

ELUSIVE JUSTICE

SOMALI TRADERS' ACCESS TO FORMAL
AND INFORMAL JUSTICE MECHANISMS
IN THE WESTERN CAPE

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2012 | ACMS RESEARCH REPORT

ACKNOWLEDGEMENTS

This research report was produced by the African Centre for Migration & Society at the University of the Witwatersrand, Johannesburg. Funding was provided by the European Commission through OXFAM GB as part of a project entitled 'Strengthening access to justice and constitutional rights for non-nationals in South Africa'.

The report was researched and written by Vanya Gastrow (visiting researcher at ACMS), with supervision and contributions from Roni Amit (senior researcher at ACMS). Mohamed Aden Osman, Sakhiwo 'Toto' Gxabela, and Wanda Bici provided research assistance in the field sites.

ACMS wishes to acknowledge the research support of various individuals, organisations and government departments. Abdi Ahmed Aden and Mohamed Abshir Fatule of the Somali Retailers Association shared valuable information on the experiences of Somali traders in Cape Town. The Somali Association of South Africa and the Somali Refugee Aid Agency also helped facilitate the research within the Somali community.

The South African Police Service (SAPS) introduced ACMS to relevant station commanders who in turn facilitated interviews with sector managers as well as detectives at their stations. Fundiswa Hoko at the SAPS Western Cape provincial office provided quick and efficient coordination.

The Department of Justice and Constitutional Development facilitated interviews with prosecutors, and the National Prosecuting Authority provided ACMS with valuable data on prosecutions relating to 'xenophobia cases'.

ACMS also acknowledges the many Somali traders and South African township residents who spoke openly with ACMS and shared their views and experiences.

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EXECUTIVE SUMMARY

Introduction

Fleeing the civil war that began in 1991, Somalis began migrating to a newly-democratic South Africa in the mid-1990s. Somalis who arrived in Cape Town initially worked as informal traders in the central business districts in and around the city. They soon moved into the city's townships and began opening small grocery stores or spaza shops. These spaza shops have proved largely successful, and today are a central source of income for Somalis in cities and towns across South Africa.

But these township spaza shops have also been a source of insecurity for Somali traders. Somali-run shops have suffered disproportionately from crime that includes robberies, looting, and orchestrated arson attacks and murders organised by competing South African traders. This report explores these crimes in the Western Cape and the extent to which Somali victims can access both the formal justice system and informal community justice structures. The report reveals that both forms of justice are lacking.

On the informal justice side, the socially tenuous and isolated positions that Somali traders occupy in the townships exclude them from many of the community structures used to mediate conflict and punish crime. The lack of close community ties also increases their vulnerability to crime, abuse, and extortion by individuals, community leaders, and state actors. Forced to rely almost exclusively on the formal institutions of justice, Somali traders are hampered by a lack of faith in the police and courts that is exacerbated by language barriers and a lack of understanding of how the justice system works. Police and prosecutors also encounter difficulties communicating with Somali victims of crime and keeping them engaged in cases that must wend their way through a lengthy justice process. The result is that very few crimes against Somalis lead to convictions. The research findings identify some of the barriers that contribute to this outcome, as well as possible ways to overcome them.

Methodology

This is the first in a series of three reports examining the situation of Somali traders in the Western Cape by exploring the economic, community, and institutional dynamics at work. The reports focus specifically on Somali nationals because they make up the majority of foreign spaza shopkeepers in the region.¹ Attempting to identify why Somalis are so often

¹ ACMS carried out research in three townships in Cape Town where residents, Somali traders and police all confirmed that the vast majority of foreign shopkeepers in their areas were Somali nationals. ACMS also visited a number of small towns in the province where there was a higher ratio of Ethiopian traders, but Somali traders still operated the majority of foreign national businesses.

the targets of crime, the research explores the social and political context in which Somalis are embedded.

The current report focuses on the access to justice dimension of the Somali experience. The second report turns to the economics of Somali migration, looking more closely at Somali business practices and the overall effect of Somali businesses on local economies. It considers the common myths and misperceptions involving Somali businesses. The final report examines some of the socio-political dynamics at work, investigating various government and civil society interventions aimed at regulating Somali shops and addressing threats or complaints by South African shopkeepers.

The research covers three field sites near Cape Town: Philippi, Khayelitsha, and Kraaifontein (specifically Bloekombos and Wallacedene). It also includes more limited research on the experiences of Somali traders in small towns in the Western Cape. Sites visited included Ceres, Tulbagh, Prince Albert Hamlet, Vredenberg and Caledon.

The findings are based on qualitative interviews with 72 Somali traders: 55 who were working in townships and seventeen in small towns in the Western Cape. ACMS also interviewed South African township residents, local community leaders, police, prosecutors and members of civil society.

Crime affecting Somali traders

Somali traders in the Western Cape experience much higher rates of business robberies than their South African counterparts. In Khayelitsha, for example, foreign traders (primarily Somali) owned 50 percent of shops, but made up 96.5 percent of business robbery victims.² Within the wider province, almost 70 percent of business robbery victims are foreign nationals, most running spaza shops in the townships.³

Although business robberies are the most commonly reported crime, Somali traders experience a range of additional types of crime. The main categories of crime affecting Somali traders include:

- Opportunistic business robberies;
- Crimes orchestrated by South African traders against Somali competitors;
- Crimes orchestrated by Somali traders against other foreign competitors;
- Intimidation and attempted illegal evictions of Somali shops by South African competitors;
- Robberies by police during police search operations;

² Khayelitsha police station crime intelligence officials, telephone interview, 17 April 2012.

³ Wyndham Hartley, 'Illegal foreign business owners "a soft target for criminals"' *Business Day*, 9 February 2012, available at <http://www.businessday.co.za/articles/Content.aspx?id=164482>, date accessed 24 May 2012. The SAPS Western Cape provincial office confirmed these statistics by phone on 16 August 2012.

- Looting of shops by residents;
- Hijackings; and
- Harassment and abuse by state institutions and community leaders.

The fact that these crimes disproportionately targets foreign businesses suggests that they are not motivated by economic factors alone.

Findings and implications

Despite the targeting of Somalis for a range of crimes, very few individuals are arrested for these crimes, and even fewer are convicted. The resulting culture of impunity contributes to the notion that Somalis are easy targets, and that individuals can commit crimes against them with few repercussions. This creates added incentives for the targeting of Somali shops.

Somali traders rely heavily on the formal institutions of justice, including the police, prosecutors, and the courts, to combat crime affecting them. This reliance often proves frustrating for both sides, as police battle to investigate cases, prosecutors prove unable to secure convictions, and Somalis grow frustrated with lengthy court procedures that they do not understand. Many Somalis either fail to report cases because they mistrust the system, or they grow disillusioned with the justice system and abandon existing cases.

Some efforts by police and prosecutors have proved effective in both reducing and prosecuting crime. These include improved police tactics to investigate crimes and efforts to engage Somali community members during legal proceedings. At the same time, the police have failed to act against specific categories of crimes: the looting of Somali shops and intimidation by South African traders. This inaction raises questions about the extent to which the police are fulfilling their constitutional duty to ‘prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.’⁴ It also reinforces the notion that the Somali presence in the townships is somehow illegitimate. By validating the efforts of South Africans who claim an entitlement to target Somali shops, police inaction undermines the rule of law and the notion of an equitable system of justice.

Somali traders are particularly affected by the failures of the formal justice system because of their inability to turn to the informal community structures that operate as parallel justice mechanisms in many townships. In many areas, these informal justice mechanisms have displaced the formal institutions of justice, as community structures conduct their own investigations and mete out punishments. The preference for these informal community measures, combined with a general distrust of the institutions of state, has affected the willingness of local residents to cooperate with police and prosecutors in cases

⁴ Section 205(3) of the Constitution of the Republic of South Africa, 1996.

involving both South Africans and foreigners. But while South African residents can turn to these informal mechanisms where the formal justice system proves inadequate, Somalis are largely excluded from these community structures. Living in social isolation from the areas in which they work, Somalis have not developed close community ties, and their lack of integration is often resented by local residents. As a result, crime against these shops is not visible to residents in the same way as crime against South Africans. While the latter is perceived as a community issue, the former is not.

This invisibility not only prevents Somalis from obtaining redress for crimes committed against them; it also increases their vulnerability to crime, as criminals calculate that there will be less chance of a community response for crimes committed against Somalis. From a purely objective assessment, Somali shops make easier targets than South African ones: the lack of community involvement in either the formal or informal mechanisms of justice reduces the likelihood of being caught and punished. At the same time, the relative social isolation of Somalis increases their vulnerability to crime, extortion, and abuse by individuals with other motivations, such as xenophobia or eliminating competition.

Access to the formal justice system

The institutions of justice responsible for responding to crimes against Somalis confront specific challenges associated with this socio-political context. Investigating these in detail, the report identifies the main barriers that weaken Somali access to justice. At the same time, it uncovers a few factors that may facilitate interactions with the institutions of justice and improve Somali faith in this system, making their participation more productive. These are briefly summarised below.

Factors weakening access to justice

ACMS identified a range of factors that weakened access to formal justice for Somali traders:

- Language barriers that prevented police from questioning Somalis immediately when they reached crime scenes;
- Somali community interference with evidence: community members often arrived at crime scenes before police and tampered with evidence or removed bodies for burial;
- The inability of Somali traders to identify suspects because of their relative isolation from the community;
- Lack of South African witness cooperation;
- Non-reporting of crimes by Somali traders;
- The withdrawal of cases because of settlements or intimidation;
- Somali difficulties contacting or communicating with the police;

- Police difficulty contacting Somali complainants due to frequent Somali relocation;
- Unwillingness of the police to prevent or investigate looting of Somali shops;
- Police unwillingness to charge and prosecute South African traders for intimidation of competing Somali traders or the eviction of Somali traders from their shops;
- Intimidation or abuse by police officers;
- The perception among Somali traders that the police are related to criminals;
- Somali misunderstandings about how the formal justice system works; and
- Vague police witness statements.

A few factors facilitated access to formal justice. Specific factors include:

- Police patrol efforts;
- A long-standing Somali presence in an area;
- The prioritisation of crimes against foreigners and improved intelligence efforts;
- Somali community involvement in high profile investigations and court cases; and
- Monitoring of court cases by non-governmental organisations.

Access to informal mechanisms of justice

Many township residents eschew interactions with the formal justice system and rely instead on informal community justice. These mechanisms generally consist of local street committees, which are small residents' forums found on almost all township streets. Most fall under the authority of the South African National Civic Association (SANCO), an umbrella body of civic organisations. Street committees enjoy varied support amongst residents. Some residents believe that street committees play an important role in addressing community issues, while others perceive them as too closely linked to party politics, and accuse members of being self-serving and authoritarian.

Somali traders have limited access to informal justice mechanisms because they face difficulties integrating into the communities where they work and lack close community ties. Only three Somali respondents regularly attended street committee meetings, and traders rarely formed relationships with local residents.

Many local residents were largely oblivious to crime affecting Somali traders, while others expressed hostility over the fact that Somalis were not more engaged with the community. Even residents who were supportive of Somali shops were either reluctant or unable to actively defend them within these community structures because of the competing views of other members. Thus, even those few Somalis who participated in street committees found that these committees were unwilling to respond to crimes against them. Such crimes fell outside of the scope of shared community concerns mobilising action.

Conclusion and recommendations

This report sheds light on the social and political dynamics at play in areas hosting Somali shops, and how these dynamics influence both the nature of crime affecting Somali traders, and their ability to access justice. A variety of factors – particularly their social marginalisation - increase both the vulnerability of Somalis to crime, and the invisibility of these crimes within the community. Existing outside of the communities in which they operate, Somalis are forced to rely almost exclusively on the formal institutions of justice. But these institutions also confront community dynamics that limit their ability to address crimes targeting Somalis. In addition, these formal justice actors encounter obstacles working with Somalis themselves, both because of language barriers and because of Somali confusion around the workings of the justice system. As a result, Somalis may not always have faith in the justice system on which they are forced to rely.

These challenges are multifaceted and cannot be addressed by one stakeholder alone. While crime affecting Somali shops falls clearly within the ambit of the formal justice system, the underlying social causes of such crimes do not. Other parties, including Somali and South African community organisations, civil society, and local government also have a role to play in improving the security of Somali traders.

In light of the findings of the report, ACMS makes the following recommendations:

To the South African Police Service:

Addressing language barriers

- Police stations should work with local Somali community leaders to set up a ready reserve of locally based translators who can be called upon to come to crime scenes quickly.
- Police stations should train translators on how to take reliable police statements, especially the importance of translating information accurately and in detail.

Crime prevention

- Police stations should maintain and expand police patrolling efforts to increase the rate of police apprehension of suspects in the act of committing crime. This is especially important given Somali difficulties in identifying suspects.

Preventing withdrawal of cases by Somali complainants

- Investigating officers should keep in touch with complainants regularly, and ensure that they are fully informed of the status of police investigations.
- Police stations must take measures to ensure that individual police officers are providing Somali traders with access to information on their cases when they make enquiries, rather than turning them away or creating arbitrary requirements.

- Investigating officers should remind Somali complainants to notify them if they change their address or telephone number.
- Police at crime scenes should provide Somali complainants with information to assist them in following up on their cases, including providing their direct phone numbers.
- Police stations should work with Somali community organisations to set up institutional mechanisms to alert Somali community representatives of key cases under investigation so that Somali community members can provide support to complainants.
- The investigating officer should follow up with complainants who were taken to the hospital before the investigating officer arrived at the scene of the crime.

Intimidation

- Police must charge and send for prosecution South African traders suspected of intimidating Somali competitors.
- Police stations must institute training and review measures to ensure that police statements are taken properly, and are thorough and comprehensive enough to be reliable in court, particularly in bail hearings.
- Police stations should set up institutional mechanisms to alert Somali community organisations of bail hearings so that they can arrange for community members to attend. This will help indicate the Somali community's concern to the prosecutor and magistrate and encourage solidarity with victims.

Looting

- SAPS must develop strategies to protect shop property from looters in line with its obligation to 'prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.'⁵
- Police must ensure that suspected looters are charged and their cases sent for prosecution.
- When rumours of xenophobic attacks arise, the police must send a clear message that looting of Somali shops will not be tolerated and must enforce this message.
- Police should protect traders so that they are not forced to abandon their shops in response to threats of xenophobic violence. If traders do decide to close their shops, the police must ensure that vacant shops are not looted of remaining contents or infrastructure.

⁵ Section 205(3) of the Constitution of the Republic of South Africa, 1996.

Promoting trust in the police and preventing police abuse

- Police stations must ensure that Somali traders are treated respectfully at police stations when reporting crime.
- Police stations should prioritise investigations into police robberies of Somali shops.
- The police must investigate all allegations of police abuse and take action against those found to have committed such abuse.
- SAPS should enforce trading regulations in a fair and non-discriminatory manner against both Somali and South African traders and not discriminatorily target only Somali shops.
- The police should expand the use of successful intelligence gathering strategies. This includes appointing an investigating officer who can specialise in crime affecting Somali shops and can focus on gathering intelligence from local communities. This is especially important where crimes appear to be orchestrated by specific groups such as South African traders or organised gangs. Where certain crimes appear to be spread over several different police jurisdictions, local police can arrange for docket analyses to be carried out by SAPS crime intelligence officials so that separate investigations can be joined.

Record keeping

- The police should compile and make accessible records on crime affecting foreign nationals. This will enable researchers, civil society, and community organisations to know the extent of crime affecting foreigners in the province, and to determine where assistance is required, or where research should be focused.

To the National Prosecuting Authority:

- The NPA should clarify what ‘xenophobic crimes’ are when gathering data on such crimes and keep records of crimes affecting foreign nationals in general.
- Prosecutors should remind Somali complainants to notify them in the event of any change of given addresses or telephone number.
- Where police statements are vague, prosecutors must advise relevant police officers to obtain more comprehensive statements before bail hearings begin.
- The NPA should engage with Somali community organisations to arrange the provision of high quality translators who are familiar with court procedure and can explain to complainants at their first consultation how the court procedure works.

To Somali community organisations:

- Somali community organisations should encourage Somali traders to familiarise themselves with local township community organisations and participate in community affairs.
- Somali community organisations should develop a program to support Somali victims of crime by attending court appearances with them, and providing guidance about the workings of the criminal justice system.
- Somali community organisations should work with local NGOs to inform traders of proper procedure at crime scenes and how to prevent interference with evidence.
- Somali community organisations should work with township community organisations such as SANCO to improve integration of Somali traders in townships.
- Somali community organisations should inform Somali traders about the importance of providing accurate and detailed information when police take down their statements.
- Somali community organisations should inform Somali traders of their duty to notify investigating officers of any change of given address.
- Somali community organisations should inform Somali traders of the importance of persisting with their criminal cases and of how this plays a role in addressing crime affecting the Somali community as a whole.
- Somali community organisations should improve communication and coordination amongst themselves.
- To prevent police abuses (e.g., robberies) during searches, Somali community organisations should advise Somali traders that police in general cannot search their shops without a search warrant.
- Somali community organisations should alert NGOs of important cases so that they can monitor cases and educate Somalis about the court process.

To the City of Cape Town:

- The City's Social Development Department should treat measures to address xenophobia as one of its core functions.
- The City's Social Development department should work with South African township communities and Somali community organisations to bolster the integration and inclusion of Somali traders in their communities. This could include arranging dialogues between South African and Somali community leaders to find out ways in which Somali traders could participate in local initiatives such as street committee meetings, sports teams, and skills training.
- The City's Social Development department should include Somali traders in local community projects run by the City such as youth leadership programmes and arts and culture projects.

- The City of Cape Town's Economic and Human Development Department should develop comprehensive strategies to support and regulate informal business in townships.
- The City of Cape Town's Economic and Human Development Department should liaise with SAPS to ascertain which body is best positioned to monitor regulations and by-laws in line with the City's local economic policies and to ensure non-discriminatory application of these laws.

To civil society and non-profit organisations:

- Civil society and non-profit organisations working with township communities should involve Somali traders in their projects.

INTRODUCTION

Somali nationals began migrating to South Africa in the mid-1990s, most seeking refuge from the civil war in their home country. Once here, many became financially self-reliant by opening small businesses in cities and towns. Their most common business venture is the informal grocery shop, or spaza shop. Seeing a key market opportunity, Somali traders have opened spaza shops in townships across the country over the last decade.

These shops have proved to be a valuable mechanism for economic survival and growth, but they have not been without consequences. Somali traders have experienced high rates of crime including robberies, lootings, arson attacks, and orchestrated murders. The South African Police Service does not publish records of crime affecting foreign nationals in South Africa, but the Western Cape Provincial Commissioner recently stated in Parliament that nearly 70 percent of business robbery victims in the province were foreign nationals who operated spaza shops.⁶ Somali nationals operate the majority of foreign-owned spaza shops in the Western Cape⁷ and are thus disproportionately affected by such crime.

Somali-owned spaza shops are particularly susceptible to crime because they hold large amounts of cash from the quick turnover of consumer goods, and also contain easily conveyable items such as airtime vouchers and cigarettes. This makes them an appealing target for potential robbers or looters. But their vulnerability to crime cannot be attributed to their economic appeal alone, given that South African spaza shopkeepers are not targeted with the same frequency. Although South African nationals operated approximately 50 percent of spaza shops in Khayelitsha (Site B and C), for example, they constituted 3.5 percent of business robbery victims.⁸ The remaining 96.5 percent were foreign nationals, despite making up only half of spaza shop owners. Most of these foreign victims were likely Somali, as police estimate that they make up 80 to 90 percent of foreign traders in Khayelitsha.⁹ Somalis not only experience robberies, but also more orchestrated attacks that involve arson, murder, and the use of threatening letters aimed at getting them to close their shops. The greater susceptibility of Somali nationals to crime suggests that other dynamics, in addition to economic opportunity, may be at work.

This report seeks to explore some of these dynamics. Somali experiences with crime must be understood within the broader socio-political context within which the migrant population is embedded. On a community level, local attitudes and reactions to the Somali

⁶ Wyndham Hartley, 'Illegal foreign business owners "a soft target for criminals"' *Business Day*, 9 February 2012 available at <http://www.businessday.co.za/articles/Content.aspx?id=164482>, date accessed 24 May 2012. The SAPS Western Cape provincial office confirmed these statistics by phone on 16 August 2012.

⁷ Other foreign traders, including Ethiopians, Burundians, Bangladeshis, Chinese and Pakistanis, have also entered the spaza shop market in the Western Cape. Somalis operated the majority of foreign national spaza shops in all three of the field sites. In small towns, there were larger proportions of Ethiopian traders, but Somali nationals still made up the majority of foreign traders.

⁸ Khayelitsha police station crime intelligence officials, telephone interview, 17 April 2012.

⁹ Khayelitsha police station sector manager, Khayelitsha, 25 October 2012. Khayelitsha police station detective, Khayelitsha, 27 October 2011. Harare crime intelligence official, Harare, Khayelitsha, 24 May 2012.

presence more generally, and to crime specifically, together with approaches by civil society, are important influences on day-to-day developments. At the institutional level, the response from the formal justice system, coupled with the actions of other government actors, further affect the calculations of Somali and South African actors alike. Finally, the role of Somali business practices—ostensibly the source of much of the conflict and anti-Somali sentiment—cannot be understood in isolation, but must be contextualised within the wider economic picture that includes both South African traders and South African customers.

This is the first in a series of three reports examining the situation of Somali traders in the Western Cape by exploring the dynamics described above. The reports focus specifically on Somali nationals because they make up the majority of foreign spaza shopkeepers in the region.¹⁰ Attempting to identify why Somalis are so often the targets of crime, the research explores the social and political context in which Somali nationals are embedded.

The current report focuses on the access to justice dimension of the Somali experience. The second report turns to the economics of Somali migration, looking more closely at Somali business practices and the overall effect of Somali businesses on local economies. It considers the common myths and misperceptions involving Somali businesses. The final report examines some of the socio-political dynamics at work, investigating various government and civil society interventions aimed at regulating Somali shops and addressing threats or complaints by South African shopkeepers.

Relying on field research in selected areas that host Somali traders, the current report reflects on the ability of Somali shopkeepers to access justice—both formal and informal—in the aftermath of crime. It examines both the obstacles Somali nationals experience in accessing the formal justice system, and the challenges formal justice actors encounter in their efforts to address crime against Somali nationals. It also looks beyond the formal justice system to understand the role of the informal community justice systems prevalent in many Western Cape townships—investigating the views of local residents, and the responses of township community structures to crime against Somali shops.

The first section of the report briefly outlines the research methodology. The following section describes the background of Somali migration to South Africa and Somali business and community activities. The report then provides a description of the specific types of crime targeting Somali shops. This is followed by an analysis of the three field sites—Khayelitsha, Philippi and Kraaifontein—and a discussion of the possible factors accounting for different crime trends in each area. The subsequent section turns to efforts to address crime against Somalis. Beginning with the Somali experience with the formal justice system, the findings assess the challenges both Somalis and state institutions encounter in addressing these crimes. Finally, the report examines Somali interactions with informal

¹⁰ ACMS carried out research in three townships in Cape Town where residents, Somali traders and police all confirmed that the vast majority of foreign shopkeepers in their areas were Somali nationals.

community justice mechanisms, and how their inability to access these mechanisms affects the level of crime, and the efforts of the formal justice system to deal with these crimes.

RESEARCH METHODOLOGY

Introduction

The report's findings are based on field research conducted over two periods totalling twelve months: from September 2010 to February 2011, and from October 2011 to March 2012. Cape Town's townships served as the main field sites, but additional research also took place in two outlying Cape Town suburbs, and in a few more rural small towns in the Western Cape.

The primary field sites were located in three townships:

1. Kraaifontein: Bloekombos and Wallacedene
2. Philippi: Philippi East and Browns Farm
3. Khayelitsha: Site B, Site C and Harare

While conducting in-depth qualitative research in these areas, the field researcher also spent significant time in Somali neighbourhoods in the coloured township of Mitchells Plain and the largely Afrikaans suburb of Bellville, where many of the interviews with Somali traders from the field sites were conducted. Bellville is located approximately 25 kilometres from Cape Town's city centre, and Mitchells Plain lies approximately 30 kilometres from the city centre.

Finally, in order to identify potential differences between rural and urban dynamics, the field researcher also conducted limited research in a few small towns in the Western Cape: Vredenburg, Veldrif, Tulbagh, Ceres, Prince Albert Hamlet and Caledon. These rural dynamics will be discussed in more detail in the report on the economics of Somali migration.

In all of the main sites, the researcher interviewed Somali shopkeepers, residents and members of the formal and informal justice sectors, including police, prosecutors, legal aid practitioners, and local community leaders. Prior background research of the field site areas helped to inform these interviews. In addition to site interviews, the researcher observed mediation meetings between Somali and South African traders. The researcher also attended selected court hearings involving Somali victims: hijackings targeting Somali traders in Philippi and Khayelitsha, arson and attempted murder cases in Kraaifontein, a police brutality case in Bellville, and an equality court hearing assessing whether the police response to the looting of Somali shops in Du Noon during the 2008 xenophobic attacks violated the equality rights of Somalis.

