

Leading a horse to water ...

Assessing review mechanisms of SAPS performance

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There have been no shortage of reviews, evaluations and audits of police performance in South Africa over the past decade. This article provides a detailed description of the key findings of a number of reviews relating to the role and function of the SAPS. A closer reading of these reviews points to considerable agreement about the systemic weaknesses that confront the police organisation today. What is problematised in this article is the apparent inability and/or unwillingness of senior leadership to address the organisational defects through deliberative and concerted interventions. This lack of action has dire consequences for both the police organisation and the communities it is supposed to serve.

In the last decade there have been a number of internal and external reviews of the performance of the South African Police Service (SAPS). 'Review' is used here as a collective term, inclusive of internal inspections and external evaluations or audits of police performance. These reviews, including two formal commissions of inquiry, have confirmed the existence of deep-lying and pervasive inadequacies in the performance of the SAPS. Such inadequacies include issues such as ill-discipline, corruption, poor 'command and control', especially at local level, a lack of regular and thorough internal inspections and, even when these are conducted, an inability to effectively address issues.

This article looks at some of these reviews in order to establish to what extent they have led to an accountable implementation of recommendations. More specifically, this discussion will focus on the following reviews:

- SAPS Policy Advisory Council reports
- Report on Parliament's Detective Dialogue
- National Development Plan 2030: Our future – make it work
- SAPS National Inspectorate: Basic policing indaba
- Report of the Khayelitsha Commission of Inquiry

In spite of clear findings and recommendations in all these reports, there is little evidence that the situation has improved. On the contrary, not only do consecutive reviews identify the continued prevalence of much the same weaknesses, but matters appear to be deteriorating. There is an apparent unwillingness or inability within the SAPS to acknowledge and engage with these major problems and to implement measures to address them.

In an article by Frank Hughes and Lisa Andre in *The Police Chief*, they discuss repeat officer misconduct and the value of an early warning system for control and the promotion of accountability within a police department.¹ The link between misconduct and systemic problems within police agencies

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more broadly is obvious, as is the need for timely interventions. In relation to the importance and benefits of an early warning system and the need for remedial action, they conclude that:

... the system must first properly identify the appropriate variables that are causing problems for the agency. These variables may differ for individual police agencies based on their personnel, range of services offered, and community demographics. Fear of liability exposure from having such a system should never be allowed to keep an agency from doing something that it believes reinforces the mission of law enforcement and its obligation of accountability to the public. Once police agencies identify their potential problem officers using an [Early Warning System], they can implement appropriate intervention strategies and monitoring techniques with a higher level of confidence.²

This article will explore the nature of the pervasive systemic inadequacies within the police and the lack of decisive interventions to address those.

The need for police reviews, and their focus

Reviews of the police should not be perceived or approached as a witch-hunt aimed at targeting individual police officers. It is much rather about identifying weaknesses or shortcomings in the structure and functioning of the police as an integrated system, and in rectifying these where necessary. As John Fuller points out:

A staff inspection when done correctly is a favorably proactive practice. The purpose is to uncover potential problems and develop solutions within the agency's scope of operations before the problems reach proportions that negatively affect the department and its personnel and before the problems generate negative media attention and community criticism.³

This does not, of course, imply that wrongdoing on the part of individuals or groups, when uncovered, should be ignored. On the contrary, although this should not be the primary focus of inspections,

undue conduct, whenever it is detected, should result in some form of punitive action, either disciplinary steps or criminal prosecution, depending on the nature of the conduct.

External reviews of the police will always find it more difficult to ensure that in addition to recommendations for corrective measures, disciplinary or criminal action is taken against offending members of the police. Examples of such external reviews can be found in inspections by the Office of the Auditor General, the Civilian Secretariat for Police and even Parliament's Portfolio Committee on Police. To some extent the Independent Police Investigative Directorate (IPID) is another good example. Its constituting legislation, the Independent Police Investigative Directorate (IPID, Act 1 of 2011), does give it more teeth than its predecessor, the Independent Complaints Directorate (ICD), but does not specifically mandate it to inspect or review the police.⁴ IPID personnel can, however, make important contributions towards addressing systemic weaknesses in the police, for example by doing a simple analysis of criminal investigations that might reveal some of the underlying weaknesses that allow for this type of conduct.

