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Your Community-based Safety & Security Magazine

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The law and
pedestrians @
Junctions

SAPS welcomes back Minister Cele

ISSN 1015-2385



Disabled,
abused,
thrown away



Femicide: Dying
for being a woman



Elderly abuse –
the worst form
of disrespect



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Cover photo: By Kotie Geldenhuys

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My EDITORIAL

letter for April 2018

I recently felt as if I had lost all faith in humanity due to the unprecedented levels of violence meted out in different parts of our country. By now our readers are mostly familiar with what happened when five police members from Ngcobo Police Station, situated between Queenstown and Umtata in the Eastern Cape, were brutally killed by a group of armed men who stormed that station. The incident happened in the early morning hours of 21 February 2018 when three police members were killed in the Community Service Centre when the thugs opened fire on the members on duty. But that was not where their killing spree stopped: as they left the police station they shot a retired soldier, took off with a police van and took two police members along. These two members' bodies were later found approximately 6 km from the police station. In the process, the robbers stole two rifles, two shotguns and six pistols. W/O Sibongiseni Sandlana, W/O Zuko Mbini, Const Kuhle Mathetha, Const Nkosiphendulo Pongco and Const Zuko Ntshoku lost their lives during this tragedy in the Eastern Cape.

Shortly after the attack, the SAPS's National Commissioner Gen Sitole activated a task team to investigate the attack. Less than 72 hours later, an operation led by members of the Special Task Force (STF), the National Intervention Unit, the Tactical Response Team and other SAPS members resulted in the suspects being cornered in a "church-like" building which they used as a hiding place. During the shootout, seven suspects were killed and one STF member was injured, while the task team recovered the ten stolen SAPS firearms.

On an equally shocking level, what barbaric criminals did to one of South Africa's top triathletes, Mhlengi Gwala, in the early morning hours of 6 March 2018, did nothing to restore my faith. In fact, I got a lump in my throat when I heard about Mhlengi's ordeal and the way in which he almost lost his legs. What happened was that while Mhlengi was on his way to a training session on his bicycle, he was pulled off his bike. His assailants apparently used a chainsaw to cut into his lower right leg, severely damaging tissue, muscle, nerves and bones - they also started sawing into his left leg, but were by all accounts startled by something and fled. Despite Mhlengi offering them his bicycle, his cellphone and wallet, the attackers had no interest in any of his possessions - they only

wanted to severely injure him. And that is probably why I was so shocked: how can any right-minded person take a chainsaw and try to cut off another human being's limbs? Miraculously, Mhlengi, managed to crawl to the road where a security officer spotted the light from his cellphone and rushed him to hospital. Thanks to the efforts of various medical practitioners and his positive attitude, this 27-year-old triathlete is on the road to recovery - although it will be a long one. Alarming, no arrests have yet been made in this heinous attempted murder. Another concern is that nobody close to Mhlengi, who is said to have no enemies, has any idea about the motive of the attack: was it jealousy or for muti purposes? All we know is that it was definitely not a robbery.

Our reality is that neither these slain policemen nor Mhlengi, are the only victims of crime since we live in a society plagued by violent tendencies where victims are numerous. Vulnerable victims are also not limited to women and children; people who travel to work or athletes who exercise in the early morning hours when few witnesses are around.

In fact, this month our focus is on vulnerable victims, including how persons living with disabilities are at least four times more likely to be abused than people living without disabilities - and that doesn't only refer to people living with mental disabilities. Never forgetting what happened during the Life Esidimeni tragedy when (at least) 144 people were mistreated, abused and starved to death. When one considers that 10% of the world's population are living with a disability, it is a serious slur on the reputation of the rest in how we treat these vulnerable people - not respecting their right to dignity and life.

And what about older people? Those who are equally abused and mistreated when they, in fact, require our support and respect during their last (golden) years. The least we can do is to fulfil our legal obligation of informing a social worker, the Department of Social Development or a police official when we are aware of abuse happening among these older people. If we don't report it, we are equally guilty.

In this month when we celebrate our 24th year of freedom - let's not forget that this freedom is meant for all South Africans! Let's not have more people lose their lives to protect it!

Annalise Kempen
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by Megan Coetzer

A child of a policeman

Ever thought about the impact of parents' jobs on their children? This poem, written by W/O Johan Coetzer's daughter, Megan, says so much, especially when one realises that she was only 13 years old when she wrote it. Many police members' children are as worried about their parents' safety as the police members' spouses are, and this poem is a true reflection of their concerns.

Megan's father, Johan, is stationed at Himeville Detective Branch, KwaZulu-Natal.

Daddy just went,
Quickly slipped out the door
Probably another telephone call
I wonder what it is this time
A murder, a robbery, an accident?
Or maybe a petty little incident
He'd quickly given me a kiss on the cheek
Although I was supposed to be asleep
But he never realised I was awake
My dreams could wait
I waited to hear the murmur of voices
To try and see if I could steal a piece
Of information
But there was only a rattle of keys
And a squeaky door
A jingle at the gate
And finally, an engine roars

Silence filled my room
It was broken by mum's footsteps
And her climbing back into bed
Silence filled my room again
You'd probably think I'd go back to sleep
Nope! This is the time where my worries,
Well, worry me
I dread if I think of the things that could
go wrong
I fall asleep to the sound of worry in my
head
When I awaken, I go look to see if he's
there
Yup, there he sits in his chair, cigarette in
his hand,
TV babbling on in the background
He's SAFE!

Erratum Servamus: March 2018

The article "A walk down memory lane - Paying tribute to a dedicated war hero" that was published in **Servamus**: March 2018 on pp 76-77, refers. Unfortunately, the wrong caption was published with this photo. It should have read: "Capt Willem Jacobus Venter Visser (MC)."

We would like to apologise for the misprint. Ed.



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Industry

Cellphone innovation changing the security landscape

The South African security market is one of the more mature and unique security industries worldwide. Mature in that its origins as a technology and armed response service go back as far as the 1950s, and unique in that violent crime in South Africa is higher than in many other countries. "This has led to a crime solution that consists of a mix of technology, alarm monitoring and armed response, with innovative products and services to allow South Africans to stay ahead of the crime wave," says Stuart Clarkson, the Managing Executive of Fidelity ADT.

As with many industries, the move is towards harnessing the power of the cellphone. In the South African security market this is leading to innovation in two areas: personal safety and response to the cellphone, and management of security technology from a cellphone, both of which are supported by a 24-hour monitoring station and responded to by armed personnel.

Stuart Clarkson says while there are a number of different emergency apps available for cellphones, many of which are free,

there remains a question about the effectiveness of a cellphone emergency button sending an alert to nominated contacts, with no professionally coordinated armed response to the user. "The Fidelity ADT FindU app is a multi-feature emergency button app for smartphones linked to a 24-hour monitoring station and a national footprint of armed response resources. The app can be activated by pressing the panic button, or by shaking the cellphone. The cellphone then emits an audio siren, flashing strobe and records a video at the time of the event. The video and coordinates from the phone are sent to the monitoring centre, which then calls the phone and coordinates a response," he explains.

Home alarms, which form the first layer of electronic security for many South Africans, have also recently taken steps towards the mobile device technology trend. As one manufacturer described it "the keypad is moving to your cellphone". "Alarm systems can now be armed and disarmed, zones bypassed, trouble conditions viewed and activations received on the phone. In more sophisticated solutions, in-home and external video cameras can also be viewed, and even lights and switches can be operated from the phone, wherever you are and whenever you choose," says Mr Clarkson. On some platforms, security scenarios can be programmed to only send alerts on exceptions.

"In many parts of the world self-monitoring of these apps is the norm. Due to the high crime risk in the country, the South African market still requires monitoring of these apps through a security industry accredited and compliant central monitoring station, with armed response. Consumers need to be cautious when looking at technology solutions off the shelf that do not have the facility to be monitored by control rooms, and responded to by armed response service providers," he adds.

South Africans generally understand that security needs to be layered around their properties and lives. In simple terms, this extends from physical security, such as fences, gates and burglar bars; to indoor electronic solutions such as alarm systems with PIRs and door contacts; and external detection devices such as beams for early warning. The next layer beyond this is environmental (neighbourhood) security that includes community CCTV solutions, and Licence Plate Recognition technology that reads vehicle licence plates and has the ability to run the number against databases of suspicious vehicles. "This upstream approach is aimed at preventing a crime through triggering alerts when the threat is identified in the suburb before an incident can take place. CCTV systems alone provide a limited service, and once again it is the central monitoring centre receiving the alert, and acting appropriately to security resources on the ground that offers real value to residents," he concludes.



"To care for those who once cared for us is one of the highest honours."

- Tia Walker

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The fight against poaching is none other than relentless and all consuming. This is all in an effort to protect our proud African heritage and to protect vulnerable and exploited animals from the worst of humanity. Our praise and thanks go out to the dedicated personnel of South African National Parks (SANParks) who tackle this onslaught of epic proportions day in and day out. All the more so we thank the brave rangers who are the tip of the spear and are the very ones who confront these unscrupulous evildoers face-to-face in the unforgiving African bushveld.

Some of these encounters between ranger and poacher may often occur as the culprits attempt their looting under the concealment of night, in the hope to remain undetected and make a quick escape. Despite various advanced technological means in place to counter such attempts, there is little substitute for being able to light up the darkness during those crucial moments, when contact in the bush is established.

It is with great appreciation that the SANParks rangers accepted a massive donation of NiteCore high intensity tactical flashlights, which are not only super bright, but also easy to rifle mount and designed with tactical users in mind. This combination of dedicated ranger and quality equipment proves a formidable force to contend with and is the last line of defence against a living healthy rhino and a killed or mutilated animal.