Choice of field sites

Because there are no public police statistics on reported crime affecting Somali shopkeepers, field sites were chosen based on information provided by the Somali Association of South Africa (SASA), a Somali community organisation operating in Cape Town, Johannesburg and Port Elisabeth.

SASA identified Kraaifontein and Philippi as crime ‘hot spots,’ a feature that corresponded with media reports. In contrast, SASA advised that crime rates against foreign shopkeepers in Khayelitsha had decreased. Accordingly, ACMS initially envisioned Khayelitsha as a useful comparison point through which it could potentially identify factors that contributed to this decrease. However, during the course of the research it became clear that Somali shopkeepers in Khayelitsha also experienced disproportionate levels of crime, especially robbery and looting. But there did appear to be fewer incidents of orchestrated crime in which South African traders organised the murders of Somali traders or the destruction of their shops. ACMS retained Khayelitsha as a field site because we deemed the absence of crime orchestrated by South African traders to be an important feature for comparison. We were unable to identify any townships in the Western Cape where crime rates against foreign shopkeepers were either low, or comparable to those against South Africans.

The field researcher also briefly conducted interviews in small towns in the Western Cape to compare the circumstances of shopkeepers in rural as opposed to urban townships. The towns of Fishhoek, Vredenburg, Veldrif, Tulbagh, Ceres, Prince Albert Hamlet and Caledon were selected based largely on their geographical location, but also their differing economies (e.g. farming versus fishing).

Interviews

ACMS interviewed 72 Somali shopkeepers and eleven foreign shopkeepers of other nationalities. In addition, the field researcher interviewed 65 South African township residents (including nine South African shopkeepers and six landlords). The interviews also targeted a range of other significant actors, including policemen, legal aid attorneys, and prosecutors, as well as members of civil society and other stakeholders. Interview questions were both specific and open-ended. All interviewees gave informed consent after the researcher explained the nature of the research. All interviews were kept confidential and anonymous, and interviewees were free to stop the interview at any time.

INTERVIEWS								
Area	Somali traders	SA residents	SA traders	Police	Land-lords	Legal Aid	Prosecutors	Other stakeholders
Khayelitsha	15	14	0	11	1	1	0	3
Kraaifontein	10	10	3	5	2	2	0	2
Philippi	15	35	5	4	4	1	4	3
Small towns	17	0	0	0	0	0	0	0
Other areas	9	6	1	0	0	0	0	5
Total	72	65	9	20	7	4	4	13

Somali shopkeepers spoke about their experiences with crime and with the justice system. Many of these interviews took place in neutral locations in Bellville and Mitchells Plain, where many Somali nationals reside, and where some also do business. The shopkeepers preferred that the interviews take place away from their shops for a range of reasons: they felt uncomfortable responding to questions in front of customers, they did not like being interrupted while serving customers, and they did not want to draw attention to themselves. Most Somali shopkeepers in small towns, by contrast, were interviewed inside their shops, as they felt more at ease in their communities and their businesses had fewer customers.

Initially, Somali interviewees were identified through SASA. ACMS then asked these individuals to identify additional potential interviewees. The researcher conducted each interview individually, as Somali traders had particular experiences of crime, and group situations would make accurate recording of chronological and specific events difficult.

In addition to Somali traders, ACMS also interviewed South African residents in the three primary field sites. Residents were asked about their perceptions of Somali shopkeepers. They were also asked their views on the community structures that dealt with crime and on Somali involvement in community activities such as street committee meetings and crime prevention. The interviews covered as wide a demographic of residents as possible, including young, middle-aged and elderly residents—both male and female. ACMS identified some community leaders in Philippi and Khayelitsha via referrals from residents. For other local residents, the field researcher spoke directly with individuals who happened to be on the streets while she was in the field site. This approach was chosen over the snowball technique in order to obtain a more random, broad spectrum of opinion that would not limit the respondents to particular social networks.

Interviews with South Africans were conducted both individually and in groups, depending on whether residents were encountered alone or with friends or family. The research did not rely on focus groups because the possible existence of community divisions on the issue of foreign shops meant that residents might feel uneasy sharing their views amongst strangers. Most interviews were conducted on weekends in order to access both employed

and unemployed South Africans. Where residents could not speak English, interviews were carried out with the assistance of a translator.

Community workers in both Philippi and Kraaifontein cautioned that conducting research in the field sites could reinvigorate dormant conflicts.¹¹ This risk was greatest with South African shopkeepers, many of whom had previously attempted to forcibly remove foreign shopkeepers from all three of the field sites. Some had also allegedly ordered the murders of their Somali competitors. To minimise the risk of reviving these resentments, the researcher conducted only a limited number of interviews with South African shopkeepers and relied largely on observations made during attendance at four open meetings hosted by police in Khayelitsha. South African shopkeepers from several different townships attended these meetings to voice their concerns.

Permissions to conduct interviews with members of the formal justice sector

The South African Police Service (SAPS) and the Department of Justice and Constitutional Development (DOJ&CD) granted ACMS permission to conduct interviews with police officers, prosecutors and Legal Aid attorneys. The local SAPS and Legal Aid offices provided immediate, unhindered interview access. The Director of Public Prosecutions (DPP) in the Western Cape, however, initially delayed the research for several months and then prevented ACMS from conducting interviews with prosecutors in the province altogether. Instead, he submitted ACMS's research questions (intended to provide the DPP with greater detail as to what ACMS was researching) directly to three anonymous court officials who supplied brief, often just one word or one-sentence answers. Last minute intervention by the regional head of the DOJ&CD enabled ACMS to interview four prosecutors (three at the Wynberg Regional Court and one at the Athlone District Court). While the delay hindered the information ACMS was able to gather, the interviews did provide some insight into the experiences of prosecutors in Philippi, which falls under the jurisdiction of both the Athlone and Wynberg courts.

Participant observation

As mentioned above, the field worker attended four meetings hosted by police in response to threats from South African traders to forcibly close Somali shops. The meetings were held in Khayelitsha and concerned a 2008 agreement between Somali and South African traders prohibiting new Somali shops in Khayelitsha. South African traders from Khayelitsha, as well as neighbouring townships such as Mfuleni and Nyanga, voiced their concerns about Somali shops at these meeting. The police and local government authorities worked to mediate tensions.

¹¹ This concern was raised by a representative of a non-profit organisation in Philippi, and by a city-appointed mediator in Kraaifontein.

The researcher also observed court proceedings in five cases in which the defendants were accused of attacks on Somali shopkeepers. Providing an indication of the types of obstacles these cases encounter, all of these hearings were postponed for reasons that included the lack of interpreters for the accused, the failure of the defence attorneys to appear in court due to personal emergencies, or a decision by the accused to change attorneys.

BACKGROUND ON THE SOMALI PRESENCE IN THE WESTERN CAPE

Somali immigration to South Africa

Somalis fleeing both large-scale political violence and ethnic persecution have arrived in South Africa as asylum seekers in need of refugee protection. As mentioned, Somali immigrants began arriving in South Africa in the mid-1990s, after the emergence of democracy in South Africa. Most of them were fleeing the civil war that erupted in 1991 following the collapse of dictator Siad Barre's government. Some Somalis also fled from the Somali Region of Ethiopia (also referred to as the Ogaden Region), where the Ethiopian government has carried out large-scale persecution of ethnic Somalis since 1948 when the region was ceded to Ethiopia. This persecution intensified in the early 1990s under former Prime Minister Meles Zenawi.¹²

According to Somali respondents, immigration to South Africa increased following the Ethiopian invasion of Somalia in December 2006. The invasion ousted the ruling Islamic Courts Union, giving rise to al-Shabaab, a militant Islamist group aligned with al-Qaeda.¹³ This led to a second wave of immigration to South Africa from mid-2007, made up of Somalis primarily from the areas surrounding Mogadishu, where most of the fighting took place.¹⁴

This 'second wave' of immigration has recently slowed down following a return to relative stability in Mogadishu. Somalis reported that Somali immigration into Cape Town has dropped significantly in 2012.¹⁵

The Somali community in Cape Town

Somalis have established many community organisations in South Africa. In Cape Town, the two primary representative organisations are the Somali Association of South African (SASA) and the Somali Community Board (SCB). Both organisations function as representative bodies, and liaise with government and civil society regarding matters concerning the Somali community. Another organisation, the Somali Retailers Association, represents Somali traders based in the townships. Somali students at the University of the Western Cape have also set up a research council to conduct and promote discussion on research on Somalis in South Africa as well as in the Horn of Africa. The Somali Refugee Aid

¹² Human Rights Watch, *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Regional State*, 2008, at 20, available at www.hrw.org/sites/default/files/reports/ethiopia0608_1.pdf, date accessed 12 August 2012.

¹³ International Crisis Group *Africa Briefing*, 22 February 2012, no 87, at 3, available at <http://www.crisisgroup.org/-/media/Files/africa/horn-of-africa/somalia/b87-somalia-an-opportunity-that-should-not-be-missed.pdf>, date accessed 20 July 2012.

¹⁴ Informal conversations with various Somali community representatives.

¹⁵ Ibid.

Agency (SORAA) has recently been set up to offer community services such as English classes, computer training and trauma counseling to Somali residents in Bellville.

In Bellville, two local mosques play a central role within the Somali community. Religious figures often preside over disputes between community members. The primary Somali religious organisation in Bellville, Al Bayan works with Somalis across clans, arranging religious events and organising advice sessions on matters such as medical or tax issues.

Somali business operations in the Western Cape

Somali traders are engaged in diverse business activities in the Western Cape. In Cape Town, they run businesses in townships as well as in formal central business districts (CBDs) such as Bellville, the Mitchells Plain town centre and the Cape Town city centre. A similar pattern exists in small towns where Somalis have opened shops in both town centres and adjacent townships.

When Somalis first started arriving in South Africa, they set up businesses in the central business districts of Cape Town, including the city centre, the Mitchells Plain town centre and the Bellville train station area. Often, they started out as hawkers selling clothing such as socks, belts and sandals, eventually moving on to open clothing shops. Today these businesses have grown and diversified. Cape Town's city centre houses many Somali internet cafes, grocery shops, clothing shops, and restaurants. These city grocery shops have recently adapted and serve takeaway coffee for working customers. Mitchells Plain and Bellville now have densely populated Somali neighbourhoods where businesses include grocery shops, furniture and upholstery shops, clothing shops, restaurants, cafes, bulk 'cash and carry' stores, internet and printing shops, travel agents and guest houses.

The first Somali immigrants in Cape Town had few support structures. The owner of two clothing shops in the Tulbagh town centre described how empty Bellville was when he first arrived in South Africa in 1997: 'There were only dogs and street people. No one was renting there.' Lacking any resources or connections, he was forced to sleep outside, using the clothes he hawked to keep himself warm.¹⁶ Similarly, a Gugulethu shop owner who arrived in 1998 lacked any contacts and initially worked as a security guard for a South African security business in Bellville.¹⁷

Somali traders eventually sought business opportunities in the 'spaza' market in Cape Town's townships. Spaza shops are small informal grocery shops that provide basic food and household items such as bread, milk, sugar, cooking oil, soft drinks, cigarettes and paraffin. The earliest Somali traders began opening spaza shops in townships in the mid to late 1990s.¹⁸ These shops became a noticeable presence in the townships in the early

¹⁶ Somali shopkeeper, Tulbagh, Western Cape, 1 March 2012.

¹⁷ Somali shopkeeper, Bellville, 22 July 2012.

¹⁸ Harare police station crime intelligence officer, Harare, Khayelitsha on 24 May 2012.

2000s.¹⁹ Somali traders favour the township spaza market because of the untapped business opportunity, the low start-up costs of spazas, and the informal nature of business in Cape Town's townships, where permit and paper requirements are low or non-existent. Two Somali traders also pointed to increasing competition from Chinese traders in the clothing market as pushing them into the grocery market.²⁰

From about 2005, Somali traders also began searching for opportunities in small towns across the province.²¹ As a result, Somali businesses consisting mainly of clothing and grocery shops can be found in more distant towns, including Barrydale, Tulbagh, Caledon, Vredenberg and Prince Albert Hamlet.

Spaza shop owners or employees often sleep in their shops, or in separate rooms behind their shops because they worry that their shops will be robbed if they leave them vacant overnight. The wives and children of Somali shop owners and employees generally do not live in township areas, but in Somali neighbourhoods in Bellville and Mitchells Plain. Somali women often oversee businesses in these Somali neighbourhoods including clothing and fabric shops, restaurants and street stalls.

Somalis have entered the townships to take advantage of business opportunities, but they have chosen to settle their families outside of the townships because of security concerns. This has drawn negative attention from some township residents, and has inhibited Somali integration with the local township community, leaving Somali traders socially isolated. These and other factors have exposed traders to even greater levels of crime in the townships.

Factors contributing to disproportionate levels of crime against Somali traders

All three of the field sites—Khayelitsha, Philippi and Kraaifontein—are characterised by high levels of violence and crime that affect Somalis and South Africans alike. Somali shopkeepers, however, experience higher rates of violent crime than their South African neighbours. Attacks on Somali shopkeepers are motivated by a number of interrelated factors stemming largely from their marginalisation in the community and the nature of their businesses. Marginalisation limits community responses to crime against Somali shops and enables misinformed and biased views to circulate unchecked. South African traders also resent the competition posed by Somali businesses. Finally, Somali shops present lucrative targets for opportunistic robbers. These factors are described below.

¹⁹ Khayelitsha police station colonel, Khayelitsha, 25 October 2012. Somali Retailers Association representative, Bellville, 10 January 2011.

²⁰ Somali trader, Tulbagh, Western Cape, 1 March 2012. Somali traders, Vredenburg, 8 March 2012.

²¹ Of the 17 traders interviewed in small towns, the earliest arrivals had opened their shops in 2005.

Social isolation

Although many South African township residents welcome Somali shops into their neighbourhoods, Somali nationals themselves tend to live in social isolation from the communities in which they work. This isolation from the community lowers the risk of capture and punishment for those who commit crimes against Somalis, making them more appealing targets. While South Africans have access to informal community justice mechanisms that are mobilised in response to crime, community members do not mobilise in the same way to combat crimes against Somalis. They feel little outrage against these crimes and are less likely to investigate them or share information with the police. One Khayelitsha resident stated:

We don't help them because they don't help us. We are not really concerned about their problems because they are very separate from us. If someone were to kill them, we would never even know.²²

The issue of social isolation and informal justice mechanisms will be explored in greater detail in a later chapter.

Misinformation and bias

A number of residents hold misinformed, biased views of Somali traders. Somali marginalisation exacerbates this problem, as the lack of engagement between Somali traders and surrounding communities contributes to the formation of ill-informed beliefs. Some residents suspect traders of engaging in witchcraft aimed at bringing back luck to communities. Others feel that Somalis are arrogant and do not care about local community problems. Acute poverty also heightens the bias against Somali traders, giving rise to fears that the Somali presence reduces economic opportunities for South Africans and is a financial drain on society. Such negative sentiments further contribute to the lack of community response to crimes affecting foreign traders.

Impunity

Low prosecution rates for crimes targeting Somalis, coupled with the lack of community response described above, creates a sense of impunity amongst the perpetrators. This adds to the perception that Somalis as easy targets, leading to further attacks.

²² South African resident, Endlovini, Khayelitsha, 6 February 2011.

Competition

Intense competition between South African and Somali shopkeepers has resulted in attacks on Somali shops and shopkeepers. South African traders have been arrested for murder, attempted murder and arson attacks against competing Somali traders in Philippi and Kraaifontein. South African traders often act under the belief that South Africans have greater claim to township business markets than Somali refugees and asylum seekers.

Profitable targets

Some criminals target Somalis because they know that they keep large amounts of cash on them, as well as other easily conveyable consumer goods such as airtime vouchers and cigarettes. Somali traders store cash in their shops partly because of the barriers to opening and maintaining bank accounts with asylum seeker or refugee documents. Although the banking system agreed to accept asylum seeker documents following a legal challenge,²³ additional barriers, such as the proof of residence requirement, continue to prevent bank access.²⁴ Even with bank accounts, Somali shops still hold large cash reserves because most purchases rely on cash.²⁵ Although some larger spaza shops possess credit and debit card machines, the vast majority of customers prefer to pay in cash.²⁶

Complexity of motivations

Attacks on Somali shopkeepers are motivated by a number of factors, including marginalisation, impunity, profitability, prejudice, and/or business competition. These factors are often interrelated and can simultaneously motivate criminal attacks. The overlapping factors make it difficult to easily categorise attacks on Somali shops as either ordinary crime like that affecting residents, or as purely xenophobic. What is apparent is that the disproportionate rate of crimes against Somali shopkeepers in Cape Town's townships is not accidental and requires further exploration.

²³ A settlement was reached between the Consortium for Refugees and Migrants in South Africa (CORMSA) and Financial Intelligence Service in November 2010. See CORMSA press release 'Refugees and Asylum seekers again able to access bank accounts' available at <http://www.lhr.org.za/news/2010/refugees-and-asylum-seekers-again-able-access-bank-accounts>, date accessed 16 August 2012.

²⁴ Somali Association of South Africa representative, telephone interview, 14 August 2012.

²⁵ Somali Retailers Association representative, telephone interview, 14 August 2012.

²⁶ Ibid.

CRIME AFFECTING SOMALI SHOPKEEPERS IN THE WESTERN CAPE

The overlapping motivations described above give rise to various forms of crime. While robberies are the most prevalent crime, shopkeepers are also subject to looting by residents and to more orchestrated attacks organised by competing South African traders. These crimes are set out below.

Statistics on crimes affecting foreigners, including robberies and murders, are not readily available. The Kraaifontein station commander said that her station did not keep any records of crime affecting foreigners. Police in Philippi East and Harare said that they kept records, but could not disclose them without the consent of the Provincial Commissioner. At the time of writing, ACMS was still awaiting a response from the Provincial Commissioner's office.

Types of crime

Somali shopkeepers in the Western Cape experience a variety of crimes, many of which involve extreme violence. The most common categories of crime include:

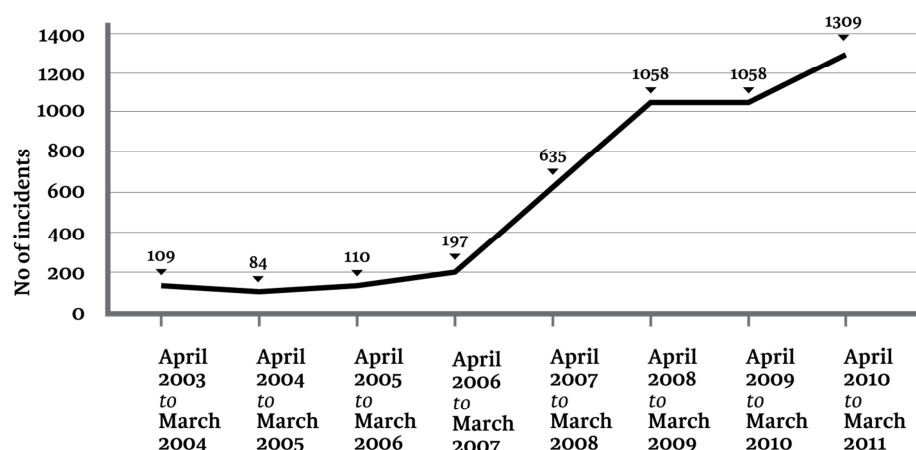
- Opportunistic business robberies;
- Crimes orchestrated by South African traders against Somali competitors;
- Crimes orchestrated by Somali traders against other foreign competitors;
- Intimidation and attempted illegal evictions of Somali shops by South African competitors;
- Robberies by police during police search operations;
- Looting of shops by residents;
- Hijackings; and
- Harassment and abuse by state institutions and community leaders.

Opportunistic business robberies

The most common crime against Somali shops involves business robberies, generally involving violence or the threat of violence. Business robberies in the Western Cape have

increased since 2006, as demonstrated by the table below, which sets out general business robbery statistics for the Province as a whole:²⁷

Robberies at non-residential premises in the Western Cape (SAPS statistics)



In response to the constant threat of robberies, many traders have armed themselves to protect their shops. Two respondents successfully defended their shops from robbers with firearms.²⁸ Legally, firearms must be stored in secure premises containing safes and official street addresses—both of which are lacking at Somali shops. As a result, Somalis have resorted to buying illegal firearms, often from local youth.²⁹ Although police believe the firearms are generally being used in self-defence, they expressed concern that the number of unlicensed firearms owned by Somalis could increase overall levels violence.³⁰ One Somali trader, for example, shot at Tactical Response Team members when they tried to raid his shop.³¹ In another incident, a woman was injured as a result of crossfire between Somali traders and robbers.³²

The Somali preference for illegal firearms is not difficult to understand, given that Somali shopkeepers are disproportionately affected by business robberies. In an address to Parliament in February 2012, the Western Cape Provincial Commissioner of Police stated that nearly 70 percent of business robbery victims in the province were foreign national spaza shopkeepers.³³ Police intelligence officers at the Khayelitsha police station reported that foreign traders—most of whom were Somali—made up 96.5 percent of business

²⁷ SAPS crime statistics, available at: http://www.saps.gov.za/statistics/reports/crimestats/2011/crime_stats.htm, date accessed 15 May 2012.

²⁸ Former Khayelitsha Somali trader, Mitchells Plain, 6 July 2012. Philippi Somali trader, Bellville, 21 June 2012.

²⁹ Khayelitsha police station colonel, Khayelitsha, 25 October 2012. Kraaifontein police station detective, Kraaifontein, 1 December 2011.

³⁰ Khayelitsha police station colonel, Khayelitsha 25 October 2011. Khayelitsha sector manager, Khayelitsha, 25 October 2011. Kraaifontein police station detective, telephone interview, 30 July 2012.

³¹ Khayelitsha sector manager, Khayelitsha, 25 October 2011.

³² Ibid.

³³ Wyndham Hartley 'Illegal foreign business owners "a soft target for criminals"' *Business Day* 9 February 2012, available at <http://www.businessday.co.za/articles/Content.aspx?id=164482>, date accessed 24 May 2012. The SAPS Western Cape provincial office confirmed this statistic by telephone on 16 August 2012.

robbery victims in the station's jurisdiction, despite owning only 50 percent of shops in the area. South African nationals, by contrast, owned the other 50 percent of shops but made up only 3.5 percent of victims.³⁴ Forty percent of business robberies involved attempted murder or murder.³⁵

Crimes orchestrated by South African traders against Somali competitors

Some South African shopkeepers have responded to growing competition from Somali shopkeepers by orchestrating crimes against them. These crimes have taken the form of arson attacks on Somali shops, murders or attempted murders of shopkeepers, and robberies by hire. Orchestrated crimes were widespread in Kraaifontein in 2009 and 2010, but have since decreased. They were also common in Philippi until mid-2011, and are again on the rise following a period of inactivity. Somali traders there believe that a 2012 murder in Philippi East, and a shooting in Browns Farm that left one trader paralysed, were orchestrated by South African shopkeepers.³⁶ In Khayelitsha, by contrast, most of the robberies are committed by opportunistic youth, and police and Somali traders report that there are very few incidents of orchestrated crime.

In one of the most high profile cases of orchestrated crime, four South African shopkeepers were arrested in Kraaifontein in 2010 for allegedly bribing seven youths to murder local Somali shopkeepers. These shopkeepers were released a few months later after a key witness refused to testify.³⁷ In a similar case, a South African woman from Philippi is currently on trial for arranging the murder of several Somali shopkeepers in the area on behalf of South African traders.³⁸

Arson attacks on Somali shops were also prevalent in both Kraaifontein and Philippi. Attackers threw lit bottles of paraffin into shops, resulting in deaths and serious injuries. Of fifteen shopkeepers interviewed in Philippi, six reported cases of arson against their shops. Two shops had been burnt down more than once. In Kraaifontein, two of the ten traders interviewed had suffered arson attacks. Arson attacks in Philippi and Kraaifontein generally did not involve robbery, as the shop contents were destroyed in the fire.

In Khayelitsha, the two traders who experienced arson attacks reported that their shops had been set on fire by protesters—in one instance during a taxi strike and in the other during a protest by shebeen owners. They did not suspect South African traders of having planned the arson attacks, in contrast to the experiences of shopkeepers in Kraaifontein and Philippi.

³⁴ Khayelitsha police station crime intelligence officials, telephone interview, 17 April 2012.

³⁵ Khayelitsha police station crime intelligence officials, Khayelitsha, 25 October 2012.

³⁶ Philippi Somali trader, Bellville, 22 July 2012.

³⁷ Kraaifontein police detective, Kraaifontein, 13 January 2010.

