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## **ARMED RESPONSE: AN UNFORTUNATE LEGACY OF APARTHEID**

**Leila Lawlor<sup>1</sup>**

### **ABSTRACT**

After apartheid was repealed in South Africa, the country's system of forced segregation officially ended. Vestiges of racial discrimination remain, however, including spatial segregation in housing, income inequality, and huge disparities in the government's provisioning of basic services. The poorest of South Africa's citizens live in peripheral communities, far from city centers and employment hubs. The poorest communities often lack safe streets and safe toilets. Whereas wealthier South Africans are able to pay private policing companies to provide armed security, those in the poorest of communities must live with regular fear of violent crime. The problem is compounded by a flawed method of allocating police resources, which has resulted in unequal distribution of government-provided security. The situation is now dismal for many township residents, but hope has emerged through the efforts of concerned activists, clever urban designers, and many of the residents themselves. With focus on safety, land justice, and education, the situation can soon be turned around.

### **KEY WORDS**

Private security, policing, South Africa Police Service, spatial segregation, township, apartheid, segregation, allocation of resources, Constitution of South Africa, Bill of Rights, income gap, unemployment, Khayelitsha, safety, violent crime, affordable housing

### **INTRODUCTION**

Separateness, or apartheid, was a way of life in South Africa even before it became an official, enforced policy.<sup>2</sup> Apartheid, from the French root "àpart," which means separate, and the Dutch root "heid," a cognate of the English root

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<sup>2</sup> *The History of Separate Development in South Africa*, SOUTH AFRICAN HISTORY ONLINE, <http://www.sahistory.org.za/article/history-separate-development-south-africa> (last updated May 9, 2016); see also Oliver Wainwright, *Apartheid Ended 20 Years Ago, So Why Is Cape Town Still 'a Paradise for the Few'?* THE GUARDIAN (Apr. 30, 2014), <https://www.theguardian.com/cities/2014/apr/30/cape-town-apartheid-ended-still-paradise-few-south-africa>.

“hood,”<sup>3</sup> became official policy under South African law in 1948.<sup>4</sup> In 1950, the Population Registration Act was passed, requiring the entire South African population to be classified into three groups – black,<sup>5</sup> white, and colored.<sup>6</sup> Thus, racial discrimination was institutionalized in South Africa, stripping nonwhites of many fundamental rights, including the rights to travel freely, live where they chose, marry whom they chose, receive adequate education and hold higher paying jobs.

Determination of whether a person was white or nonwhite was based on physical characteristics and social identifiers like the location of a person’s home, a person’s job, and even a person’s friends.<sup>7</sup> In a bizarre ritual, borderline cases were sometimes subjected to the “pencil test,” in which a person’s hair was tested to see if it was kinky enough to hold an inserted pencil.<sup>8</sup> Failing the pencil test – when one’s hair held on to the pencil -- meant denial of classification as white, and subsequent denial of the numerous benefits and expanded rights that went along with that classification.

Under apartheid, nonwhites were cruelly removed from their Cape Town homes and communities.<sup>9</sup> Under the Group Areas Act of 1950, blacks, Asians, Indians and mixed-race persons were forced to live in segregated communities,

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<sup>3</sup> DICTIONARY.COM, <http://www.dictionary.com/browse/apartheid> (last visited Jan. 14, 2017).

<sup>4</sup> Pdraig O’Malley, *The National Party, Apartheid and the Anatomy of Repression in South Africa, 1948-1994*, NELSON MANDELA CTR. OF MEMORY, <https://www.nelsonmandela.org/omalley/index.php/site/q/03lv02167/04lv02264/05lv02303/06lv02304/07lv02305/08lv02310.htm> (last visited Jan. 14, 2017).

<sup>5</sup> Blacks were also referred to as “African” or “native.” See Pdraig O’Malley, *1950 Population Registration Act No. 30*, NELSON MANDELA CTR. OF MEMORY, <https://www.nelsonmandela.org/omalley/index.php/site/q/03lv01538/04lv01828/05lv01829/06lv01838.htm> (last visited Jan. 14, 2017).

<sup>6</sup> Colored persons were defined as mixed race, Indian or Asian. See *id.* The “colored” group was often further subdivided.

<sup>7</sup> *Colour Me South African*, THE ECONOMIST (June 3, 2010), <http://www.economist.com/node/16248631>.

<sup>8</sup> *Id.*

<sup>9</sup> The largest displacement was from District 6, a valuable and desirable land area within Cape Town’s central business area. The displacement caused 60,000 forced goodbyes from an area with a sense of community, convenient markets and nice homes. The residents were displaced to slums outside the city. Since passage of the Land Restitution Act in 1995, about 150 families have moved back to District 6. Bonita Bennett, Director of District 6 Museum, Address at Study Space IX, Sponsored by Ga. St. U. C. of L. and U. of Cape Town Afr. Ctr. For Cities, Cape Town, S. Afr. (June 30, 2016).

sometimes ripping apart families.<sup>10</sup> “Cape Town was conceived with a white-only centre, surrounded by contained settlements for the black and coloured labour forces to the east, each hemmed in by highways and rail lines, rivers and valleys, and separated from the affluent white suburbs by protective buffer zones of scrubland.”<sup>11</sup>

The strain of living under South Africa’s system of enforced discrimination left deep scars. Nonwhites suffered obvious material and physical deprivation. Despite the repeal of apartheid laws between 1991 and 1994, and repeated apologies from former National Party leader F.W. de Klerk,<sup>12</sup> the scars remain. Perhaps even more profound than physical and material injuries, apartheid left seemingly indelible psychological scars.<sup>13</sup> Thabo Mbeki, successor to Nelson Mandela as South Africa’s President, expressed in 2007, thirteen years after apartheid ended, the deep, raw anger and hurt still suffered by millions: “I speak here of the challenge to defeat the centuries-old attempt ‘to dwarf the significance of (our) manhood,’ to treat us as children, to define us as sub-humans whom nature has condemned to be inferior to white people, an animal-like species characterised by limited intellectual capacity, bestiality, lasciviousness and moral depravity, obliged, in our own interest, to accept that the white segment of humanity should, in perpetuity, serve as our lord and master.”<sup>14</sup>