Donors Louis and Celesti Mathews, owners of NiteCore South Africa, explain: "We have taken the time and put in the effort to investigate, on ground level, just how much of a difference the use of our high-end flashlights is making in this war, especially the fight against rhino poaching which has been at the forefront of the battle for many years now. The Kruger Park has previously purchased some of our equipment and has been using it in the field for quite some time. The feedback that we received was overwhelming, and it was yet again proven

NiteCore supports anti-poaching efforts



that proper equipment in these types of circumstances is absolutely critical. The word tactical superiority comes to mind, and that is exactly what we wish for our ranger forces to be."

It is common knowledge that the cost of anti-poaching operations has skyrocketed beyond belief in recent times. Therefore, the decision to contribute in the form of a donation was easy to reach. On 20 February 2018, Louis and Celesti and their team handed over NiteCore equipment worth half a million rand to a ranger group in Kruger Park. "It is our belief that assisting the rangers in this way will not only allow them to fulfil their mandate but also contribute to keeping up their morale in very testing times for them and their families. As a small four-person company we are in a unique position to contribute through our particular product and I feel strongly that many companies, most of which are significantly larger than us, can do so too. There are some ground-breaking technologies available which have not yet been implemented in the Park, simply due to budget constraints, and as the minutes tick by we lose more and more animals to human greed. Human greed becomes a runaway train when left unopposed. With dedication and commitment, we will win this war, sooner rather than later," concluded Louis.





Boys and very young children are at greater risk of severe online sexual abuse

According to a report released by Interpol and ECPAT International on 6 March 2018, the younger the victim of sexual abuse, the more severe the abuse was likely to be. This inference was made after more than a million photos and videos from around the world, and which are stored on Interpol's International Child Sexual Exploitation (ICSE) database, were analysed as part of the ground-breaking research.

A detailed examination was conducted of a random selection of 800 series of videos and images. Of these, 84% contained explicit sexual activity, assault, gross assault, sadism or other problematic paraphilia such as bestiality, humiliation or necrophilia.

This report also highlights the urgent need for better understanding of online exploitation and for more resources to be allocated towards victim identification.

Infant victims

More than 60% of unidentified victims were prepubescent, including infants and toddlers. They were also more likely to be subjected to abuse and exploitation featuring an additional paraphilic theme. A link between gender and the level of abuse was also identified, with severe abuse images more likely to feature boys. **"Unfortunately most people do not realise that when we talk about child abuse, we are also speaking about very young children, babies who are just months old, being the victims of extreme sexual assault,"** said Bjorn Sellstrom, Interpol's Crimes Against Children (CAC) Unit coordinator.

"Victim identification is at the core of Interpol's work in connecting global investigations into online child sexual abuse. This report underlines the need for more countries to connect to the ICSE database and become part of this important network of investigators dedicated to rescuing child abuse victims. This study will help raise awareness of the challenges facing law enforcement and encourage stronger support in developing victim identification efforts globally," said Mr Sellstrom.

Identifying offenders

Experts agree that the vast majority of online child sexual abuse material is made by those in the victim's circle of trust. For this reason it is vital to identify the victim as it will not only provide authorities an opportunity to remove the child from harm, but is often the first step in identifying the offender.

Dorothy Rozga, the Executive Director of ECPAT International notes that, while millions of videos and images of children being sexually abused or exploited are uploaded every day, the vast majority of both victims and offenders remain unidentified. "This study addresses a pressing need to address the lack of research and indicators on unidentified children depicted in this kind of material, as well as the quality of the response by law enforcement around the world. What is needed now is coordinated global action," said Ms Rozga.

To date more than 12 000 victims of child sexual abuse around the world have been identified via the ICSE database.

Other lessons from the study

- Law enforcement officials face multiple challenges in identifying victims and offenders, even with powerful tools such as the ICSE database.
- As much as 61% of analysed series contained images and videos which were both abusive and exploitative. In the vast majority of the analysed series from child modelling sites, both abusive and exploitative material was visible.
- Accurate determination of core characteristics of victims such as their age is a challenge, particularly across ethnic groups.
- Even though most offenders were men, women were also involved in the abuse and exploitation of children where it is clear their role is complicated.
- The phenomenon of "youth-produced sexual imagery" appears to present a challenge to international law enforcement. This is both in terms of the detection and integration of these types of images into databases, and the identification and classification of its victims.

Reference

Interpol. 2018. "Study finds boys and younger children at greater risk of severe online sexual abuse." - Media statement issued by Interpol dated 6 March 2018.



Dying for being a woman

There are no words to describe the shock when a man cold-bloodedly murders his wife, seemingly without motive. One such a guy was Dr Colin Bouwer, a psychiatrist from South Africa, who emigrated to New Zealand, with his wife Annette. He engaged in a succession of extramarital affairs both in New Zealand and in South Africa. One of his lovers was Anne Walsh, who worked alongside Dr Bouwer at both the university and the hospital in Otago. After attending a conference in Copenhagen together towards the end of 1999, their affair flourished. It was also the same time when Annette Bouwer, who had previously enjoyed perfect health, began feeling dizzy and unwell. The sicker Annette became, the more Anne entered the children's lives as a close family friend. Dr Bouwer in the meantime had written prescriptions for glucose-lowering drugs, grinding them up with a mortar and pestle, and giving them to Annette, most probably in her food. Annette died in January 2000, but her regular doctor refused to sign her death certificate without having a post-mortem conducted. Dr Bouwer objected to a post-mortem of his wife, but his objection was overruled. Significant levels of sedatives and insulin were found in Annette's blood and a further investigation showed they had been obtained via 11 forged prescriptions. After spinning many lies, Colin Bouwer had to face the music and was eventually sentenced in 2001 in New Zealand to life incarceration - of which he had to serve a non-parole sentence of 15 years (refer to Servamus: February 2006 for this crime story).

Photo by Ihsan Haffeejee/GroundUp
Compiled by Kotie Geldenhuys

Violence against women is institutionalised through family structures, social and economic frameworks as well as through cultural and religious traditions (Laurent, 2013). Therefore many people do not recognise that violence against women is in fact a crime. That is why it becomes difficult for some women to recognise that there is in fact something wrong with the way others treat them. Femicides are not isolated incidents arising suddenly and/or unexpectedly. In fact, femicide is the ultimate act of violence, experienced as part of a broader continuum of violence and discrimination. In recent years, there has been a noticeable increase in the rate of women being murdered.

Gender Links for Equity and Justice (2014) estimates that worldwide approximately 66 000 women are violently murdered each year. Southern Africa is ranked

as one of the five regions in the world with the highest rates of femicide. Lopez (2015) argues that it is possibly for this reason that society seems so desensitised about the horrors of violence against women and why some can so easily make light of a serious problem. Another reason is that South Africa is governed within the confines of a deeply patriarchal culture, one that is often marred by misogynistic ideology, values and attitudes which at various levels, and whether done so overtly or subconsciously, objectify women and impose notions of their inferiority to men. Within this context, violence against women is more easily excused or ignored.

The extent of femicide

Stephanie Burrows, a technical officer at the Violence and Injury Prevention programme of the World Health Organisation (WHO) noted that the organisation's latest murder estimates provide data for 2015. They collected data using a questionnaire which was completed by respondents "working on violence prevention" in various ministries and institutions. Data was collected for the years 2000 to 2010 and by using this, the organisation projected murder figures for 2015. She noted that the estimated global rate of femicide (see definition for femicide below) for 2015 was 2.4 per 100 000 women. South Africa's rate for the same year was 9.6 per 100 000 women. This implies that South Africa's rate is almost four times that of the global average when considering the latest estimates (Makou, 2017).

The year 2017 started off badly for women and children in South Africa, when, during the first five months of the year, more than 20 women and children made the headlines after they had been murdered. The list of victims include Nicola Pienaar whose body was found in January 2017 with her pregnant belly slashed open as if she had a C-section; Akhona Njokana who was shot in January 2017; Priska Schalk who was stabbed to death in February 2017; Thapelo Ramorotong who burned to death in March 2017; Manaki Annah Boys who was stabbed and burned to death in April 2017; Lerato Moloi who was raped and murdered on 29 April 2017; Sgt Sthembile Mdluli who was kidnapped and beaten to death in April 2017; Jeannette Cindi who was raped and stoned to death before she was set alight in April 2017; Popi Qwabi who was shot on 12 May 2017; Bongeka Phungula who was shot on 12 May 2017 and Mavis Mabala who was murdered on 19 May 2017 (www.news24.com/SouthAfrica/News/south-africa-a-country-where-women-and-children-end-up-as-grim-stats-20170522). This succession of brutal murders sparked national outrage and many calls for action were made to end the violence. One of those who strongly

reacted to these murders was Cheryl Tshabangu of the Pink Ladies Organisation, who said that it is important that education starts young. "It's high time we taught a boy child what it means to respect a woman. We are living in societies that are broken. Most of these boys who end up being abusive are growing up watching the abuse happening at home," she said. The SAPS also hosted an Action Indaba on gender-based violence and protection of vulnerable groups in August 2017 to address, among other things, murder on women (femicide) and children. In addition, it is foreseen that dealing with gender-based violence, will in future form part of the basic training of police recruits.

What is femicide?

The term femicide was first proposed by Diana Russell at the International Tribunal on Crimes Against Women in 1976 in order to name the intentional "killings of females by males because they are females". Ms Russell's definition is broadly used (UN, 2014) and according to her, femicide can be defined as "the murder of women by men motivated by hatred, contempt, pleasure, or a sense of ownership of women" and "the misogynistic killings of women by men". Vives-Cases *et al* (2016) stress that in relation with this definition of femicide, different forms of female murder are recognised, which include:

- intimate partner-related murders;
- honour murders;
- dowry-related murders;
- forced suicide;
- female infanticide;
- gender-based sex-selective feticide;
- genital mutilation-related death cases;
- targeted killing of women at war; and
- murders in the context of organised crime.