³⁸ Philippi East police station detective, Philippi East, 1 December 2011.

Orchestrated crime by South African traders also takes the form of ‘hit and runs’ where individuals fire shots at Somali shopkeepers and then leave the scene without stealing any goods.³⁹ Most of these attacks have occurred in the field sites of Philippi and Kraaifontein, as opposed to Khayelitsha. Police at the Philippi East and Kraaifontein police stations suspect South African traders of planning some of these attacks.

In Kraaifontein, four Somali respondents had experienced hit and run attacks. One of them described how attackers shot at his colleague in the front of the shop and then ran away. The bullet missed his colleague and struck the respondent in the back while he was watching television at the other end of the shop, leaving him permanently paralyzed. The shopkeeper did not know if a case had been opened, as he was hospitalised immediately after the attack and was not approached by police at the hospital. He returned to Somalia two days after the interview so that his mother could care for him.⁴⁰ Four South African traders and seven youths were later arrested for orchestrating similar crimes in Kraaifontein.

Only one Somali respondent in Philippi reported a ‘hit and run’ incident. However, unlike the traders in Kraaifontein, he did not believe the shooting was organised by South African traders. He attributed it to youths who were angry that he had laid charges of arson and attempted murder against one of their crime associates two days earlier. As a result of the shooting, the respondent decided not to pursue the arson case against the suspect.⁴¹ Similarly, only one of the fifteen Somali traders in Khayelitsha reported a ‘hit and run’. He also believed it was a revenge attack for laying charges against a robbery suspect, and as a result of the shooting he decided to abandon the charges.

There is also evidence that South African shopkeepers may have orchestrated robberies. In July 2010, six armed men robbed a Somali shop in Philippi and then set the shop on fire by throwing a lit bottle of paraffin into it,⁴² indicating that they also wanted to destroy the shop. Police and some shopkeepers have also not ruled out the possibility that some seemingly ordinary robberies could be instigated by competing shopkeepers to scare away customers and destroy competing businesses.

Crimes orchestrated by Somali traders against other foreign nationals

On a more limited scale, Somali shopkeepers have also resorted to crime against competing foreign nationals (including Somali, Ethiopian and Chinese nationals), or used crime to address internal disputes, such as those between employers and employees, or between shareholders over shop profits. They have not, however, orchestrated crimes against South African competitors.

³⁹ Ibid.

⁴⁰ Kraaifontein Somali shopkeeper, Bellville, 11 November 2010.

⁴¹ Philippi Somali trader, Bellville, 30 October 2010.

⁴² Ibid.

Police at all field sites reported that they suspected Somali traders of committing crimes against their foreign competitors, but these cases made up a small portion of the attacks against foreign migrants. The Kraaifontein police reported five incidents since 2011.⁴³ In Philippi East, police believed that Somali traders orchestrated approximately 30 percent of crime against their Somali counterparts.⁴⁴ In Khayelitsha, police reported only three cases involving disputes between Somali traders; such crime, they said, constituted less than one percent of cases relating to foreign nationals.⁴⁵ Most of these cases involved threats and intimidation against fellow Somalis, and were often resolved by Somali community leaders in Bellville.⁴⁶

Police in both Khayelitsha and Philippi East also suspected Somali traders of paying youth to rob foreign competitors.⁴⁷ In Kraaifontein, police suspected Somali traders of burning down a new Chinese spaza shop that had opened next door. They also believed Somali traders had orchestrated an arson attack on a Somali shop in the neighbouring coloured township of Skotsdene.⁴⁸

Although limited in scope, the fact that Somalis have also resorted to crime to address business competition may in part stem from the heightened business pressure Somali shopkeepers feel as they confront attempts by South African traders to limit their businesses. The relative impunity of those who commit crimes against them may also give rise to a more 'self-help' attitude in which Somalis believe they must resort to extra-legal measures to ensure their own survival. Such crimes must thus be understood within the broader socio-political context in which Somalis operate and their attempts to access justice.

Intimidation and attempted illegal evictions of Somali shops by South African competitors

Somali shopkeepers in Khayelitsha, Philippi, Gugulethu, and Kraaifontein have received threatening letters meant to intimidate them into leaving their shops. These letters instruct Somali shopkeepers to close their businesses by a certain date and leave the township.

Asylum seekers and refugees enjoy the right to work in South Africa, as well as the Constitutional right to equality.⁴⁹ The attempts to remove Somali traders from the townships through these intimidating letters, particularly if indirectly supported by the state through police inaction, may amount to unfair discrimination on the basis of

⁴³ Kraaifontein police station detective, Kraaifontein, 14 June 2012.

⁴⁴ Philippi East police station officers, Philippi East, 27 October 2011.

⁴⁵ Khayelitsha police station crime intelligence officials, Khayelitsha, 25 October 2011.

⁴⁶ Harare police station detective, telephone interview, 16 August 2012.

⁴⁷ Philippi East police station detective, Philippi East, 1 December 2012.

⁴⁸ Kraaifontein police station detective, telephone interview, 30 July 2012.

⁴⁹ See section 27 of the Refugees Act 130 of 1998. The right to work for asylum seekers was confirmed by the Supreme Court of Appeal in *Minister of Home Affairs and Others v Watchenuka and Another* 2004 (4) SA 326 (SCA) at 15. The right to equality is set out in section 9 of the Constitution and applies to 'everyone', and is therefore not restricted to South African citizens alone.

nationality. While the threats of violence are generally implicit, the letters leave Somali shopkeepers feeling very insecure. Somali traders fear violence if they do not comply, particularly because threats to close down shops often coincide with the murders of Somali shopkeepers in the same area. In Philippi East, three murders of Somali traders occurred within days after an eviction notice was sent out in May 2011.⁵⁰ At the time of writing, the cases remained unsolved.

In some instances, South African traders have moved beyond intimidation and have acted on their threats by shutting down Somali shops. South African shopkeepers in Philippi (2011) and Khayelitsha (2010 and 2012) physically confronted Somali traders who had refused their instructions and ordered them to close their businesses.

In July 2011, a group of South African traders from Lower Crossroads (a section of Philippi) sent out warning notices to Somali traders to close their shops within two months. The police did not take any action against the group. After the cut-off date, the traders drove from shop to shop and forced several Somali traders to close their businesses, telling them that they would face death if they resisted, and threatening to bring looters into the shop.⁵¹ The police intervened to halt the closures after the South African traders had successfully closed down eight Somali businesses, but they still declined to charge them.⁵²

In both February and May 2012, a group of South African traders calling themselves the Zanokhanyo Retailers Association closed down several Somali shops in Khayelitsha. A group of approximately 30 association members ordered Somali shopkeepers to close their shops and remove their stock. In some instances, they broke into shops, began removing stock themselves, and physically assaulted the Somali traders.⁵³

Zanokhanyo claimed to be enforcing a 2008 agreement with the Somali Retailers Association that prohibited Somali traders from opening any new shops in Khayelitsha. During the first attempted evictions in late February 2012, police intervened and informed traders they could re-open their shops.⁵⁴ A police spokesperson was quoted in a news article as stating that those who forcefully closed businesses would 'be treated with the full force of the law and arrested.'⁵⁵ However, when Somali traders then tried to press charges at the Harare police station, the police took no action.⁵⁶ A few weeks after the incident, the police hosted a meeting to address the Zankhanyo Retailers Association's complaints. Zankhanyo members proclaimed: 'During apartheid the government never did anything for us, now the current government is also not doing anything for us, so we are going to do things our own way.'⁵⁷ Viewing this as a threat, the Somali representatives left the meeting.

⁵⁰ Philippi Somali trader, Bellville, 6 November 2011.

⁵¹ Philippi Somali trader, telephone interview, 6 August 2012.

⁵² Philippi Somali trader, Bellville, 6 November 2011.

⁵³ Somali Retailers Association representative, telephone interview, 21 August 2012.

⁵⁴ Speech by local police appointed mediator at a meeting between South African and Somali traders, Khayelitsha, 7 March 2012.

⁵⁵ Nombulelo Damba, 'Somali shops re-open after local business owners attempt to force them to close,' *West Cape News* 6 March 2012. Available at: <http://westcapenews.com/?p=3798>. Date accessed: 30 April 2012.

⁵⁶ Somali Retailers Association representative, telephone interview, 21 August 2012.

⁵⁷ Somali Retailers Association representative, telephone interview, 2 August 2012

The police did not arrest any Zanakhanyo members for this threat, but they did arrest a Somali trader outside the meeting after he told a journalist that ‘Somalis are soldiers and will fight back.’ Unlike the majority of cases involving crimes against Somalis, his case went to court, and he was forced to hire a lawyer to defend himself.

In May 2012, the Zanakhanyo Retailers Association again closed down several Somali shops in Khayelitsha.⁵⁸ Media reports state that this time police called to the scene did not intervene to stop the closures.⁵⁹

When South African traders attempt to close down Somali shops themselves, they effectively take the law into their own hands, undermining the state’s authority to regulate trade and business, and weakening the rule of law. Moreover, the limited police response to attempts to intimidate and evict Somali businesses also perpetuates the notion that Somali businesses are somehow illegitimate, and that their presence violates the rights of local community members. This issue will be examined in greater detail in the third report in this series.

Robberies by police during police search operations

While called on to protect Somali shops, some policemen have instead themselves participated in crimes against Somalis. Not all policemen participate in these activities, but the actions of individual policemen have served to increase Somali distrust of the police.

Most of these crimes occurred during police searches of shops, often in pursuit of unlicensed firearms. Police sometimes trashed shops and assaulted employees during these searches. They also used these searches as an opportunity to rob shops.

Three Somali respondents from Khayelitsha reported that the police had robbed their shops while conducting searches. Two traders who had relocated to other areas (Philippi and Ceres) also mentioned that police had robbed them when they had worked in Khayelitsha. Traders in Philippi and Kraaifontein did not report police robberies.

Accounts of the robberies varied. One trader stated that ‘undercover police’ stole airtime and cash while searching his shop.⁶⁰ Two other police robbery victims in Khayelitsha reported that police Tactical Response Team (TRT) members had robbed their shops. They identified the police as being TRT members because they arrived in a black police vehicle as opposed to a regular police vehicle.

According to one of these victims, TRT members had robbed his shop in Harare, Khayelitsha three times.⁶¹ The first incident occurred in October 2011, when approximately

⁵⁸ Somali Retailers Association representative, telephone interview, 21 August 2012.

⁵⁹ Nombulelo Damba, ‘Somali-owned shops forced to close in Khayelitsha,’ *West Cape News*, 16 April 2012, available at <http://westcapenews.com/?p=4303>, date accessed 20 June 2012.

⁶⁰ Khayelitsha Somali trader, Bellville, 8 January 2011.

⁶¹ Khayelitsha Somali trader, Bellville, 3 June 2012.

seven police officers arrived in black TRT vehicles and informed the shop employees that they were searching for firearms. They closed the doors of the shop and did not let anyone out while they carried out the search. After the police left, R2000 cash was missing from the till. In November 2011, the same TRT policemen searched the shop again and assaulted the two employees. One employee was left unconscious and later hospitalised. The police searched both the shop and the employees' bedroom behind the shop. According to one of the employees, the police were 'collecting and crashing'⁶² everything and turning over furniture in the bedroom. The police eventually took R6000 that was hidden under a cupboard in the bedroom—the two employees' monthly salary.⁶³

After accusing the employees of having 'a bad attitude,' the same policemen returned to the shop in March 2012 and again robbed it while claiming to search for firearms. They searched the premises aggressively, damaging the shop ceiling. The police stole R18,000 that was hidden on the premises and belonged to the shop owner.⁶⁴

The shop owner reported both the second and third robberies to the police. Neighbouring residents angered by the police actions had written down the registration number of the two black TRT vehicles parked outside during the third robbery and the shop owner submitted it to the police. When the shop owner tried to follow up, the detective responded that they were 'still investigating' the matter. When he spoke to ACMS in June 2012, the shop owner had not heard anything further from the police and was considering abandoning the matter for fear of retaliation, claiming that his investigating officer had advised him to drop the case because the accused police could come back and do what they wanted to him.⁶⁵

Looting of shops by residents

Somali shopkeepers also fall victim to mob attacks and lootings. Lootings occurred in all three field sites during the May 2008 xenophobic attacks, and also took place in Khayelitsha and Kraaifontein around the time of the July 2010 World Cup final match. In some instances, a small group of instigators called nearby residents to come into the shop and loot (common in Khayelitsha); in others, groups of residents marched from shop to shop and looted contents (more common in Kraaifontein). General protests and strikes also frequently gave rise to looting and violence. Somali nationals affected by protest or strike looting believed that these activities were an attempt to get the government's attention. One trader explained:

⁶² Khayelitsha Somali trader, Mitchells Plain, 3 June 2012.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Khayelitsha Somali trader, Bellville, 3 June 2012.

If they need any little access to the government they have to sweep us, so that the government could wake up and say ‘why do you want to touch the refugees in the country or the foreigners?’ When they want to get the government’s attention we will be the target.⁶⁶

The trader characterised the looting targeted at Somalis as another means of violent protest, such as burning tires or throwing stones. He believed that residents used looting as a way to threaten xenophobic action in order to elicit a quicker government response.

Hijackings

Somalis were also targeted en route to buying stock, when they were carrying large amounts of cash. Seven shopkeepers in Philippi and Khayelitsha reported being hijacked while on their way to buy stock: five in Khayelitsha and two in Philippi. Three of them were injured during the hijackings. According to one of the Philippi traders, the hijackings started in Mfuleni (near Khayelitsha) in 2009 and spread to Du Noon, Samora Machel, Nyanga, Gugulethu, Philippi, and Khayelitsha. Hijackers generally waited in areas that were on the route to the wholesalers and robbed the traders at gunpoint while they were stopped at nearby traffic lights.⁶⁷

Some traders have also been murdered during hijackings. In July 2010, three Somali traders were hijacked. They were taken to an empty field in Philippi where they were each shot at point blank range. One trader was shot in the head and died. The other two survived.⁶⁸ One ring of hijackers led by an individual named ‘Lulamile’ is suspected of carrying out all the attacks. After numerous Somali traders identified the same hijackers, the police found and arrested the gang’s ringleader in early 2011. He was kept in custody for several months. During this time, Somali traders reported that the hijackings stopped.⁶⁹ He was eventually released near the end of 2011, after weaknesses in the police investigation led to the provisional withdrawal of the case. The hijackings resumed in 2012.⁷⁰

There are indications that hijackers may be working with South African spaza shopkeepers. In August 2012, police received a tip that led them to suspected hijackers in Mitchells Plain. The hijackers had stolen a Somali trader’s vehicle packed with stock. The police found the empty vehicle, and the hijackers directed police to a South African trader in Philippi who had purchased the stolen stock from them. The police seized the stolen property and

⁶⁶ Kraaifontein Somali trader, Kraaifontein, 5 June 2012.

⁶⁷ Somali Retailers Association representative, Bellville, 14 November 2010.

⁶⁸ Helen Bamford, ‘Somali men shot in hijacking’ *IOL News*, 11 July 2010, available at http://www.iol.co.za/news/south-africa/somali-men-shot-in-hijacking-1.489403#.UAW_yGjQ9UQ, date accessed 25 May 2012.

⁶⁹ Informal conversations with members of the Somali Retailers Association.

⁷⁰ Informal conversations with members of the Somali Retailers Association.

returned it to the hijacking victim, but did not charge the South African trader with possession of stolen property.⁷¹

Harassment and abuse by state institutions and community leaders

In addition to the robberies at the hands of individual policemen described above, Somalis also experience more institutionalised forms of harassment and abuse. These actions come from the government institutions tasked with protecting and preserving rights, including SAPS and the Department of Home Affairs, as well as from local community leaders. They take the form of fining Somali shops on the basis of non-existent legislation; beatings, detention and/or kidnapping of traders for minor offenses or for no reason at all; and extortion of Somali traders by local councillors or community leaders.

Somali shopkeepers in Kraaifontein, Philippi, Cravenby, Khayelitsha and Gugulethu reported receiving fines of R1500 from police for not possessing business licenses. The fines were issued in terms of the Local Authorities Act 19 of 1974. No such legislation exists.⁷² The fines also conflict with statements from police and local government officials characterising townships as 'free trade areas' where traders do not require permits or licenses to open spaza shops.⁷³

These fines have exclusively targeted foreign shops. In Philippi, police told South African traders to obtain licenses, but did not fine them.⁷⁴ In Khayelitsha, fines were reserved for new Somali shops.⁷⁵ These shops had allegedly opened in violation of a 2008 agreement between traders that prohibited new Somali shops.⁷⁶ They remained open despite the fines.⁷⁷

Somali shopkeepers were also arrested for keeping their shops open late. In Cravenby, shopkeepers were kept at police stations for several hours, allegedly for operating their shops past 8pm,⁷⁸ despite the absence of any regulations or by-laws requiring spaza shops to close by a particular time.

Somalis in CBD areas in Bellville and Mitchells Plain have also reported police abuse, including the tear-gassing of a random Somali pedestrian in Bellville in retaliation for a

⁷¹ Somali community representative who was present with police when the stolen property was located in Philippi, telephone interview, 23 August 2012.

⁷² Act 19 of 1974 is the 'Subdivision of Agricultural Land Amendment Act', which does not relate to trading without a license. There is no legislation called the 'Local Authorities Act'.

⁷³ City of Cape Town Law Enforcement Department statement at meeting between South African and Somali shopkeepers, Khayelitsha, 20 March 2012. Response to ACMS enquiries at City of Cape Town Land Use Planning department in Kraaifontein, 11 January 2011. Police officials at Khayelitsha and Harare police stations.

⁷⁴ ACMS made enquiries with eight South African traders at Philippi Cash and Carry on 14 March 2012.

⁷⁵ A Khayelitsha court official stated that only new shops were being fined, telephone interview, 27 June 2012. A Khayelitsha mediator stated at a meeting between Somali and South African traders in Khayelitsha on 7 March 2012 that new Somali shops in Khayelitsha were being fined.

⁷⁶ In November 2008 the Somali Retailers Association and the Zanolkhanyo Retailers Association agreed that no new Somali shops would be allowed to open in Khayelitsha.

⁷⁷ Statement by the chair of a meeting between Somali and South African traders, Khayelitsha, 7 March 2012.

⁷⁸ Two Cravenby Somali traders, Bellville, 18 January 2012.

policeman having been assaulted by a Somali national earlier that day.⁷⁹ The victim reported the attack at the Bellville police station, but after making him wait several hours, police refused to open a case, telling him that ‘an injury to one is an injury to all.’ When he returned the following day, the police threatened to charge him with harassment, and he gave up. At a subsequent meeting between Somalis and the Bellville police station over another incident of police brutality,⁸⁰ he again raised the tear-gassing incident. The station commander dismissed his complaint, stating only that the victim should understand that the police were very angry on the afternoon that the incident occurred.⁸¹

Somali residents in Bellville reported intimidation by the police’s Tactical Response Team, which donned bulletproof vests and balaclavas to conduct random searches of Somali nationals on the streets in Bellville.⁸² In November 2010, a Somali resident in Bellville was abducted and beaten by TRT policemen after he observed them searching Somali youth on a pavement outside a Somali guest lodge and began writing down the registration number of their vehicle.⁸³ The police pled guilty to assault, kidnapping and theft before an internal disciplinary hearing and were given a six-month warning.⁸⁴ A criminal case is also underway at the Bellville Magistrates’ Court. On the first day of the trial, one of the defendants pulled a gun out of his back pocket while sitting directly opposite two of the Somali witnesses. The witnesses complained to the prosecutor, who responded that, as policemen, the defendants were permitted to bring firearms to court.⁸⁵

The problem of harassment and abuse is not limited to the police. On 13 March 2008, the Department of Home Affairs carried out a raid in the Mitchells Plain town centre where many Somali nationals live and operate businesses. Somali nationals were herded onto trucks and driven to a local police station where their papers were checked.⁸⁶ After one shopkeeper became upset when he saw his wife and four-day old infant at the station, he was beaten and detained overnight. He later reported the incident to the police and opened a civil case against the Department. The civil case was still underway at the time of his interview.⁸⁷

Local councillors and civic organisations have also extorted funds from Somali traders. In one incident, a local councillor in Kraaifontein advised Somali community representatives that they needed to ‘fundraise’ for her to speak to the community about xenophobia and attacks on their shops.⁸⁸ She also regularly requested ‘donations’ of approximately R2000

⁷⁹ Somali trader, Bellville, 14 November 2010.

⁸⁰ This incident is set out in the paragraph below.

⁸¹ ACMS attended the meeting on 6 December 2010.

⁸² Informal conversations with member of the Somali Association of South Africa and member of the Somali Refugee Aid Agency.

⁸³ Informal conversations with victim.

⁸⁴ ACMS accompanied the victim to the police internal disciplinary hearing in July 2011.

⁸⁵ ACMS was present when the prosecutor gave the advice on 24 July 2012. The trial was eventually postponed, as the accused’s attorney had urgent matter to attend to in Australia.

⁸⁶ Somali trader, Mitchells Plain, 8 January 2011. See also Candice Bailey and Lynnette Johns, ‘Traders protest against ‘brutal’ police raid’ *Cape Argus*, 15 March 2008, available at http://www.hiiraan.com/news4/2008/mar/6044/traders_protest_against_brutal_police_raid.aspx, date accessed 16 August 2012.

⁸⁷ Somali trader, Mitchells Plain, 8 January 2011.

⁸⁸ Kraaifontein Somali trader, Bellville, 14 December 2012.

towards her children's school fees as well as her husband's funeral. Somali nationals complied, as they hoped that she could help protect them from attacks. In 2011, a new councillor took over who did not extort money.⁸⁹

Officials with the South African National Civic Organisation (SANCO) in Khayelitsha have also engaged in extortion. SANCO oversees township street committees in Cape Town and across the country and therefore plays a significant role in township development and politics. Somali community representatives contacted SANCO in 2008 to assist in a community outreach programme aimed at improving relations between Somali traders and local residents in the area.⁹⁰ Thereafter, SANCO officials continued to approach Somali community members for 'donations' towards various causes. Somali representatives eventually informed SANCO in 2009 that they could not make any further donations to individual members unless local residents were informed. In response, a SANCO official sent a text message to a Somali community representative stating that he and his colleagues were 'playing with fire.'⁹¹ Interpreting this as a death threat, Somali community representatives stopped working with SANCO members and making donations.⁹²

As a minority group with very little political power, Somali traders both are targeted and are more susceptible to abuse, bribes, and extortion by state and local authorities. The general failure to address threats and crime against them serves to heighten their feelings of powerlessness and their lack of faith in state institutions.

Crime in small towns

Unlike their counterparts in Cape Town, Somali traders in small Western Cape towns have traded business profits for relative security. Businesses in these areas experienced both significantly less crime and significantly fewer profits. As a result, shop numbers in many towns are declining, as traders are being forced to move back to the cities in search of sustainable business opportunities.

Somali respondents interviewed in townships surrounding the small towns of Tulbagh, Prince Albert Hamlet, Nduli, Caledon, and Laingville said that crime was practically non-existent in their areas. They attributed this to the fact that most residents were employed on local farms or factories. Towns with higher levels of unemployment, including Hopland (in the West Coast) and Bella Vista (near Ceres in the Cape Winelands) had higher levels of crime. Traders in these towns also reported that city gangs had infiltrated their neighbourhoods. The crimes against Somalis in these areas were largely the same as in Cape Town and included robberies by local youth, looting by residents during the May 2008 xenophobic attacks, and harassment by police. However, three categories of crimes were

⁸⁹ Kraaifontein Somali trader, Kraaifontein, 5 June 2012.

⁹⁰ Somali Retailers Association representative, Bellville, 10 January 2011. Khayelitsha Somali community activist, Mitchell's Plain, 6 July 2012.

⁹¹ Khayelitsha Somali community activist, Mitchell's Plain, 6 July 2012.

⁹² Ibid. Somali Retailers Association representative, telephone interview, 23 July 2012.

notably absent: orchestrated crimes, intimidation by South African competitors, and hijackings en route to buying stock.

Conclusion

Somali traders fall victim to numerous and varied crimes committed by common criminals, South African (and sometimes Somali) competitors, looting residents, and institutional actors including the police and local officials. South African traders have further relied on intimidation to drive out Somali shops by sending threatening letters and going to Somali shops in person to shut them down. Somali traders have themselves at times targeted competing Somali and foreign national traders in an effort to protect their perceived turf from newcomers.

Although robberies were the most common form of crime, Somali traders were generally more fearful of the less frequent, but more fatal, orchestrated crimes by South African traders, which took the form of assassination style shootings and arson attacks. Thus, despite escalating robberies, many Somali traders viewed Khayelitsha as a safe haven compared to other areas such as Philippi and Kraaifontein where orchestrated crime was widespread. The next chapter turns in more detail to the crimes found in the field sites.