The importance and, in particular, the correct focus of inspections are also highlighted in a report by the Organization for Economic Cooperation and Development (OECD), published in 2012.⁵ Although the report deals with inspections in a business environment, it concludes that inspections and their enforcement systems need to be constantly improved in order to 'ensure that inspections and enforcement are more risk-based focused, and aim more at promoting compliance and ensuring positive outcomes than at detecting and punishing violations'.⁶

Internal reviews and the policy advisory council

The SAPS has always had a system of internal inspections, largely conducted by the National Inspectorate, but its effectiveness has long been questioned. According to Bilkis Omar, the 'many challenges' that 'persist' at local police level are probably a result of the declining ability of the Inspectorate to carry out inspections and evaluations

regularly and efficiently.⁷ It must be added that even where inspections are carried out regularly and efficiently, it is hardly useful if little or nothing is done to fix the problem.

The Divisional Commissioner of the National Inspectorate, Lt.-Gen. Sharon Jephta, appointed on 1 February 2015, seemed to agree. Shortly after her appointment, on 19 March 2015, she issued an interim instruction aimed at addressing this specific problem. For example, paragraph 2 of the instruction reads as follows:

The feedback reports regarding the implementation of the inspection and evaluation findings submitted, in particular to the Inspectorate, are *not comprehensive to indicate the rectification of the shortcomings indicated in respective reports* [Own emphasis]⁸

The persisting challenges Omar refers to include 'the manipulation of crime statistics, missing case dockets, under-resourcing, inefficient management, lack of discipline and ineffective crime combating at police stations across the country'.⁹ These 'challenges' amount to systemic weaknesses and 'often lead to poor service delivery, hamper policing to communities, create feelings of insecurity and fail to bring down levels of crime'.¹⁰

In obvious recognition that the Inspectorate and other internal mechanisms were unable, on their own, to sufficiently identify and address the pervasive weaknesses in the police, the then national commissioner of the SAPS, Jackie Selebi, decided in October 2006 to appoint 'an independent body, composed of persons with extensive policing experience' to assist the SAPS, inter alia, by:¹¹

- Identifying and comprehensively reviewing issues that need to be addressed by the SAPS in order to improve its effectiveness in the combating of crime
- Enhancing the capacity of the management of the SAPS to address critical policing issues

This independent body of experienced persons was called the Policy Advisory Council and was made up of retired senior members of the SAPS management team.¹² The council comprised two former deputy national commissioners (one of them acting as chairperson), five former divisional commissioners

and eight former provincial commissioners.¹³ Between them they shared experience and expertise that covered many years of management, investigation and other operational areas of policing, and also of support services.

Over a period of two years the council carried out inspections at 858 police stations, representing 77% of the 1 116 police stations countrywide.¹⁴ Subsequent to these visits the council compiled two reports, the first covering the period November 2006 to October 2007 and the second report November 2007 to October 2008.¹⁵ According to the council's first report, it adopted a 'developmental approach' that included an 'on the ground identification and rectification of shortcomings/issues that require attention and that could be fixed on the spot or in the short term'.¹⁶ They mention a number of problems 'rectified' during their visits, such as arranging, with the assistance of provincial commissioners, the 'movement and replacement' of ineffective and inefficient commanders.¹⁷

The two reports painted a bleak picture of the level of management, efficiency and capability at police stations generally and made pertinent recommendations about what was needed to address these deficiencies. After the council's first interim report to the SAPS Management Forum on 24 April 2007, the forum was sufficiently concerned for the national commissioner to announce the formation of 'management task teams' to attend to the issues raised by the council.¹⁸ The activities of these management task teams, however, were clouded in secrecy. As a consequence it was not clear whether they ever became operational and actually performed any tasks.

Besides the many shortcomings identified by the council, are specific findings in relation to systemic weaknesses that relate to management (command and control), discipline, and detectives and inspections. (The period for each report is indicated alongside each finding.)