Vestiges of discrimination are still present in South African society. While not officially enforced, spatial segregation in housing is still present. Nonwhites continue to live outside of South Africa’s cities in segregated communities, slums

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<sup>10</sup> Michael Pearson & Tom Cohen, *Life under Apartheid: Demeaning, Often Brutal*, CNN (Dec. 6, 2013), <http://www.cnn.com/2013/12/06/world/africa/mandela-life-under-apartheid/>.

<sup>11</sup> Oliver Wainwright, *Apartheid Ended 20 Years Ago, So Why Is Cape Town Still 'a Paradise for the Few'?* THE GUARDIAN (Apr. 30, 2014), <https://www.theguardian.com/cities/2014/apr/30/cape-town-apartheid-ended-still-paradise-few-south-africa> (quoting Edgar Pieterse, Director of the African Centre for Cities at the University of Cape Town).

<sup>12</sup> In 1997, speaking before the South African Truth and Reconciliation Commission, de Klerk famously said, “I apologise in my capacity as leader of the NP to the millions who suffered wrenching disruption of forced removals; who suffered the shame of being arrested for pass law offences; who over the decades suffered the indignities and humiliation of racial discrimination.” *De Klerk Apologises Again for Apartheid*, S. AFR. PRESS ASS’N. (May 14, 1997), <http://www.justice.gov.za/trc/media/1997/9705/s970514a.htm>. The Truth and Reconciliation Commission was “formed after the end of apartheid to help expose and heal the country’s many wounds.” Pearson & Cohen, *supra* note 10.

<sup>13</sup> *Id.*

<sup>14</sup> President Thabo Mbeki, Address at the 30th Anniversary of the Death of Stephen Bantu Biko (Sept. 12, 2007), [https://www.uct.ac.za/downloads/news.uct.ac.za/lectures/stevebiko/sb\\_thabombeki.pdf](https://www.uct.ac.za/downloads/news.uct.ac.za/lectures/stevebiko/sb_thabombeki.pdf).

which are euphemistically called townships.<sup>15</sup> A sad aspect of these townships is that they were intentionally located far from city centers, the hubs of employment. Thus, the township residents had no opportunity for gainful work near their homes, requiring them to endure excessive travel times and pay fares they could ill afford to work at jobs in cities. Even worse, scarcity of employment near their homes often forced township residents to leave their loved ones and accept live-in positions as domestic servants in the all-white communities.<sup>16</sup> The situation remains about the same for many. It is estimated that about 1.1 million South Africans work as domestic servants in a country with a total population of about 52 million.<sup>17</sup> Living far outside the city center still restricts access to good jobs; long travel times still translate to unnecessary expense and little time being left for one's own family.<sup>18</sup>

Although there has been a significant increase in first-generation black entry into South Africa's middle class, particularly in the last six years,<sup>19</sup> many of the poorest South Africans still find themselves stuck in the old black and colored townships because moving would force separation from loved ones and established

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<sup>15</sup> This system of segregated housing dates back to colonial times. The British colonial government displaced nonwhite workers in the late 1800s and early 1900s, under pretenses of lowering urban population in order to control disease outbreaks. Lisa Findley & Liz Ogbu, *South Africa: From Township to Town*, PLACES J. (Nov. 2011), <https://placesjournal.org/article/south-africa-from-township-to-town/>.

<sup>16</sup> Zackie Achmat, Address at Study Space IX, Sponsored by Ga. St. U. C. of L. and U. of Cape Town Afr. Ctr. For Cities, Cape Town, S. Afr. (June 28, 2016). See also Daniel Knoetze, *Apartheid's Bitter Legacy Taints Cape's New Urban Removals*, MAIL AND GUARDIAN (July 31, 2015), <http://mg.co.za/article/2015-07-30-apartheids-bitter-legacy-taints-cape-new-urban-removals>; Bennett Gwynn, *Overcoming Adversity from All Angles: The Struggle of the Domestic Worker during Apartheid*, S. AFR. HIST. ONLINE (June 10, 2015), <http://www.sahistory.org.za/article/overcoming-adversity-all-angles-struggle-domestic-worker-during-apartheid-bennett-gwynn>.

<sup>17</sup> Maria Hengelvel, *South Africa's Domestic Workers: Invisible Labor in Plain Sight*, AFR. IS A COUNTRY (Mar. 12, 2015), <http://africasacountry.com/2015/03/south-africas-domestic-workers-bonded-labor-in-plain-sight/> (citing Mariam Seedat-Khan et al, *A New Form of Bonded Labour: A Comparative Study between Domestic Workers of South Africa and India*, KRE PUBLISHERS, [http://www.krepublishers.com/06-Special%20Volume-Journal/JSSA-00-Special%20Volume/JSSA-SV-04-14-Singh-Anand/JSSA-SV-04-057-031-14-Seedat/JSSA-SV-04-057-031-14-Seedat-Tx\[5\].pdf](http://www.krepublishers.com/06-Special%20Volume-Journal/JSSA-00-Special%20Volume/JSSA-SV-04-14-Singh-Anand/JSSA-SV-04-057-031-14-Seedat/JSSA-SV-04-057-031-14-Seedat-Tx[5].pdf) (last visited Jan. 15, 2017).