BACKGROUND AND HISTORY OF CRIME IN THE PRIMARY FIELD SITES

While certain commonalities of crime against Somali traders existed in all three of the field sites, there were differences in both the types of crimes and in the ways in which they were carried out. The particular features of each field site affected the characteristics of crime in an area. These features included:

- The sequence of Somali trader settlement in townships.
- The proportion of Somali traders in an area who were new arrivals in South Africa, as opposed to long-standing residents.
- Police breakthroughs in crime investigations.
- The presence of prominent South African businessmen owning several businesses.
- The efforts made by Somali community organisations to familiarise themselves with local South African leaders and community organisations.
- The size and population of the field sites.

After providing background on the field sites, this chapter sets out how these factors influenced the evolution of crime against Somalis.

Background of field sites

Khayelitsha

Khayelitsha is the largest township in Cape Town. It lies adjacent to the N2 highway, approximately 35 kilometres from the Cape Town City Centre. The research covers the jurisdictions of the Khayelitsha Police Station, which includes Site B and Site C, and the Harare Police Station.

A 2005 study estimated the population of Khayelitsha at 406 779.⁹³ More recent estimates place the population as high as one million.⁹⁴ The 2001 Census found that 96 percent of residents spoke Xhosa at home.⁹⁵ The Census also revealed low levels of education and high

⁹³ Maverick 358 cc, 'The Population Register Update: Khayelitsha 2005,' Report for the Department of Social Services and Poverty Alleviation, April 2006 at 72, available at http://www.westerncape.gov.za/other/2007/10/kprufinal_2005_october_2007_publish_date.pdf, date accessed 20 June 2012.

⁹⁴ Parliament of the Republic of South Africa report 'NCOP 'Taking Parliament "to the People"' 29 October to 2 November 2007, at 7.

⁹⁵ City of Cape Town Information and Knowledge Management Department 'A Population Profile of Khayelitsha,' April 2005, at 14, available at http://www.capetown.gov.za/en/stats/CityReports/Documents/Population%20Profiles/A_Population_Profile_of_Khayelitsha_1052006142120_359.pdf, date accessed 2 June 2012.

unemployment. Seventy-six percent of adults did not complete matric and only 4.3 percent had a post-matric diploma or degree.⁹⁶ Unemployment stood at 50.8 percent.⁹⁷

According to the police, foreign nationals operated fifty percent of spaza shops in Sites B and C, and sixty percent of shops in Harare.⁹⁸ Police estimated that between eighty and ninety percent of foreign shopkeepers were Somali.⁹⁹ Somali shops in Khayelitsha are located in both formal housing areas and shack settlements. Shops located in shack settlements are generally situated on main roads or in close proximity to main roads.¹⁰⁰

Khayelitsha was one of the first townships where Somali nationals set up spaza shops.¹⁰¹ Harare crime intelligence reported Somali traders in the area as far back as the mid-1990s, with numbers increasing after 2000. According to the Station Commander at the Khayelitsha Police Station, Somali shops became a noticeable presence after 2000.¹⁰²

Khayelitsha has experienced lower levels of orchestrated crime against Somali traders than Philippi and Kraaifontein. None of the fifteen Somali respondents interviewed reported incidents that reflected features of orchestrated crime, such as arson attacks or assassination style killings. While the police did not completely rule out orchestrated crimes, they stated that they did not have any clear evidence to prove it.¹⁰³ Members of the Somali Retailers Association agreed that orchestrated crimes were not common in Khayelitsha, but they did suspect that South African traders were behind the murders of three Somali traders in October 2010.¹⁰⁴ These murders remain unsolved.

The lack of prominent local traders with large business interests in Khayelitsha may account for the low rate of orchestrated attacks against Somalis in the area. South African traders often spoke aggressively at meetings, but had never acted upon their threats, and Somali traders believed it unlikely that they would resort to violence against Somali shops.¹⁰⁵ The South African traders in Khayelitsha may have lacked sufficient political power and influence within the community to carry out orchestrated attacks. Most of the South African spaza shop owners there were small shopkeepers and did not have the large business holdings that local shopkeepers in other townships possessed.¹⁰⁶ According to a

⁹⁶ Ibid at 17.

⁹⁷ Ibid at 29.

⁹⁸ Khayelitsha police station crime intelligence officers, telephone interview, 17 April 2012. Harare station commander, Harare, Khayelitsha, 7 December 2011.

⁹⁹ Khayelitsha police station sector manager, Khayelitsha, 25 October 2012. Khayelitsha police station detective, Khayelitsha, 27 October 2011. Harare police station crime intelligence official, Harare, Khayelitsha, 24 May 2012.

¹⁰⁰ Patrolling with Harare crime prevention police officers on 24 May 2012.

¹⁰¹ Somali community representatives, Mitchell's Plain, 3 June 2012.

¹⁰² Harare police station crime intelligence official, Harare, Khayelitsha, 24 May 2012. Khayelitsha police station colonel, Khayelitsha, 25 October 2011.

¹⁰³ Khayelitsha police station sector managers and police colonel, Khayelitsha, 25 October 2011. Harare police station detective, Harare, Khayelitsha, 7 December 2011.

¹⁰⁴ Somali Retailers Association representatives, Mitchells Plain, 1 November 2010.

¹⁰⁵ Informal conversation with Khayelitsha Somali community representatives, Mitchells Plain, 3 June 2012.

¹⁰⁶ Harare sector managers, Harare, Khayelitsha, 1 December 2011. Khayelitsha police station colonel and Khayelitsha station sector manager, telephone interviews, 17 August 2012.

representative from the Somali Retailers Association, the more prominent businessmen came from areas such as Philippi, Nyanga and Gugulethu.¹⁰⁷

One Somali community representative attributed the virtual absence of organised crime in Khayelitsha to the long-standing presence of Somali traders there. Because Somali traders were relatively unheard of when they opened their first shops, local traders and residents did not perceive them as a threat. This enabled Somalis to establish positive relationships with local residents and their neighbours.¹⁰⁸

Several shopkeepers believed that a Somali-led community outreach programme in 2008 and 2009 had played a role in preventing orchestrated crime in Khayelitsha. This programme was coordinated with the assistance of SANCO, and encouraged Somali nationals to familiarise themselves with residents and South African community organisations. Somali leadership in Khayelitsha also worked to strengthen relationships with police officials, SANCO leaders, and women's groups.¹⁰⁹

The outreach efforts were partly inspired by community sympathy towards Somali traders after the May 2008 xenophobic attacks. Many residents complained that after Somali traders evacuated Khayelitsha, South African traders increased food prices, making residents more aware of the benefits they received from Somali businesses.¹¹⁰ With the assistance of SANCO, Somali community organisations hosted functions for Khayelitsha residents, such as a lunch event for Khayelitsha school children, and donated funds to emergency victims, such as survivors of shack fires.¹¹¹

The programme came to an end in 2009 because Somali community representatives felt that it was generating conflict amongst South African community leaders who were competing for funding from the Somali community. One Somali community representative said that while the programme started as an attempt to support community projects and provide welfare to residents, it had become a vehicle for South African community representatives to aggressively demand donations and funding, making it more akin to the payment of protection fees by Somalis.¹¹²

Despite its demise, the outreach effort may have had a lasting positive effect. Somali traders in Khayelitsha were generally on good terms with residents and customers. As one shopkeeper summed up:

Khayelitsha is the only area where at least we have a friendship with the black people. At least it's somewhere I can go any time... In Khayelitsha I can drive any time I want, even if it's midnight because I know the people.¹¹³

¹⁰⁷ Somali Retailers Association representative, telephone interview, 21 August 2012.

¹⁰⁸ Somali community representative, Mitchells Plain, 3 June 2012.

¹⁰⁹ Khayelitsha Somali trader, Bellville, 7 January 2011. Somali Retailers Association representative, Bellville, 10 January 2011.

¹¹⁰ Khayelitsha Somali community activist, Mitchells Plain, 6 July 2012. Khayelitsha Somali trader, Mitchells Plain, 8 January 2011.

¹¹¹ Ibid.

¹¹² Somali Retailers Association representative, telephone interview, 23 July 2012.

¹¹³ Khayelitsha Somali community activist, Mitchells Plain, 6 July 2012.

All fourteen of the residents interviewed in Khayelitsha were very positive about Somali shops. They described in detail how they benefited from the shops through cheap prices, wide product ranges, and later hours.

Support from the local community has hindered the efforts of South African shopkeepers to close new Somali shops. Many of these attempts have been met with local community protest.¹¹⁴ Community support has also compelled local authorities to respond more strongly to threats against Somali shops. A local councillor criticised an agreement limiting the number of Somali shops in Khayelitsha, complaining that it negatively affected customers and landlords.¹¹⁵ In contrast, a councillor in the nearby township of Nyanga told a Somali trader there that he could not prevent Somali shop closures in the area, for fear of losing votes in municipal elections.¹¹⁶

The general absence of powerful South African spaza traders, combined with positive community sentiment towards Somali shops, and backing from local leaders and senior police, all limit the ability of local traders to resort to orchestrated crime against Somali competitors. Although crime rates remain high in Khayelitsha, Somalis perceive the area as more secure because of the lack of violent orchestrated attacks.¹¹⁷

Kraaifontein

Kraaifontein, located approximately 30 kilometres outside of Cape Town's city centre, is home to the Bloekombos and Wallacedene townships. The area is surrounded by commercial farms and is also relatively close to farming towns such as Paarl and Stellenbosch. The Kraaifontein police station covers the entire area. According to the 2001 Census, the population of Bloekombos is 16,890. Approximately 90 percent of residents are black and ten percent coloured. In Wallacedene, the population of 27,664 is approximately 80 percent black and 20 percent coloured.¹¹⁸ Housing is a mixture of formal and informal structures, but Somali shops are almost all found in formal housing areas.¹¹⁹ Educational levels in the area are low; most residents have not completed high school.¹²⁰ There is also vast unemployment in the area—66.86 percent in Bloekombos and 52 percent in Wallacedene.¹²¹

¹¹⁴ Somali Retailers Association representative 10 January 2011. Khayelitsha Somali trader, Mitchells Plain, 3 June 2012. See also Nombulelo Damba 'Khayelitsha residents come to the rescue of Somali traders' 20 May 2012, *West Cape News*, available at <http://westcapenews.com/?p=4321>, date accessed 10 June 2012.

¹¹⁵ Local councillor, Harare, 22 June 2012.

¹¹⁶ Philippi Somali trader, Bellville, 22 July 2012.

¹¹⁷ Khayelitsha Somali community activist, Mitchells Plain, 6 July 2012. This perception was confirmed by a number of Somali respondents based in Khayelitsha.

¹¹⁸ 2001 census data for the City of Cape Town, available at <http://www.capetown.gov.za/en/stats/2001census/Pages/Profiles.aspx>, date accessed 10 June 2012.

¹¹⁹ Informal conversations with Kraaifontein police and Somali traders.

¹²⁰ Ibid.

¹²¹ Ibid.

It is difficult to determine exactly when Somalis arrived in Kraaifontein. According to the police, Somalis began arriving in significant numbers in mid-2007,¹²² but many Somali interviewees reported opening their shops in 2005, and one of them bought his business from a Somali trader who had opened the shop in 2002.¹²³ A recent survey that Somali traders conducted for the police counted 108 Somali shops in Wallacedene and Bloekombos.¹²⁴ Because only foreign shops have been counted, there are no reliable estimates of the percentage of foreign-owned shops. Police claim that foreigners operate approximately 99 percent of shops in Kraaifontein. Somali traders, by contrast, place the proportion at 50 percent.¹²⁵

Residents in Kraaifontein were generally positive about Somali shops, but local community leaders were not as enthusiastic. SANCO membership in the township included prominent local South African businessmen who owned a number of informal businesses in Kraaifontein and were in direct competition with Somali shopkeepers. These businessmen, whom the police referred to as ‘big bosses,’ carried much political weight. As central figures in SANCO, they were able to exert their interests through the organisation. Other members of SANCO who attempted to oppose them were met with threats.¹²⁶

Apart from the relatively large extent of their business interests, another explanation for the political influence of these local traders is that the smaller size of Wallacedene and Bloekombos makes it easier for the so-called big bosses to mobilise against individuals opposing their interests. Khayelitsha, because of its larger size, houses relatively greater numbers of SANCO representatives, councillors and community organisations, making such mobilisations far more difficult. Further research is needed to substantiate this proposition.

Both the police and Somali traders reported that crime orchestrated by South African traders in Kraaifontein peaked between 2009 and 2010. In mid-2010, the Kraaifontein police prioritised investigations into orchestrated crime against Somali shops and arrested the suspected ringleaders in June and September 2010. Orchestrated crime stopped almost immediately after these arrests in September 2010.¹²⁷ Despite the drop in orchestrated crime, business robberies have continued unabated.

¹²² Kraaifontein police captain, telephone interview, 8 June 2012.

¹²³ Kraaifontein Somali trader, telephone interview, 8 June 2012.

¹²⁴ Kraaifontein Somali trader, Kraaifontein, 5 June 2012.

¹²⁵ Kraaifontein police station colonel, Kraaifontein, 8 November 2011. Kraaifontein Somali community representative, Bellville, 14 December 2010.

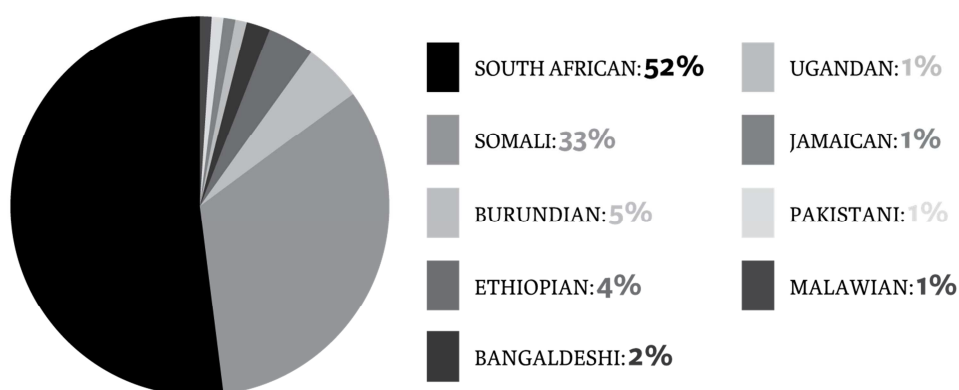
¹²⁶ Kraaifontein Somali trader, Bellville, 18 November 2010. Kraaifontein Somali community representative, Bellville, 21 November 2012.

¹²⁷ Kraaifontein police station detective, Kraaifontein, 13 January 2011.

Philippi

Philippi, with a population of 110,321,¹²⁸ is located on the Cape Flats, approximately 25 kilometres southeast of Cape Town's city centre. It covers several areas including Philippi East, Thabo Mbeki, Browns Farm, Philippi West, Samora Machel, and Weltervreden Valley.¹²⁹ As in the other two sites, the 2001 Census reflected low levels of education in Philippi coupled with high unemployment. Seventy-nine percent of residents did not have a matric certificate and fifty-nine percent were unemployed.¹³⁰ According to a 2011 count conducted by the Philippi East police station, there were 172 spaza shops in their jurisdiction.¹³¹ Of these, South Africans operated 90 shops, Somalis 57 shops, and other foreign nationals 25 shops (see Table below).

Distribution of spaza shops in Philippi East



Research was conducted in several parts of Philippi including Philippi East (Lower Crossroads, Better Life, Pola Park, Thabo Mbeki and Acacia Park) and Browns Farm.

Although the research fell within the jurisdiction of both the Philippi East and Nyanga police stations, ACMS only interviewed police at the Philippi East station. The Nyanga police station indicated that it would provide written responses to questions. Despite repeated requests, the station never provided these responses.

The police stated that Somali traders first arrived in the area in 2006 and 2007— more recently than in Khayelitsha and Kraaifontein.¹³² Somali respondents confirmed that traders entered Philippi much later, and that many moved into the area from neighbouring

¹²⁸ South Africa Education and Environment Project (SAEP), *Philippi Community Profile Report*, 2009 at 13, available at <http://oscarsaunderson.co.za/downloads/Community%20Profile%20-%20SAEP.pdf>, date accessed 22 June 2012.

¹²⁹ Ibid at 12.

¹³⁰ 2001 census data for the City of Cape Town, available at <http://www.capetown.gov.za/en/stats/2001census/Pages/Profiles.aspx>, date accessed 10 June 2012.

¹³¹ Philippi East sector managers, Philippi, Philippi East, 8 November 2011.

¹³² Philippi East police station colonel, telephone interview, 1 June 2012.

Khayelitsha.¹³³ Twelve out of fifteen Somali respondents in Philippi had arrived in the area after 2008.

Residents in Philippi were generally more hostile towards Somali shops than in Khayelitsha and Kraaifontein, although opinions were mixed. Responses by Philippi residents suggest that the community is divided about the Somali presence. About a third of residents felt negative about Somali traders. Concerns included increased competition with South African shops, fear of loss of power to Somali immigrants, suspicions that Somali traders used witchcraft, and perceptions that Somalis did not care about, or believed they were superior to, South Africans.

At the same time, just under half the number of residents felt positive about Somali shops, citing low prices, good proximity and better customer service. One resident went so far as to state that she wanted Somali shops to expand and be more permanent, and another resident argued that if it were up to him he would 'make bigger facilities for foreigners to thrive because as business people they create avenues for growth through their businesses and the community benefit a lot.'¹³⁴ The remaining residents were indecisive on the issue, stating that they appreciated the cheap prices and good services of Somali shops, but were concerned about hygiene (especially stale bread) and the loss of business opportunities.

As in Kraaifontein, prominent local businessmen who owned numerous shops in the area orchestrated a number of attacks against Somali shops, including arson, murder and attempted murder. As influential members of SANCO, these South African shopkeepers also managed to send eviction notices on SANCO letterhead to all Somali traders in Lower Crossroads in 2011. Organisationally, SANCO was split on the matter and later withdrew the notice.¹³⁵

Somali traders gave many reasons for the higher levels of orchestrated crime by South African traders against Somali shops in Philippi relative to Khayelitsha. A Somali community representative believed that South African shopkeepers in Philippi had heard about the business competition posed by Somali shopkeepers in Khayelitsha and had thus 'prepared' themselves for the arrival of Somali shops in the area.¹³⁶ As a result, many Somali shops were affected by violent crime from the start.

Many traders also pointed to the fact that a large proportion of Somali traders in Philippi were new arrivals—individuals originating from the areas surrounding Mogadishu who had fled Somalia after the December 2006 invasion by Ethiopia.¹³⁷ Unlike older generations of Somali migrants, most new arrivals struggled to speak English and did not integrate as well. This may have affected their relations with local residents and increased agitation against Somali shops. These possible explanations point to the need for further research.

¹³³ Informal conversations with Somali community representatives, Mitchells Plain, 12 June 2012.

¹³⁴ Two youth, Lower Crossroads, Philippi, 20 January 2012.

¹³⁵ Philippi East police station colonel, telephone interview, 1 June 2012. Philippi Somali community representative, Bellville, 6 November 2011.

¹³⁶ Informal conversation with Somali community representative, Mitchells Plain, 12 June 2012.

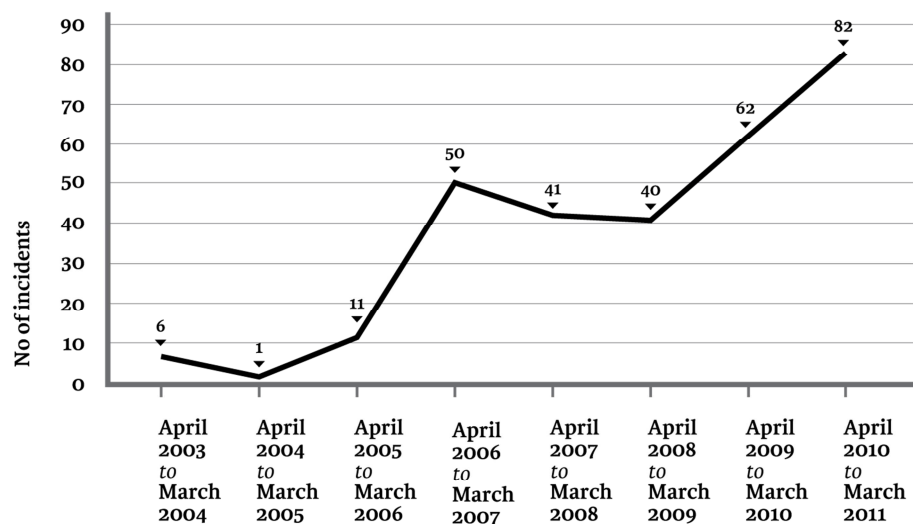
¹³⁷ Philippi Somali trader, Bellville, 21 June 2012. Somali community representatives, Mitchells Plain, 3 June 2012. Somali respondents in Philippi tended to be more recent arrivals, and most of their shops had opened in 2009 or after.

History of crime in field sites

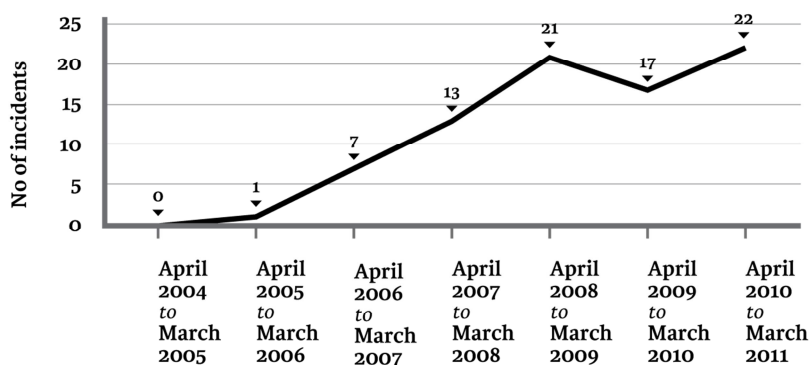
2006: Crime increase

SAPS business robbery statistics show a marked increase in business robberies in Khayelitsha and Philippi between April 2006 and March 2007. For example, business robbery cases in Khayelitsha (Sites B and C) rose from eleven in the 2004/2005 financial year to fifty in the 2006/2007 financial year.¹³⁸ The increases in crime are depicted in the graphs below.

Robberies at non-residential premises: Khayelitsha police station (SAPS statistics)



Robbery at non-residential premises: Philippi East police station (SAPS statistics)



¹³⁸ SAPS crime statistics, available at: http://www.saps.gov.za/statistics/reports/crimestats/2011/crime_stats.htm, date accessed 15 May 2012.

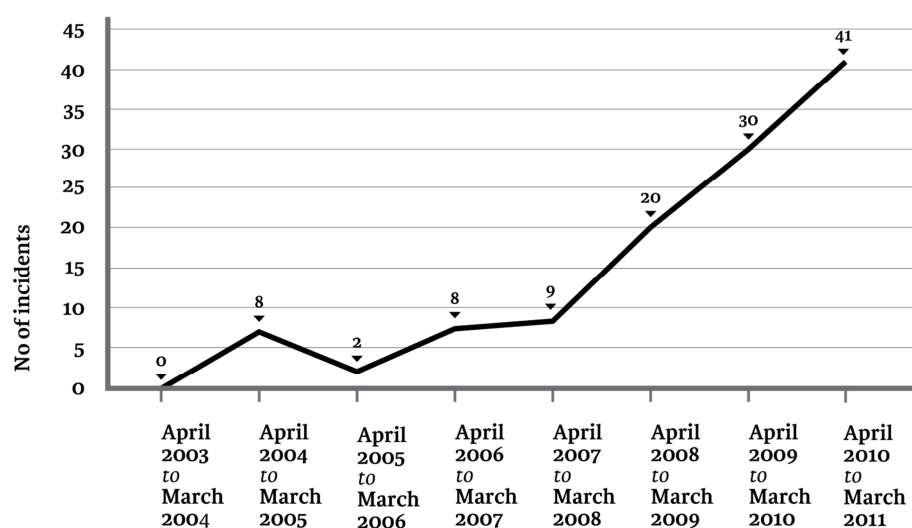
Somali traders in Khayelitsha also flagged 2006 as the year when crime started to become unbearable. The cause of this spike is not clear.