Intimate partner femicide

Although intimate partner violence can be perpetrated by both males and females, Abrahams *et al* (2013) found that women are disproportionately murdered more by their intimate partners. Femicide committed by a current or former husband or boyfriend is known as intimate partner femicide. There is no shortage of examples of women who have been killed at the hands of men, some known to them and some total strangers to them. Some men are the direct perpetrators, while others hire hitmen to do the job on their behalf. From research it is clear that intimate femicide, whereby women are murdered by their husbands, boyfriends or ex-lovers, is the biggest problem. A UK femicide census report reveals that of 113 women killed by men in England, Wales and Northern Ireland in 2016, 78 (90%)

were murdered by a partner or ex-partner and 75% were murdered in their own homes (Bulman, 2017). Preliminary findings of an ongoing study by WHO and the London School of Hygiene and Tropical Medicine show that more than 35% of all murders of women globally are reported to be committed by an intimate partner. In comparison, the same study estimates that only about 5% of all murders of men are committed by an intimate partner. They however caution that these numbers are conservative, given the high amount of missing data, which is particularly concerning in non-industrialised countries (WHO, 2012). It was further found that evidence also shows that women killing their male intimate partners often act in self-defence following ongoing violence and intimidation.

Lopez (2015) reminds that according to the Medical Research Council, **intimate femicide** - the murder of a woman by an intimate partner - **is one of the leading causes of the death among women in South Africa**. A study of mortuary registers, autopsy reports and interviews with police investigators, conducted by the Medical Research Council between 2009 and 2011 found that a woman is killed by an intimate partner every eight hours. Although we don't always hear about all these murders, some of these cases have grabbed the media's attention.

The 29-year-old Reeve Steenkamp was gunned down on Valentine's Day of 2013 by her boyfriend, paralympic athlete Oscar Pistorius (refer to [Servamus](#): July and August 2016) while 22-year-old Karabo Mokoena went missing on 28 April 2017. Her body was discovered the following day, burned beyond recognition, and it took the police two weeks to link her to her family who had reported her missing. The 29-year-old Jayde Panayiotou, was kidnapped and murdered as orchestrated by her husband, Christopher (refer to the article published from pp 34-41 in this issue), who paid a hitman to get the job done. It was similar to that of Anni Dewani in 2010 whose husband Shrien was implicated in her murder during their honeymoon in Cape Town (refer to [Servamus](#): November 2015). The 27-year-old Lerato Olifant was stabbed several times with an assegai after running into a house, apparently to hide from an ex-lover who had dragged her from another house down the street in Kimberley in 2015 (Wildenboer, 2015) while the body of 15-year-old Elda Jaftha from Bredasdorp was found under the bed of her 31-year-old boyfriend, the Zimbabwean national, Gift Sibondo, in 2015 (Booyesen, 2018). The list of women dying at the hands of the men they loved continues.

To address this huge problem, the Department of Justice and Constitutional Development launched a national programme for a dialogue on intimate femicide in March 2017. South Africa does not know how many women are in danger of dying at the hands of their partners because women fear speaking out about abuse and the justice system has no way of collecting credible information on gender-based violence. This national programme could change the way in which cases dealing with violence against women are being reported and filed. **Women around the country will be encouraged to speak out about abuse they suffer at the hands of their partners.** Speaking during the launch of this programme, the Deputy Minister of Justice and Constitutional Development, John Jeffery said: "The incidence of intimate femicide in our country is a serious concern. In 2016 there were approximately 189 000 new applications for protection orders." The Department, however also saw an increase in the cancellation of protection orders by victims. Victims are often threatened by the abuser or the family to withdraw charges. It is further hoped that the dialogues will lead to effective changes in policies. "Intimate Femicide Dialogues are also conducted to respond to the report compiled by the UN Special Rapporteur on Violence against Women, its Causes and Consequences, after a visit to South Africa in December 2015. One of its recommendations is the establishment of a femicide

watch, which would release a report every year, detailing the number of gender-related killings per year, desegregated by age and sex of the perpetrators, as well as the relationship between perpetrator and victim," Mr Jeffery said. At this stage no government department collects statistics specifically on intimate femicide cases, because these contact crimes resort under any of the categories relating to assault or murder or general contact crimes. Mr Jeffery explains: "South Africa is working towards improving its data collection in this regard. **This means we are getting closer to having a 'femicide watch', which will be a databank capturing the details of victims. Currently, all cases of homicide (murder) are captured collectively without the identification of the relationship between the accused and the deceased.** This is mainly because the charge sheet does not make any provision for the capturing of the details of victims. To address this, our chief directorate in the promotion of the rights of vulnerable groups is working with the National Prosecution Authority and other stakeholders to amend the charge sheet by adding an annexure that will reflect the critical details of victims. The SAPS and the Department of Correctional Services are represented in the Charge Sheet Amendment Task Team and have been requested to amend their data capturing tools and systems accordingly" (www.justice.gov.za/m_speeches/2017/20170303-IntimateFemicide-DM.html and www.iol.co.za/news/crime-courts/time-to-speak-out-on-femicide-8037227). This is an ongoing programme and hopefully these changes will be implemented in the near future.

Not only is intimate partner femicide the most extreme consequence of intimate partner violence, it also has a strong and prolonged impact on women's surroundings. The surviving children of women killed by their intimate partners experience long-lasting effects, since they lose one parent to the murder and the other parent to prison. They often have to leave their parental home and adjust to a new environment in which they might be labelled as the child of a murderer (WHO, 2012). A WHO review of risk factors for intimate partner violence perpetration showed that risk factors were similar in high income and lower income settings (Abrahams *et al*, 2013).

Non-intimate femicide

Non-intimate femicide is committed by someone without an intimate relationship with the victim. Etherington and Baker (2015) explain that non-intimate femicide can involve sexual femicide and/or serial killing. Sexual femicide involves sexual aggression,

although it should be noted that the sexual aspect of the murder may not be evident through investigation which could lead to cases being classified incorrectly. Serial murders of women are often motivated by misogyny or hatred of women, classifying these murders as femicide. Jack Mogale, dubbed the West End serial killer, was a predator who hated women and killed them as a result of that hate. During his killing spree, between 2008 and 2009 when he kidnapped, raped and murdered 16 women, he created an image of himself as a smart, trustworthy man. He approached women in Westonaria, Lenasia and Venterspost, southwest of Johannesburg, picking his victims fastidiously: they were black, female and naive. Jack Mogale presented himself as a *moruti* with the wisdom to heal all ailments.

The perpetrator charmed his victims and was able to strike down woman after woman. Only two women survived his clutches: the one survivor testified that a seemingly good man "suddenly turned into a monster". The other survivor told the court how Jack Mogale sped down a gravel road into the veld and pulled her violently from the vehicle. She put up a brave fight, grabbing hold of his sango-ma beads, but he used a brick to smash her face. He throttled her until she lost consciousness and then raped her violently. He left her for dead, but her body

South Africa's rate for femicide for 2015 was 9.6 per 100 000 compared to 2.4 per 100 000 as the global rate.

did not give up. A day later she regained consciousness and crawled to a security officer, who helped her. When Jack Mogale was arrested in March 2009 he showed contempt and hatred towards women. In a warning statement to the late Brig Piet Byleveld, Jack Mogale said: "I want you to help me 'cause when I'm with women I lose control and I don't know what I'm doing. I kill all of them if they don't give me what I want." In his judgment in February 2017, Judge Kgomo told Jack Mogale: "I'm happy, sir, to grant you your wish. Sir, there is no way for you to be outside prison and not come into contact with women. To protect you, and women from you, I'm removing you from society for good to not be in the same place as women again." Judge Kgomo sentenced Jack Mogale to 16 life sentences which are running concurrently and to another 23 years thereafter, without the possibility of parole. The judge said: "His hatred of women could be the result of some life experience, some perceived maltreatment by them" (refer to [Servamus](#): October 2015 for the article about Mogale's crimes).

The murder of women and girls because of their sexual orientation or gender identity

On 28 April 2008, the partially dressed body of Eudy Simelane, former star of South Africa's acclaimed Banyana Banyana national female football squad, was found in a creek in a park in KwaThema, on the outskirts of Johannesburg. She had been gang-raped and brutally beaten before she was stabbed 25 times in the face, chest and legs (refer to [Servamus](#): November 2011 for the crime series about Eudy Simelane).

Lesbian, bisexual and transgender women and girls are subjected to high levels of physical violence, often exceeding the level of violence present in other hate crimes, and resulting in death. Sexual assault may also be used in these crimes as a method of persecution against women who are viewed by perpetrators as having violated traditional sexual or gender norms (Etherington and Baker, 2015). The violence against lesbians in South Africa is characterised by "corrective rape" committed by men who want to "cure" lesbians of their sexual orientation.

Early effective intervention by law enforcement and other support agencies is essential to prevent femicide.

Honour-related murders

Tasleem was only 18 years old when her brother reportedly shot her in the head: her crime was marrying a man of her choice. This is considered a betrayal of a family's honour among many in Pakistan who live by an ancient code of conduct. Many of the family's neighbours agreed that Tasleem's brother had "done the right thing". One said: "I am proud of this man, he has done the right thing to kill her. We cannot allow anyone to marry outside our religion. He did the right thing" (Barbash, 2016).

"Honour"-related murder happens when a woman or a girl is murdered by a male or female family member for an actual or assumed sexual or behavioural transgression, including adultery, sexual intercourse, pregnancy outside marriage or even for being raped. The perpetrators see this form of femicide as a way to protect family reputation, to follow tradition or to adhere to wrongly interpreted religious demands. Murders in the name of "honour" may also be used to cover up cases of incest (WHO, 2012). Women have been shot, stabbed, stoned, set alight and strangled for bringing "shame" on their families for everything from refusing marriage proposals to marrying the "wrong" man and helping friends elope (www.timeslive.co.za/news/world/2017-10-31-men-still-killing-women-for-honour-in-pakistan-despite-new-law). The UN (2010) estimates that 5000 murders in the name of "honour" occur each year worldwide, although this is believed to be an underestimated figure (<https://news.un.org/en/story/2010/03/331422-impunity-domestic-violence-honour-killings-cannot-continue-un-official>). These murders occur mainly in parts of the Middle East and in South Asia, but also among some migrant communities in Australia, Europe and North America (WHO).