<sup>18</sup> The problem is worse for black Africans than for those considered colored. Activist Zackie Achmat explained that, under apartheid, there were geographic buffers between whites and blacks. There was also a buffer of colored settlements intentionally placed between the white city center and the black townships. Colored workers were the "preferred workers." Achmat, *supra* note 16.

<sup>19</sup> South Africa's First Generation Middle Class, FUTUREFACT (Mar. 12, 2014), <http://www.futurefact.co.za/futurefact/south-africa%E2%80%99s-first-generation-middle-class>.

community, or they stay because they cannot afford to move to formerly all-white suburbs.<sup>20</sup> Perhaps most disappointing, the almost 4 million new, improved housing units built under South Africa's post-apartheid Reconstruction and Development Program have largely been built in or near old townships, on the edges rather than the centers of cities, perpetuating spatial separation of races and keeping the poorest residents on the peripheries of cities.<sup>21</sup>

Other vestiges of apartheid are apparent in South Africa's interrelated problems of income gap, wealth gap and hugely disproportionate unemployment rates.<sup>22</sup> Although the situation is decidedly improving,<sup>23</sup> the World Bank as recently as 2013 reported that South Africa had exceptionally high income inequality.<sup>24</sup> Using the widely accepted Gini economic inequality index to measure income gap, with 0 reporting perfect equality and 100 indicating perfect inequality, South Africa stood at 63.1 – the highest in the world.<sup>25</sup> In 2014, a white South African employee generally earned about four times the median income of a black South African employee.<sup>26</sup> Further government and private sector investment in education and other human capital development will surely ease these inequalities.<sup>27</sup>

Another arena in which the legacy of apartheid can be seen is the lack of necessary services provided to the poorest communities. Things largely provided

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<sup>20</sup> Findley & Ogbu, *supra* note 15.

<sup>21</sup> Wainwright, *supra* note 2 (reporting that the location of the 3.6 million homes built since Mandela's declaration in his inaugural address that "[t]he time to build is upon us" has sadly reinforced apartheid-era segregation). Even more homes have been built since Wainwright's article was published.

<sup>22</sup> See Gavin Keeton, *Inequality in South Africa*, J. OF THE HELEN SUZMAN FOUND. (Nov. 2014), file:///C:/Users/lawlor/Downloads/5.%20Inequality%20in%20South%20Africa%20-%20G%20Keeton.pdf. Activist Zackie Achmat reports that unemployment in South Africa is higher than official statistics show. Achmat stated that, whereas official reports show 24% unemployment, the rate is closer to 34%. Achmat said the rate is highest in South Africa's poor black communities. Achmat, *supra* note 16.

<sup>23</sup> South Africa Economic Update: Fiscal Policy and Redistribution in an Unequal Society, THE WORLD BANK (Nov. 2014), <http://www.worldbank.org/en/country/southafrica/publication/south-africa-economic-update-fiscal-policy-redistribution-unequal-society>.

<sup>24</sup> *Income Inequality in South Africa*, VAND. U. (Sept. 9, 2013), (citing *Income Inequality*, World Bank (2013), [http://www.worldbank.org/depweb/beyond/beyondco/beg\\_05.pdf](http://www.worldbank.org/depweb/beyond/beyondco/beg_05.pdf)).

<sup>25</sup> *Id.*

<sup>26</sup> *Labour Market Dynamics in South Africa, 2014 Reports*, STAT. S. AFR., <http://www.statssa.gov.za/?p=4445>.

<sup>27</sup> See Gavin Keeton, *supra* note 22.

by government agencies and taken for granted by citizens in most developed countries are lacking in the townships of South Africa. Particularly troubling is the lack of adequate toilet facilities and police services in the poorest of communities. Two of the most basic human needs for living in a densely populated community – safe toilets and safe streets – are not being properly met.<sup>28</sup>

## POLICING IN SOUTH AFRICA

In order to understand why these basic human needs are not being met in South Africa, it is necessary to understand the failings of the country's police force. Being a law enforcement officer for the South African Police Service (SAPS) is not an easy job. The pay is low and the job is extremely stressful and dangerous.<sup>29</sup> South Africa is notorious for its high rates of violent crimes. The country has the highest rate of rape of any country in the world and very high rates of murder and assault as well.<sup>30</sup> While the job of a SAPS officer is stressful and dangerous, the salary is not commensurate; new police academy graduates in South Africa can expect to earn just about the equivalent of 10,000 American dollars during their first year of law enforcement.<sup>31</sup>

The disdain for and distrust of police in South Africa is palpable. Even worse, many South Africans express fear of the police. According to Johannesburg-based consulting firm FutureFact, 35% of South Africans admitted

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<sup>28</sup> Achmat, *supra* note 16.

<sup>29</sup> See Monique Marks, *Stresses in the South African Police Service*, CTR. FOR THE STUDY OF VIOLENCE AND RECONCILIATION (1995), <http://www.csvr.org.za/index.php/publications/1774--stresses-in-the-south-african-police-service.html>.

“South African officers are killed at higher rates than their American counterparts.” Norimitsu Onishi, *Police in South Africa Struggle to Gain Trust After Apartheid*; N.Y. TIMES (Aug. 13, 2016), [https://www.nytimes.com/2016/08/14/world/africa/south-africa-apartheid-police-killings.html?\\_r=0](https://www.nytimes.com/2016/08/14/world/africa/south-africa-apartheid-police-killings.html?_r=0).

<sup>30</sup> Ryan Lenora Brown, *Briefing: How Violent is South Africa?* CHRISTIAN SCI. MONITOR (Feb. 22, 2013), <http://www.csmonitor.com/World/Africa/2013/0222/Briefing-How-violent-is-South-Africa>; Charlotte England, *South Africa's Murder Rate Climbs 4.9 Percent to 51 People Killed Every Day*, INDEP. (Sept. 3, 2016), <http://www.independent.co.uk/news/world/africa/south-africa-murder-rate-51-killed-every-day-rise-49-per-cent-a7224176.html>.