One possibility is that participants in crime were inspired by attacks that took place in August 2006 in Masiphumelele, outside of Fishhoek. The attacks on Somali shops in Masiphumelele led to the evacuation of fifty Somali shopkeepers from the area, which garnered high levels of media attention.¹³⁹ These events were followed by a spate of murders around Cape Town. According to media reports, at least twenty-eight Somali traders were murdered in the period between August and September 2006.¹⁴⁰

Particular disaffected groups also may have orchestrated some of the 2006 violence. Somali traders and police suspected taxi bosses of planning some of the attacks in response to decreased demand for transport after more residents began buying their groceries locally from Somali shops.¹⁴¹ A policeman at the Khayelitsha police station also attributed the 2006 upsurge in crime to bands of ‘Witdoeke’—groups of vigilantes and criminals terrorising local residents as well as foreign shopkeepers.¹⁴²

In contrast to Khayelitsha and Philippi, Kraaifontein did not register a 2006 spike in crime. Crime there began to peak after 2008.¹⁴³

Robberies at non-residential premises: Kraaifontein (SAPS statistics)



¹³⁹ South African Human Rights Commission, ‘Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals,’ 2010, at 30, available at <http://www.cormsa.org.za/wp-content/uploads/2009/05/hrc-report.pdf>, date accessed 20 May 2011.

¹⁴⁰ Pearlle Joubert, ‘We didn’t come here to be killed,’ *Mail and Guardian Online*, 3 September 2006, available at <http://www.gunownerssa.org/forum/viewtopic.php?t=626&view=previous&sid=723c60375425d5c6856d468ad71a86ba>, date accessed 4 May 2012. Babalo Ndenze, ‘Cape identified as top xenophobic hotspot,’ *Independent Online* 4 September 2006, available at: <http://www.iol.co.za/news/south-africa/cape-identified-as-top-xenophobic-hotspot-1.292172?ot=inmsa:ArticlePrintPageLayout.ot>, date accessed 4 June 2012.

¹⁴¹ Somali community representative, telephone interview, 16 August 2012. Khayelitsha police station colonel, telephone interview, 16 August 2012.

¹⁴² Khayelitsha police station colonel, telephone interview, 16 August 2012.

¹⁴³ SAPS crime statistics, available at: http://www.saps.gov.za/statistics/reports/crimestats/2011/crime_stats.htm, date accessed 15 May 2012.

2008: Xenophobia

In May 2008, Khayelitsha, Philippi and Kraaifontein all experienced xenophobic attacks. The attacks began in Alexandra in Gauteng before spreading throughout the country. Somali shopkeepers in all field sites reported widespread looting during that time, as crowds of residents broke into Somali businesses and emptied them of stock and other contents. Many shopkeepers were forced to relocate to the temporary places of safety set up following the attacks including the Soetwater, Bluewaters and Harmony Park camps, which were set up by the City of Cape Town.¹⁴⁴ The Khayelitsha Magistrates Backlog Court was temporarily designated to deal exclusively with xenophobic matters.¹⁴⁵ A legal aid attorney at the court had close to fifty xenophobia-related cases over 2008 and 2009. Two-thirds of the attorney's cases were linked to business competition. The main crimes included public violence, intimidation and looting, and the majority of complainants in these cases were Somali.¹⁴⁶

2008: Intimidation of Somali traders and the negotiation of informal trade agreements

South African traders in the Cape Town area have pressurised Somali community representatives to enter into informal agreements aimed at limiting Somali trade in the townships. These agreements often come after Somali traders receive intimidating letters demanding that they leave the area. The police generally respond to such threatening letters by hosting negotiation meetings aimed at preventing South African traders from acting on their threats. The negotiations culminate in agreements prohibiting new Somali shops in the townships. Some agreements also fix the prices of basic goods or oblige Somali traders to relocate their shops a certain distance from South African shops.

Somali and South African traders in Khayelitsha reached such an agreement in November 2008. Before the agreement, and a few months after the May 2008 xenophobic attacks, a local business association called the Zanolkhanyo Retailers Association had sent letters to Somali traders informing them to close their shops on 25 August 2008 until further notice. The letter added that from 25 August to 14 September 2008 'all matters regarding your existence in our communities are being discussed.'¹⁴⁷

The police responded immediately and arrested the shopkeepers responsible for the letter.¹⁴⁸ They were subsequently released on the condition that they enter into dialogue with Somali shopkeepers.¹⁴⁹ Among the main issues discussed at the negotiations was the increasing number of Somali shops in Khayelitsha. The outcome of the meeting was a signed agreement (the Khayelitsha Agreement), which stated:

¹⁴⁴ Philippi East ward councilor, Philippi East, 24 November 2010.

¹⁴⁵ Legal Aid attorney, Cape Town, 24 October 2011.

¹⁴⁶ Ibid.

¹⁴⁷ Letter on file with ACMS.

¹⁴⁸ Somali Retailers Association representative, Bellville, 10 January 2011.

¹⁴⁹ Ibid.

Both Zanolkhanyo and Somali committee must approve all new shops opening in the Khayelitsha vicinities, in order to prevent unprecedented clashes of businesses which might result in conflicts.¹⁵⁰

The agreement resembled a 2006 agreement between Somali and South African traders in Masiphumelele that limited the number of Somali shops in the area.

According to a representative from the Somali Retailers Association, Somalis were forced to enter into the Khayelitsha agreement out of fear:

We signed the agreement in Khayelitsha out of pressure from local people. Even though it was agreed, it came out of pressure from local people. People will ask 'why are Somalis signing these agreements?' That is probably the answer then. You have to say 'yes yes' otherwise you know, someone can even shoot you.¹⁵¹

Such agreements are often the preferred method of redirecting threats against Somalis, but they do not address the underlying tensions.

Less than a year after the Khayelitsha agreement, Somali and South African traders in Gugulethu entered an agreement in August 2009 that limited Somali shop numbers, forced them to move 100 metres away from South African shops, and required them to fix prices to match those at South African shops. The police in Philippi East and Kraaifontein confirmed similar limits on the number of Somali shops in their jurisdictions since 2011. In Kraaifontein, SANCO participated in setting up a meeting where South African traders and Somali community representatives agreed to limit Somali shops. In Philippi East, police claimed that they were monitoring an agreement between South African traders and Somali community representatives prohibiting new Somali shops.¹⁵² These limits came in response to complaints and threats by prominent local South African businessmen or 'big bosses' who owned several business enterprises in the area, including shebeens, bottles stores, spaza shops and fisheries. However, Somali community representatives were unaware of any shop limits in the area.¹⁵³ These informal attempts at regulating of Somali shops will be discussed in greater detail in the third report in this series.

¹⁵⁰ Agreement dated 27 November 2008.

¹⁵¹ Somali Retailers Association representative, telephone interview, 2 August 2012.

¹⁵² Philippi East policeman, Philippi East, 31 October 2011.

¹⁵³ Philippi Somali community representative, Bellville, 6 November 2011.

July 2010: 'World Cup' xenophobic attacks

In July 2010, rumours spread through Cape Town that xenophobic attacks would erupt after the World Cup final match. Somali traders in Khayelitsha, Philippi and Kraaifontein responded to these rumours by closing down their shops and fleeing the township areas for a period of two weeks, just before and after the final match on 11 July 2012. Perhaps as a result of their departures, the attacks did not reach the level of destruction seen in 2008.

Nevertheless, several shops were looted. One Somali shopkeeper in Kraaifontein returned to his locked shop after residents cut the sheeting and began looting it. He said that the police were unwilling to assist and just stood by while the looting occurred.¹⁵⁴ In Khayelitsha, a Somali respondent's shop was also looted a few days before the World Cup final, before he had managed to close his businesses and evacuate.¹⁵⁵

While World Cup-related xenophobic attacks in Khayelitsha and Kraaifontein centred around general looting by residents, attacks in Philippi during this period differed. There, around the time of the World Cup final, a handful of robbers and arsonists targeted Somali shops. Of the fifteen Philippi Somali shopkeepers interviewed, four suffered what they described as 'World Cup' attacks between 10 and 12 July 2010—two robberies and two arson attacks. One shopkeeper lost all of his possessions after his shop was burnt down,¹⁵⁶ while another was shot during a robbery.¹⁵⁷

2009 to 2012: Crime orchestrated by South African traders

In 2009, Somali shopkeepers in Philippi and Kraaifontein began experiencing violent attacks orchestrated by competing South African traders. Unlike most of the crime targeting Somali shops, which is motivated by robbery, these attacks were aimed at eliminating competition. In some instances, gunmen shot Somali traders while leaving the shop contents undisturbed. In other cases shops were set on fire and the contents destroyed.

One shop in Kraaifontein was attacked three times in 2009. In the first incident in October 2009, a group of youth entered the shop and beat and stabbed both shopkeepers before robbing the shop. While the shopkeepers were in the hospital, a group of youth fired gunshots at the replacement employees, but they were unable to gain entry into the shop and eventually left. In December 2009, the shop was set on fire while the shopkeepers slept inside. Police patrolling nearby put the fire out, but not before the shopkeepers suffered burns.¹⁵⁸ The shop and its contents were destroyed in the fire, indicating that the motive was not robbery. The police arrested five people in June 2010 in connection with the attack.

¹⁵⁴ Kraaifontein Somali trader, Bellville, 21 November 2010.

¹⁵⁵ Khayelitsha Somali trader, Mitchells Plain, 8 January 2011.

¹⁵⁶ Philippi Somali trader, Bellville, 1 November 2010.

¹⁵⁷ Philippi Somali trader, Bellville, 11 November 2010.

¹⁵⁸ Kraaifontein Somali trader, Philippi, 21 November 2010.

They included prominent South African shopkeepers who owned several businesses in the area.¹⁵⁹

A Somali community representative in Kraaifontein characterised attacks against shopkeepers in 2010 as worse than during the 2008 xenophobic attacks, particularly between March and September, in terms of the degree of violence.¹⁶⁰ More shopkeepers were killed in 2010 than during the more numerous May 2008 attacks. The 2010 attacks were also set apart by the fact that they were largely the work of the South African business community alone, rather than the whole community as had been the case in 2008.¹⁶¹

Shopkeepers in Philippi also described numerous instances of crime that had the characteristics of orchestrated attacks from South African competitors. Much of the sporadic violence affecting Somali shops involved arson attacks. Several Somali shopkeepers reported that their shops had been set on fire or that their employees had been killed. In a January 2010 incident, a shop was burnt down and everything destroyed. The three employees in the shop managed to escape. Two months later, after the shop re-opened, robbers came during the day, robbed the shop of its contents, and shot and killed one of the employees. In June 2010, the shop was robbed again and the employees beaten.¹⁶² One of the employees who had witnessed all of the attacks was heavily traumatised and considered returning to Somalia.¹⁶³ Police confirmed that they had investigated the attacks, but could not proceed because of a lack of evidence.¹⁶⁴ Another Somali described the death of a relative after attackers shot him and then set his shop on fire.¹⁶⁵

Police in Philippi also suspected South African shopkeepers of responsibility for some 'hit and run' and arson attacks. In 2010, they arrested a South African woman for paying youths to murder Somali shopkeepers on behalf of South African traders. At the time of writing, the case was being heard in the Wynberg Regional Court.¹⁶⁶

In Kraaifontein, orchestrated attacks subsided in the second half of 2010 after police arrested four South African traders and seven unemployed youth who were responsible for several attacks (police made five arrests in June 2010, and another six arrests in September).¹⁶⁷ Police connected the suspects to 33 criminal cases involving attacks on Somali shops in Kraaifontein.¹⁶⁸ Although the accused were released in early 2011, the orchestrated attacks did not resume. Police in Philippi East refused to disclose information

¹⁵⁹ Ibid.

¹⁶⁰ Kraaifontein Somali community representative, Bellville, 14 December 2010.

¹⁶¹ Ibid.

¹⁶² Philippi Somali trader, Bellville, 27 October 2010.

¹⁶³ Ibid.

¹⁶⁴ Philippi East detective, Philippi East, 13 January 2012.

¹⁶⁵ Relative of deceased Philippi Somali trader, Bellville, 14 November 2010.

¹⁶⁶ Philippi East detective, Philippi East, 13 January 2012.

¹⁶⁷ Kraaifontein police detective, Kraaifontein, 13 January 2011.

¹⁶⁸ Ibid.

on decreases in orchestrated crime,¹⁶⁹ but Somali traders reported that orchestrated crime peaked in 2009 and 2010 and diminished in 2011.¹⁷⁰

There is evidence that orchestrated crime may be resuming in Philippi. In June 2012, a prominent Somali businessman approached a South African shop owner in Philippi about renting his shop. The man asked him to return the next day, and when he did, he was shot and killed.¹⁷¹ ACMS also received reports of two further incidents in Philippi in July 2010—a Somali trader who was shot and paralysed, and another who was murdered—but was unable to verify these incidents before the report went to press.¹⁷²

Unlike in Kraaifontein and Philippi, Somali respondents in Khayelitsha did not suspect South African traders of orchestrating crime against them. Somali community representatives attributed this to the long-standing presence of Somali traders, leading to higher levels of community acceptance of Somali shops than in other townships. Somali community representatives there had also implemented a coordinated response following the 2008 xenophobic attacks, which may have had lasting effects. These representatives, working with the Somali Retailers Association, launched a community outreach programme that sought to establish ties with community organisations and residents in Khayelitsha. The programme encouraged Somali shopkeepers to engage with community leaders and street committees.¹⁷³

Conclusion

Somali shops are targeted in all three field sites, but Somali experiences with crime in these areas differ. While Somali traders in Khayelitsha experience high levels of business robberies, South African traders do not orchestrate more violent crimes against them. In contrast, Somali traders in both Philippi and Kraaifontein have encountered escalating business robberies, as well as high levels of orchestrated attacks against Somali shops.

Several factors account for these differences:

1. The sequence of Somali trader settlement in townships

The first Somali shopkeepers to enter townships in general experienced less antagonism than those that arrived later.

¹⁶⁹ Philippi East police colonel, telephone interview, 24 August 2012.

¹⁷⁰ Philippi Somali community activist, telephone interview, 24 August 2012.

¹⁷¹ Kraaifontein Somali community representative, Kraaifontein, on 8 June 2012.

¹⁷² Philippi Somali trader, Bellville, 23 July 2012.

¹⁷³ Somali Association of South Africa representative, Bellville, 10 January 2011. Khayelitsha Somali community activist, Mitchells Plain, 6 July 2012.

2. Duration of stay in South Africa

Areas with greater proportions of long-established Somalis traders showed higher levels of integration and tolerance than areas with higher proportions of new arrivals who had recently arrived in the country and experienced difficulties integrating.

3. Police breakthroughs in investigations

In Kraaifontein, police arrested suspected ringleaders responsible for orchestrating crimes against Somali shops. This resulted in a dramatic and long-term reduction in such crime in the area.

4. The presence of 'big bosses'

Areas with prominent South African shopkeepers owning several businesses, including spazas, had higher levels of orchestrated crime than areas with mainly small-scale South African businesses whose owners lacked influence within community organisations such as SANCO.

5. Somali efforts at community outreach

Only Somali traders in Khayelitsha had organised themselves politically and made concerted efforts at community outreach. This increased their support from the community and improved their political influence, as they formed close relationships with the SANCO leadership. Community support countered the efforts of South African traders to orchestrate crime against their shops.

6. Size and population of the area

South African traders appear to more easily obtain political influence and organise attacks against Somali shops in more compact, smaller neighbourhoods, than in sprawling townships such as Khayelitsha.

ACCESSING FORMAL JUSTICE

Introduction

Somali traders rely heavily on the formal institutions of justice, including the police, prosecutors, and the courts, to combat crime. This reliance often proves frustrating for both sides, as police battle to investigate cases, prosecutors prove unable to secure convictions, and Somalis grow frustrated with lengthy court procedures that they do not understand. Many Somalis either fail to report cases because they mistrust the system, or they grow disillusioned with the justice system and abandon existing cases. At the same time, some efforts by police and prosecutors have proved effective in both reducing and prosecuting crime. These include improved police tactics to investigate crimes and efforts to engage with Somali community members during legal proceedings.

This chapter explores the Somali experience with the formal justice system, and the barriers that formal justice actors experience in their efforts to address crime against Somalis. It identifies the key elements that weaken or prevent access to justice for Somalis. It also explores the elements that strengthen police investigations and prosecutions.

Conviction rates

Although there are no publicly available figures on convictions rates for crimes involving foreign victims, field research and NPA data on conviction rates for ‘xenophobia cases’¹⁷⁴ indicate that Somali traders’ access to formal justice is weak. One prosecutor at the Wynberg Regional Court recounted a successful conviction for a man who robbed a Somali shop in Manenberg (a coloured township), but this experience was unique among respondents. Neither the police nor the Somali traders who were interviewed reported any successful convictions.

Conviction rates in South Africa are very low in general. In 2003, the South African Law Commission released a report on conviction rates for certain violent crimes.¹⁷⁵ The Commission tracked 15,529 violent crime cases reported to police in 1997 and 1998 in eight police areas. Approximately two years later it assessed conviction rates for these crimes. The Commission found that 74.5 percent of cases did not make it to court and only 5.7 percent of reported cases resulted in convictions.¹⁷⁶ The aggravated robbery category, which includes business robberies, had a three percent conviction rate.¹⁷⁷

¹⁷⁴ The NPA provided statistics on conviction rates for this category of crimes. Email from Nicolette Bell of the NPA to ACMS, 26 May 2012.

¹⁷⁵ South African Law Commission, ‘Conviction rates and other outcomes of crimes reported in eight South African police areas’ Research Paper 18, 2003, available at <http://www.justice.gov.za/salrc/rpapers/rp18.pdf>, date accessed 4 June 2012.

¹⁷⁶ Ibid at 14.

¹⁷⁷ Ibid at 18.

In Cape Town, the Law Commission surveyed police stations in the city's Western Metropole, which includes the Nyanga and Philippi East police stations. The Eastern Metropole areas of Kraaifontein, Harare and Khayelitsha were not included. The Law Commission found that 87.25 of aggravated robberies reported to police in the Western Metropole did not make it to court, and only 3.36 percent of reported cases resulted in convictions.¹⁷⁸

To the extent that conviction rates for aggravated robbery in South Africa are generally low, conviction rates when the victims are foreign traders are even lower. The NPA has compiled data on 'xenophobia cases'—primarily business robberies against foreign traders and some instances of public violence, murder, and arson committed against foreigners. Of the 190 xenophobia cases that were dealt with by courts in the Western Cape between March 2009 and April 2012 (first court appearance dates ranged from 2009 to 2011), prosecutors achieved only seven convictions—a conviction rate of 3.68 percent for xenophobia cases that made it to court. Six of the convictions occurred in the George cluster area (including George, Mossel Bay, Knysna, and Thembalethu), and one in Caledon. Eighty-three xenophobia cases made it to courts in the Cape Town local municipality (Cape Town, Wynberg, Athlone, Bellville, Philippi, Goodwood and Blue Downs courts), but no convictions were recorded in respect of any of the cases.

The NPA statistics only cover matters that made it to court, while the Law Commission data reflects all cases reported to the police. If the Law Commission data is limited to matters that were sent to court, 27.27 percent of aggravated robberies nationally and 26.35 percent of aggravated robberies in the Western Metropole of Cape Town resulted in convictions. In contrast the conviction rate for 'xenophobia' cases arising in Cape Town between 2009 and 2011 (both in the Western and Eastern Metropolises) was zero. The Law Commission did not survey the police regions covering the George cluster region or Caledon.¹⁷⁹

Factors weakening access to justice

These conviction rates suggest that foreign victims of crime encounter barriers in the formal justice system. Police, prosecutors and Somali respondents outlined a range of factors that weakened Somali access to justice. These problems occurred throughout the entire justice process, beginning with the police investigation and continuing into the court proceedings.

The factors inhibiting investigations included:

¹⁷⁸ South African Law Commission, 'Conviction rates and other outcomes of crimes reported in eight South African police areas' Research Paper 18, 2003, available at <http://www.justice.gov.za/salrc/rpapers/rp18.pdf>, date accessed 4 June 2012 at 29.

¹⁷⁹ Two police regions were covered in the Western Cape: the 'Western Metropole' in Cape Town and the 'Boland' region (covering most of the Cape Winelands district municipality).

- Police encountered obstacles collecting evidence (due to language barriers, Somali interference in evidence at crime scenes, Somali difficulties in identifying suspects, and lack of South African witness cooperation).
- Some Somali traders did not report cases at all or abandoned cases as a result of a lack of police communication with victims, settlement agreements with families of the accused, or disillusionment with the criminal justice system.
- Police often withdrew cases because of difficulties locating Somali complainants.
- Somali traders claimed that police failed to institute charges for certain crimes such as looting and intimidation.

Similar factors affected the progress of prosecutions:

- Somali complainants were often unwilling to proceed with criminal cases, resulting in cases being dropped.
- Prosecutors were often forced to withdraw cases after being unable to contact Somali complainants.
- Language barriers and vague police statements made prosecuting crimes more difficult.

These factors are set out in more detail below.

Factors arising during police investigations

Police encountered a number of barriers in their efforts to investigate crimes against Somalis. Both South Africans and Somalis contributed to these barriers. In some cases, the actions of the police also hindered the progress of investigations.

Language barriers

Police cited the language barrier as the greatest difficulty in pursuing crimes against foreign traders. Because many Somali traders do not speak any South African languages, police officers at a crime scene must often wait for a translator before they can question victims and pursue suspects. The delay in gathering vital information, including the description of the perpetrator, the direction he fled, and the means of escape, gives the perpetrator an advantage in avoiding detection. Subsequent investigations also require extra time because of the reliance on interpreters, which need to be arranged in advance. More planning and coordination is also involved, as many of these interpreters are based in Bellville.

Interference with evidence

According to the police, large numbers of Somali community members often converge on crimes scenes involving injuries or murder. Because many Somalis are not familiar with the

procedures for investigating and prosecuting crimes, they may disturb evidence before the police are able to complete the evidence collection.

In Khayelitsha, police reported several instances where Somali community members removed bodies before police arrived and buried the murder victims before a post mortem could be conducted.¹⁸⁰ Under Islamic law, the dead must be buried with 24 hours. Such burials destroyed any chance of pursuing a case, as ‘if there’s no body there’s no case’.¹⁸¹ In Philippi, local police refused to record the murder of a Somali trader when community members buried the body before a post mortem could be conducted.¹⁸²

The practice of immediately replacing injured or murdered traders to keep the targeted shop operational following a robbery also interfered with evidence collection. One police officer expressed frustration that ‘Somalis go on with business even when they are shot. They destroy evidence. The whole clan will come and walk in.’¹⁸³

Somali inability to identify suspects

According to the police, Somali traders were rarely able to point out suspects at identification parades.¹⁸⁴ Many Somali traders were new to the areas where they worked, and had trouble recognising community members. Local residents sometimes tipped off police about the identity and whereabouts of suspects, but these tips were not admissible in court without supporting testimony. Because many South African witnesses refused to testify in court, cases often hinged on the ability of Somali traders to identify attackers.

Lack of South African witness cooperation

Eyewitness testimony is crucial in robbery cases because victims and attackers usually have no prior relationship. A police investigator at the Khayelitsha police station explained that murders of South Africans were generally much easier to solve than shop robberies because the victims and accused often knew each other. This facilitated the identification of possible suspects even when there were no eyewitnesses. Knowledge of social relationships (including feuds or disputes) can assist in establishing a motive that can then be proved beyond doubt with accompanying circumstantial evidence (for example ballistic tests and cell phone records). With robberies, the lack of any known association between the victim and suspect makes it difficult to solidify a case. Although circumstantial evidence such as ballistic and finger print evidence is vital to many robbery cases, eyewitness confirmation is usually necessary to prove a case beyond doubt.¹⁸⁵

Witness participation is an essential element of crime investigation against Somali shops, as Somali nationals are often unable to identify suspects themselves. South African witnesses,

¹⁸⁰ Khayelitsha police station colonel, Khayelitsha, 25 October 2011.

¹⁸¹ Legal Aid attorney, Athlone, 24 October 2011.

¹⁸² Philippi Somali trader, Bellville, 22 July 2012.

¹⁸³ Harare police station detective, Harare, Khayelitsha, 7 December 2011.

¹⁸⁴ Harare police station detective, Harare, Khayelitsha, 7 December 2011. Khayelitsha police station crime intelligence officials, Khayelitsha, 25 October 2012. Khayelitsha police station detective, Khayelitsha, 27 October 2011.