Gidda (2017) mentions that transnational honour killings, which happen when family members lure victims overseas to kill them, are a growing phenomenon. From 2010 to 2014, a UK human rights group recorded 29 cases of honour killings of people who resided in the UK, based on media reports. Of these, 11 of the murders were committed overseas, all of them in Pakistan. Perpetrators of these crimes apparently believe that they stand a better chance of getting away with an honour killing if it occurs in countries like Pakistan and India, whose police forces and judicial systems suffer from corruption. Officials in the victim's country of residence are less likely to find out about such a murder and even if they do, police cannot simply travel abroad and launch their own investigation. In the UK, the problem of transnational honour murders attracted

widespread public attention in 2016 when a young woman, Samia Shahid, was found dead in Pakistan on 20 July 2016. Her family had reportedly lured her to the country by saying her father was sick. When she arrived, her ex-husband, assisted by her father, allegedly strangled her. When Samia's second husband told a member of Parliament (MP) for Bradford West in England where she lived, this MP moved quickly and urged Pakistani police to investigate Shahid's death, which her family had attributed to a heart attack. Both Shahid's ex-husband and her father were arrested and charged with her murder. Her second husband believes they killed her because they disapproved of her divorce and of him.

In October 2016, the Pakistani government closed a loophole that allowed the perpetrator of an honour murder to go free if the victim's family, who may have sanctioned the murder, forgives the murderer. The law however, still allows the family to save the murderer from the death penalty. The new legislation mandates life imprisonment for honour killings, but whether a murder can be defined as a crime of honour is left to the judge's discretion. That means that the culprits can simply claim another motive and still be pardoned. They can do so under Pakistan's *Qisas* (blood money) and *Diyat* (retribution) laws, which allow them to seek forgiveness from a victim's

relatives, a particularly convenient means of escape in honour cases. Despite a law being passed, between October 2016 and June 2017 at least 280 honour murders were recorded by the independent Human Rights Commission of Pakistan. The Peshawar High Court twice acquitted a man of honour crimes after this law was passed. It seems that in essence, there is no change in this country, despite the legislation which is in place (www.timeslive.co.za/news/world/).

In India, police historically recorded honour murders, if they were reported, as regular homicides. As a result, the Indian government had no indication of how many honour murders were committed each year, though it knew the problem was significant. In 2014, in an attempt to combat this, officials ordered police to list honour murders as a distinct category of murder. Despite this new law, the numbers suggest Indian police are still miscategorising or overlooking hundreds of deaths. After the government's proclamation, Indian police recorded 251 honour murders in 2015, up from 28 in 2014 (Gidda, 2017).

Dowry-related femicide

Shortly after Madiha, a 22-year-old woman from Gujranwala, got married her abuse at the hands of her husband, Amir, started. He beat her regularly, simply because she was unable to bring a motorbike for Amir in her dowry. Two months after the wedding, Amir and his family doused Madiha with petrol and set her on fire. She died within a short period of time (<https://blogs.tribune.com.pk/story/47476/pakistan-kills-about-2000-women-per-year-over-dowry>).

A dowry is a cultural tradition where the family of the bride provides money and/or property to the family of the groom. When a larger dowry is requested following the marriage of the bride and groom, or when the groom's family is dissatisfied with the dowry given to them, the woman starts to be considered an "unsuitable wife". Women are then murdered or forced to commit suicide through torture and harassment by the groom's family (Etherington and Baker, 2015). Dowry is paid in the form of cash and goods such as jewellery, household appliances and cars to the bridegroom or his parents by the bride's family. It has been illegal in India since 1961 but remains commonplace, with tragic consequences. According to India's national crime statistics bureau, 8000 dowry deaths are recorded each year. Women have also committed suicide over dowry harassment. In January 2017, a software engineer in Hyderabad hanged herself after being harassed for dowry payments by her husband, even though her

family had already given him land and substantial amounts of gold and cash at the time of their marriage (Bundhun, 2017).

While Russell's definition of femicide is limited to murders of females by males because they are female, there is a significant minority of murders of females by females because they are female, such as the participation of some Indian (South Asian) mothers-in-law in murders of their daughters-in-law in dowry femicides. Therefore Russell (2008) refers to these crimes as female-on-female murders.

Genital mutilation-related femicide

"My two elder sisters and I were taken to our aunt's place. My sisters were 16 and 14, and I was 13 at the time. All of the sudden we saw all our family members. They were singing and dancing. I was very nervous and immediately started throwing up. My 16-year-old sister stood up and ran away, but our mother was the one to chase her and bring her back in. She was the first one they cut and then my middle sister. I didn't see when they were cutting them and I was the last. My eyes were tied and my foster mum took my hand and led the way. They asked me to lay down, which I obviously did. Suddenly I felt this unbelievable pain. I started fighting and managed to pull the cloth from over my eyes. My aunt sat on my chest and then they cut me. It's so painful it's impossible to bear. They took me into a small room. My sisters were already there. When my elder sister wanted to urinate, she started bleeding. Overnight it became worse and on the fourth morning my middle sister started bleeding. It was shocking. We were miles from the nearest town, they could not take them to hospital or even seek medical help. According to the custom there, it is taboo for a man to see you at that time. On the seventh day after the cutting, my middle sister died at the age of 14 and when my elder sister died the following morning, my world changed. In that part of the bush, when you die, it's your fault. The victim's fault - can you believe that? The even more upsetting part about it is that they do these harmful things to babies as young as 7 days old," a 29-year-old woman from Sierra Leone recalls (www.dw.com/).

Female genital mutilation involves the partial or full removal and/or injury of female genitalia for non-medical purposes. It is typically performed on girls between infancy and 15 years of age. Infections incurred as a result of unhygienic operations, frequently result in a loss of life, which is considered an acceptable outcome (Etherington and Baker, 2015). The UN states that the huge global scale of female genital

mutilation reveals that **at least 200 million girls and women who are alive today have undergone ritual cutting**. The UN found that approximately 44 million victims of female genital mutilation around the world are aged 14 or younger and the majority of girls who have had their genitals mutilated were cut before they were five years old (Elgot, 2016). Unfortunately, many of the victims also die as a result of female genital mutilation.

The UNFPA (2018) argues that reasons given for practicing female genital mutilation fall generally into five categories:

- Psychosexual reasons: female genital mutilation is carried out as a way to control women's sexuality, which is sometimes said to be insatiable if parts of the genitalia, especially the clitoris, are not removed. It is thought to ensure virginity before marriage and fidelity afterward, and to increase male sexual pleasure.
- Hygiene and aesthetic reasons: In some communities, the external female genitalia are considered dirty and ugly and are removed, ostensibly to promote hygiene and aesthetic appeal.
- Sociological and cultural reasons: female genital mutilation is regarded as part of a girl's initiation into womanhood and as an intrinsic part of a community's cultural heritage. Sometimes

A study of mortuary registers, autopsy reports and interviews with police investigators conducted by the Medical Research Council between 2009 and 2011 found that in South Africa, a woman is killed every eight hours by an intimate partner.

myths about female genitalia perpetuate the practice. These myths include that an uncut clitoris will grow to the size of a penis, or that female genital mutilation will enhance fertility or promote child survival.

- Religious reasons: Although female genital mutilation is not endorsed by either Islam or by Christianity, supposed religious doctrine is often used to justify the practice.
- Socio-economic factors: In many communities, female genital mutilation is a prerequisite for marriage, especially where women are largely dependent on men, economic necessity can be a major driver of the procedure. Female genital mutilation sometimes is a prerequisite for the right to inherit. It may also be a major income source for practitioners.

Female genital mutilation is prevalent in Africa, Asia and the Middle East, as well as among immigrants in Australia, Europe and the United States (Laurent, 2013).

Female infanticide and gender-based sex-selective feticide

In July 2013, a new-born baby girl was found where she was buried alive in an Indian forest. She was only one day old when she was found wrapped in a cloth and half buried under earth and gravel. She was rushed to a local government hospital with heavy bleeding from her nose and mouth but tragically died the following day from her injuries (Miller, 2013). In another case, triplet girl babies were born healthy but the following day they were declared dead. Autopsy reports showed that the family had killed them by putting salt in their mouths. In another recent incident, a father threw his new born off a train within 12 hours of her birth. There are millions of little girls under the age of six years who are killed in India through deliberate neglect, starvation, violence and often premeditated murder. They are killed with undisguised vengeance simply for being born as girls (<https://genderbytes.wordpress.com/2010/05/17/her-story-karishmas-grandmother-tried-to-kill-her>). Szczepanski (2017) emphasises that in China and India alone, an estimated two million baby girls go "missing" each year. They are selectively aborted, killed as new-borns or abandoned and left to die.

Etherington and Baker (2015) argue that when female foetuses are aborted because they are female, it is considered gender-based sex-selective feticide. These types of femicide are reflective of "the lower 'value' of women in patriarchal societies". Female feticide is rife in India, as many families prefer having baby boys to girls. Male children are preferred in the belief they will bring wealth and prosperity to the family while female children are often viewed as burdens. Another factor is the dowry system, since families with several daughters can find the practice of paying a dowry a serious burden. In 2012, the medical journal **Lancet** wrote that 500 000 girls in India were being lost annually through sex-selective abortions. Female feticide began in the early 1990s as a result of the availability in India of ultrasound techniques capable of determining the sex of an unborn child. As a result, 80% of Indian districts have reported a greater ratio of male to female children since 1991. The practice is believed to have led to an increase in human trafficking with women being bought and sold as brides in areas where there are a greater proportion of men (Miller, 2013).