<sup>31</sup> See *Basic Police Development Learning Programme*, S. AFR. POLICE SVC., [http://www.saps.gov.za/careers/basic\\_police\\_program.php](http://www.saps.gov.za/careers/basic_police_program.php) (last visited Jan. 15, 2017); *Pay Hikes for Metro Police Officers*, JOBURG (July 2, 2008), [http://www.joburg.org.za/index.php?option=com\\_content&id=2665&Itemid=208](http://www.joburg.org.za/index.php?option=com_content&id=2665&Itemid=208); *Fact File: Police Basic Salaries*, DEFENCEWEB (May 20, 2010), [http://www.defenceweb.co.za/index.php?option=com\\_content&view=article&id=8072:fact-file-police-basic-salaries&catid=79:fact-files&Itemid=159](http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=8072:fact-file-police-basic-salaries&catid=79:fact-files&Itemid=159). See also Onishi, *supra* note 29.

to fear of the police, when asked.<sup>32</sup> The number rose when the question was posed to persons in lower socio-economic classes.<sup>33</sup> Four out of ten South Africans see no point in calling the police to report crime, as they perceive the police to be completely unresponsive.<sup>34</sup> Worst of all, two-thirds of those interviewed believe the police themselves are criminals.<sup>35</sup>

Public conceptions of police inaction and untrustworthiness are particularly ironic, as South Africa's Bill of Rights, adopted post-apartheid, provides the right to "freedom and security of the person," including the right "to be free from all forms of violence from either public or private sources."<sup>36</sup> South Africa is unique in providing its citizenry a constitutional right to safety and security, but it is sadly clear that this constitutional right is still denied many of South Africa's poorest citizens.

Public conceptions of police inaction and untrustworthiness are not without basis. There have been numerous highly publicized cases that have attracted national, sometimes international, attention. There was the 2012 Marikana Massacre, when police opened fire on striking workers at a South African platinum mine, killing 34 and injuring another 78.<sup>37</sup> There was the case of Thandiswa Qubuda, a young woman who was brutally gang-raped in an Eastern Cape township, then left on the ground in pouring rain, gravely injured. Witnesses to the aftermath reported that it took three hours for the police to respond from a station half a mile away, during which time the perpetrators escaped and Qubuda likely suffered. The young woman died from her injuries days later.<sup>38</sup> Then, there was the horrific case of Mido Macia, a 27-year-old Mozambican taxi driver who was tied to the back of a police van and dragged down the streets of Johannesburg in

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<sup>32</sup> *I am scared of the Police*, FUTUREFACT (Mar. 1, 2013), <http://www.futurefact.co.za/futurefact-finds/235-i-am-scared-of-the-police>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* A number of public scandals involving the police corruption have eroded public trust. See Onishi, *supra* note 29.

<sup>36</sup> S. Afr. Const., 1996, ch. 2, § 12.

<sup>37</sup> Nick Davies, *Marikana Massacre: The Untold Story of the Strike Leader Who Died for Workers' Rights*, THE GUARDIAN (May 19, 2015), <https://www.theguardian.com/world/2015/may/19/marikana-massacre-untold-story-strike-leader-died-workers-rights>.

<sup>38</sup> Ann Garrison, *Gang Rape: The South African Death of Thandiswa Qubuda*, BAY VIEW (Mar. 5, 2013), <http://sfbayview.com/2013/03/gang-rape-the-south-african-death-of-thandiswa-qubuda/>.

February 2013. Macia later died of head injuries while in police custody. Eight police officers were tried and convicted of his death.<sup>39</sup>

### EMERGENCE OF THE ARMED RESPONSE INDUSTRY

With growing angst over South Africa's high rates of violent crime, coupled with mistrust of police abilities and integrity, many South Africans have turned to private security companies to gain a stronger sense of safety. In fact, there are a reported 9000 private security companies with upwards of 400,000 licensed guards now operating in South Africa.<sup>40</sup> That number is larger than the South African police and army combined.<sup>41</sup> Between 2005 and 2010, the number of privately employed security guards in South Africa grew 236%.<sup>42</sup> "The industry is [now] the largest employer in the formal private sector, more or less matching all mines and quarries put together."<sup>43</sup> Signs posted to give notice to would-be intruders that a home or business is protected by an armed, private security provider are ubiquitous in middle-class and wealthy neighborhoods and business districts.<sup>44</sup>

In the period just after the repeal of apartheid, the perfect storm brewed to fuel this tremendous growth in the private security industry. In addition to increasing public distrust of the South African Police Service and fear over violent crimes, simultaneously SAPS suffered from lack of resources and manpower. Problems in SAPS led to massive resignations; between 1995 and 2002, about 23,000 police officers left SAPS.<sup>45</sup> Additionally, "a large number of South Africans had to leave the South African military [post-apartheid] in order to give

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<sup>39</sup> *South African Policemen Guilty of Murdering Mido Macia*, BBC NEWS (Aug. 25, 2015), <http://www.bbc.com/news/world-africa-34052111>.

<sup>40</sup> Victoria Eastwood, *Bigger than the Army: South Africa's Private Security Forces*, CNN NEWS (Feb. 8, 2013), available at <http://www.cnn.com/2013/02/08/business/south-africa-private-security/>.

<sup>41</sup> *Id.*

<sup>42</sup> *Armed Response Chosen over Cops*, NEWS 24 IN P'SHIP WITH CITY PRESS (Jan. 20, 2012), <http://www.news24.com/SouthAfrica/News/Armed-response-chosen-over-cops-report-20120120>.