¹⁸⁵ Khayelitsha police station detective, Khayelitsha, 27 October 2011. Harare police station detective, Harare, 7 December 2011.

however, are frequently unwilling to assist police investigations. Police reported that eyewitnesses at crime scenes would simply respond ‘andias’ (‘I know nothing’) to questioning, even if the robbery occurred in broad daylight.¹⁸⁶ In the few instances when South African witnesses did come forward with information, many were not prepared to testify in court.¹⁸⁷ Witnesses were similarly reluctant to cooperate in cases involving South African victims, but South African complainants had the advantage of being able to recognise suspects. They were thus less reliant on the testimony of other witnesses.¹⁸⁸

Harare and Philippi East police also pointed to a lack of confidence in the police in general as contributing to the scarcity of witness testimony amongst both South African and Somali complainants. A resident in Pola Park in Philippi explained her lack of faith in approaching police about crime:

Police inform on criminals by accident. For example, they’ll say ‘your neighbour told us they saw you use a gun.’ They are not corrupt, but disclose identities of witnesses because they think it will strengthen their cases.¹⁸⁹

One police officer also raised the possibility that individual policemen with ties to suspected criminals provided them with information about investigations and witnesses.¹⁹⁰

The negative perception of the police also may have been carried over from the apartheid era, when residents set up their own parallel structures that continue to operate today. Rather than approaching the police, South African residents often take the law into their own hands by setting up informal trials or resorting to mob justice. A detective in Harare explained: ‘Residents do not speak [to the police]. They do their own investigation and if they catch you then you gone. They carry out beatings with bricks and stones.’¹⁹¹

In addition to their general distrust of the police, many residents were reluctant to cooperate with investigators in cases involving Somalis for fear of retaliation—either from syndicates or from competing South African traders believed to be behind the attacks. According to one police officer, the more orchestrated a crime appeared to be, the less likely police were to find witnesses:

¹⁸⁶ Ibid.

¹⁸⁷ Philippi East police station detective, Philippi East, 1 December 2011. Khayelitsha police station detective, Khayelitsha, 27 October 2011.

Harare police station detective, Harare, Khayelitsha, 7 December 2011. Kraaifontein police station detective, Kraaifontein, 1 December 2012.

¹⁸⁸ Khayelitsha police station detective, Khayelitsha, 27 October 2011.

¹⁸⁹ South African resident, Pola Park, Philippi, 19 December 2010.

¹⁹⁰ Khayelitsha police officer, telephone interview, 23 August 2012.

¹⁹¹ Harare police station detective, Harare, Khayelitsha, 7 December 2011.

People do not want to become involved in xenophobia cases out of fear. If there's an ordinary robbery then they will maybe come forward to the police. Government gives a lot of money for information, but it does not help for xenophobia cases.¹⁹²

Residents also worried more generally that their testimony might spark a backlash within the community because the presence of Somali traders was such a divisive issue.¹⁹³

As the above factors highlight, township residents are generally wary of the justice system, regardless of the nationality of the victim. Many residents prefer to conduct their own investigations and rely on informal mechanisms of justice to address crime. This reluctance to cooperate with the police is aggravated in cases involving Somalis by the fear of retaliation—either from criminal syndicates or from local residents who side with the interests of South African shopkeepers over their Somali counterparts.

Non-reporting of crimes by Somali traders

A large number of Somali respondents did not report crimes to the police for a variety of reasons. Some did not make the effort because they could not recognise the accused, while others had little faith in the ability of the police and the formal justice system to address the crimes affecting their shops. Respondents also noted that the police were swamped with criminal cases and lacked the capacity to deal with robberies affecting Somali shops. A number of Somalis had been ignored or insulted at police stations, leading them to conclude that the police did not care about cases involving Somali traders.

A trader who had owned a shop in Khayelitsha did not report the robberies he experienced because 'there is no law in Khayelitsha,' and the police themselves are afraid of the criminals.¹⁹⁴ He recounted two incidents where police drove past his shop while he was being robbed at gunpoint, but did not stop to assist him. He believed that they had seen the robbery occur, but were too afraid to intervene, although they did arrive shortly after one of the robberies to investigate. Instead of relying on the police, he arranged for neighbouring residents to protect his shop and respond during robberies.

Withdrawal of cases because of settlements or intimidation

Somalis often preferred to reach agreements with the families of the accused when possible to avoid retaliation. As a result, some Somali victims either did not press charges or withdrew their cases after the police investigations had gotten underway. A Somali trader in Khayelitsha explained:

The guy who was gun shotted [sic] me. I know him, he's next door. He's so small boy. He's underage... I have no choice. I went to his parents. The most they can do

¹⁹² Kraaifontein police station detective, Kraaifontein, 1 December 2011.

¹⁹³ South African residents, Better Life, Philippi, 21 January 2012.

¹⁹⁴ Khayelitsha Somali community activist, Mitchells Plain, 6 July 2012.

for me is condolise [sic] me and say to me 'sorry what ever happened'.... And then I call him and say to him whatever you've got a problem just come to me rather than coming with other guys, new faces, and starting shooting the shops and starting to rob.¹⁹⁵

He did not believe that it was useful to go to the police, as the perpetrator was likely to be released on bail, 'and then you've just created an enemy rather than being a friend to someone'.

The experiences of other Somali victims suggest that these fears are not unwarranted. In one case, police arrested two men involved in the robbery of a shop in Philippi. The parents of one of the accused approached the shopkeepers and promised to repay the stolen money in return for withdrawal of the case. The shopkeepers agreed, but two days later the shop was set on fire. One employee was killed and another suffered brain damage from smoke inhalation and returned to Somalia to be cared for by relatives. Although no arrests were made, the uncle of the murdered man believes that the accused robbers were behind the attack.¹⁹⁶

One trader whose Philippi shop was set on fire while he and a colleague were sleeping inside recounted a very positive experience with the police, who immediately arrived on the scene and arrested the arsonists. He nonetheless chose to abandon the case because the accused were youth who lived nearby and he feared that if they were released on bail they would come back to the shop and kill him. He spoke to the parents, who promised that their sons would leave him and his shop in peace.¹⁹⁷

A month later, another group set his shop on fire. The police arrived at the scene and arrested one of the arsonists. Two days later the remaining attackers approached the shop and fired gunshots at him. He again decided to withdraw the case after speaking with the suspect's relatives.

In Khayelitsha, the parents of a suspect visited a shopkeeper whose colleague was stabbed during the robbery of his shop. The parents tried to intimidate him into dropping the case, stating: 'you are not from here, you will have to go back to where you came from and you won't be able to stay.' The police conducted a thorough investigation and found a substantial amount of evidence, including fingerprints that linked the accused to the crime, as well as a positive identification by the complainant. When the trader asked the police to drop the investigation, they refused, citing separate charges against the suspect in another case. Ten days after the initial visit from the parents, the remaining suspects, who were not

¹⁹⁵ Ibid.

¹⁹⁶ Relative of deceased Philippi Somali trader, Bellville, 13 November 2010.

¹⁹⁷ Philippi Somali trader, Bellville, 30 November 2010.

in custody, came to the man's shop and shot him. The police then agreed to release the suspect and drop the case.¹⁹⁸

The police and prosecutors reported that they offered witness protection to Somali complainants, but that traders refused to take up such offers.¹⁹⁹ Only one Somali respondent reported being offered witness protection. He stated that it was not feasible because it involved extreme isolation from the Somali community over a long period of time, without any ability to work. It was easier for traders to relocate to other areas than to spend lengthy amounts of time under police watch in a safe house.²⁰⁰ A Legal Aid attorney was similarly sceptical of the usefulness of the witness protection programme, as the protection only lasted for the duration of the trial.²⁰¹

Somali difficulties contacting and communicating with police

While a number of Somali crime victims praised police services, just as many expressed dissatisfaction. Much of this dissatisfaction stemmed from their inability to contact investigating officers and receive feedback on their cases, as well as difficulties obtaining assistance at police stations.

Many Somali victims complained that they were unable to contact their investigating officers, who did not answer their phones or return messages, and that the police had not made any efforts to contact them. As result they gave up on their cases, believing that police had probably dropped their investigation.

At the same time, some Somali victims complained that the police made no efforts to contact them, but they had made no effort to follow up with the police themselves. For example, a Philippi shop employee recounted a shooting at his shop that left his colleague injured. Police arrived quickly at the scene, made a barricade, and took evidence. They recorded his contact details and informed him they would report back to him. While he characterised the police response as promising on the day of the attack, there had been no progress since then. He had not considered following up with police.²⁰²

Communication between Somali victims and the police also appears to break down in situations where individuals are taken to the hospital in the aftermath of attacks. Three interviewees who were seriously injured in attacks reported that police had not contacted them at the hospital, and they did not know whether a case had been opened. At the same time, they had made no attempts to follow up with police. In all three incidents, the victims never returned to the areas where the crimes had taken place (in two of the cases their injuries left them permanently incapacitated and unable to work). This may have made it more difficult for police to locate the victims.

¹⁹⁸ Khayelitsha Somali trader, Bellville, 18 January 2011.

¹⁹⁹ NPA email to ACMS, 26 May 2012. Harare police station detective, telephone interview, 16 August 2012.

²⁰⁰ Bellville Somali trader, telephone interview, 16 August 2012.

²⁰¹ Legal Aid attorney, Stellenbosch, 24 November 2011.

²⁰² Philippi Somali trader, Philippi, 23 June 2012.

The police also created arbitrary barriers that prevented Somalis from communicating with the justice system. One shopkeeper who tried to follow up on several cases affecting his shop—including arson, attempted murder and murder—was instructed to bring a letter from an attorney before the police would provide feedback. Although he was legally entitled to the information, he travelled the 25 kilometres from Philippi to the Refugee Rights Clinic at the University of Cape Town to obtain the letter.²⁰³ Police officers were similarly unwilling in some cases to help respondents report cases at police stations. One trader—a hijacking victim—said this prevented him from opening a case.²⁰⁴ Another trader reported that police continued to bypass him and call several people standing behind him to the front of the queue.²⁰⁵ When a Somali trader went to report a police robbery at the Harare police station, the police told him that he was lying, and then queried whether or not he had a licence to operate his shop, saying they had orders to fine shops without licenses.²⁰⁶ While his complaint was eventually addressed, Somalis encountering similar obstacles may give up. These types of barriers waste time and negatively affect the morale of the complainant, raising the possibility that he or she will abandon the case, and will lose faith in the formal justice system.

Police difficulty contacting Somali complainants

The communication problems between Somalis and the police do not run only in one direction. Police also report problems staying in contact with Somali complainants, in part because they frequently relocate. Many of those interviewed described moving, either out of fear or because their injuries prevented them from working.

Multiple Somali respondents reported moving to other townships in Cape Town or to Bellville or Mitchells Plain in the aftermath of crime. A shopkeeper whose Khayelitsha shop was destroyed by looters relocated to Nyanga.²⁰⁷ Another Somali whose Khayelitsha shop was destroyed by looters in 2010 closed his business and now works as a shop assistant in a clothing store in Bellville. Three interviewees were so severely injured that they could no longer work at all. Two stayed in Bellville and one returned to Somalia.

A number of Somali respondents left the Cape Town area altogether after ACMS interviewed them, usually as a result of the crime they had experienced. One trader moved to Port Elizabeth after witnessing the death of a colleague in Philippi. A victim of a police robbery in Khayelitsha moved to Pretoria on the advice of relatives. Traders in small towns also moved around in response to crime. A Somali respondent interviewed in Hopland in Saldanha Bay contacted ACMS from Botchabelo in the Free State, explaining that he had moved there because of high levels of crime in Hopland. Another trader in Prince Albert Hamlet described relocating after he was seriously injured during a robbery that occurred at

²⁰³ Philippi Somali trader, Bellville, 24 October 2010.

²⁰⁴ Khayelitsha Somali trader, Bellville, 7 January 2011.

²⁰⁵ Philippi Somali trader, Bellville, 22 July 2012.

²⁰⁶ Khayelitsha Somali trader, Mitchells Plain, 2 June 2012.

²⁰⁷ Nyanga Somali trader, Bellville, 22 July 2012.

his previous shop near Ceres.²⁰⁸ Many crime victims are shop employees who, if they do not leave directly as a result of the crime, leave the area after saving enough money to open their own shops.

The high rate of relocation means that many Somali complainants have long since left the area when police arrive at their recorded addresses a year or two after the crime to notify them to testify in court trials. According to police and prosecutors, Somalis who relocate often fail to provide investigating officers with their new contact information. They are then forced to abandon the cases.

Unwillingness of the police to prevent or investigate looting of Somali shops

Police have often failed to intervene to prevent the looting of shops, defining their role as one of saving lives, not property.²⁰⁹ Somali respondents reported eighteen cases of looting, but only one instance in which the police acted to protect shop property. In that case, after robbers broke into a Khayelitsha shop and encouraged a group of residents to loot the shop, two policemen arrived and chased the potential looters away. They then called in reinforcements who made a barricade around the shop.²¹⁰ However, in the same area of Khayelitsha, another trader stated that eighteen to twenty people looted his shop four days later on the night of the World Cup final. The police told him to leave the shop and save his life.²¹¹ Two traders also reported police participation in lootings.²¹²

The police were also generally reluctant to pursue looting charges. When five Somali respondents who recognised many of those who looted their shops tried to press charges, the police refused. Police at the Khayelitsha police station told one trader to ‘just take care of himself’ and not go after the looters. They told another that they could not open a case because looting had occurred at many shops that evening. A third trader reported that Khayelitsha police arrested 57 people the night his shop was looted, but released them the following day. The trader remarked that ‘people take a chance when they see the police don’t support you.’²¹³ The police did assist one trader to recover his property from the looters, but still did not make any arrests.²¹⁴

Kraaifontein police advised a Somali trader that they could only save his life and not assist with his stolen property.²¹⁵ Many Somali traders reported the same response from the police. A recent Western Cape High Court judgment on the looting of foreign national shops in Worcester outside Cape Town confirmed that the police’s overall strategy was to

²⁰⁸ Somali trader, Prince Albert Hamlet, 27 February 2012.

²⁰⁹ Traders in Kraaifontein, Khayelitsha and Vredenburg reported that police informed them that they could not protect their property, but only their lives during both the 2008 and 2010 xenophobic attacks.

²¹⁰ Khayelitsha Somali trader, Mitchells Plain, 8 January 2011.

²¹¹ Khayelitsha Somali trader, Mitchells Plain, 7 January 2011.

²¹² Kraaifontein Somali trader, Bellville, 14 December. Hopland Somali trader, Vredenburg, 20 February 2012.

²¹³ Khayelitsha Somali trader, Bellville, 22 July 2012.

²¹⁴ Khayelitsha Somali trader, Mitchells Plain, 8 January 2011.

²¹⁵ Interview with Kraaifontein Somali trader in Bellville on 14 December 2012.

‘focus manpower and resources on protecting human life.’²¹⁶ The court ruled that the police failure to protect the property of looting victims contravened section 205(3) of the Constitution, which provides that the ‘objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.’²¹⁷ The police cited lack of resources in defence of their inaction, but the court ruled that they had sufficient prior warning that looting may occur and therefore should have planned ahead.²¹⁸

The limited police response may have lasting effects that go beyond the destruction of property. The decision to evacuate victims while abandoning their property to looters serves many of the attackers’ goals of destroying foreign businesses and forcing foreign nationals out of the community. While the immediate effect may be to preserve lives, the long-term repercussions of the police strategy may in fact create additional risks by failing to have any deterrent effect and encouraging further xenophobic action.

Police unwillingness to charge and prosecute South African traders for intimidation of competing Somali traders or the eviction of Somali traders from their shops.

South African traders have on numerous occasions sent out threatening letters or leaflets to their Somali competitors informing them to close their shops and leave townships. As set out in earlier, such letters amount to intimidation of, and possible discrimination against Somali traders.

Threatening letters have been sent out in a number of townships including Khayelitsha (2008), Gugulethu (2009), Kraaifontein (2010) and Philippi East (2011). Only in Khayelitsha in 2008 did police arrest and charge those responsible. Police have also not prosecuted traders who acted on their threats and attempted to evict Somali traders. The failure of the police to enforce the law once again breaches the constitutional duty of police officers to ‘prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.’²¹⁹ It also reinforces xenophobic attitudes, sending a message that such actions against foreign traders are acceptable. Such impunity heightens the climate of crime against foreigners.

Intimidation or abuse by police officers

Some police officers actively compromise justice by themselves engaging in crime. These incidents by individual members of the police service tasked with protection affect the willingness of Somali traders to engage and cooperate with the police. Many traders reported being beaten or robbed during police searches for unlicensed firearms or inquiries into business licenses, especially in Khayelitsha, Bellville, Mitchells Plain and Cravenby.

²¹⁶ Judgment by Judge Nathan Erasmus, *Said and others v Minister of Safety and Security and others*, Western Cape Equality Court, December 2011, case no EC13/06 at 25.

²¹⁷ Ibid at 26 and 27.

²¹⁸ Ibid at 27.

²¹⁹ Section 205(3) of the Constitution of the Republic of South Africa, 1996.

Other traders also reported being assaulted during interactions with the police. Three Somali respondents had opened civil cases against the police, and in at least one instance a criminal case was underway against the police.

In Cravenby (a coloured township), two traders arrested for keeping their shops open past eight and for not having business licenses described police abuse. Police beat one trader (a Somali community elder) during the arrest, while a second was not permitted to put on clothing and was taken shirtless to the police station. At the station, police officers teased him and asked: ‘why don’t you go back to Somalia?’²²⁰ Somali shopkeepers in Cravenby also complained that police officers were often rude, and would swear at them when they approached shops.²²¹

In Khayelitsha, many traders described being robbed during police searches. One trader said that Tactical Response Team police members had robbed his shop three times.²²² These forms of harassment and crime by police make traders wary of approaching the formal justice system for assistance.

The perception among Somali traders that the police are related to criminals

Somali relations with the police were negatively affected by their fear that local police might have relatives living in the community, some of whom may be criminals. They speculated that the lack of progress in their cases might have been due to police unwillingness to investigate friends or relatives. One trader believed that ‘the police should come from the outside because maybe the skollie is his cousin, or he thinks “these are my people.”’²²³

Although ACMS was not able to assess whether this was fact or perception, a Khayelitsha police officer suspected some police members of working with local criminal syndicates and disclosing information regarding witnesses and investigations to them.²²⁴ Even if the practice was not widespread, the perception nonetheless affected Somali willingness to cooperate with the police.

Factors affecting prosecutions

Where police and Somalis were able to overcome the barriers described above, they still faced barriers in prosecuting cases. Prosecutors encountered some of the same challenges described by police, particularly high withdrawal rates and language barriers. As mentioned, ACMS was only able to interview four prosecutors. Although findings were thus limited, the interviewees did provide valuable insights into their experiences, which are set out below.

²²⁰ Cravenby Somali trader, Bellville, 18 January 2012.

²²¹ Five Cravenby Somali traders, Bellville, 18 January 2012.

²²² Khayelitsha Somali trader, Mitchells Plain, 2 June 2012.

²²³ Khayelitsha Somali trader, Mitchells Plain, 8 January 2011.

²²⁴ Telephone interview, 23 August 2012.

Withdrawal of cases caused by the disappearance or unwillingness of complainants to proceed

Prosecutors cited the loss of Somali complainants, either because they relocated to an unknown location, or because they changed their minds about testifying in court, as the key obstacle in pursuing cases. According to one prosecutor, 'when you hear it's a Somalian there's a stigma that they won't come to court.'²²⁵

As described above, many complainants are no longer at the address on record when police arrive to subpoena them to appear in court. Prosecutors also stated that they had difficulties reaching Somalis on their cell phones.²²⁶

While traders do regularly move to different shops (especially in the aftermath of crime), ACMS did not experience any difficulties remaining in contact with traders on their cell phones during the course of the research. A representative from the Somali Retailers Association stated that in his experience traders rarely changed their cell phone numbers, except when their phones were stolen and they found it difficult to follow the procedures required to obtain the same number.²²⁷

According to prosecutors, Somali complainants were less likely to testify in court than South Africans for a number of reasons:

- Victim intimidation;
- Agreements between Somali traders and the accused or their families, including possible compensation for their loss;
- Disillusionment with lengthy court processes and difficulties taking time off from work; and
- Relocation to other areas, cities or countries.

Somali respondents confirmed most of these factors. Several Somali respondents stated that they had abandoned their cases out of fear. They felt like 'sitting ducks' for accused criminals wishing to threaten or harm them, as they both lived and worked in their shops. Prosecutors likened the situation of Somali traders to cases of gang violence in coloured townships such as Manenberg, where witnesses were afraid to testify for fear of retribution from organised gangs.²²⁸

A number of Somali respondents also abandoned cases after reaching settlements with the families of the accused, as described above. Some Somalis arrived at these agreements voluntarily because they were sceptical of their chances with the formal justice system.

²²⁵ Wynberg Regional Court prosecutor, Wynberg, 21 June 2012.

²²⁶ Ibid.

²²⁷ Somali Retailers Association representative, telephone interview, 27 July 2012.

²²⁸ Wynberg Regional Court prosecutor, telephone interview, 13 June 2012. Athlone District Court prosecutor, Athlone, 13 June 2012.

Other traders entered into settlements after being threatened by the accused or their families.

Growing impatience and a lack of faith in lengthy courts proceedings, including repeated postponements, also played a role in the withdrawal of Somali complainants. According to prosecutors, Somali traders often became disillusioned with the length of criminal proceedings and expressed concern about the amount of work they were missing in order to be in court. A Somali community representative in Philippi complained that many Somali traders did not have the stamina to continue attending court hearings through to the finalisation of their cases.²²⁹ ACMS witnessed the problem of court delays, having attended five separate hearings in respect of attacks on Somali traders (three trials and two bail hearings), all of which were postponed.

The high withdrawal rate by Somali complainants has frustrated prosecutors. One prosecutor explained: 'You keep working hard and prepare the case, but you never know whether the complainant will pitch up'.²³⁰ Police have similarly been frustrated by the withdrawal of cases. As one police officer stated: 'You arrest people, and the Somali witness knew the guy. The police did all the work and then at the first appearance the matter is withdrawn'.²³¹

Many of these factors are likely to affect South African as well as Somali complainants, particularly the frustration over the slow pace of criminal trials and the loss of work hours. But these challenges are often heightened for Somalis who are unfamiliar with state justice systems, and lack local community support, making them more likely to abandon the process.

Somali traders may misunderstand how the justice system works because of language barriers

Prosecutors pointed to the fact that Somali traders, like many South Africans, had little understanding of how the justice system worked, which could negatively affect their interactions with the justice system. This lack of knowledge was aggravated by language barriers that prevented prosecutors from communicating directly with complainants. One prosecutor gave the example of a Somali complainant who showed up for a consultation under the impression that he was there to attend trial and testify.²³² Confusion over the various stages of the process contributed to frustration and loss of faith in the justice system.

²²⁹ Philippi Somali community representative, telephone interview, 6 August 2012.

²³⁰ Wynberg Regional Court prosecutor, Wynberg, 21 June 2012.

²³¹ Harare police station detective, Harare, Khayelitsha, 7 December 2012.

²³² Wynberg Regional Court prosecutor, telephone interview, 13 June 2012.

Vague police witness statements resulting in release on bail or the disintegration of the case under cross-examination

Language barriers also contribute to inadequate witness statements that undermine the case. According to one prosecutor, many police statements from Somali complainants were very vague and did not disclose all the elements of the crime. For example the statement would say that ‘the accused robbed me of R3,000,’ but would not mention how the person was robbed, or what weapons were used. Although prosecutors were quick to blame Somalis for these deficiencies, most individuals, whether Somali or South African, are unlikely to know what information should be included in police statements. Language barriers may exacerbate the issue, but the responsibility for collecting proper statements falls on the police. The problem of vague statements thus points to a failure on their part to ensure that proper information is recorded during case preparation.

Vague police statements often mean that the magistrate lacks sufficient details on which to deny bail.²³³ Given widespread Somali fears of retaliation, the release of suspects on bail deters Somalis from laying charges, and induces those who have laid charges to request that the matter be withdrawn.

Even where cases are not withdrawn, badly drafted statements may harm the prosecution’s case. Attorneys for the accused often use variations between these statements and subsequent affidavits drafted by prosecutors to raise doubt over the truthfulness or accuracy of Somali statements.²³⁴

Factors enabling access to justice

Although Somalis face significant obstacles in their interactions with the justice system, the research identified several factors that strengthened crime prevention, investigations, and prosecutions, contributing to overall access to justice for Somalis. Effective police patrols played an important role in crime prevention. On the investigatory side, the length of time Somalis had resided in an area contributed to the success of investigations. The prioritisation of crime intelligence also led to important investigatory breakthroughs. With respect to prosecutions, the joining of cases, which resulted in multiple witnesses in one case, led to more successful outcomes, as did cases where the cooperation of Somali community leaders was sought. Finally, NGOs played an important oversight role by attending court proceedings.

Police crime prevention via patrols

Police in all three of the field sites patrolled their jurisdictions regularly. These efforts have improved police response times and affected crime outcomes. Many Somalis described how police on patrols apprehended suspects shortly after crimes had occurred. Police also

²³³ Athlone District Court prosecutor, Athlone, 13 June 2012.

²³⁴ Wynberg Regional Court prosecutor, Wynberg, 25 June 2012.

quickly arrived on the scene to help put out fires in cases of arson. The quick response times take on added importance for Somali court cases, which may rely on the police's ability to immediately apprehend suspects given that Somalis struggle to identify suspects in identity parades.

