<br>Coded                   |
| <b>11.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Mr. Bregman, staff of SJC</li> <li>▪ Ms. Vetten, expert on gender based violence and criminal justice process</li> <li>▪ Mr. Cole, City of Cape Town, City Safety and Security Directorate; Mr. Moeller, Metro Police, Senior Superintendent</li> <li>▪ Mr. Papu, Mr. Timm, specialist statements on emergency medical services</li> <li>▪ Dr. Gillespie, expert on vigilante violence</li> <li>▪ Mr. Persson, intern at SJC</li> </ul> | 2411-2470<br>2471-2526<br>2527-2564<br>2564-2596<br>2597-2648<br>2648-2666 | Coded<br>Coded<br>Coded<br>Coded |
| <b>12.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Mr. Busakwe, CPF chair, community member</li> <li>▪ Mr. Giles, staff Violence Prevention through Urban Upgrading (VPUU)</li> <li>▪ Mr. Jafta, CPF chairperson</li> <li>▪ Ms. Mtwana, staff VPUU</li> </ul>  | 2668-2723<br>2724-2763<br>2764-2821<br>2822-2866                           | Coded<br>Coded<br>Coded<br>Coded |
| <b>13.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Colonel Reitz, SAPS Station Commissioner Lingeletu West</li> </ul>  | 2867-3085  |                                  |

| <b>Date</b>       | <b>Witness, Affiliation</b>   | <b>Page(s)</b>                                   | <b>Coded</b>                     |
|-------------------|---|--|----------------------------------|
| <b>14.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Colonel Reitz, SAPS Station Commissioner, Lingelethu West</li> <li>▪ Lieutenant Colonel Swart, SAPS Head of Detectives, Lingelethu West</li> </ul>   | 3086-3249<br>3249-3325                           |                                  |
| <b>17.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Lieutenant Colonel Swart, SAPS Head of Detectives, Lingelethu West</li> <li>▪ Brigadier Dladla, SAPS Commander, Site B Khayelitsha</li> </ul>  | 3326-3471<br>3472-3554                           | Coded                            |
| <b>18.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Brigadier Dladla, SAPS Commander Site B, Khayelitsha</li> </ul>  | 3556-3772  | Coded                            |
| <b>19.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Brigadier Dladla, SAPS Commander Site B, Khayelitsha</li> <li>▪ Colonel Marais, SAPS Head of Detectives, Khayelitsha</li> </ul>  | 3773-3828<br>3829-4030                           | Coded                            |
| <b>20.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Ms. Mtwana, staff VPUU</li> <li>▪ Captain Pillay, SAPS Detective Court Case Officer</li> <li>▪ Mr. kaBeja, KDF executive member, community member; Mr. Tyhido, KDF Chairperson, community member</li> <li>▪ Mr. Siko, CPF Chairperson Khayelitsha, community member</li> </ul> | 4032-4047<br>4048-4176<br>4177-4262<br>4265-4298 | Coded<br>Coded<br>Coded<br>Coded |
| <b>21.02.2014</b> | <ul style="list-style-type: none"> <li>▪ Mr. Du Toit; Mr. Lefko-Everett, consultancy on Community Perception Survey into Policing</li> <li>▪ Colonel Tobias, SAPS Head of Detectives, Harare</li> </ul>   | 4299-4331<br>4332-4509                           | Coded<br>Coded                   |
| <b>17.03.2014</b> | <ul style="list-style-type: none"> <li>▪ Colonel Tobias, SAPS Head of Detectives, Harare</li> <li>▪ Colonel Nel, SAPS former Station Commander Harare; Colonel Rboliba, SAPS current Station Commander, Harare</li> </ul>   | 4516-4611<br>4612-4727                           | Coded<br>Coded                   |
| <b>18.03.2014</b> | <ul style="list-style-type: none"> <li>▪ Colonel Nel, SAPS former Station Commander, Harare; Colonel Rboliba, SAPS current Station Commander, Harare</li> <li>▪ Brigadier van Zyl, SAPS Head of Inspections</li> <li>▪ Brigadier Seimela, SAPS Crime Research and Statistics Component</li> </ul>                       | 4730-4859<br>4859-4947<br>948-4986               | Coded                            |
| <b>24.03.2014</b> | <ul style="list-style-type: none"> <li>▪ Colonel Wiese, SAPS Cluster Detective Coordinator</li> <li>▪ Mr. Siko, CPF Chairperson Khayelitsha</li> <li>▪ Mr. Mlenga, SAPS former Station Commander Khayelitsha; Major General Goss, SAPS former Cluster Commander at Khayelitsha</li> </ul>                               | 4988-5102<br>5103-5115<br>5116-5224              | Coded<br>Coded                   |