Organised crime-related femicide

Organised crime-related femicide involves femicides associated with gangs, drug and/or human trafficking and firearm proliferation. This type of killing can involve kidnapping, torture and sexual assault, murder and mutilation, decapitation, and the public display and/or dumping of naked bodies and/or body parts in empty wastelands. Violence perpetrated against women in drug culture symbolises gang cohesion and masculinity and serves to threaten the enemy. Women are also viewed as disposable objects in drug culture, reinforced by their use as drug mules without concern for their well-being (Etherington and Baker, 2015).

Yagoub (2016) informs that Latin America has some of the highest femicide rates in the world. It was found that 50% of the 854 women killed in Guatemala in 2015 were murdered as a direct result of organised crime. Human trafficking is a vast illegal economy in Latin America, where such victims to and from the region are on the increase, and so are the number of fatalities. Female victims from across the region as well as other areas, such as Eastern Europe, are tricked into working in the sex trade where they are tortured, raped and often murdered. Another Latin American phenomenon that can help explain the high rate of female murders is the presence of gangs. While the majority of gang-related deaths are men, one of the fundamental threats to women is that they are considered to be the property of gang members. Consequently, during disputes between

gangs, women are frequently caught in the crossfire, with girlfriends, sisters and mothers targeted by rival gangs. In many cases, female relatives of imprisoned gang members make easy targets for revenge killings, as the male is unable to protect them. Femicides can also be high among women who become members of criminal organisations. Within organised crime, patriarchal structures and traditional gender roles continue to be reproduced. Women seldom occupy higher positions in such organisations and are rather used for menial, but often dangerous tasks. Perhaps the most high-profile of these largely female roles is the "mula" or drug "mule". This duty can all too frequently lead to death if drugs enter the mule's bloodstream, and she can also be killed later, as punishment for getting caught. In other criminal structures, women can be used as expendable members, working as extortion collectors or as drug dealers.

Targeted killing of women in armed conflict

Etherington and Baker (2015) note that both state and non-state actors perpetrate physical, sexual and psychological violence against women and girls as a "weapon of war". Such actions are intended to punish or dehumanise women and girls, and to persecute the community to which they belong. They are also used as a method of instilling fear, domination and

control. Targeted killings are premeditated, with lethal force intentionally used against selected victims. Laurent (2013) argues that reports of this practice were found during the Bosnian conflict, where between 200 000 and 500 000 women and girls were raped. These occurrences happened in the victims' homes in front of their families or were committed in large-scale detention camps. It was not uncommon that, soon after the rape, the woman was killed.

Victims due to accusations of sorcery and/or witchcraft

Laurent (2013) adds the murder of women due to accusations of sorcery and witchcraft to the forms of femicide. If women are perceived to be dangerous and/or a threat to men, they may be made out as scapegoats in the form of an accusation of witchcraft and/or sorcery. Some accusations are economically motivated, for the intended purpose of taking over land or possessions. This pattern of violations includes violent murder, physical mutilation, displacement, kidnapping and disappearance, or the subjugation of women to exorcism ceremonies involving public beatings and/or abuses by shamans or village elders. In a study conducted in Zimbabwe, it was found that of the 42 cases of femicide involving women older than 50, most of the women had in fact been accused of witchcraft by male relatives prior to the killings. In the last 20 years, thousands of women were strangled, stabbed and burned alive on the pretext of practicing "witchcraft" in Tanzania. In only a short period of time, between January and July 2017, 479 Tanzanian women were accused of practicing witchcraft and murdered (www.telesur.tv/english/news/Report-479-Women-Accused-Of-Witchcraft-Killed-in-Tanzania-20170731-0029.html).

South Africans also witness this form of femicide when we hear about the murder of women who were accused of witchcraft. South African examples include an incident in January 2017 where a 70-year-old woman was murdered and another injured in the Eastern Cape after being accused of witchcraft (www.enca.com/south-africa/elderly-women-terrorised-in-ecape-village-over-witchcraft-claims) as well as the murder of a 78-year-old woman in Pietermaritzburg after she was accused of witchcraft (Ngubane, 2017). Eastern Cape Social Development MEC Nancy Sihlwayi, explained the superstitions that some held about older women by saying: "When she's old she loses some complexion, she loses shape and because she has become disfigured there is a belief that she is now a person who kills under the science that is not known by many people, witchcraft" (www.enca.com/south-africa/elderly-women-terrorised-in-ecape-village-over-witchcraft-claims). In

the Pietermaritzburg case, the victim was accused of having body parts in her house including the liver of a child. What the community referred to as a child liver later turn out to be window putty (Ngubane, 2017).

Responding to femicide

Tackling femicide is extremely difficult, especially when one considers how gender discrimination and violence against women are so embedded within social, cultural and economic structures. Laurent (2013) reminds that responses to femicide must be comprehensive and involve the following:

- Development and implementation of strong legislation;
- Gender sensitive law enforcement policies and protocols;
- Awareness promotion at grassroots level;
- Support for individuals and families experiencing violence;
- Realisation of women's social, economic and political rights;
- Educating men and boys; and
- Educating women and girls.

Gender Links for Equity and Justice (2014) argues that prevention efforts should target attitudes, beliefs and behaviours that condone or perpetuate violence as part of national violence prevention strategies. It is also vital that law enforcement officers receive effective training, education and sensitisation in appropriate ways to deal with victims of domestic violence and sexual assault.

Early effective intervention by law enforcement and other support agencies is essential to prevent femicide. Law enforcement agencies must have the capacity to:

- support women's assessment of the risk they face;
- provide appropriate and effective protection measures;
- enforce restraining orders; and
- refer women to social services, including shelters and safe houses.

Police must be monitored and continuously assessed in terms of how they treat victims of violence and sexual assault in order to encourage the public to report crimes. Police monitoring to ensure rigorous investigation, evidence gathering and accurate recording procedures must take place in order for cases to be brought to court to be prosecuted.

According to Gender Links for Equity and Justice (2014), femicide should be defined as a specific crime. Laws must be implemented, so that cases are diligently investigated, perpetrators brought to trial and conviction

and sentencing must be commensurate with the heinous crime.

Femicide, as all forms of violence against women, is deeply rooted in historically unequal power relations between men and women and it is often embedded in and supported by social values, cultural patterns and practices. It is a global issue that claims millions of lives annually which include girls and women of all ages - from foetuses to elderly women. Shockingly, the prevalence of different manifestations of femicide is increasing rather than decreasing on a global level and impunity continues to be widespread. Femicide often remains unpunished, which not only intensifies the subordination and powerlessness of women and girls, but also sends a negative message to society that violence against females may be both acceptable and inevitable. It is the most extreme manifestation of violence against women and is a gross human rights violation. All nations across the world should take femicide seriously and respond effectively to this crime committed against women simply because they were born female.

Editor's note

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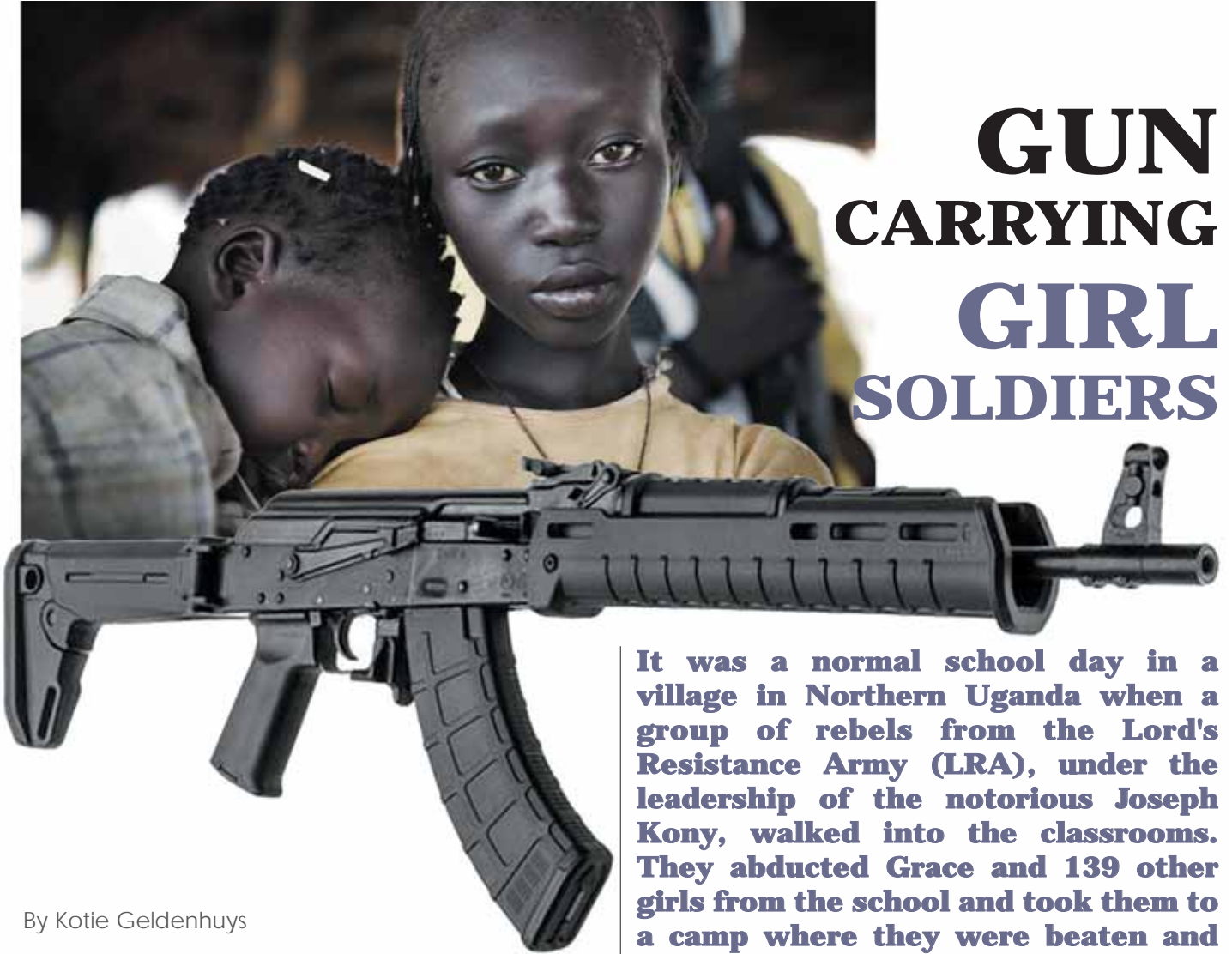


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GUN CARRYING GIRL SOLDIERS



By Kotie Geldenhuys

Whenver the topic of child soldiers is discussed, we typically picture young boys carrying large automatic attack rifles in their hands. But the reality is that there are also many girls who have to face all the violence a war can offer, although the majority of child soldiers are boys. Patriarchy wants girls to be naturally peaceful, pacifist and passive, while boys will be inherently violent, aggressive and impulsive (Penicaut, 2016). No wonder that girl child soldiers are invisible.