As a result of intensive patrols, police in Harare knew exactly where every Somali shop in their jurisdiction was located—even those in informal settlements.²³⁵ This further improved response times, as they could easily find shops without relying on directions. This was especially important where shops were located in shack settlements that lacked street names and addresses. Residents of these shack settlements also relied on police knowledge of Somali shop locations when they themselves required urgent assistance and needed to direct police. Residents could arrange to meet police at nearby Somali shops in order to direct them to crime or emergency scenes.²³⁶

Somali traders residing in the area for a substantial period of time

According to prosecutors, the investigations that make it to court generally involve Somali traders who have been in a neighbourhood for a substantial period of time and have developed good relations with their South African neighbours. These relationships are an essential component in securing community involvement, including the identification of suspects, and the willingness of South African witnesses to testify. Even when residents did not come forward directly after a crime, members of the community who had relationships with the traders were able to locate suspects by speaking to others in the community.

Prioritising crimes against foreigners and strengthening intelligence

In 2010, the Kraaifontein police station decided to prioritise cases involving foreigners in response to a spike in crime affecting Somali traders, which appeared to be organised by a local syndicate of South African traders. The station appointed a police detective to deal exclusively with crime affecting Somali traders, who began focusing on gathering local intelligence. Within a few weeks, a local resident led the detective to a witness who was prepared to testify against a group of South African businessmen who had allegedly orchestrated several arson attacks against Somali shops, as well as the attempted murders of Somali traders. The suspects were arrested between June and September 2010 and held without bail.

The suspects were ultimately released in January 2011 after the witness changed his mind about testifying. But the case played an important role in the reduction of orchestrated attacks on Somali shops in Kraaifontein. Despite the case's ultimate failure, the arrests marked a turning point in crime against Somali shopkeepers in Kraaifontein, as the police explained:

²³⁵ Harare crime prevention police officer, Harare, Khayelitsha, 24 May 2012.

²³⁶ Ibid.

Somalis are no longer as afraid of South African shopkeepers because police are harsher than before and the police approach is different... If something starts like that we want it to stop. We will go right to the people we arrested before and detain them again. They got such a fright after this.²³⁷

Somali shopkeepers confirmed that orchestrated attacks had stopped since the police action.²³⁸

Effective police investigations supported by SAPS crime intelligence officials also played a role in the arrest of several alleged hijackers who had been targeting Somali traders en route to collecting stock. Police in Philippi East noticed a pattern of crimes and contacted SAPS crime intelligence officials to conduct a dockets analysis of cases being handled by a number of different investigating officers. As a result of the analysis, police were able to join several separate investigations together and attribute the crimes to a single gang.²³⁹ These combined cases bolstered police evidence and multiplied the number of witnesses. The suspected hijackers were arrested, denied bail, and kept in custody for almost a year. They too were eventually released after their attorney cast doubt over the police identification procedure.²⁴⁰ The hijacking of Somali traders has resumed since the accused were released.

Somali community involvement in high profile investigations and court cases

Broader support from the Somali community has also facilitated prosecutions. A police investigator in Kraaifontein described occasionally calling on local Somali community leaders for assistance, and relying on them to explain the seriousness of an investigation to Somali victims. He recognised that Somali victims were sometimes more likely to listen to community leaders because 'we [the police] are not their leaders.'²⁴¹

Somali community members appreciated efforts by police to include them in the justice process. A Somali community leader in Kraaifontein described this relationship with the police: 'The police sent us a lot of help and encouragement. They asked us that we must tell them anything, the situation... They try their best.'²⁴² He also described attending several meetings with the Kraaifontein station commander, who made significant efforts to check in regularly with Somalis when orchestrated crimes were at their peak.

The close relationship increased Somali confidence in the police, and Somali community leaders contacted them whenever they had relevant information (e.g., that South African traders were holding a meeting).²⁴³ The relationship also encouraged Somali community

²³⁷ Kraaifontein police station detective, Kraaifontein, 1 December 2011.

²³⁸ Kraaifontein Somali representative, Bellville, 12 December 2011. Kraaifontein Somali community representative, Kraaifontein, 5 June 2012.

²³⁹ Police crime intelligence official, Goodwood, 20 January 2011.

²⁴⁰ Informal conversation with Somali Retailers Association representative working with police on the case.

²⁴¹ Kraaifontein police station detective, telephone interview, 30 July 2012.

²⁴² Kraaifontein Somali community representative, Kraaifontein, 5 June 2012.

²⁴³ Kraaifontein Somali community representative, Kraaifontein, 5 June 2012.

leaders to mobilise complainants to testify, and community leaders often joined them in court to provide support.²⁴⁴

Police in Kraaifontein proactively encouraged Somali community participation in a case against a syndicate of South African traders. Recognising that many Somali community members were unable to attend court to show solidarity with the complainants, the police drafted a petition for Somali community leaders to sign and to be submit in court.²⁴⁵ The petition noted the Somali community's concern over crimes affecting Somali shopkeepers in Kraaifontein. Community leaders circulated the petition in Kraaifontein and Bellville. It was signed not only by Somalis, but also by South African employees working in Somali shops.²⁴⁶ The petition communicated the community's concern over the crimes to the magistrate.²⁴⁷ Its circulation also raised awareness within the Somali community about the case, and a number of Somalis attended the hearings to show support.

As the Kraaifontein example shows, the ways in which the police indicate their commitment to addressing crimes against Somalis influence the level of effort Somali traders are themselves prepared to make in police investigations. Such efforts play a crucial role in countering the incentives that work against continued involvement: the high levels of intimidation against Somali complainants, the amount of time and in some cases travel demanded by court appearances, and the loss of faith in the police and the courts.

NGO monitoring of court cases

Attorneys and representatives from the University of Cape Town Refugee Rights Clinic attended a number of high profile court cases. Their presence encouraged Somali community members to testify and to remain engaged in the court process. It also assisted Somali traders in understanding and obtaining information about the progress of cases.

Conclusion and recommendations

While local residents often rely on informal community structures to address crime, Somali traders have little access to these structures and are left with a formal justice system they often misunderstand and mistrust. Numerous factors inhibit access to formal justice for Somali traders. These include difficulties collecting evidence, lack of witnesses willing to testify, language barriers, difficulties contacting Somali traders, as well as Somali fear and lack of faith in the formal justice system.

Specific factors limiting formal justice are summarised below:

²⁴⁴ ACMS attended hearings at the Blue Downs Regional Court, which were also attended by Somali community representatives who had liaised with police. Community leaders also encouraged other community members to attend, as well as a University of Cape Town Refugee Rights Unit representative, and a Somali journalist.

²⁴⁵ Kraaifontein police station detective, Kraaifontein, 13 January 2011.

²⁴⁶ ACMS observed Somali traders signing the petition in an internet café in Bellville. South African staff at the internet café also signed the petition.

²⁴⁷ Kraaifontein police station detective, Kraaifontein, 13 January 2011.

- Language barriers that prevented police from questioning Somalis immediately when they reached crime scenes;
- Somali community interference with evidence: community members often arrived at crime scenes before police and tampered with evidence or removed bodies for burial;
- The inability of Somali traders to identify suspects because of their relative isolation from the community;
- Lack of South African witness cooperation;
- Non-reporting of crimes by Somali traders;
- The withdrawal of cases because of settlements or intimidation;
- Somali difficulties contacting or communicating with the police;
- Police difficulty contacting Somali complainants due to frequent Somali relocation;
- Unwillingness of the police to prevent or investigate looting of Somali shops;
- Police unwillingness to charge and prosecute South African traders for intimidation of competing Somali traders or the eviction of Somali traders from their shops;
- Intimidation or abuse by police officers;
- The perception among Somali traders that the police are related to criminals;
- Somali misunderstandings about how the formal justice system works; and
- Vague police witness statements.

At the same time, certain factors facilitated access to formal justice. Specific factors include:

- Police patrol efforts;
- A long-standing Somali presence in an area;
- The prioritisation of crimes against foreigners and improved intelligence efforts;
- Somali community involvement in high profile investigations and court cases; and
- Monitoring of court cases by non-governmental organisations.

In light of the above conclusions, ACMS makes the following recommendations.

To the South African Police Service:

Addressing language barriers

- Police stations should work with local Somali community leaders to set up a ready reserve of locally based translators who can be called upon to come to crime scenes quickly.
- Police stations should train translators on how to take reliable police statements, especially the importance of translating information accurately and in detail.

Crime prevention

- Police stations should maintain and expand police patrolling efforts to increase the rate of police apprehension of suspects in the act of committing crime. This is especially important given Somali difficulties in identifying suspects.

Preventing withdrawal of cases by Somali complainants

- Investigating officers should keep in touch with complainants regularly, and ensure that they are fully informed of the status of police investigations.
- Police stations must take measures to ensure that individual police officers are providing Somali traders with access to information on their cases when they make enquiries, rather than turning them away or creating arbitrary requirements.
- Investigating officers should remind Somali complainants to notify them if they change their address or telephone number.
- Police at crime scenes should provide Somali complainants with information to assist them in following up on their cases, including providing their direct phone numbers.
- Police stations should work with Somali community organisations to set up institutional mechanisms to alert Somali community representatives of key cases under investigation so that Somali community members can provide support to complainants.
- The investigating officer should follow up with complainants who were taken to the hospital before the investigating officer arrived at the scene of the crime.

Intimidation

- Police must charge and send for prosecution South African traders suspected of intimidating Somali competitors.
- Police stations must institute training and review measures to ensure that police statements are taken properly, and are thorough and comprehensive enough to be reliable in court, particularly in bail hearings.
- Police stations should set up institutional mechanisms to alert Somali community organisations of bail hearings so that they can arrange for community members to attend. This will help indicate the Somali community's concern to the prosecutor and magistrate and encourage solidarity with victims.

Looting

- SAPS must develop strategies to protect shop property from looters in line with its obligation to 'prevent, combat and investigate crime, to maintain public order, to

protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.²⁴⁸

- Police must ensure that suspected looters are charged and their cases sent for prosecution.
- When rumours of xenophobic attacks arise, the police must send a clear message that looting of Somali shops will not be tolerated and must enforce this message.
- Police should protect traders so that they are not forced to abandon their shops in response to threats of xenophobic violence. If traders do decide to close their shops, the police must ensure that vacant shops are not looted of remaining contents or infrastructure.

Promoting trust in the police and preventing police abuse

- Police stations must ensure that Somali traders are treated respectfully at police stations when reporting crime.
- Police stations should prioritise investigations into police robberies of Somali shops.
- The police must investigate all allegations of police abuse and take action against those found to have committed such abuse.
- SAPS should enforce trading regulations in a fair and non-discriminatory manner against both Somali and South African traders and not discriminatorily target only Somali shops.
- The police should expand the use of successful intelligence gathering strategies. This includes appointing an investigating officer who can specialise in crime affecting Somali shops and can focus on gathering intelligence from local communities. This is especially important where crimes appear to be orchestrated by specific groups such as South African traders or organised gangs. Where certain crimes appear to be spread over several different police jurisdictions, local police can arrange for docket analyses to be carried out by SAPS crime intelligence officials so that separate investigations can be joined.

Record keeping

- The police should compile and make accessible records on crime affecting foreign nationals. This will enable researchers, civil society and community organisations to know the extent of crime affecting foreigners in the province, and to determine where assistance is required, or where research should be focused.

²⁴⁸ Section 205(3) of the Constitution of the Republic of South Africa, 1996.

To the National Prosecuting Authority:

- The NPA should clarify what ‘xenophobic crimes’ are when gathering data on such crimes and keep records of crimes affecting foreign nationals in general.
- Prosecutors should remind Somali complainants to notify them in the event of any change of given addresses or telephone number.
- Where police statements are vague, prosecutors must advise relevant police officers to obtain more comprehensive statements before bail hearings begin.
- The NPA should engage with Somali community organisations to arrange the provision of high quality translators who are familiar with court procedure and can explain to complainants at their first consultation how the court procedure works.

To Somali community organisations:

- Somali community organisations should develop a program to support Somali victims of crime by attending court appearances with them, and providing guidance about the workings of the criminal justice system.
- Somali community organisations should work with local NGOs to inform traders of proper procedure at crime scenes and how to prevent interference with evidence.
- Somali community organisations should inform Somali traders about the importance of providing accurate and detailed information when police take down their statements.
- Somali community organisations should inform Somali traders of their duty to notify investigating officers of any change of given address.
- Somali community organisations should inform Somali traders of the importance of persisting with their criminal cases and of how this plays a role in addressing crime affecting the Somali community as a whole.
- Somali community organisations should improve communication, and coordination amongst themselves.
- To prevent police abuses (e.g., robberies) during searches, Somali community organisations should advise Somali traders that police in general cannot search their shops without a search warrant.
- Somali community organisations should alert NGOs of important cases so that they can monitor cases and educate Somalis about the court process.

To the City of Cape Town:

- The City of Cape Town’s Economic and Human Development Department should develop comprehensive strategies to support and regulate informal business in townships.

- The City of Cape Town's Economic and Human Development Department should liaise with SAPS to ascertain which body is best positioned to monitor regulations and by-laws in line with the City's local economic policies and to ensure non-discriminatory application of these laws.

ACCESSING COMMUNITY JUSTICE

Efforts to address crime in the townships have not been limited to the formal institutions of justice. Informal community structures have also played a role, running parallel to and sometimes in conflict with the formal justice system. These structures can be traced back to the apartheid era, when township residents who did not trust the institutions of state established their own mechanisms for resolving disputes and addressing crime.

Local residents continue to prefer these informal mechanisms, which dispense ‘justice’ far more quickly than the formal justice system. Court cases can take years to be finalised, and may result in the acquittal of perceived criminals. Community structures resolve issues almost immediately, either by punishing alleged criminals or by arranging payment of reparations to victims.

Measures to mediate local conflicts and investigate crime are usually coordinated by street committees—local resident forums that represent single streets and are found on most streets. Unresolved issues are sent to ward area committees, which oversee a number of streets.²⁴⁹ Street committees have to a large degree usurped the role of more formal institutional structures such as the police.

Somali traders are largely excluded from these community structures because of their general social isolation from the communities in which they work. All but three Somali respondents reported that they were neither street committee members, nor regularly attended street committee meetings. As a result, Somalis rely solely on the police and the courts to investigate crimes and prosecute accused criminals. But these investigations do not exist in isolation from the workings of community justice mechanisms. Because of the substantial role that street committees and informal community structures play in addressing crime in townships, it is important to understand how they operate in relation to Somali traders.

Local community structures and crime

History and operation of street committees

Although largely a legacy of apartheid, street committees also have their roots in the indigenous African legal systems where crime was addressed through meetings known as

²⁴⁹ Philippi community worker, Cape Town, 22 November 2010.

lekgotlas.²⁵⁰ These systems preceded the formal court structures that exist today. In more recent times, street committees can be linked to the ‘people’s power’ strategy of the United Democratic Front (UDF) in the 1980s.²⁵¹ Formed in 1983 as an umbrella body for various political organisations opposing apartheid,²⁵² the UDF developed the strategy of people’s power to weaken the government through mass action such as strikes, consumer boycotts and the withholding of rent.²⁵³ Affiliates were urged to set up parallel structures in the form of street committees to deal with municipal issues such as street cleaning and rubble removal, and to set up informal ‘people’s courts’ to deal with ordinary as well as political crime.²⁵⁴

These informal courts utilised traditional methods of conflict resolution such as mediation and conciliation, but became increasingly violent throughout the 1980s.²⁵⁵ During this period, people’s courts meted out harsh punishments including beatings and murder.²⁵⁶ Many UDF youths also began using burning tyres to kill councillors and suspected informers, a practice that became known as ‘necklacing’.²⁵⁷

In March 1991, the National General Council of the UDF disbanded the Front, leaving thousands of civic bodies without a central point of coordination.²⁵⁸ To fill this gap, former UDF activists and civic leaders formed the South African National Civics Organisation (SANCO) in 1992 to co-ordinate mobilisation between civic bodies.²⁵⁹ While ANC branches focused on political issues, civic bodies turned their attention to ‘bread and butter’ developmental issues.²⁶⁰ SANCO quickly lost its effectiveness because of a lack of funding and the departure of key leaders for government roles.²⁶¹ But it remains the primary organisation representing township civic bodies and plays an important role in regulating community affairs, including addressing crime and service delivery issues. Its members liaise with local government officials and help to implement development projects.

Street committee membership is limited to property owners, who are generally older residents owning either houses or shacks. Meetings are held with varying frequency. Some committees have meetings every week, while others have them monthly or as needed. Meetings cover a range of issues including housing allocation, infrastructure development, crime, disputes between neighbours, and domestic abuse. Street committees report to ward area committees, which represent numerous streets and take up matters that street

²⁵⁰ Rachel Monaghan, ‘Community-Based Justice in Northern Ireland and South Africa’, *International Criminal Justice Review*, 2008, vol 18(1) at 88.

²⁵¹ Jeremy Seekings, *The UDF: A history of the United Democratic Front in South Africa 1983-1991* (2000) at 138.

²⁵² Tom Lodge, *All, here, and now: Black politics in South Africa in the 1980s* (1991) at 74 to 75.

²⁵³ Seekings (note 251) at 169.

²⁵⁴ Seekings (note 251) at 169.

²⁵⁵ Lodge (note 252) at 138 and 97.

²⁵⁶ *Ibid* at 138.

²⁵⁷ *Ibid* at 97.

²⁵⁸ Seekings (note 251) at 21.

²⁵⁹ *Ibid*.

²⁶⁰ Glenda Daniels, ‘Beyond protest politics’, July/August 1991, *Work in Progress* 13.

²⁶¹ Jeremy Seekings ‘After Apartheid: Civic organizations in the “New: South Africa” in Glenn Adler and Jonny Steinberg (eds) *From Comrades to Citizens: The South African Civics Movement and the Transition to Democracy*, 2000, at 217.

committees have been unable to resolve.²⁶² Ward area committees (each representing an area within a ward) in turn report to a ward committee that works alongside the local councillor. Ward committees are led by a SANCO ward chairperson.²⁶³ Often, local councillors are former SANCO ward chairpersons. SANCO represents the majority of township street committees in South Africa. Decisions taken by senior SANCO members are filtered down to residents via ward area committees and street committees.

Street committee activities include conducting street patrols (either on their own or through community policing forums set up by SAPS), investigating crime, and punishing suspected criminals. They make enquiries with local residents to locate suspected criminals and bring suspects before an informal community hearing. Punishments may include the payment of reparations by the accused, or public beatings and even death.

Support for SANCO-aligned street committees in the field sites was mixed, and not all residents participated in or approved of street committee activities. While some respondents attributed their non-participation to time constraints, others felt that street committees were too orientated along political party lines. Non-ANC supporters felt marginalised by the fact that many SANCO leaders were also ANC leaders. According to a respondent from Nyanga (next to Philippi):

Anything community orientated in Nyanga is one way or the other a disguised sub-division of the ANC from your SANCO, ward committees, and street committees. If you are not known to be an ANC person then you can't really partake.²⁶⁴

A resident in Khayelitsha held similar views:

People do not know what to do and why they are suffering. Street committees don't talk about these things, but only about money. They are connected to political parties and people in power... Street committee leaders have a face, but they are not the ones leading the community because they have their bosses.²⁶⁵

For some residents, SANCO structures and street committees thus hold little legitimacy. They view street committees as largely dominated by individuals seeking political advancement or access to local government funding.

²⁶² Philippi East SANCO chairperson, Philippi East, 26 November 2010.

²⁶³ Ibid.

²⁶⁴ Philippi East community worker, Cape Town, 22 November 2010.

²⁶⁵ South African resident, Site C, Khayelitsha, 5 February 2011.

Community responses to crime

Informal community justice mechanisms vary greatly. While some street committees are carefully organised and follow certain due process principles, others are quick to unleash violent punishment against suspected criminals. The different approaches are shaped by a variety of factors, including the levels of community cohesion, education and income among residents. Whether residents have rural or urban backgrounds also may play a role, although more research is needed in this area.

A closer look at three sites in Philippi illustrates how these factors affect the operation of street committees. In Lloyd (also referred to as Thabo Mbeki), a small shack settlement with high levels of social cohesion and community engagement in local affairs, street committees proved highly effective. Residents in Pola Park, another small shack settlement, reported low levels of community involvement in local issues and high levels of crime. Finally, in Acacia Park, a mixed black and coloured area with higher income and educational levels, residents relied almost exclusively on police to resolve crime.

According to residents, Somali shops in Lloyd were generally free from crime, and the community did not take part in either the 2008 or the 2010 xenophobic attacks. Two Somalis working in a shop in Lloyd agreed.²⁶⁶ In fact, there was almost no crime in Lloyd at all. Residents, mostly originating from the more rural Eastern Cape, closely monitored the area and strangers could not enter Lloyd unnoticed. Street committees were tightly organised and residents patrolled the streets regularly, preventing most crime.²⁶⁷

Lloyd is governed by the Lloyd Committee, a ward area committee made up of about thirteen people. The Lloyd Committee falls under the authority of the SANCO ward committee for Philippi East. Local street committees bring individuals suspected of crimes before a general community meeting set up by the Lloyd Committee, where meetings are governed by the principle of ‘ithuba loz’thethela’—the right to defend oneself.²⁶⁸ Community members at the meeting then discuss the case, and, if the culprit is found guilty, they deliberate over the sentence. Punishment varies depending on the severity of the crime and whether the individual is a repeat offender. Many first time offenders are beaten. For more serious crimes, the offender and those housing him will be chased out of the area. One respondent described a meeting involving a repeat offender. After some discussion, community leaders asked all the women to leave the meeting; the remaining men beat the alleged offender to death. Community members then dismantled his shack and placed his belongings next to his body on a nearby open field.²⁶⁹

The shack settlement of Pola Park, by contrast, lacks carefully organised responses to crime. On the surface, Pola Park looks identical to Lloyd. It is a small, crowded shack settlement wedged between the ‘Better Life’ formal settlement and the Golden Arrow bus stop. But residents there reported that crime was rampant, and criminals often hid in the area. One

²⁶⁶ Somali traders, Lloyd, Philippi on 27 May 2012.

²⁶⁷ South African resident, Lloyd, Philippi, 18 December 2010.

²⁶⁸ South African resident, Lloyd, Philippi, 27 May 2012.

²⁶⁹ South African resident, Lloyd, Philippi, 18 December 2010.

resident stated that police were afraid to enter Pola Park due to the large number of unlicensed firearms in the area.²⁷⁰

There are no Somali shops in Pola Park. Three out of the five residents interviewed attributed this to the area being a shack settlement, making it difficult to penetrate. The fourth resident cited high crime, while the fifth stated that residents disliked Somalis and would chase them away.

Pola Park residents lack the organised response to crime seen in Lloyd. Formally, street committees in the area, which fall under SANCO, are responsible for investigating crime. After receiving information about an individual's involvement in a crime, committee members visit the offender's house to inform him or her of the charge and convene a hearing. Punishments include beatings, demolition of shacks and, in extreme cases, death. Yet, Pola Park residents said that street committees were made up of small groups of individuals who were not supported by the broader community, and that the committees were essentially non-functional.²⁷¹

A member of a Pola Park street committee complained that residents were unhelpful, did not partake in anti-crime patrols and only looked after their own interests.²⁷² Ordinary residents often addressed crime themselves—bypassing street committee structures—and relying on mob justice. Suspects attacked by mobs often only avoided death if police arrived on the scene in time.²⁷³ These unstructured actions were more common than organised community responses.

Acacia Park in Philippi provides yet another community approach to crime. Acacia Park is a mixed black and coloured neighbourhood made up of formal housing. Many foreign nationals also live in the area including Ugandans, Tanzanians, and Basothos (from Lesotho). Most residents were from older black and coloured townships in Cape Town (as opposed to the Eastern Cape) and were relatively well-educated. Street committees exist in Acacia Park, but they do not call regular meetings with residents or punish criminals. Instead, they work with a SANCO ward area committee and call residents to general meetings on a nearby field when important issues arise that affect the whole community, such as planned housing developments.²⁷⁴ Residents may report on crime in the area, but there are no informal hearings or community punishments. Instead, captured criminals are handed over to the police.²⁷⁵ Crime in Acacia Park is generally low and the area did not experience any xenophobic attacks in either 2008 or 2010. When rumours of impending violence spread in 2010, the ward area committee called on residents via loudspeaker to

²⁷⁰ South African resident, Pola Park, Philippi, 18 December 2010.

²⁷¹ South African residents, Pola Park, Philippi, 21 January 2012.

²⁷² South African resident, Pola Park, Philippi, 27 May 2012.

²⁷³ South African residents, Pola Park, Philippi, 21 January 2012 and 27 May 2012.

²⁷⁴ South African resident, Acacia Park, Philippi, 18 December 2010.