| <b>Date</b>                                | <b>Witness, Affiliation</b>   | <b>Page(s)</b>  | <b>Coded</b>       |
|--|---|---|--------------------|
| <b>25.03.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Brigadier Rabie, SAPS Section Head Performance, Measurement, Organisational Development</li> <li>▪ Major General Burger, SAPS Deputy Provincial Commissioner, Human Resource Management</li> </ul>   | 5226-5401<br>5401-5503  |                    |
| <b>26.03.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Major General Fick, SAPS Deputy Provincial Commissioner, Physical Resource Management</li> <li>▪ Brigadier Heilbron, SAPS Provincial Head Organisational and Strategic Management; Colonel Vermeulen, SAPS Provincial Office Performance Management</li> </ul>         | 5505-5594<br>5594-5763  |                    |
| <b>27.03.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Colonel Harri, SAPS Provincial Commander Family Violence, Child Protection and Sexual Offence Unit</li> <li>▪ Major General Molo, SAPS Provincial Office, Responsible for Detectives in the Province</li> <li>▪ Mr. Mgxaji, Khayelitsha Cluster Chairperson</li> </ul> | 5765-5878<br>5880-5992<br>5993-6005                           | Coded<br><br>Coded |
| <b>28.03.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Major General Jacobs, SAPS Deputy Provincial Commissioner Crime Intelligence</li> </ul>  | 6007-6255   |                    |
| <b>31.03.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Major General Jephtha, SAPS Deputy Provincial Commissioner Operations Officer</li> </ul>   | 6256-6484   |                    |
| <b>01.04.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Lieutenant General Lamoer, SAPS Provincial Commissioner, Western Cape</li> </ul>   | 6485-6737   | Coded              |
| <b>Phase Two Hearing 12.05.-16.05.2014</b> |   |   |                    |
| <b>12.05.2014</b>                          | Thematic Hearings (Witness, Theme): <ul style="list-style-type: none"> <li>▪ Ms. Redpath, Resource Allocation</li> <li>▪ Ms. Fish, Mr. Schlebusch, Human Resources</li> <li>▪ Mr. Giliomee, Informal Liquor Establishments</li> <li>▪ Dr. Burger, Visible Policing, Sector Policing</li> </ul>                  | 6744-6773<br>6835-6876<br>6876-6909<br>6910-7015              | Coded<br><br>Coded |
| <b>13.05.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Mr. Tait, Community Policing</li> <li>▪ Mr. Swart, FCS Detective Work</li> <li>▪ Dr. De Kock, Crime Intelligence</li> <li>▪ Prof. Ward, Youth Gangs</li> <li>▪ Dr. Klatzow, Crime Scene Management</li> </ul>  | 7016-7083<br>7083-7129<br>7130-7212<br>7213-7235<br>7236-7279 | Coded<br><br>Coded |
| <b>14.05.2014</b>                          | <ul style="list-style-type: none"> <li>▪ Dr. Grobler, Corruption</li> <li>▪ Ms. Ballard, Independent Policing Oversight</li> <li>▪ Ms. Vetten, Gender Based Violence</li> </ul>   | 7280-7335<br>7335-7383<br>7383-7434                           | Coded              |