<sup>43</sup> *Private Security Amendment Bill "the Enemy of SA Economy"*, NEWS 24 IN P'SHIP WITH CITY PRESS (Oct. 11, 2015), <http://city-press.news24.com/Business/Private-security-amendment-bill-the-enemy-of-SA-economy-20151009>.

<sup>44</sup> During a June 2016 trip to Cape Town, the author observed that the signs were ubiquitous.

<sup>45</sup> Anthony Minnaar, *Oversight and Monitoring of Non-State/Private Policing: The Private Security Practitioners in South Africa*, INST. FOR SECURITY STUD. (Nov. 2007), <https://issafrica.org/chapter-8-oversight-and-monitoring-of-non-stateprivate-policing-the-private-security-practitioners-in-south-africa-anthony-minnaar>.

way to new recruits that were to reflect the South African diverse groups.”<sup>46</sup> A rich pool of skilled labor developed.<sup>47</sup> Many ex-military and ex-SAPS officers subsequently became employed by private security companies or formed their own private security companies.<sup>48</sup> These companies were able to fill a void for customers trying to garner a sense of safety, and the companies could advertise the superior ability and experience of their guards. An additional factor adding to growth in the private security industry was increased requirements by insurance companies that clients employ private security.<sup>49</sup>

In South Africa, private security guards now perform functions once the sole responsibility of SAPS.<sup>50</sup> For example, armed, private security guards now commonly respond when a customer’s burglar alarm is set off. This is a phenomenon known as “armed response,” and it appears to have become an entrenched part of South African society, at least for citizens who can afford it.

#### **A TALE OF TWO CITIES: THE LEGACY OF APARTHEID CONTINUES THROUGH INADEQUATE POLICING**

Despite increased hiring in recent years,<sup>51</sup> the South African Police Service is undermanned.<sup>52</sup> South African residents in all areas of the country complain that they rarely see SAPS officers in their neighborhoods.<sup>53</sup> By one report, SAPS has

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<sup>46</sup> Sabelo Gumedze, *Regulation of the Private Security Sector in Africa*, INST. FOR SECURITY STUD. (2008), [http://psm.du.edu/media/documents/reports\\_and\\_stats/think\\_tanks/iss\\_gumedze\\_policy\\_paper\\_regulation\\_of\\_private\\_security\\_in\\_africa.pdf](http://psm.du.edu/media/documents/reports_and_stats/think_tanks/iss_gumedze_policy_paper_regulation_of_private_security_in_africa.pdf).

<sup>47</sup> *Violence and Private Security in South Africa*, VICE NEWS (Apr. 21, 2014), available at <https://www.youtube.com/watch?v=pKGzw8GROf0>.

<sup>48</sup> Minnaar, *supra* note 44.

<sup>49</sup> See Jenny Irish, *Policing for Profit: The Future of South Africa’s Private Security Industry*, INST. FOR SECURITY STUD. (Aug. 1999), <https://issafrica.org/research/monographs/monograph-39-policing-for-profit-the-future-of-south-africas-private-security-industry-by-jenny-irish>.

<sup>50</sup> *Id.* Civilian Secretariat for Police in South Africa, Jenny Irish-Qhobosheane, has expressed concern over an industry which she recognized had grown to be larger than the country’s police force and army combined. She has called for tighter regulation of the industry as its players assume more roles that were once the sole province of SAPS. Eastwood, *supra* note 40.

<sup>51</sup> See Onishi, *supra* note 29.

<sup>52</sup> See Minnaar, *supra* note 44.

<sup>53</sup> *Id.* The author can personally attest to the scarcity of SAPS officers’ presence. During a nine-day stay in Cape Town in June 2016, I saw SAPS officers only two times. I saw numerous private security guards, wherever I went as tourist, but only two state-employed police during my entire

21% as many employees engaged in active policing as there are active, registered private security guards in South Africa.<sup>54</sup> In reality, SAPS needs private security to supplement its services because it simply does not have the manpower to keep South Africans safe without help from the private sector.

For wealthier South Africans, the scarcity of police protection is not disastrous. Private home security, promising quick armed response when needed, comes with a price tag they can afford. Private security requires an initial investment for monitoring equipment and then an ongoing monthly monitoring fee of somewhere between 300 to 400 Rand,<sup>55</sup> the equivalent of 22 to 30 U.S. dollars.<sup>56</sup> These costs of private security are out of reach for the poorest South Africans, those living in the old black and colored townships.

Security problems for the impoverished in South Africa's townships do not stop there. Compounding the problems of understaffed police and unaffordable private security, SAPS' insufficient resources are not allocated equitably. In a manner starkly reminiscent of apartheid, a higher number of police officers are allocated to wealthy, mostly white neighborhoods with far lower crime rates than crime-ridden, impoverished townships. During 2014 hearings addressing safety and policing in the poor township of Khayelitsha, outside Cape Town, SAPS Brigadier Leon Rabie reported to the Khayelitsha Commission that he lacked resources to staff the three township police stations adequately.<sup>57</sup> The Khayelitsha Inquiry revealed, for example, that Harare, an area in Khayelitsha which suffers one of the highest murder rates in the country, was staffed with 111 police officers per 100,000 in population; compare that with 2,636 officers per 100,000 at Table

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visit. One I saw during a tour of a new, eco-friendly, mixed-used development and the other was during a tour of a Muslim neighborhood.

<sup>54</sup> Kate Wilkinson, *Does SA Have the Largest Private Security Industry in the World?* AFR. CHECK (Jan. 23, 2015), <https://africacheck.org/reports/does-sa-have-the-largest-private-security-industry-in-the-world/> (citing Private Security Industry Regulatory Authority Annual Report from 2013-14).

<sup>55</sup> *Violence and Private Security in South Africa*, *supra* note 46 (interview with Mark Stewart, Oakdale Neighborhood Watch).