Why are children used?

When the topic of child soldiers is discussed, one cannot help to wonder why any army or military movement would rely on the inferior physical power and inexperience of children. And, why children are the "weapons of choice" in so many countries? Denov (2007) notes that children in general and girls in particular, are highly valued by armed groups as they are perceived as highly obedient and easily manipulated. Another advantage is that these children neither require payment nor do they have families to support. Dudenhoefer (2016) further explains that more than 50% of the population in many African conflict or post-conflict zones consist of children younger than 18 years old. Consequently, one of the reasons for employing child soldiers is that "they are viewed as expendable, replaceable" and are cheap to maintain. They are also psychologically more vulnerable than many adults, who have already shaped their personalities. Since younger children in particular can lack a sense of fear, they might be preferred over adults

It was a normal school day in a village in Northern Uganda when a group of rebels from the Lord's Resistance Army (LRA), under the leadership of the notorious Joseph Kony, walked into the classrooms. They abducted Grace and 139 other girls from the school and took them to a camp where they were beaten and mistreated. Deprived of food and sleep, completely dependent on their captors for survival, they underwent a crude form of basic training before being handed AK-47s and thrown into combat where they were forced to kill. "Most of the children were sent to the forefront with the leaders behind them. When your bullets were finished you shoot your friend in order to get more bullets. At the same time the leaders used children as shields, so that the children get shot and they survive," Grace recalls - she spent seven months in captivity, before she managed to escape (De Grave, 2012).

.....
because they accept more dangerous tasks without asking too many questions. Children and adolescents' identities are still being formed, meaning that they can more easily be influenced and controlled, since they are dependent on protection and guidance.

Although children are smaller and physically weaker than adults, child soldiers are able to take part in combat as they mainly use AK-47 assault rifles which can be easily carried and used by children (an AK-47 weighs between 3 and 4 kg). This makes them almost as dangerous and effective as any adult soldier. When I read the book *A Long Way Home* I remember where Ishmael Baeh from Sierra Leone wrote that killing became “as easy as drinking water”. He was only 12 when he was kidnapped by a government militia and trained to kill in the most inhumane ways possible.

How big is the problem?

De Villiers (2015) argues that worldwide, 230 million children live in countries affected by armed conflicts, of whom 15 million are caught up in violent conflicts in countries such as the Central African Republic (CAR) and South Sudan. Many children have been abducted and/or recruited and used by government forces and armed groups. As many as 300 000 children are believed to be serving as soldiers in armed conflicts around the world, but accurate figures pertaining to child soldiers around the world are difficult to find. **Boys and girls, some as young as seven, serve in government forces and armed opposition groups. They fight on frontlines, participate in suicide missions and act as spies, messengers or lookouts. Sadly, these children are deprived of a normal childhood and education** (<https://reliefweb.int/report/central-african-republic/10-countries-where-child-soldiers-are-still-recruited-armed>). The UN stresses that approximately 40% of all child soldiers are female (although numbers are near impossible to pin down due to under-reporting on this issue) (www.un.org/youthenvoy/2015/02/4-10-child-soldiers-girls). De Grave (2012) adds that the girl child soldier is largely hidden from view, masked by the leaders of armed groups who refer to girl combatants as “wives” or “sisters”.

In 2006, world leaders agreed to work together to stop the use of child soldiers. According to the United Nations children's agency UNICEF, approximately 65 000 children have been released from armed forces and armed groups between 2006 and 2017 (<https://reliefweb.int/report/central-african-republic/10-countries-where-child-soldiers-are-still-recruited-armed>). Although progress has been made, there are still child recruits in countries around the world. Briggs (2017) provides a list of countries where child soldiers are still recruited and used in conflicts. These include:

- Afghanistan, where the Afghan National Police, the Afghan Local Police and three armed groups including Taliban forces, were listed as perpetrators.
- The Central African Republic (CAR), where as many as 10 000 children were used by armed groups involved in the latest conflict as combatants, guards, human shields, porters, messengers, spies, cooks and/or for sexual purposes.
- The Democratic Republic of Congo (DRC), where children continue to be recruited and used by numerous armed groups. Girls are often used as “wives” and are sexually abused by their commanders and other soldiers.
- Iraq, where Human Rights Watch has documented the recruitment or use of children by Sunni and Shia Arab armed groups fighting in Iraq, including militias in the battle to retake Mosul.



- Myanmar, where internal armed conflicts have seen children widely used by both state armed forces and armed groups.
- South Sudan, where an estimated 17 000 children have been recruited in South Sudan between 2013 and 2017.
- Nigeria, where the terrorist group Boko Haram recruited 2000 child soldiers in 2016, according to the UN. It was also reported that they used girls as suicide bombers in Maiduguri, when two bombs went off killing at least one person. A local militia member, Abdulkarim Jabo, was reported to have said he thought the girls were each aged about seven or eight, commenting: “They got out of a rickshaw and walked right in front of me without showing the slightest sign of emotion. I tried to speak with one of them, in Hausa and in English, but she didn't answer. I thought they were looking for their mother. She headed towards the poultry sellers, then detonated her explosives belt.”
- Somalia, where, according to the UN, 903 children had been recruited in 2016. Of them 555 were by Al-Shabaab. The Somali National Army also recruited a high number of children, who were used for various tasks, such as manning checkpoints.
- Syria, where since 2014, warring sides have recruited children as young as seven. More than half of children recruited in 2015 were under the age of 15. Children have been filmed executing prisoners in grisly propaganda videos by the Islamic State group.
- Yemen, where there have been nearly 1500 cases of child recruitment since the escalation of hostilities in 2015.

Girls suffer the most

No child - boy or girl - is ever supposed to be carrying a weapon and kill people. But it seems that the fate of girl soldiers is often worse than that of boys in the same situation. Kiplagat *et al* (2014) stress that while all such children who are kidnapped suffer high levels of torture, differential gender-based violence in captivity is evident, with the girl child suffering the most. Angucia (2010) captures this intense experience of the girl child soldier by quoting one of the girls: “... **for instance, mothers carrying their babies on their backs will be running with a corpse on their back without ... noticing. You can only realise it when you want to breastfeed and, some could even remove their kids from the back without the head ...**” Esslemont (2013) further mentions that one girl was also forced to perform abortions on other female recruits, who were not allowed to have children, in order to keep them focused on their guerrilla duties. The girl said that the women recruits think that if

they get pregnant, then they're lucky and will be freed. "They are mistaken. It doesn't matter how long a woman has been pregnant. It could be two or eight months. Either way, she will get an abortion."

Girls are also used as sex slaves by male rebels in areas where HIV rates are extremely high. If they are lucky, girls are made "bush wives" and form longer-lasting relationships with commanders. But once the conflict is over, they have lost any chance of a respectable marriage and often endure lives as sex workers in cities rather than face the shame of returning to their families. One can rightly argue that girl child soldiers are the invisible and most vulnerable groups during conflict (www.cpc-jalliance.org/international-day-african-child).

Recruitment of girl child soldiers

Denov (2007) reminds that some girls who end up in armed conflict, sometimes join the group voluntarily, while others are forcefully recruited. Those who volunteer appear to join fighting forces for a variety of overlapping reasons, including religious or political beliefs, to obtain food, shelter, medicine and to seek revenge. They may also join armed groups because they may perceive the armed group as providing critical protections from violence, whether from direct violence or violations by state forces and armed groups, or protection from unwanted marriages or sexual abuse at home. However, many girls are forcibly kidnapped, raped and forced to take up arms.