| <b>Date</b>                                 | <b>Witness, Affiliation</b>   | <b>Page(s)</b>  | <b>Coded</b>                              |
|---|---|---|---|
|   | <ul style="list-style-type: none"> <li>▪ Prof. Artz, Domestic Violence, Homophobic &amp; Sexual Violence</li> <li>▪ Mr. Newham, Complaints System and Institutional Culture</li> </ul>  | 7434-7464<br>7464-7572  | Coded                                     |
| <b>15.05.2014</b>                           | <ul style="list-style-type: none"> <li>▪ Ms. Mtwana, Community Structures and Crime Prevention</li> <li>▪ Ms. Berg; Prof. Cartwright; Mr. Lamb, Community Policing and Breakdown of Relationship between Community and Police</li> <li>▪ Mr. McLean, Community Policing</li> <li>▪ Dr. Holtmann, Crime Prevention Strategies</li> <li>▪ Prof. Gobodo-Madikizela, Vigilantism</li> </ul> | 7575-7621<br>7622-7650<br>7665-7698<br>7713-7772<br>7773-7820 | Coded<br>Coded<br>Coded<br>Coded<br>Coded |
| <b>16.05.2014</b>                           | <ul style="list-style-type: none"> <li>▪ Dr. van Eyk, Training</li> <li>▪ Dr. Super, Vengeance Attacks</li> <li>▪ Mr. Huxham, Information Technology</li> <li>▪ Mr. Faull, SAPS Performance Measurement</li> <li>▪ Prof. Steinberg, Policing and Street Justice</li> </ul>  | 7821-7884<br>7885-7905<br>7922-7962<br>7964-8021<br>8021-8059 | Coded<br>Coded<br>Coded                   |
| <b>Closing Arguments Hearing 29.05.2014</b> |   |   |   |
| <b>29.05.2014</b>                           | <ul style="list-style-type: none"> <li>▪ LRC on behalf of complainants' organisations</li> <li>▪ Province, Department of Community Safety</li> <li>▪ City of Cape Town</li> <li>▪ SAPS</li> <li>▪ LRC reply</li> </ul>  | 8061-8124<br>8124-8141<br>8141-8151<br>8153-8186<br>8186-8195 | Coded<br>Coded<br>Coded<br>Coded<br>Coded |

**Table 5: Commission Hearing Schedule and Transcript Index**

(Source: author's own representation based on Khayelitsha Commission, 2014, Appendix B, pp. 470-477)

## Appendix IV: Khayelitsha Commission background documents

This appendix provides an overview of the Khayelitsha Commission's background documents, consisting of the complaint for the establishment of the Khayelitsha Commission, the Khayelitsha Commission's opening statements, and closing legal arguments, the Khayelitsha Commission bundles analysed for this research, the final Khayelitsha Commission Report, and the Khayelitsha Commission website.

## Complaint for the establishment of the Khayelitsha Commission

Social Justice Coalition, The Treatment Action Campaign, Equal Education, Free Gender, Triangle Project, Ndifuna Ukwazi (2011). *Complaint in terms of section 206(5)(a) of the Constitution and section 66(2)(a) of the Constitution of the Western Cape to the Premier of the Western Cape*. [Online]. Available at: <http://www.khayelitshacommission.org.za/terms-of-reference/women-s-legal-centre-complaint/80-women-s-legal-centre-complaint.html> [Accessed 20 June 2017].

### Khayelitsha Commission opening statements (written submission)

The table below provides an overview of the Khayelitsha Commissions' opening statements which were provided as written submissions for the opening of the Khayelitsha Commission on the 23<sup>rd</sup> of January 2014. The written submission can be found on the Khayelitsha Commission website under *Information – Opening Statements* (Khayelitsha Commission, 2012e).

| <b>Organisation</b>  | <b>Paragraphs</b> |
|--|-------------------|
| Commissioner's Opening Statement at the commencement of the Commission of Inquiry, 23 January 2014 | 1-15              |
| Evidence Leaders   | 1-17              |
| Western Cape Department of Community Safety  | 1-21              |
| The City of Cape Town  | 1-4.2             |
| South African Police Service   | 1-37              |
| Legal Resource Centre on behalf of the complainant organisations (English Opening Statement)       | 1-9               |

**Table 6: Khayelitsha Commission - Opening Statements**  
(Source: author's own representation)

### Khayelitsha Commission closing legal arguments (written submission)

The table below provides an overview of the Khayelitsha Commissions' closing legal arguments, which were provided as written submissions prior to the final closing argument hearings, which took place on 29<sup>th</sup> of May 2014. The written submission can be found on the Khayelitsha Commission website under *Information – Closing Arguments* (Khayelitsha Commission, 2012f).

| Organisation   | Page numbers |
|--|--------------|
| Legal Resource Centre on behalf of the complainant organisations | 1-487        |
| Western Cape Department of Community Safety                      | 1-55         |
| The City of Cape Town  | n.p.         |
| South African Police Service                                     | 1-104        |