<sup>56</sup> The subscription cost of 300-400 Rand is the equivalent of \$22 to \$30 U.S. U.S. XE CURRENCY CONVERTER, <http://www.xe.com/currencyconverter/convert/?From=ZAR&To=USD>.

<sup>57</sup> *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 COMM'N (Aug. 2014), [http://khayelitshacommission.org.za/images/towards\\_khaye\\_docs/1\\_Introduction\\_and\\_Part\\_One.pdf](http://khayelitshacommission.org.za/images/towards_khaye_docs/1_Introduction_and_Part_One.pdf).

Bay Harbour, an affluent tourist area with a much lower rate of violent crime.<sup>58</sup> In fact, 2015-16 crime statistics indicate there were 369 murders in Khayelitsha in a 12-month period, and none at all in Table Bay Harbour.<sup>59</sup>

Jean Redpath, a criminologist at the University of the Western Cape, testified during the Khayelitsha Inquiry that a flawed formula was used by officials who allocated resources,<sup>60</sup> resulting in bias against poor black and colored communities and preferential treatment for traditionally white areas.<sup>61</sup> When accurately applying the flawed formula, Khayelitsha required fewer police per capita than Camps Bay, a white area that had suffered only ten murders in ten years.<sup>62</sup>

Activist Zackie Achmat, whom the *New Yorker* has called the “most important dissident in the country since Nelson Mandela,”<sup>63</sup> put the problem succinctly: “There are 200 times more murders in poor communities, but three

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<sup>58</sup> See Jean Redpath, *Submission on the Issue of Relative Resourcing of Police Areas*, THE COMM’N OF INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENT IN KHAYELITSHA AND A BREAKDOWN OF RELATIONS BETWEEN THE COMMUNITY AND THE POLICE IN KHAYELITSHA, available at [http://cspri.org.za/publications/submissions-and-presentations/Submission%20on%20the%20Issue%20of%20Relative%20Resourcing%20of%20Police%20Areas%20.pdf/at\\_download/file](http://cspri.org.za/publications/submissions-and-presentations/Submission%20on%20the%20Issue%20of%20Relative%20Resourcing%20of%20Police%20Areas%20.pdf/at_download/file)

<sup>59</sup> Siyabonga Sesant, Back to Square One on Crime in Khayelitsha, IOL NEWS (Sept. 30, 2016), <http://www.iol.co.za/news/crime-courts/back-to-square-one-on-crime-in-khayelitsha-2074864>; CRIME STATS SA, <https://crimestatssa.com/provinceselect.php?sortorder=&ShowProvince=Western+Cape&go=1&Precincts%5B%5D=1062&Precincts%5B%5D=1082&Precincts%5B%5D=1074&Precincts%5B%5D=1078&Precincts%5B%5D=1036&Crimes%5B%5D=Murder&Years%5B%5D=2016&Submit=Submit> (last visited January 16, 2017).

<sup>60</sup> See Helen Bamford, *Police Minister Sued over Allocation of Resources*, IOL NEWS (Mar. 31, 2016), <http://www.iol.co.za/news/crime-courts/police-minister-sued-over-allocation-of-resources-2003599>.

<sup>61</sup> See Phumeza Mlugwana, *Why We Are Taking the Minister of Police to Court*, Opinion, GROUNDUP (APR. 14, 2016), <http://www.groundup.org.za/article/police-resources-allocation-apartheid-remnant/>.

On an interesting note, Mlugwana herself is a lifelong resident of Khayelitsha township.

<sup>62</sup> See Redpath, *supra* note 56; *id.*

<sup>63</sup> Samantha Power, *The Aids Rebel*, THE NEW YORKER (May 19, 2003), <http://www.newyorker.com/magazine/2003/05/19/the-aids-rebel>.

times less police. . . . Twenty years into our democracy and we still have apartheid-style policing, not just in militarism but also in allocation of resources.”<sup>64</sup>

Numerous neighborhood patrols have emerged out of necessity and a sense of community. South African government encourages neighborhood patrols and provides some resources; for example, the Western Cape Government provides a free two-day training course as well as jackets, reflective vests, torches and bicycles.<sup>65</sup> But, is such government outsourcing of its policing function ethical? The poorest, most vulnerable members of society should not be encouraged to patrol extremely dangerous, crime-infested neighborhoods. It is telling that those who patrol the worst areas must do so discreetly for two reasons. First, they fear retribution from criminals. Second, any weaponry or protective gear they have would be highly desirable to criminals.<sup>66</sup>

Another problem with neighborhood patrols is that they seem eerily similar to vigilantism, a real problem in South Africa. Motivated by police neglect, residents of the poorest townships with the highest crime rates have frequently taken the law into their own hands. Between April 2011 and June 2012, for example, 78 people were murdered by vigilantes in Khayelitsha alone.<sup>67</sup> Vigilantism is committed by “community courts” or “street committees” in an effort (like neighborhood patrolling) to rid their streets of crime.<sup>68</sup> The damage to humanity is profound; the psychological damage to children growing up in a community accepting of and witness to such violence is hardly imaginable.

Some private security companies will respond to crime alerts even when the victim is not a client. The reasoning behind this is a notion that the security industry

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<sup>64</sup> We Still Have Apartheid-Style Policing – Protester, NEWS 24 VIDEO (Aug. 25, 2015), <http://www.news24.com/Video/SouthAfrica/News/We-still-have-apartheid-style-policing-protester-20150825>.

<sup>65</sup> *Getting Training and Equipment for Your Neighbourhood Watch*, W. CAPE GOV'T, <https://www.westerncape.gov.za/service/getting-training-and-equipment-your-neighbourhood-watch>.

