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REPORT ON COMMISSION EVIDENCE

**Misconduct, distrust, more missing dockets,
and a myriad of other problems**

Of the four SAPS witnesses to have testified thus far, **Colonel Johan Marais**, the Detective Commander at Khayelitsha Site B, has been the most willing to acknowledge his station's failures and explain, in detail, why they occur. Marais began his SAPS career in 1983 as a learner detective in Grahamstown. In 1989 he was appointed as the Detective Commander of the SAPS station in Stellenbosch, with the rank of Lieutenant. Between then and his transfer to Khayelitsha Site B in January 2011, he held senior positions in detective and crime prevention units across the Western Cape, but specialized in organized crime intelligence.

Upon his arrival at Khayelitsha Site B, Marais found "a detective unit in disarray", with most of its members demotivated, overburdened by hundreds of case dockets, and some too ill to work, in addition to "a myriad of other problems". He then set about rectifying the situation – but not, he conceded, with unrealistic expectations. Operating within a system constrained and strung out by bureaucracy, and at a station widely known to be a "dumping ground" for incompetent, underperforming officers, he attempted to reallocate roles and weed out the weakest members.

And yet, in what is commonly referred to as the 'Tshabalala Report' – a document of evidence drawn from inspections by an SAPS task team at the three Khayelitsha stations in July 2012 – it is indicated that at SAPS Khayelitsha Site B during the period January-December 2011 a total number of 291 employees were disciplined, in addition to 138 during the period January-June 2012. The task team described these rates as "extremely high".

Elsewhere in the Report it is revealed that, in 2011, 15 complaints were registered against SAPS officers at Site B, of which 12 were related to police negligence and misconduct. In only the first six months of 2012, 16 were registered, and again 12 related to negligence and misconduct, suggesting a significant increase. The testimonies of community members heard

by the Commission during the past four weeks, moreover, have suggested that there are many more, very serious, unregistered complaints.

Marais spoke revealingly about the impossible caseload that he and his detectives deal with on a daily basis. He estimated that, at any given time, investigating officers in Khayelitsha each carry between 130 and 145 case dockets. Some, however, carry far more, and one officer currently has between 130 and 160 murder dockets. Marais explained that the SAPS *Resource Allocation Guide* (RAG) does not sufficiently take into account the context of each station's needs – only the population and crime rates within its precinct. “I don't believe in the RAG,” he stated, “I don't believe it is right.” He reiterated this by comparing Cape Town Central – where the station complement of 110 detectives receives approximately 2,500 dockets per month, of which the majority are shop-lifting and house-break-in cases, and where perhaps one murder is committed every three months – with Khayelitsha Site B, where 60 detectives receive between 3,500 and 4,000 dockets per month, and where it is not unusual when 7 murders are committed in a single weekend.

This issue of insufficient resources often goes hand-in-hand with the constraints imposed upon investigating officers by the environment they operate within. Marais illustrated this by way of a first-hand account of an “average weekend” at the Site B detective branch. Within the period of a few hours one Friday evening, with only two detectives on standby, he and his officers were forced to attend to three incidents of murder that all took place in one sprawling informal settlement. Marais explained that a thorough investigation of a murder scene always requires at least 3 hours. But when a murder has been committed within a concentrated area of informal houses without direct road access the on-site investigation requires more time, especially at night without adequate lighting and when it is necessary to evacuate people from their shacks just to cordon off the area or to locate a bullet or a spent cartridge.

By the Saturday morning, only one arrest had been made. By the Sunday morning, an additional four murders had been committed in the area. Marais and his officers were unable to attend all of the post-mortems because they took place in different places at similar times while other, more pressing aspects of the investigation were being prioritized. Profiles were then submitted to the crime intelligence unit, CCTV footage was reviewed and community members were consulted before a second arrest was made on the Wednesday. The following day, some detectives were finally able to return to their other case dockets, but by then another two murders had already taken place. “There are simply not enough hours in a day,” Marais concluded.

This morning, **Justin du Toit** of Mthente Research and Consulting Services presented a community perception survey that was conducted earlier this year for the specific purposes of the Commission. It revealed that 44.5% of the respondents in Khayelitsha Site B have personally experienced crime in the past year – a greater percentage than those in Harare (36.5%) and Lingeletu West (42.2%). It was also found that 77% of the Site B respondents do not feel safe in their own suburb – again, a greater percentage than those in Harare (68.3%) and Lingeletu West (73.7%).

Across all three precincts, 61.2% of respondents disagreed that the police in Khayelitsha do what they are required to; 55.3% disagreed that the police in Khayelitsha are polite; 55% disagreed that the people who live in Khayelitsha have confidence in the SAPS; and 55.4% disagreed that the SAPS treat members of the community with respect.

But again, the problem of criminal justice in Khayelitsha goes far beyond the Commission's mandate, which is limited to examining police inefficiency and the breakdown in relations between the community and the police in Khayelitsha. Yesterday the Commission heard the

testimony of **Captain Daniel Pillay** who, since January 2010, has been the Detective Court Case Officer at the Khayelitsha Magistrates' Court. In 1983, Pillay began his career at Wentworth in Durban. He then transferred to the Guard Unit, working in Parliament for 5 years. In 1990, he returned to KwaZulu-Natal, serving in Dalton before joining the Riot Unit – and later the Central Inquiry Branch – in Pietermaritzburg. In 2005, he once again transferred to the Western Cape, where he served for four years at SAPS Mfuleni before moving to Khayelitsha.

Pillay described his role as that of enhancing the quality of the dockets provided to the court by SAPS (by screening them for sufficient evidence), of improving the efficiency of the docket flow between the courts and SAPS, and of facilitating communication between SAPS, the Public Prosecutor and the Department of Justice. Advocates Sidaki, Mayosi and Gerber (representing the Commission, the complainants and the Department of Community Safety for the Western Cape, respectively) probed Pillay on the question of lost dockets. He explained that when a docket is not submitted three days before its scheduled court date, as is legally required, he begins by calling the 'court room' in the relevant police station. If this fails to resolve the issue, he then resorts to calling the investigating officer responsible for the docket, failing which he calls the branch commander.

Pillay estimated that, each day, there is an average of three missing dockets among those received from the three Khayelitsha stations. He also confirmed that, among these, some may be connected with serious crimes, such as rape or murder. Through a close examination of Pillay's job description, Advocate Gerber then made the witness concede that he could have done more to reduce the number of missing dockets. Given that Pillay receives the court's schedule of cases up to a week in advance, he alone is capable of – and indeed responsible for – notifying the three SAPS stations as to which dockets are required of them on which dates.

The issue of missing dockets has thus far been central to the Commission's findings. Testimonies and incisive cross-examinations have revealed that at the root of this problem there are in fact several layers of inefficiency and negligence – not just at police-station level, but also at the magistrates' court and the prosecuting authorities.

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