**Table 7: Khayelitsha Commission - Closing Legal Arguments**  
(Source: author's own representation)

#### Khayelitsha Commission bundles

This table provides an overview of the Khayelitsha Commissions' background and reference documents that were analysed for this thesis. The table indicates the bundle reference and respective content of the specific document. All bundles can be accessed at the Khayelitsha Commission website (Khayelitsha Commission, 2012a). The bundles are found under the section labelled *Bundle* on the website. There is further information on how to navigate the bundles and a search function enabling easy access to the individual documents (Khayelitsha Commission, 2012c; 2012d).

| Bundle                          | Content   |
|---------------------------------|---|
| Consolidated indexes (15), n.d. | Consolidated index: media articles                                      |
| Bundle 1(1.a), item 13, 2012    | Affidavit: community member   |
| Bundle 1(1.a), item 31, 2012    | Affidavit: school principal, community member                           |
| Bundle 1(1.a), item 41, 2012    | Affidavit: community member   |
| Bundle 1(1.a), item 47, 2012    | Affidavit: community member   |
| Bundle 1(2), n.d.               | Media articles  |
| Bundle 1(5), file D, item 4     | Affidavit: SJC coordinator  |
| Bundle 1(9), item 2, 2013       | Affidavit: community member   |
| Bundle 2(1.1), item 84, 2013    | Affidavit: founder of Free Gender, community member                     |
| Bundle 4(1.1), item 2, 2013     | Expert report: socio-economic profile of Khayelitsha (Simkins, 2013)    |
| Bundle 5(1), item 5, 2013       | Expert report: economy, society and municipal services (Seekings, 2013) |

| <b>Bundle</b>                          | <b>Content</b>  |
|--|---|
| Bundle 5(4), file 8, n.d.              | Affidavits: CPF and KDF members<br>Notes: CPF meeting notes, CPF e-mails and contact details      |
| Bundle 5(4), file 8, item 1, 2013      | Affidavit: Khayelitsha Cluster Chairperson, community member                                      |
| Bundle 5(4), file 8, item 2, 2013      | Affidavit: KDF executive member, community member   |
| Bundle 5(4), file 8, item 3, 2013      | Affidavit: CPF chairperson, Harare, community member  |
| Bundle 5(4), file 8, item 4, 2013      | Affidavit: CPF chairperson, Khayelitsha, community member   |
| Bundle 7(1), file A, item 2a, 2012     | Annexures and notes: additional material to the Complaint Social Justice Coalition et al. (2011)  |
| Bundle 7(1), file G, item 8b, n.d.     | Map: Khayelitsha map including the three police precincts (Khayelitsha Commission, 2012h)         |
| Bundle 7(1), file G, item 11, 2013     | Affidavit: former CPF secretary, community member   |
| Bundle 7(1), file H, item 9a, 2013     | Expert report: on Khayelitsha (Cole, 2013)  |
| Bundle 7(1), file H, item 10, 2014     | Affidavit: expert on crime statistics   |
| Bundle 8(4), file 4.1, item 3.23, 2012 | SAPS report: bundu court overview   |
| Bundle 8(8), item 2, 2014              | Expert presentation: on Khayelitsha (Cole, 2014)  |
| Bundle 8(8), item 3, 2014              | Expert presentation: population and socio-economic indicators (Seekings, 2014a)                   |
| Bundle 9(1.2), item 91, 2014           | Affidavit: CPF chairperson Lingeletu, community member  |
| Bundle 10(1), file 1.1., item 11, 2014 | Expert report: community perceptions on policing (Mthente research and consulting services, 2014) |

**Table 8: Khayelitsha Commission Bundles**

(Source: author's own representation)

#### Khayelitsha Commission Report

Khayelitsha Commission (2014). *Towards a safer Khayelitsha: report of the Commission of Inquiry into allegations of police inefficiency and a breakdown in relations between*

*SAPS and the community of Khayelitsha* [Khayelitsha Commission Report]. Cape Town: Khayelitsha Commission. [Online]. Available at: <http://www.khayelitshacommission.org.za/final-report.html> [Accessed 17 November 2014].

#### Khayelitsha Commission website

Khayelitsha Commission (2012a). *Welcome*. Cape Town: Khayelitsha Commission. [Online]. Available at: <http://www.khayelitshacommission.org.za/> [Accessed 28 May 2017].

Khayelitsha Commission (2012b). *Information*. Cape Town: Khayelitsha Commission. [Online]. Available at: <http://www.khayelitshacommission.org.za/2013-11-10-19-36-33.html> [Accessed 28 May 2017].