²⁷⁵ South African residents, Acacia Park, Philippi, 18 and 19 December 2010.

attend a general meeting on an open field. At the meeting, local SANCO leaders told residents that attacks against foreign-owned shops would not be tolerated.²⁷⁶

As these three examples show, local community approaches to crime vary greatly depending on the conditions in each area. In Lloyd, residents adhere to rigid procedures for investigating and adjudicating crime. The Pola Park community is more fractured, with higher levels of crime and distrust between residents and community leadership. This encourages residents to by-pass community structures altogether when punishing suspected offenders. Finally, in Acacia Park, the prosecution and punishment of crime is left to the formal justice system.

Effectiveness of street committee justice

As described above, community responses to crime have had varying levels of success. Some of the more violent measures employed by street committees have had a deterrent effect. A detective in Kraaifontein explained:

You do not steal or break into someone's house in Wallacedene and Bloekombos. The police pick up bodies along the road. They [community members] attack with pangas, knob kerries and shambocks. Therefore, you do not simply rob a South African shop.²⁷⁷

Crime against South Africans in Bloekombos and Wallacedene was generally more personal in nature, involving offences like domestic abuse, shebeen fights, or assaults and murders between individuals who were acquainted.²⁷⁸ Criminals from these areas who committed economic crimes such as robberies generally acted in neighbouring suburbs that lacked community justice structures. Foreign shops also made an alluring target because community justice structures did not investigate or punish crimes affecting these businesses.²⁷⁹

While providing an effective deterrent, community forms of justice generally do not observe the basic elements of due process designed to protect the rights of the accused. As a result, innocent suspects who are targeted for punishment have little recourse. A resident in the informal settlement of Endlovini, Harare described an incident where a woman in the neighbourhood was shot and wounded in a robbery. The woman approached her street committee, which went door-to-door rounding up several youth suspects who were taken to a hall and beaten to death. No formal hearing was held. The respondent emphasised that

²⁷⁶ Ibid.

²⁷⁷ Kraaifontein police station detective, Kraaifontein, 1 December 2011.

²⁷⁸ Kraaifontein police station detective, Kraaifontein, 1 December 2011.

²⁷⁹ Ibid.

the victims were merely suspects, and no one was in fact certain who had committed the crime.²⁸⁰

A legal aid attorney in Khayelitsha provided another troubling example. A street committee she was representing in a court case told her that residents were pressurising the committee to take action against a youth whom certain individuals had accused of committing a crime.²⁸¹ The street committee had carefully investigated the matter and had found no evidence linking the youth to the crime. Nonetheless, the committee felt that it had to take action against him because it was competing against a rival street committee for local popularity and did not want to appear weak and ineffective to the community.²⁸²

Street committee 'justice' mechanisms often involve extreme violence against suspected criminals. Khayelitsha residents described street committee punishments that involved beating criminals to death with bricks. Police reported numerous necklacings in the area.²⁸³ In Kraaifontein, a policeman reported that if local township residents caught someone committing a crime, he was 'a dead man.'²⁸⁴ Street committee punishments in Kraaifontein included beatings, lashings, dripping burning plastic on people's bodies, or leaving alleged culprits constrained outdoors in the sun so that they suffered dehydration and sunburn.²⁸⁵

Residents generally supported the violent punishments meted out by street committees, believing them to be more effective than formal justice system efforts. Residents also inhibited police investigations into crimes committed by street committees. According to respondents in Khayelitsha and Philippi, residents often told police who arrived in the aftermath of informal justice measures that the whole community was responsible. Police were thus unable to identify and arrest the individuals responsible for the physical violence.²⁸⁶

Somali access to informal justice

Somali traders were largely excluded from the mechanisms of community justice. Most did not attend street committee meetings. Local residents explained that as tenants rather than land owners, Somali traders were barred from attending. But local prejudices also seemed to be at play. Residents pointed to the fact that Somalis never stayed in townships for long periods, were afraid of South Africans, and could not communicate effectively in the local language. Residents also feared that admitting Somalis to street committees could cause conflict within the community, especially since local shopkeepers did not want them there.

²⁸⁰ Khayelitsha resident, Endlovini, Harare, 6 February 2011.

²⁸¹ Legal Aid attorney, Cape Town, 24 October 2012.

²⁸² Ibid.

²⁸³ Harare crime prevention police officer, Harare, Khayelitsha, 24 May 2012.

²⁸⁴ Informal conversation with Kraaifontein police captain, Kraaifontein, 14 June 2012.

²⁸⁵ Legal Aid attorney, Stellenbosch, 24 November 2011.

²⁸⁶ Philippi resident, Cape Town, 16 February 2011. Harare resident, Newlands, 16 February 2011. Legal Aid attorney, Athlone, 2 November 2011.

One resident concluded that it was better for Somalis to stay inside their shops and not integrate.²⁸⁷

Echoing this sentiment, a Harare resident stated:

Only South Africans attend street committee meetings. Somalis don't attend because they are not South African. Street committees are for South Africans. Somalis will bring differences to the street committees.²⁸⁸

Another Harare resident said:

Somalis do not attend street committee meetings because street committee members do not see Somalis as normal people and discriminate against them.²⁸⁹

Many Somalis understood that they would not be welcome in street committees and also feared the participation of members who supported the interests of South African shopkeepers. One shopkeeper was expressly denied permission to attend meetings of his street committee.²⁹⁰ Somalis did sometimes donate snacks and soft drinks towards street committee meetings to maintain good relations, but that was generally the extent of their involvement.

Only three of the 72 Somali traders interviewed regularly attended street committee meetings. One Somali shop owner who did attend meetings on a weekly basis in Harare, Khayelitsha began attending meetings in 2008, when Somali community representatives in Khayelitsha initiated an outreach process with SANCO. This process enabled him to develop good relationships with local street committee members.²⁹¹ In spite of his involvement, the street committee took no action after his shop was robbed in 2009 and one of his employees killed. The shopkeeper believed that there was nothing his street committee could do, as the robbers had come from outside the area and were not recognisable.

Another shop employee in Harare, Khayelitsha periodically attended street committee meetings.²⁹² His shop had been robbed by Tactical Response Team (TRT) police members, but not by ordinary criminals. Community members assisted him by writing down the registration numbers of two TRT vehicles parked near the shop, which he then forwarded to the police. Customers also supported the shop and offered to identify the police robbers and

²⁸⁷ South African resident, Better Life, Philippi, 21 January 2012.

²⁸⁸ South African resident, Endlovini, Harare, 6 February 2011.

²⁸⁹ South African resident, Endlovini, Harare, 5 February 2011.

²⁹⁰ Philippi Somali trader, Bellville, 27 October 2010.

²⁹¹ Khayelitsha Somali trader, Mitchells Plain, 7 January 2011.

²⁹² Khayelitsha Somali trader, Mitchells Plain, 3 June 2012.

attend court as witnesses.²⁹³ Although the Somali employee generally felt safe in his neighbourhood, he was not sure whether the community would employ informal justice mechanisms to punish offenders if his shop was robbed.

A third trader who attended street committee meetings in Kraaifontein also found little support from the community. The street committee took no action after his shop was robbed. He believed that some street committee members knew the identities of the culprits, but did not disclose them for fear of upsetting certain residents who would be angered by the arrest of a South African youth for a crime against a foreigner.²⁹⁴

Community structures did not independently investigate and punish crime against Somalis. A Somali trader in Khayelitsha said that even though he had good relations with community leaders and residents, they never assisted in addressing the numerous robberies affecting his shop, explaining:

There is a thing called 'andias' [I don't know] in Xhosa. Whatever they see they will tell you 'andias.' Even if it is your best friend, even the owner of the house. I don't know why it's like that.²⁹⁵

In general, residents were quick to mobilise and engage street committees around incidents affecting South Africans, but not those affecting Somalis. In Philippi, five Somali respondents recounted approaching street committee members to complain about crime, and receiving no assistance. In a section of Lower Crossroads in Philippi East, no Somali shops remained after two Somali shopkeepers were murdered in an arson attack and a 'hit and run' incident. The remaining shopkeepers left after the community failed to respond.²⁹⁶

In Lower Crossroads, residents resisted the efforts of a local woman who tried to mobilise the community around crimes against Somalis:

When South Africans are robbed, the whole community stands up and makes sure they catch the gangster that robbed them. With the Somalians, few people are helping to assist them, and it is rare. For example this year the Somalian shops were burnt... We did have information about who robbed them. But being the community we did not go to that house and get these people who robbed them. It was just vanished.²⁹⁷

²⁹³ Khayelitsha Somali trader, Mitchells Plain, 3 June 2012.

²⁹⁴ Kraaifontein Somali trader, Bellville, 21 November 2010.

²⁹⁵ Khayelitsha Somali trader, Mitchells Plain, 6 July 2012.

²⁹⁶ South African residents, Lower Crossroads, Philippi, 25 January 2012.

²⁹⁷ South African resident, Lower Crossroads, Philippi, 18 December 2010.

South African residents explained that local street committees generally did not investigate crimes affecting Somali traders, either because of direct hostility towards them or because members did not view Somalis as part of the community. A Harare detective described the general attitude of street committees toward crimes against Somalis: 'it's fine you can rob them, but not a local.'²⁹⁸

Somalis were barred from participation in community forums, but they were also faulted for this non-participation. According to a street committee member from Harare, Khayelitsha, 'if foreigners want help they must attend meetings and be more involved.'²⁹⁹ Philippi residents painted a similar picture. One street committee member there reported that Somalis were advised to go to the police with their crime concerns. His committee did not assist Somalis because of resentment over the fact that Somalis made no effort to involve themselves in the community. Although Somalis were barred from participation in street committees (because of the property ownership requirement), he pointed to their lack of participation in sports teams, the absence of Somali women in the townships, the decision not to enrol their children in local schools, and the failure to employ South Africans.³⁰⁰

The realities of township life have prevented most Somalis from settling in township areas and engaging with the community in the ways suggested by the committee member. These realities include high crime rates, housing shortages, and social problems including drug and alcohol abuse. Most shopkeepers prefer to settle with their families in the Somali neighbourhoods of Bellville or Mitchells Plain, or in working class coloured areas where access to housing is easier. They generally send their children to private Islamic or former Model C schools (semi-privatised public schools) because they believe such schools offer better levels of education than township schools. They also fear for the safety of their children at township schools. Some parents whose children were refused entry at local Model C schools chose not to send their children to school at all.³⁰¹

Social interaction between South Africans and Somalis is also limited by cultural and religious differences. Language barriers inhibit communication between Somali shopkeepers and South African residents (although Somali traders quickly learn to converse in Xhosa). Somalis, who are predominantly Muslim, do not attend the mainly Christian places of worship frequented by South Africans. Islamic law also forbids the consumption of alcohol and non-halal foods, making it difficult for Somalis to join South Africans at many social functions, or at popular venues such as shebeens or braai stands.

Only the shop employees who sleep in their spaza shops reside in the townships. Most are not there for long, and move on as soon as they have saved enough money. The frequent changes in shop personnel make it difficult for residents to get to know individuals

²⁹⁸ Harare police station detective, Harare, Khayelitsha, 7 December 2011.

²⁹⁹ South African resident, Endlovini, Harare, 6 February 2011.

³⁰⁰ South African resident, Lower Crossroads, Philippi, 18 December 2010.

³⁰¹ The parents lived in Vredenburg, where there was no private Islamic school. A community elder gave ACMS a list of sixteen Somali children between the ages of 4 and 12 who were not attending school because they had been refused entry at a local Model C primary school.

associated with Somali shops and to accept them as part of the community. As a result, crime against these shops is not visible to residents in the same way as crime against South Africans.

Lack of integration not only limits Somali access to community justice systems, but can also give rise to overt hostility or anger. Many negative perceptions of Somali traders result from their lack of interaction with community. Three residents in Philippi suspected Somalis of engaging in witchcraft when they prayed. When Somalis used a bucket of water for prayer ablution, local residents sometimes thought they were bathing, leading to the perception that Somalis lack proper hygiene practices. Other residents were angered by the way Somalis kept to themselves. A resident in Better Life in Philippi reasoned that Somalis did not mix with local residents because ‘they think they better than us.’³⁰² Another resident was suspicious of the motives of a group of Somalis he had seen gather at night.³⁰³ Lack of integration therefore not only limits Somali access to informal justice mechanisms, but also can spark negative community responses against Somali nationals.

The absence of a community response to crimes targeting Somalis, coupled with the intense response to crimes against South Africans, further increases the vulnerability of Somali traders. A group of Philippi youth explained that Somali shops made an easier, more appealing target, both because Somalis did not lay charges with the police and because there was no community response. They could rob the same shop multiple times, even if the shopkeeper recognised them. Crimes against South Africans, by contrast, were much riskier, as residents could mobilise community leaders against the perpetrators.³⁰⁴

Only a minority of South African residents actively disliked Somali traders and wanted them removed from their neighbourhoods. Most residents were not opposed to Somali shops and even welcomed their presence. But they did not recognise crime against Somali shops as a direct concern, nor did they view it as an issue they could address. Somalis existed outside of, not as a part of, their community. Some residents also feared that punishing South Africans for committing crimes against Somalis could cause community divisions. Thus, although many residents were quick to state the ways in which they benefitted from Somali shops and felt no misgivings towards traders, these sentiments did not translate into active engagement in addressing crime against Somali shops.

Some communities did protest the forced closures of Somali businesses. When South African spaza shop owners tried to close a shop in Khayelitsha, community leaders assured the shop employee that they would prevent the closure, portraying the decision to close Somali shops as illegitimate because the agreement between South African and Somali businessmen to limit shops had not been approved by the local community. Similarly, when members of a local South African business association closed down eleven Somali shops, the shops simply re-opened because residents did not support the closures.³⁰⁵ But the

³⁰² South African resident, Better Life, Philippi, 27 May 2012.

³⁰³ South African resident, Lower Crossroads, Philippi, 18 December 2010.

³⁰⁴ Group of South African youth, Philippi, 12 December 2011.

³⁰⁵ Khayelitsha Somali trader, Mitchell's Plain, 3 June 2012.

willingness of residents to take action to prevent closures did not extend to locating and punishing criminals.

Excluded from traditional community justice structures, Somali traders have developed alternative means to involve local residents in protecting their businesses. Many shopkeepers have reached out to youths outside their shops. A group of youths in Gugulethu who had befriended local Somali traders explained, 'Somalis are very friendly towards us. We don't go there to buy – we just go there for small talk.'³⁰⁶ On one occasion, one of the Somali shopkeepers asked whether there was anything the group could do about a recent robbery. The youth investigated, but did not find any information.³⁰⁷ A trader in Khayelitsha similarly said that he was friends with most youth in his area, and was therefore not threatened by them.³⁰⁸ Police in Philippi East suspected Somali traders of paying young men they had befriended for protection.³⁰⁹ This practice could encourage the formation of protection rackets resulting in possible threats against shopkeepers who choose not to pay.

Neighbours also defended Somali shops. One Somali trader reported that his neighbours fired gunshots to chase robbers away from his shop.³¹⁰ In Harare, police reported that Somali traders had begun hiring South African security guards to sit inside their shops.³¹¹ A prosecutor in the Wynberg Regional Court mentioned that these security guards sometimes served as witnesses in court cases.³¹² None of the Somalis interviewed had hired such security guards and could not comment on their effectiveness against crime.

Conclusion and recommendations

Crime affecting Somali traders is intimately linked to their positions within the communities in which they work and their relations with local residents. Informal community structures play a central (and sometimes dominant) role in addressing crime in township areas. Social isolation and lack of integration has excluded Somali traders from these processes, leaving them wholly reliant on the formal justice system, and the limitations of this system. The effect has been to create a climate of impunity, increasing their vulnerability to crime.

Even where Somalis have achieved some level of integration and participation in community structures, this has not resulted in greater access to informal justice measures for investigating and punishing crime. However, familiarity with local residents and community leaders is still important, as it increases the visibility of Somali traders in their communities. This reduces the indifference of residents to crimes against Somalis,

³⁰⁶ Group of South African youth, Gugulethu, 9 February 2012.

³⁰⁷ Ibid.

³⁰⁸ Khayelitsha Somali trader, Mitchell's Plain, 3 June 2012.

³⁰⁹ Philippi East detective, Philippi East, 1 December 2011.

³¹⁰ Khayelitsha Somali trader, Mitchells' Plain, 6 July 2012. Philippi Somali trader, Bellville, 21 June 2012.

³¹¹ Harare crime intelligence officer, Harare, Khayelitsha, 24 May 2012.

³¹² Wynberg Regional Court prosecutor, Wynberg, 21 June 2012.

encourages them to take steps to protect shopkeepers, and increases their willingness to provide information to the police or to testify in court.

In light of the above conclusions, ACMS makes the following recommendations:

To Somali community organisations:

- Somali community organisations should encourage Somali traders to familiarise themselves with local township community organisations and participate in community affairs.
- Somali community organisations should work with community organisations such as SANCO to improve integration of Somali traders in townships.

To the City of Cape Town:

- The City's Social Development Department should treat measures to address xenophobia as one of its core functions.
- The City's Social Development department should work with South African township communities and Somali community organisations to bolster the integration and inclusion of Somali traders in their communities. This could include arranging dialogues between South African and Somali community leaders to find out ways in which Somali traders could participate in local initiatives such as street committee meetings, sports teams, and skills training.
- The City's Social Development department should include Somali traders in local community projects run by the City such as youth leadership programmes and arts and culture projects.

To civil society and non-profit organisations:

- Civil society and non-profit organisations working with township communities should involve Somali traders in their projects.

CONCLUSION AND RECOMMENDATIONS

This study shows that Somali traders in the Western Cape rarely attain justice when they are victims of crime, a reality that is linked to the social and political dynamics around community relations, business practices, and institutional barriers. The experiences of Somalis with the justice system cannot be understood without a broader understanding of this socio-political context.

While South African township residents also experience high levels of crime, they have access to local informal justice mechanisms that work parallel to the formal justice system and often usurp its role. Somali traders are generally unable to access these justice mechanisms because of low levels of social integration, the invisibility of crime against them, and community dynamics that inhibit increased visibility for these crimes.

On the formal justice side, crimes against Somalis rarely result in prosecutions. Although conviction rates in South Africa are generally low, conviction rates for crimes against foreign victims are even lower. The NPA had no recorded convictions in the Cape Town municipal area for 'xenophobia' matters since 2009.

Certain factors hamper police investigations and court prosecution:

- Police encountered obstacles collecting evidence (due to language barriers, Somali interference in evidence at crime scenes, Somali difficulties in identifying suspects, and lack of South African witness cooperation).
- Some Somali traders did not report cases at all or abandoned cases as a result of a lack of police communication with victims, settlement agreements with families of the accused, or disillusionment with the criminal justice system.
- Police often withdrew cases because of difficulties locating Somali complainants.
- Somali traders claimed that police failed to institute charges for certain crimes such as looting and intimidation.

Many of these difficulties point to a failure of communication, which can be addressed through better planning and interaction between police, prosecutors and Somali community organisations. Both the Somali community and the institutions of government can take steps to address crime against Somalis, and the relative impunity of those targeting them.

Community organisations, NGOs, and local government also have a role to play in facilitating Somali access to justice in both the formal and informal spheres. These actors

can work to address some of the social, political, and economic dynamics that contribute to the social isolation of Somalis and cause them to be targeted within their communities.

In light of the above conclusions, ACMS suggests the following recommendations:

To the South African Police Service:

Addressing language barriers

- Police stations should work with local Somali community leaders to set up a ready reserve of locally based translators who can be called upon to come to crime scenes quickly.
- Police stations should train translators on how to take reliable police statements, especially the importance of translating information accurately and in detail.

Crime prevention

- Police stations should maintain and expand police patrolling efforts to increase the rate of police apprehension of suspects in the act of committing crime. This is especially important given Somali difficulties in identifying suspects.

Preventing withdrawal of cases by Somali complainants

- Investigating officers should keep in touch with complainants regularly, and ensure that they are fully informed of the status of police investigations.
- Police stations must take measures to ensure that individual police officers are providing Somali traders with access to information on their cases when they make enquiries, rather than turning them away or creating arbitrary requirements.
- Investigating officers should remind Somali complainants to notify them if they change their address or telephone number.
- Police at crime scenes should provide Somali complainants with information to assist them in following up on their cases, including providing their direct phone numbers.
- Police stations should work with Somali community organisations to set up institutional mechanisms to alert Somali community representatives of key cases under investigation, so that Somali community members can provide support to complainants.
- The investigating officer should follow up with complainants who were taken to the hospital before the investigating officer arrived at the scene of the crime.

Intimidation

- Police must charge and send for prosecution South African traders suspected of intimidating Somali competitors.
- Police stations must institute training and review measures to ensure that police statements are taken properly, and are thorough and comprehensive enough to be reliable in court, particularly in bail hearings.
- Police stations should set up institutional mechanisms to alert Somali community organisations of bail hearings so that they can arrange for community members to attend. This will help indicate the Somali community's concern to the prosecutor and magistrate and encourage solidarity with victims.

Looting

- SAPS must develop strategies to protect shop property from looters in line with its obligation to 'prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.'³¹³
- Police must ensure that suspected looters are charged and their cases sent for prosecution.
- When rumours of xenophobic attacks arise, the police must send a clear message that looting of Somali shops will not be tolerated and must enforce this message.
- Police should protect traders so that they are not forced to abandon their shops in response to threats of xenophobic violence. If traders do decide to close their shops, the police must ensure that vacant shops are not looted of remaining contents or infrastructure.

Promoting trust in the police and preventing police abuse

- Police stations must ensure that Somali traders are treated respectfully at police stations when reporting crime.
- Police stations should prioritise investigations into police robberies of Somali shops.
- The police must investigate all allegations of police abuse and take action against those found to have committed such abuse.
- SAPS should enforce trading regulations in a fair and non-discriminatory manner against both Somali and South African traders and not discriminatorily target only Somali shops.

³¹³ Section 205(3) of the Constitution of the Republic of South Africa, 1996.

- The police should expand the use of successful intelligence gathering strategies. This includes appointing an investigating officer who can specialise in crime affecting Somali shops and can focus on gathering intelligence from local communities. This is especially important where crimes appear to be orchestrated by specific groups such as South African traders or organised gangs. Where certain crimes appear to be spread over several different police jurisdictions, local police can arrange for docket analyses to be carried out by SAPS crime intelligence officials so that separate investigations can be joined.

Record keeping

- The police should compile and make accessible records on crime affecting foreign nationals. This will enable researchers, civil society and community organisations to know the extent of crime affecting foreigners in the province, and to determine where assistance is required, or where research should be focused.

To the National Prosecuting Authority:

- The NPA should clarify what ‘xenophobic crimes’ are when gathering data on such crimes and keep records of crimes affecting foreign nationals in general.
- Prosecutors should remind Somali complainants to notify them in the event of any change of given addresses or telephone number.
- Where police statements are vague, prosecutors must advise relevant police officers to obtain more comprehensive statements before bail hearings begin.
- The NPA should engage with Somali community organisations to arrange the provision of high quality translators who are familiar with court procedure and can explain to complainants at their first consultation how the court procedure works.

To Somali community organisations:

- Somali community organisations should encourage Somali traders to familiarise themselves with local township community organisations and participate in community affairs.
- Somali community organisations should develop a program to support Somali victims of crime by attending court appearances with them, and providing guidance about the workings of the criminal justice system.
- Somali community organisations should work with local NGOs to inform traders of proper procedure at crime scenes and how to prevent interference with evidence.
- Somali community organisations should work with township community organisations such as SANCO to improve integration of Somali traders in townships.

- Somali community organisations should inform Somali traders about the importance of providing accurate and detailed information when police take down their statements.
- Somali community organisations should inform Somali traders of their duty to notify investigating officers of any change of given address.
- Somali community organisations should inform Somali traders of the importance of persisting with their criminal cases and of how this plays a role in addressing crime affecting the Somali community as a whole.
- Somali community organisations should improve communication, and coordination amongst themselves.
- To prevent police abuses (e.g., robberies) during searches, Somali community organisations should advise Somali traders that police in general cannot search their shops without a search warrant.
- Somali community organisations should alert NGOs of important cases so that they can monitor cases and educate Somalis about the court process.

To the City of Cape Town:

- The City's Social Development Department should treat measures to address xenophobia as one of its core functions.
- The City's Social Development department should work with South African township communities and Somali community organisations to bolster the integration and inclusion of Somali traders in their communities. This could include arranging dialogues between South African and Somali community leaders to find out ways in which Somali traders could participate in local initiatives such as street committee meetings, sports teams, and skills training.
- The City's Social Development department should include Somali traders in local community projects run by the City such as youth leadership programmes and arts and culture projects.
- The City of Cape Town's Economic and Human Development Department should develop comprehensive strategies to support and regulate informal business in townships.
- The City of Cape Town's Economic and Human Development Department should liaise with SAPS to ascertain which body is best positioned to monitor regulations and by-laws in line with the City's local economic policies and to ensure non-discriminatory application of these laws.

To civil society and non-profit organisations:

- Civil society and non-profit organisations working with township communities should involve Somali traders in their projects.



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