<sup>66</sup> *Violence and Private Security in South Africa*, *supra* note 46 (interview of private security employee Phillip Luyanda, who secretly patrols his own neighborhood in Khayelitsha when away from work); Achmat, *supra* note 16. Achmat described how the private security officer at Achmat's own middle class apartment must ride public transportation a long distance to and from work, and before he rides, he must change from his uniform or he would surely be robbed of his gun.

<sup>67</sup> Geoffrey York, *Vigilante Killings on the “Field of Death” in South African Township*, GLOBE AND MAIL (Feb. 22, 2014), <http://www.theglobeandmail.com/news/world/vigilante-killings-on-the-field-of-death-in-south-african-township/article17052460/>.

<sup>68</sup> *Id.*

has an overall goal of crime reduction. Many private security guards regard themselves as “crime-stoppers.”<sup>69</sup> The problem with any reliance on a private industry, when you are not the one paying for services, is obvious. A business run for profit must first answer to those who provide profit.

#### A CASE IN POINT: KHAYELITSHA

Khayelitsha (Xhosa for “New Home”) is a township in the Cape Flats outside of beautiful Cape Town.<sup>70</sup> The township was built in 1983 and a number of blacks were forcibly relocated there in 1985.<sup>71</sup> About 400,000 people now live there, almost all of them black Africans.<sup>72</sup> It is a youthful population. Only 1.6% of the residents are 65 or older.<sup>73</sup> Close to half of the homes are shacks, also called informal homes.<sup>74</sup> Many of the households of Khayelitsha are headed by women.<sup>75</sup> The median family income in 2011 was 20,000 Rand (equivalent to \$1469). Eighty-nine percent of families are food insecure, lacking access to enough nutritious food.<sup>76</sup>

At the time of the last census, 62% of employable age residents were unemployed.<sup>77</sup> Of those who are employed, about 19% are domestic workers who must travel many miles to work.<sup>78</sup> Paradoxically, in this township which suffers from high rates of violent crime, about a tenth of those who are employed work in

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<sup>69</sup> See generally Minnaar, *supra* note 44.

<sup>70</sup> Johnathon Clark, Khayelitsha, U. OF CAPE TOWN SCHL. IMPROVEMENT INITIATIVE, available at [https://webcms.uct.ac.za/sites/default/files/image\\_tool/images/271/News/Current/SII/SII%20KHA%20YELITSHA%20BD1-%20The%20township,%20an%20overview%20FINAL.doc](https://webcms.uct.ac.za/sites/default/files/image_tool/images/271/News/Current/SII/SII%20KHA%20YELITSHA%20BD1-%20The%20township,%20an%20overview%20FINAL.doc).

<sup>71</sup> *Id.*

<sup>72</sup> *City of Cape Town – 2011 Census Suburb Khayelitsha*, CAPE TOWN GOV'T (July 2013), available at [http://resource.capetown.gov.za/documentcentre/Documents/Maps%20and%20statistics/2011\\_Census\\_CT\\_Suburb\\_Khayelitsha\\_Profile.pdf](http://resource.capetown.gov.za/documentcentre/Documents/Maps%20and%20statistics/2011_Census_CT_Suburb_Khayelitsha_Profile.pdf).

Some believe that the population is much larger than 400,000. See Pharie Sefali, *Khayelitsha Turns 30*, GROUNDUP, <http://www.groundup.org.za/article/khayelitsha-turns-30/>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Clark, *supra* note 68.

<sup>76</sup> Jane Battersby, *The State of Urban Food Insecurity in Cape Town*, AFRICAN FOOD SECURITY URBAN NETWORK (2011), [http://www.afsun.org/wp-content/uploads/2013/09/AFSUN\\_11.pdf](http://www.afsun.org/wp-content/uploads/2013/09/AFSUN_11.pdf).

<sup>77</sup> *City of Cape Town*, *supra* note 70.

<sup>78</sup> *Id.*

security services.<sup>79</sup> Almost all employed Khayelitshans work as unskilled labor in service industries.<sup>80</sup> In other words, these are the people who keep the city of Cape Town running.

Living in Khayelitsha is fraught with problems. Most municipalities receive money to provide services for their residents from utility charges and property taxes, but Khayelitsha has no such income to use for providing services to the people who live there.<sup>81</sup> The residents are dependent on the provincial and national governments to provide services. Many basic services are lacking.

Khayelitshans have identified one issue that is more troublesome in their daily lives than any other – going to the toilet.<sup>82</sup> What is a blip, a miniscule activity incorporated into most people's daily routines, can be a dangerous experience for Khayelitshans. Sanitation services are a huge issue in the township,<sup>83</sup> and the worst affected are the disabled and women. Collecting water is generally a duty which falls to female Khayelitshans.<sup>84</sup> For many residents, the walk to the nearest toilet is many meters from their living space, and the walk leaves them vulnerable to violent crime, especially rape and robbery.<sup>85</sup> About 10% of Khayelitshans must walk more than 200 meters to reach plumbed water and toilets.<sup>86</sup> When communal toilets are locked, residents must use portable potties which are only emptied twice a week, creating a sanitary risk.<sup>87</sup>

Two of the most basic human needs are not being met in Khayelitsha – safe toilets and safe passage. South Africa's post-apartheid Constitution established individual rights which should eliminate deprivation of such basic needs, not just as an issue of morals and ethics, but as an issue of law. In addition to the right to be secure, discussed previously, South Africans are also guaranteed rights to

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Rob McGaffin, Address at Study Space IX, Sponsored by Ga. St. U. C. of L. and U. of Cape Town Afr. Ctr. For Cities, Cape Town, S. Afr. (June 30, 2016).

<sup>82</sup> Achmat, *supra* note 16; *Towards a Safer Khayelitsha*, *supra* note 55.

<sup>83</sup> *Towards a Safer Khayelitsha*, *supra* note 55.

<sup>84</sup> Achmat, *supra* note 16.