Khayelitsha Commission (2012c). *How to navigate the bundles*. Cape Town: Khayelitsha Commission. [Online]. Available at: <http://www.khayelitshacommission.org.za/bundles/navigate-the-bundles.html> [Accessed 28 May 2017].

Khayelitsha Commission (2012d). *Search bundles*. Cape Town: Khayelitsha Commission. [Online]. Available at: <http://www.khayelitshacommission.org.za/bundles/search.html> [Accessed 28 May 2017].

## Appendix V: Complementary sources

This section provides an overview of all complementary and additional sources, such as additional reports, studies or websites, related to this research. The section will list reports and publications, and websites used in the research.

#### Reports and publications related to the Khayelitsha Commission

Conyngham, R. and The Trantraal Brothers (2016). *Safety, justice & people's power: a companion to the O'Regan-Pikoli Commission of Inquiry into Policing in Khayelitsha*. Cape Town: Ndifuna Ukwazi. [Online]. Available at: [http://nu.org.za/wp-content/uploads/2016/04/SafetyJustice\\_small.pdf](http://nu.org.za/wp-content/uploads/2016/04/SafetyJustice_small.pdf) [Accessed 25 October 2016].

Equal Education (n.d.(a)). *Executive summary: of “loose papers and vague allegations”:* a social audit of the safety and sanitation crisis in Western Cape schools. [Online]. Available at: <https://equaleducation.org.za/wp-content/uploads/2016/09/Executive-Summary-Western-Cape-Schools-Safety-and-Sanitation-Social-Audit-Report.pdf> [Accessed 1 July 2017].

Equal Education (n.d.(b)). *A visible crisis: photographs from of “loose papers and vague allegations”:* a social audit of the safety and sanitation crisis in Western Cape schools. [Online]. Available at: <https://equaleducation.org.za/wp-content/uploads/2016/09/Pictures-Western-Cape-Schools-Safety-and-Sanitation-Social-Audit.pdf> [Accessed 1 July 2017].

Ndifuna Ukwazi (2014a). *Our evidence for the commission: a collection of community affidavits.* Cape Town: Ndifuna Ukwazi. [Online]. Available at: <http://nu.org.za/wp-content/uploads/2014/06/Our-EvidenceFinal3Small.pdf> [Accessed 1 November 2016].

Ndifuna Ukwazi (2014b). *Our struggle for safety and justice in Khayelitsha: the O’Regan-Pikoli Commission of Inquiry into policing in Khayelitsha.* Cape Town: Ndifuna Ukwazi. [Online]. Available at: <http://nu.org.za/wp-content/uploads/2014/06/Our-StruggleFinal3Small.pdf> [Accessed 1 November 2016].

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# GLOSSARY

|          |  |
|----------|--|
| AIDS     | Acquired immune deficiency syndrome                        |
| ANC      | African National Congress                                  |
| CAQDAS   | Computer Assisted Qualitative Data Analysis                |
| CBO      | Community Based Organisation                               |
| CPF      | Community Police Forum                                     |
| CSO      | Civil Society Organisation                                 |
| CSVR     | Centre for the Study of Violence and Reconciliation        |
| CTMPD    | Cape Town Metropolitan Police Department                   |
| DA       | Democratic Alliance  |
| DOCS     | Department of Community Safety                             |
| EE       | Equal Education  |
| FCS Unit | Family Violence, Child Protection and Sexual Offences Unit |
| GBP      | British Pound  |
| HIV      | Human immunodeficiency virus                               |
| IPID     | Independent Police Investigative Directorate               |
| KDF      | Khayelitsha Development Forum                              |

|                        |  |
|------------------------|--|
| Khayelitsha Commission | Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha |
| LGBTI                  | Lesbian, Gay, Bisexual, Transgender and Intersex   |
| LRC                    | Legal Resource Centre  |
| Mapogo                 | Mapogo a Mathamaga   |
| NGO                    | Non-Governmental Organisation  |
| NU                     | Ndifuna Ukwazi   |
| PAGAD                  | People Against Gangsterism and Drugs   |
| SANCO                  | South African National Civic Organisation  |
| SAPS                   | South African Police Service   |
| SJC                    | Social Justice Coalition   |
| SMO                    | Social Movement Organisation   |
| TAC                    | Treatment Action Campaign  |
| TRC                    | Truth and Reconciliation Commission  |
| UN                     | United Nations   |
| VPUU                   | Violence Prevention through Urban Upgrading  |
| ZAR                    | South African Rand   |

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