- Command, control and discipline:
 - 2006/2007: There is a general lack of command and control within the police service at local level. Resultant poor levels of discipline and high levels

of corruption are of serious concern ... Tasks are allocated with no follow up, case dockets are not inspected or inspected in a haphazard manner. Supervision and inspection are neglected.¹⁹

- 2006/2007: An in-depth investigation was done and it was found that there is indeed a disciplinary problem at station level. The general level of discipline is poor. Absence without leave and neglect of duty are common at many police stations.²⁰
- 2007/2008: Many of the problems of the police are the direct result of a breakdown in command and control and a lack of supervision in certain areas. In most instances, poor service delivery, maladministration, ill discipline and corruption have at their core a lack of supervision and control.²¹
- Detectives:
 - 2006/2007: The Detective Service is being neglected in terms of focus and resources. Many station commissioners simply leave the Detective Service to 'carry on' on their own. There is little or no support given. Detectives generally have the worst accommodation and least resources.²²
 - 2006/2007: At many branches there is no proper command and control. Many branch commanders are incompetent. Group commanders and supervisors lack skills, experience, commitment, dedication and discipline.²³
 - 2006/2007: Docket inspections ... in many instances are not done in accordance with required standards and policies.²⁴
- Inspections:
 - 2006/2007: The system of inspections in the police is totally inadequate. The National Inspectorate was also found wanting and is clearly not focused correctly, nor functioning optimally.²⁵
 - 2007/2008: Visits to stations and units ... revealed that at some stations proper inspections from the area/provincial and national level have not been conducted for long periods (years). At most stations regular inspections are not done.²⁶

- 2007/2008: It is seldom or ever that a full inspection is done. Sufficient appropriate capacity to manage and do inspections properly does not seem to exist at any level.²⁷

The Policy Advisory Council went on to cover a large number of other problems and deficiencies identified at police stations and police units, such as in the implementation of sector policing, operational planning, crime intelligence, the Forensic Science Laboratory and Criminal Record Centre, etc. However, apart from the 'rectifications' they made during their visits, there was little evidence that their findings and recommendations led to any meaningful improvements. After their second report, council members' contracts were not renewed, in spite of their expressed willingness to continue their work.²⁸

Report on Parliament's detective dialogue

On 5 September 2012 Parliament's Portfolio Committee on Police conducted a dialogue to discuss the state of the SAPS detectives and to determine what could be done to make them more efficient and effective.²⁹ According to the committee, the dialogue was motivated by the minister of police's budget vote speech in Parliament on 9 May 2012, where he declared 2012 as the 'year of the detective', and also by 'oversight visits' by the committee over the years to police stations where they identified 'numerous challenges' with respect to detectives.³⁰

A number of institutions and independent experts made oral and written presentations during the dialogue. Other participants included representatives from civil society, academics, training organisations and the police, as well as from provincial executive councils.³¹

After each of the presentations there was a fairly robust debate and towards the end of the dialogue, Lt.-Gen. Godfrey Lebeya, at the time Deputy National Commissioner: Crime Detection, highlighted some of the more pertinent issues that emerged from the discussions:

- Corruption: The SAPS acknowledges various challenges regarding corruption in the service, which must be addressed as a matter of urgency.

- Retention: The detective environment within SAPS is not designed to retain staff and the organisation is losing highly skilled detectives due to the lack of a properly developed retention strategy.
- Case loads: The heavy case loads of detectives lead to short cuts being taken, to the detriment of investigations.
- Resources: The detective environment is not sufficiently resourced in terms of personnel, computers, laptops, cellular phones and vehicles.
- Quality: The quality of investigations must be improved.
- Discipline: The SAPS acknowledges that the general discipline of detectives needs to be addressed.
- Training: The challenges faced regarding the training of detectives, especially in basic courses like the Basic Learning Programme, were acknowledged.³²

The committee, in its recommendations, expressed a deep concern with, among others, the lack of a clear career path for detectives, the demoralising effect of corruption, and the lack of effective management at 'station, unit and branch level'.³³ The lack of effective management was also identified as a key concern by the chairperson of the Portfolio Committee, as she then was, Annelise van Wyk, in her address to Parliament on 8 November 2012.³⁴ Finally, the committee recommended that its report and recommendations:

... be elevated to the level of the Minister [of Police] so that we can ensure that the implementation of these recommendations take place ... [and that the] management within the detective service, together with the Civilian Secretariat for Police ... must develop a comprehensive response to these recommendations and other challenges highlighted during the Detective Dialogue.³⁵