Girls - trained to kill

While it is true that girls are often subjected to sexual slavery and relegated to domestic tasks such as cooking, many girl child soldiers also receive weapons training and are deployed in combat (www.un.org/youthenvoy/2015/02/4-10-child-soldiers-girls). Denov (2007) explains that following their kidnapping, most girls are involved in some form of military and/or ideological training to support the armed group. They are trained in an array of activities to support the everyday functioning of armed groups that included pillaging techniques following an attack, loading and dismounting arms, defence techniques, accompanying male soldiers, sabotage, midwifery, welcoming, rousing, singing and dancing for special events. Girls also undergo weapons and military training and a small percentage receive advanced training. One girl explained: "When we were captured ... they took us to their base and trained us. They trained us to shoot guns, to run, escape and to fight ... They taught us how to load our magazines, press the trigger, put it in rapid firing. Some forms of physical training were also involved like jogging ... They also showed us how to set an ambush, how to attack and defend ... It was strenuous ... **After the training with the guns, they would bring someone for us to kill. Each one of us was forced to kill.**" **To enable the girls to train and fight more effectively, they were given alcohol and injected with drugs.**



Combat activities formed the crux of their involvement in armed conflict. One of the girls said: "Our only motive to exist was killing. That is the only thing that we thought about ... I burned houses, captured people, I carried looted properties. I was responsible for tying people and killing. I was not too good at shooting, but I was an expert in burning houses. This was less risky. We could just enter the house after the enemy had left the area and set it on fire with kerosene or petrol. In becoming fighters, girls often became perpetrators of severe acts of violence and atrocities. Some girls evolve from being frightened, disoriented recruits into fierce combatants. One of them told researchers: "I didn't have the mind to kill someone initially ... but later on I enjoyed the wicked acts ... I was responsible for killing anybody that was assigned to die. I was so happy and vigilant in carrying out this command." There are also a few cases where girls gained powerful positions as leaders and commanders of other combatants. McKay and Mazurana (2004) note that girls held command positions within Northern Uganda's Lord's Resistant Army (LRA) as captains, lieutenants and corporals. Denov and Maclure (2005) report about a girl who was promoted to the rank of a commander. This girl said: "I became a soldier and later a commander. My job was to mobilise soldiers and lead them to fight ... As a commander, I had six child bodyguards who protected me ... I was a commander not only for children but even for some soldiers." Aside from direct combat roles, girls also take on other critical and related military functions such as to train incoming recruits, to act as intelligence officers, spies, recruiters, medics, first aid technicians and weapons experts (Denov, 2007). Esslemont (2013) adds that one girl who was abducted at the age of 12 was brainwashed by the guerrillas to act as an informant. According to her, the Fuerzas Armadas Revolucionarias de Colombia (Farc) recruits girls for this reason, because no-one suspects a little girl. "A little girl can transport money, weapons, drugs much more easily."

Girls are often afraid of firearms but as the conflict drags on, the girls become increasingly aware that carrying a firearm can be a way to increase their safety and over time they become eager to possess their own firearm. One girl mentions that she was eager to become a soldier to "have my own gun so that I would be able to resist threats and harassment from other soldiers" and another said that "the gun became my bodyguard and protector. The gun was power and that's why I was anxious to have one" (Denov & Maclure, 2005).

Boys and girls, some as young as seven, serve in government forces and armed opposition groups.

Sexual abuse of girl child soldiers

Being a sex slave is perhaps one of the most common pictures of a girl involved in an armed conflict. Most of the girl child soldiers are used also for rendering sexual services. Some of the girls are even intentionally kidnapped or recruited to become the “wives” of commanders. Sometimes they are serving as a kind of reward for the best fighters and other times they are being sexually abused daily by multiple men (Foukalová, 2013). Denov (2007) mentions that gang rape and sexual assault are common. One of the girls said: “We were used as sex slaves. Whenever they wanted to have sexual intercourse with us, they took us away forcefully and brought us back when they finished with us. Sometimes, other officers took us up as soon as we were being finished with and subsequent ones were particularly painful ... I don’t even know who might have been the father of my child.” Another girl explained: “At the beginning, I was raped daily. At least one person would come to me for sex ... I was every man’s wife. But later, one of them, an officer, had a special interest in me. He then protected me against others and never allowed others to use me. He continued to rape me alone and less frequently.”

Escaping from captivity

Attempts to escape are never easy because many children, who have tried to escape, were captured and killed, often by their own peers. This served as a tool for scaring those children who thought about escaping (Kiplagat *et al*, 2014). Other factors that need to be taken into consideration when these children planned to escape are the distance the girls have to cover to “safety” as well as the hostile wilderness, diseases and hunger. Those who manage to escape successfully, will walk until they reach a village where they are assisted, while others who might know the area, will walk straight home. Denov (2007) stresses that children have been intimidated with terrifying threats that any attempt to escape their captors would be met with death. Stavrou (2004) cites one girl who said: “There in the base where I was, they caught a girl who had left a one year old baby behind when she tried to escape. They went after her and caught her and killed her when they brought her back. Everybody had to assist. They put a red band across her eyes and then they killed her. They did it to make the others afraid so that they would not try to escape.” Ellison (2016) also mentions a girl who was only 16 when she had to kill a man who was sentenced to death for trying to escape the armed group. She said: “I covered his eyes first with a dirty rag. I used a wooden club to do the job. It only took a minute.”

Children suffer long after the war

Children who manage to run away from the rebels or who are rescued, suffer emotionally and physically for many years to come. According to Kiplagat *et al* (2014), emotional scars manifest in the form of flashbacks, nightmares, alienation, appropriation, dispossession, guilt and mental recounting of the past. These children have physical scars to show which include deformity and bullet-wounds or bullets in the body. Then there are the “illegitimate” children who were born in captivity and remain a constant reminder to the girls of what had happened in the bush. Foukalová (2013) writes that the girl’s sexual activity during the conflict, even if only presumed, may stigmatise her in the eyes of her own family and original environment after her return. She may be regarded as



“impure” resulting in her family rejecting her - she will not find a husband or a job, which explains possible increased rates of prostitution following armed conflicts. Kiplagat *et al* (2014) argue that rejection by family and/or community members on the basis of disclosure of rape, pregnancy or having children considered as “rebel children” forms part of the victimisation process. Friedman-Rudovsky (2013) tells the story of a girl child soldier from Sierra Leone whose family had thought she was dead. That was the rumour her parents heard during her almost three-year disappearance. She had managed to get word to them that she was alive only just before the war ended, so when she appeared following the cease-fire, pregnant and with a daughter born in the bush, no one thought they were seeing a ghost. She remembers her mother’s smile and embrace. “My father didn’t want to see me. He was ashamed of me. He and a lot of others here thought we weren’t fit to live with our families anymore because we had been with the rebels. People would say to me and the other girls, you are rebels - you don’t belong here,” she said. It seems that this victimisation of girl child soldiers is ongoing and has no expiry date.

Coulter (2010) adds that girls in Sierra Leone learned to survive in the bush by traditionally losing their “femininity” and being “tough and aggressive” or “wild”. Kiplagat *et al* (2014) also mention that “these children tend to use violent methods to get what they want, just as they learnt”.

Reintegration

The reintegration of female child soldiers poses one of the greatest challenges for those endeavouring to protect them. De Grave (2012) argues that neither boy, nor girl child soldiers, are really accepted back into society, but for the girl child soldier it is harder especially when they have unwanted children. The boy child soldier can go back to school, train and develop life skills but for a girl, for her to go back to school and try and acquire life skills, she has to think about her children, arrange babysitting or stay at home. With boys, people can forget that they used to be soldiers, but the girl soldier walks with a child, who makes her past unforgettable - the stigma lingers on forever. A former girl child soldier said that she was called a number of names such as “Kony’s wife” and “Kony’s prostitute”.

Although a third of all children associated with armed groups in the DRC are thought to be girls, they make up only about 7% of children released

to date. When they are released or escape from armed groups, they receive little or no support to reintegrate into their communities, and many are shunned (<https://reliefweb.int/report/central-african-republic/10-countries-where-child-soldiers-are-still-recruited-armed>).

De Grave (2012) writes that former girl child soldiers are stigmatised as HIV carriers and ostracised as mothers to children born of war. Without support these girls have few opportunities in society and therefore many of them turn to prostitution. They may no longer be child soldiers but they are forced to trade-in their freedom once more. Social workers and people working with girl child soldiers have a huge role to play to reintegrate these girls into the community. This is very important, otherwise they are left to fend for themselves.

Ellison (2016) mentions a girl who spent more than half of her life in the Ugandan bush with the LRA, but since returning home in 2015 after she escaped, the former child soldier must now battle poverty and stigmatisation. The stigma was also passed down to her children. One day the former girl child soldier heard children in the adjacent compound screaming and crying. Her oldest son had gotten into a fight with a neighbour's child. The mother told her: "Your kids are of the bush. They will try and kill my children." The former girl child soldier said: "I felt so sad because I didn't go to the bush voluntarily. Their words hurt me but I just try and ignore it."

Foukalová (2013) found that opportunities to return to a normal life are even more diminished for these girls since many times they are excluded from disarmament, demobilisation and reintegration programmes. Penicaut (2016) agrees and reminds about the belief that girls don't fight and therefore many demobilisation, disintegration and rehabilitation programmes exclude them. Only 5% of former girl soldiers benefit from these programmes. And when they do benefit, their special needs are rarely addressed. There is no female clothing in the aid packages, no tampons or pads and no reproductive healthcare. Skills training is also often biased towards males only, where they learn building, carpentry and mechanic skills. When returning to civilian life, these girls are labelled as sexual victims and affected by a stigma of sexual activity. This stigma leads to social exclusion. Therefore, many girls hide their rebel lives from their families and communities and decide not to register for demobilisation because they are too afraid of the consequences that include being regarded as dangerous rebels and as "bush wives" that can no longer marry.

Kiplagat *et al* (2014) write that NGOs have some common and basic intervention activities which they provide to the children with the aim of assisting their reintegration. These interventions were commonly psycho social support and counselling as well as skills development and the provision of basic requirements such as seeds, blankets, mattresses and other necessities.

International law and child soldiers

Various legal instruments have been developed over time to protect children in armed conflict. The 1977 additional protocols to the 1949 Geneva Conventions set the minimum age for recruitment and use of



child soldiers in international and internal armed conflict at 15 years. The Convention on the Rights of the Child, which entered into force in 1990, set 15 as the minimum age for recruitment and participation in armed conflict, putting the onus on states to prevent those under the age of 15 from being recruited into armed forces or taking directly part in hostilities.