<sup>85</sup> Khayelitsha residents testified at the Khayelitsha Inquiry that they had been victims of robbery and rape when going to the toilet. Others testified to the fear this risk caused them. *Towards a Safer Khayelitsha*, *supra* note 55.

<sup>86</sup> *City of Cape Town*, *supra* note 70.

<sup>87</sup> Achmat, *supra* note 16. Achmat explained the toilets are often shut from 7:00 p.m. to 7:00 a.m.

“sufficient food and water”<sup>88</sup> and “adequate housing.”<sup>89</sup> Additionally, South African children are guaranteed rights to “basic nutrition, shelter . . . and social services.”<sup>90</sup>

### HOPE FOR THE FUTURE

Inequalities of the past cannot be erased overnight. Some progress has been made, and hopeful change is ongoing. The issue of allocation of police resources is especially frustrating because solutions have been determined but not yet implemented. At the end of its inquiry, the Khayelitsha Commission recommended a number of actions be taken, including setting standards for police response time, increasing the number of and the training for detectives, and increased monitoring. Few of these 2014 recommendations have been implemented,<sup>91</sup> but legal action is currently pending in the Western Cape High Court. Two community organizations -- the Social Justice Coalition and Equal Education -- have filed suit against South Africa’s Police Minister, hoping to force government officials to implement the 2014 recommendations and allocate resources more equitably. Time is of the essence; the issue of allocation is genuinely an issue of life or death.

There are other spots of optimism for the human condition in Khayelitsha and other impoverished townships. German urban planner Michael Krause thinks one simple solution lies in the smart redesign of communities. He has begun a program, funded by the provincial government in conjunction with German Development Bank, to build community centers to replace hot spots of crime.<sup>92</sup> Krause calls the centers “safe nodes, connected by paths that thread their way through the township, from the market to the station to the schools and so on, defining well-lit routes monitored by passive surveillance.”<sup>93</sup> His program, Violence Prevention through Urban Upgrading, has proven especially effective because of his intentional plan to empower township residents to drive the projects’ development and implementation.<sup>94</sup> Empowerment has proven to work better for the townships than top-down interventions.<sup>95</sup> Krause points to a one-third

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<sup>88</sup> S. Afr. Const., 1996, ch. 2, § 27.

<sup>89</sup> S. Afr. Const., 1996, ch. 2, § 26.

<sup>90</sup> S. Afr. Const., 1996, ch. 2, § 28.

<sup>91</sup> See Bamford, *supra* note 58.

<sup>92</sup> See Wainwright, *supra* note 2.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

reduction in the number of murders in the Harare neighborhood as proof that his plan can work.<sup>96</sup> It appears that predictable crime routes are being transformed into safe community passageways.

Activist Zackie Achmat thinks the solution must lie in a true end to spatial segregation.<sup>97</sup> To that end, affordable housing must be built in South Africa's city centers. Achmat works tirelessly with community organizations to attain affordable housing for poor South Africans. He and others are currently working to have four separate properties that the government had earmarked for sale transformed into affordable housing spaces. The Government Immovable Asset Management Act of 2007 has given legal strength to the battle for affordable housing in the central business districts; under the act, public land generally may not be sold if it can meet a public objective, like affordable housing.<sup>98</sup>

Another obvious key to change is improving education in South Africa's poorest communities.<sup>99</sup> With proper training, the poorest South Africans can pull themselves out of low-paying, unskilled jobs. With better education, workers who must now endure long travel times to work in service industries in the inner cities might be able to take advantage of possibilities opened by the internet. For example, township-based businesses could sell handmade goods in the global

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<sup>96</sup> *Id.*

<sup>97</sup> Achmat, *supra* note 16.

<sup>98</sup> Government Immovable Asset Management Act 19 of 2007.

<sup>99</sup> While beyond the scope of this article, it is evident that the struggle for safe streets and safe basic services has occurred parallel to a similar struggle for equality in education. Under apartheid, the white minority intentionally enforced under-education of South African blacks. The old Bantu system of education segregated blacks and whites in South African schools, preventing black children from training for higher paid positions which they would not be able to hold as adults. *Why is South Africa Still So Unequal?* BBC NEWS (May 13, 2015), <http://www.bbc.com/news/world-africa-32623496>. Efforts to right old wrongs in the country's educational system have not made adequate strides. Charlayne Hunter-Gault, *Apartheid Inequalities Linger in South Africa Schools*, NPR (June 12, 2008), <http://www.npr.org/templates/story/story.php?storyId=91389634>. Although racial disparities in education are still vast, there is hope that the situation is moving in the right direction and will further improve with a growing sense of social responsibility and correct focus on effective solutions to glaring inequalities. For a general discussion of the failings and progress of the post-apartheid South African educational system, see Saleem Badat & Yusuf Sayed, POST-1994 South African Education: The Challenge of Social Justice, 652 ANNALS AM. ACAD. POL. & SOC. SCI. 127 (2014).

marketplace via the internet. If students leave school with the ability to read and write and with access to the internet, possibilities are boundless.

## CONCLUSION

Law is a set of rules that a civilized society needs, but law can be used to oppress. While South Africa's racial divisions have not lessened adequately since the repeal of apartheid, there is now hope for significant progress under laws which can serve the human spirit rather than oppress. Economic inequality worsened in the first years after repeal of apartheid, but some experts now see reasons to believe the situation is improving.<sup>100</sup> South Africa is undeniably at an exciting point in the country's history. With focus on three areas -- safety, land justice and education - - the country can heal its divisions and finally begin to erase old, painful scars.

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<sup>100</sup> Economic inequality increased between 1994 and 2004. Matthew Glasser, Address at Study Space IX, Sponsored by Ga. St. U. C. of L. and U. of Cape Town Afr. Ctr. For Cities, Cape Town, S. Afr. (June 28, 2016).