At the time of writing not much was publicly known regarding progress on the 'comprehensive response'. From discussions with staff at the Civilian Secretariat for Police it would appear that a lot of work had been done in this regard and

that the process was ongoing.³⁶ For example, the Secretariat, in consultation with the SAPS, compiled a 'turnaround strategy' for the detectives, which it presented to Parliament on 21 May 2013. This was followed by a draft policy document for the detectives that is still awaiting the approval of the Minister.³⁷

While it was encouraging that the Portfolio Committee's report was taken seriously, it was also worrying that it took more than two and a half years to deliver a draft policy intended to address the urgent and serious deficiencies already identified in September 2012.

The National Development Plan (NDP)

Chapter 12 of the *National Development Plan 2030: Our future – make it work*, also, almost indirectly, refers to major weaknesses in the police, which it ascribes largely to a lack of professionalism, the remilitarisation of the police, and leadership challenges.³⁸ The NDP is a product of the National Planning Commission (NPC), appointed by Zuma in May 2010 to draft a vision and national development plan for South Africa.³⁹ The NPC was appointed as an advisory body consisting of 26 people drawn largely from outside government and chosen for their expertise in key areas. They consulted widely with stakeholders and the public more broadly before submitting their plan (the NDP) to the president in August 2012. In September 2012 cabinet announced its endorsement of the NDP and steps to start the implementation process.⁴⁰

Among the diverse and broad thematic areas covered in the NDP's 15 chapters, chapter 12 focused on 'building safer communities'. Much of this chapter focused on the police service, its inefficiencies, and how these could be addressed. Most of these inefficiencies were not distinctly identified, but could be discerned from a reading of the recommendations. Accordingly, the following are examples of the most pertinent recommendations in the NDP:

- The code of conduct should be included in the disciplinary regulations and performance appraisal system and periodic checks should be conducted on the level of understanding and practice of the code.

- A national policing board should be established with multi-sectoral and multi-disciplinary expertise to set [objective] standards for recruitment, selection, appointment and promotion.
- A competency assessment of all officers should be conducted to rate them accordingly (this should not be linked to ranks).
- In the next five years a two-stream system should be developed to create high-calibre officers and recruits (non-commissioned officer and officer streams) to be trained as professionals.
- The national commissioner and deputy national commissioners should be appointed by the president only on recommendations by a selection panel that would select and interview candidates against objective criteria.
- The police 'force' must demilitarise and the organisational culture and subcultures of the police should be reviewed to assess the effects of militarisation, demilitarisation, remilitarisation and 'the serial crises of top management'.

These were all good recommendations and if implemented could go a long way towards effectively addressing the pervasive problems of the SAPS. But it is already three years since cabinet approved the NDP and there are no concrete signs of implementation. At the time of writing, the only indication that the Department of Police was considering plans for implementation was contained in the draft White Paper on the Police. However, although it included a number of NDP recommendations, the draft White Paper was conspicuously silent on others, such as those relating to the appointment of the national commissioner and deputy national commissioners.⁴¹

It is also a moot question as to what happened to the cabinet committee whose establishment was announced on 7 September 2012 to develop targets and integrated implementation plans,⁴² and to what extent this committee may be involved in the implementation of recommendations affecting the SAPS.

SAPS National Inspectorate Report

The SAPS's Inspectorate Division held a 'Basic Policing Indaba' from 20 to 21 January 2015. Very little is known about the indaba outside of the police and the author was only able to access a copy of a Powerpoint presentation highlighting inspection findings in relation to 'basic policing' and 'service delivery' complaints against the police.⁴³ This apparent secretiveness makes it almost impossible to find publicly accessible police reports addressing issues relating to systemic weaknesses. For example, the SAPS Annual Report for 2013/14, in a section covering the Inspectorate, mentioned only the type and number of inspections done.⁴⁴ Nothing was reported on what was found. Much the same can be said about the section on internal audits, the only difference being that it concluded by identifying 'areas of concern', inter alia, the 'slow implementation of internal audit recommendations or agreed corrective actions' and 'delays in consequence management'.⁴⁵

Therefore, rather than assisting the SAPS in hiding these systemic problems and its seeming inability to effectively address them, it is important that every piece of information is exposed to public scrutiny. Only then will we be able to ensure that the pervasive systemic problems that undermine professional policing receive the corrective attention they require.

The mandate of the Inspectorate was, inter alia, to 'report to the national commissioner on the effectiveness, efficiency and quality of service delivery by the [SAPS]'.⁴⁶ In the Powerpoint report the inspection findings (from visits to police stations) were categorised as Visible Policing; Detectives; Crime Intelligence; and Support Services. It did not specify the period covered, but it is assumed that these are for inspections over time and countrywide. The findings were consistent with those in the reports already referred to and, as will be shown, with those in the report of the Khayelitsha Commission of Inquiry. Some of the findings for the first three categories are listed below:⁴⁷

- Visible policing:
 - 'Members on reliefs are not managed accordingly [sic]' ['Accordingly' in this sense is a reference to Standing Orders and other instructions].

- ‘Handing over between reliefs and station commanders is not correctly done.’
- ‘Management and supervision of sector policing by only one sector commander impacts negatively on policing.’ [This finding reflects on staff shortages, work load, lack of appropriate training, etc.]
- ‘Quality of statements is generally poor ... statements are not completed in accordance with prescribed guidelines, do not contain the elements of the crime, are not signed by deponents, and are not sworn to/affirmed by Commissioner of Oaths.’
- ‘Exhibits [are] not properly managed and [as] such lead to evidential value of exhibit[s] being tarnished and the chain of evidence compromised.’
- ‘Manipulation of crime information is a means of improving performance or efficiency of a station.’
- Detectives:
 - ‘Excessive case loads.’
 - ‘Investigation of some cases is substandard.’
 - ‘Complainants are not continuously updated about developments in their cases.’
 - ‘Investigating officers do not comply with instructions from detective commanders and/or requests from public prosecutors.’
 - ‘Investigating officers do not enquire about the linkage of suspects to other cases.’
 - ‘Crime scenes are not managed properly.’
 - ‘Cases are closed or filed incorrectly.’
- Crime Intelligence:
 - ‘Crime intelligence capacity is not optimally utilised at station level to bolster crime prevention, combating and detection.’
 - ‘Crime intelligence products such as CTA [crime threat analysis] and CPA [crime pattern analysis] do not have a standardised format and their content differs from station to station,
 - ‘CIOs [Crime Intelligence Officers] are unable to explain the purpose of a properly constituted

Station Intelligence Profile (SIP) and its importance [for] policing.’

Command and control was again identified as a ‘contributing factor’ for these inefficiencies, along with a ‘lack of consequence management and implementation of corrective measures’ and ‘disciplinary interventions [that] are not consistently implemented and finalised speedily’.⁴⁸ However, apart from resolving that the many instructions that exist in this regard needed to again be brought to the attention of all members and commanders, there was no firm indication from this report that action would be taken to ensure ‘consequence management’ and speedy ‘disciplinary interventions’. The only promise of some form of action was from the aforementioned instruction issued by Jephtha in March 2015 that feedback reports regarding the implementation of the inspection and evaluation findings should forthwith include steps in relation to ‘the rectification of the shortcomings indicated in respective reports’.⁴⁹

Report by the Khayelitsha Commission of Inquiry

For many years the Institute for Security Studies (ISS) called for the establishment of a judicial commission of inquiry independently and authoritatively to ‘assess the functioning of the SAPS and its leadership’.⁵⁰ Since then two commissions of inquiry with a focus on the police were established. The Khayelitsha Commission of Inquiry was established in August 2012 and the Marikana Commission of Inquiry in September 2012. The terms of reference of the Marikana Commission, unlike that of the Khayelitsha Commission, were focused on a specific incident, i.e. the killing by the police of 34 striking mineworkers on 16 August 2012.⁵¹ As this article is concerned with the pervasive systemic problems in the police, and since the Marikana Commission does not contain any specific findings in this regard, the report by the latter commission is not discussed any further in this article.⁵²

When the Khayelitsha Commission of Inquiry was appointed, it also did not fully fit the profile of the commission called for by the ISS, as it was geographically restricted and – mainly because it was appointed by the premier of the Western Cape –

lacked the support of central government. However, the commission was established in terms of section 1 of the Western Cape Provincial Commissions Act 1998 (Act 10 of 1998), allowing it to conduct an independent and authoritative review of the police, in spite of these limitations, and it was focused on systemic problems in the police.⁵³

The commission's terms of reference were, *inter alia*: 'to investigate complaints received by the Premier relating to allegations of inefficiency of the South African Police Service stationed at [Khayelitsha Site B, Lingeletu West and Harare]'.⁵⁴ The commission found a range of systemic and overlapping reasons why the inefficiencies in policing at the three Khayelitsha police stations and the Khayelitsha FCS unit (Family Violence, Child Protection and Sexual Offences Unit), identified by SAPS inspection reports over time, have not been addressed. But according to the commission, the most important reason was poor management at station level, cluster level and provincial level.⁵⁵

Some of the key findings included in the wide range of inefficiencies identified by the commission were:⁵⁶

- There are no established guidelines for patrols of informal neighbourhoods, and by and large, these do not seem to take place in Khayelitsha
- Many crimes reported to the three Khayelitsha police stations and the FCS Unit are not investigated properly or at all, and the commission considers the quality of detective services at the three police stations to be close to a crisis point
- The system of crime intelligence is not functioning according to SAPS national guidelines at any of the three Khayelitsha police stations
- Crime scene management in Khayelitsha is often not in accordance with the prescribed protocol, partly because of environmental difficulties but also because of the lack of basic equipment and training
- Management at the three police stations, the cluster office and the FCS Unit is ineffective
- The SAPS does not comply with the obligations imposed upon it by the Domestic Violence Act

The commission concluded its report with 20 recommendations aimed at addressing these inefficiencies. Six of the recommendations are especially dependent on the involvement of the SAPS at national and provincial level:⁵⁷

- The establishment of an oversight and monitoring team to ensure that the inefficiencies identified at the three Khayelitsha police stations are eradicated
- A change management process for leadership within the Khayelitsha cluster, the Khayelitsha FCS Unit and the three Khayelitsha police stations
- A strategic review of detective services in Khayelitsha by the Provincial Commissioner
- The development of provincial guidelines in relation to the visible policing of informal neighbourhoods
- Review of the procedures by which complaints against members of the SAPS are dealt with both by the SAPS and the IPID
- A memorandum of understanding to be entered into between the Department of Community Safety (DoCS) and the SAPS to facilitate DoCS' carrying out its constitutional mandate to monitor police conduct and oversee police efficiency and effectiveness

According to media reports soon after the release of the report in August 2014, the minister of police indicated that he found the recommendations acceptable and would work with the province towards implementation.⁵⁸ The SAPS apparently also indicated its 'unequivocal' support for implementation,⁵⁹ and according to Dan Plato, MEC for Community Safety in the Western Cape, interviewed two weeks after the release of the report, the provincial government was already working on an implementation plan.⁶⁰

At the time of writing little else was publicly available on progress in implementing the commission's recommendations.

Conclusion

It is astonishing that the pervasive problems undermining the effective and efficient performance of the SAPS have been allowed to continue, in spite of being identified repeatedly by inspections and other

reviews over at least the last decade. That this is the case reflects badly on police management and also, indirectly, on the Civilian Secretariat for Police, which should have had systems in place to ensure that internal processes were monitored and effective steps taken to address systemic weaknesses.

It is to some extent understandable that the police can avoid public scrutiny of and accountability for their internal inspections and evaluations, since they are able to hide behind the excuse of confidentiality. It is, however, less obvious why external reviews appear to be largely ignored or at least not vigorously applied by or in relation to the police. Parliament certainly has the necessary authority, but its wheels appear to be grinding at an embarrassingly slow speed and as a result it seems to be largely ineffective. The Khayelitsha Commission of Inquiry confirmed what we already know. As with all other reviews, the impact of commissions of inquiry is dependent on the willingness and ability of those who appointed them to ensure that their recommendations are properly implemented. The failure to either timeously identify system failures or ensure appropriate interventions have had and will continue to have dire consequences for the police organisation and for the citizenry at large.



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Notes

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