The Convention on the Rights of the Child Optional Protocol on Children in Armed Conflict, which came into force in 2002, obliged signatories to raise the age of voluntary recruitment from that set out in the Convention and set the benchmark for compulsory recruitment by states and participation in hostilities to the age of 18. In terms of the agreement, non-state armed groups are not allowed to recruit or use children under the age of 18. **Under the Rome Statute, which created the International Criminal Court and also became operational in 2002, it is a war crime for states to conscript or enlist children under the age of 15 during international conflicts, or to have them actively participate in hostilities.** Similarly, the conscription or enlistment of children under the age of 15 by armed groups in internal state conflicts, and their use as active participants in combat, is criminalised.

In Africa, the African Charter on the Rights and Welfare of the Child defines a child as a person under the age of 18 years and notes that states have a responsibility to ensure that no child, thus defined, takes direct part in hostilities or is recruited into armed forces (De Villiers, 2015).

Despite all the international legislation and conventions, it remains beyond shocking to realise how many under-age children, some as young as seven or eight, are carrying firearms with the aim and instruction to kill people in conflict areas.

* * *

Girl child soldiers who survived the violent and inhumane experiences of armed conflict, suffer from various forms of post-traumatic stress disorders, struggle to find work and to establish families. They live in ghettos and hide their past from communities and family. They will always be the invisible, forgotten girl child soldiers who carried guns and were a sex slave to a rebel somewhere in the bush.

Editor's note

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Disabled, abused, thrown away

By Kotie Geldenhuys

When a disabled 52-year-old former soldier's wife died a couple of years ago, his 26-year-old brother-in-law moved into his house to take care of him. When the young man, let's call him John, wanted to go out, he simply locked up the former soldier, let's call him Pete, in his home, sometimes for long periods of time. In May 2016, John again went out, leaving Pete alone at home. On his return to the Coldridge home in Vryburg, John found wheelchair-bound Pete eating his own faeces. John beat Pete with a sjambok until he died. At the time of his death, Pete had both old and new wounds as a result of being beaten over a period of time. According to neighbours, John had always hit the disabled Pete with a panga, hose pipe or sjambok because he said that he did not want Pete to dirty himself with his own faeces and drink his own urine. The matter was apparently once reported to the police but they only gave John a warning and no case was opened (Tshehle, 2016). This incident paints the grim picture of the abuse many people living with a disability face regularly.

Violence against people living with a disability is disturbing and affects people all over the world, no matter their race, age or sex. They are the voiceless and invisible members of society, who are often regarded as defenceless and unable to fight back. They are vulnerable to all sorts of abuse which is exacerbated by a criminal justice system which often fails them due to a general perception that people living with a disability cannot be regarded as reliable witnesses. Sadly, perpetrators take advantage of this situation as they know that a silent victim is the "best" victim.

According to the SA Board for People Practices (SABPP), the national disability prevalence rate in South Africa is 7.5%. Disability is more prevalent among females and it increases with age. More than half (53.2%) of people older than 85 years is reported to be living with a disability. Disability includes visual difficulties, cognitive difficulties (which refers to the ability to remember/concentrate), hearing difficulties and self-care or walking difficulties. Persons with severe disabilities experience difficulty in accessing education and employment opportunities. Some people living with a mental disability can do little or nothing for themselves and are totally dependent on the care of others. One cannot help to think about the Life Esidimeni tragedy where at least 144 people died due to negligence and starvation after the Gauteng Health Department had moved these vulnerable patients from Life Esidimeni and other facilities, to various ill-equipped unlicensed NGOs.

People living with disabilities largely remain marginalised due to stereotyping, traditional beliefs and ignorance. The World Health

Organisation (WHO) (2011) estimates that 10% of the world's population consists of people living with disabilities, with the majority of these people living in developing countries. Causes of disability range from accidents and violence to natural birth defects, but in developing countries, a lack of proper health facilities, inadequate treatment and the lack of knowledge exacerbate this problem (www.who.int/disabilities/world_report/2011/report.pdf).

Vulnerable to abuse

Grainger (2016) notes that experts conservatively estimate that people living with disabilities are at least four times more likely to be victims of abuse and crime than people living without disabilities. People living with disabilities, like other marginalised groups, are particularly vulnerable to violence and abuse in the home or in public places. Bornman (2014) adds that children and adults living with disabilities, especially those with little or no functional speech (which often accompanies mental disability) have an increased risk.

Although violence against men living with disabilities has not been studied as extensively as that of women and children living with disabilities, it has been shown to be a serious problem. Powers *et al* (2009) argue that in one study involving physical abuse, the male to female victim ratio was found to be 56% to 44%. This United States-based study of 345 men living with physical or intellectual disability showed that 65% of the participants reported a lifetime of abuse, while 24% reported a lifetime of sexual abuse. Men living with disabilities share many similarities with women with disabilities regarding the type of abuse and the impact thereof, although gender-role expectation discourages men from acknowledging the abuse, as a stereotypical view exists that men cannot be abused (Powers *et al*, 2009).

International studies have estimated that more than 70% of women living with a wide variety of disabilities have been violently assaulted at some point in their lives (Farrar, 1995). Women living with disabilities, who are experiencing gender-based violence, receive inadequate support from the relevant support systems, as well as poor access to the criminal justice system (Centre for Disability, Law and Policy and the Gender, Health and Justice Research Unit, 2012).

Children living with disabilities are the most vulnerable when it comes to abuse. Jones *et al* (2012) report that up to a quarter of children living with disabilities will experience violence in their lifetime and those living with mental or intellectual disabilities have an even higher risk of experiencing violence. In South Africa, children living with disabilities are three to four times more likely to be abused than their typically developing peers (Elphick, 2012) and they are often repeat victims. Bornman (2014) reports that these children, who depend on adults to assist them with getting dressed and going to the toilet, have an increased risk of abuse, due to the intimate nature of these activities. In order to make caregiving as easy as possible, these children are trained from infancy to comply with adult instructions, not to put up a fight and to let strangers look at their naked bodies.

Types of violence experienced by people living with disabilities

Naidu *et al* (2005) divide violence perpetrated against people living with disabilities into two groups namely:

- active violence which includes physical, emotional, sexual and economic abuse; and
- passive violence which includes physical and emotional neglect.

Powers *et al* (2009) add other forms of disability-specific violence such as the destruction of medical equipment and communication devices; withholding; stealing or overdosing of medication; physical neglect and financial abuse. Mafokwane (2017) reports about a case where a 54-year-old woman living with disability was murdered by her daughter after the victim's payouts from the Road Accident Fund and her insurance apparently became a source of conflict between the two women. The victim was an advocate in the South Gauteng High Court in Johannesburg and was left partially disabled after she was in a horrific vehicle crash in 2002. The crash left her paralysed on the left side of her body. Her daughter had quit her job and instead of caring for her mother, she just kept on demanding money from her. She had access to her mother's two vehicles and apparently they often fought over bank cards as she always wanted to withdraw funds. Apparently numerous cases were opened against the daughter but her mother would bail her out. On 5 March 2017, the daughter suffocated her paralysed mother by putting a plastic bag over her head and then dragging her into the family swimming pool at their Glen Marais house in Kempton Park where she left her to die. Lerato Monamodi was arrested in a shopping centre shortly after the incident and a year later, on 7 March 2018, she was sentenced to life incarceration. During sentencing, the judge said that Lerato had put her six-year-old child through severe trauma as he had witnessed how his grandmother was killed by his own mother and that he also had to testify against his own mother (<https://kemptonexpress.co.za/169142/life-behind-bars-for-killing-mother>).

Why are people living with disabilities abused?

There are many reasons why people living with disabilities face abuse, which include the following, according to Bornman (2014):

- **Discrimination** as people living with disabilities have a low status in the community and most people discriminate against them, including some of their own family members. There is a common myth that those with intellectual disability do not "experience the same emotions as their non-disabled counterparts" or that they "do not mind abuse because they do not regard it as abusive".
- **Isolation** as children living with disabilities are often not attending school and stay at home which make them invisible in the community and reduce their opportunities to establish contact with people outside their home in whom they can confide, should they experience abuse. The same goes for adults living with disabilities who stay at home.
- **Stigmatisation**
- **Shame** - in this case girls are more vulnerable. Girls living with an

intellectual disability and who attend special needs schools might experience name calling and threats as a way to humiliate and degrade them and also to instil a sense of fear for refusing to accept sexual advances made by male peers who attend the same school.

- **Disempowerment** is a problem as many people living with disabilities do not know their rights and are often unsure whether they have been abused or not.
- **Dependence.** Many people living with disabilities may be dependent on others to take care of them. Perpetrators are often family members or others known to the person.
- **Vulnerability.** They are easy targets for abuse.
- **Limited access to resources** such as education, health, psychological, child protection and legal systems, including mechanisms for reporting crime, is experienced. In cases where these victims find the right people to speak to, they are often referred somewhere else, dismissed or not taken seriously.

The perpetrator

Farrar (1995) argues that stranger assault is not common, as the perpetrator of abuse against people living with disabilities is typically well-known to the victim and is usually in a position of trust and authority in relation to the victim. Abuse of people living with disabilities by their caregivers is a particularly significant problem and according to Powers *et al* (2009), this can include paid and unpaid caregivers such as spouses, family members or friends. Powers *et al* (2002) also found that the abusers are often people who are known to the victim and that most assaults occur within the home or place of residence. Hartshorne (2016) agrees and adds that in a sample of 22 cases of victims ranging between the ages of six and 27, mostly located in Orange Farm (south of Johannesburg) it was found that the majority of the perpetrators were known to their victims.

Bornman (2014) stresses that abuse has a unique meaning for a person who relies on a personal assistant for personal care, equipment, medication, finances and transport, due to the power imbalance created by the dependence versus the interdependence experiences. This implies that when abuse occurs at the hands of the caregiver, a person's ability to engage in daily life activities is compromised, along with their personal health and safety. This type of abuse is often not reported, because of their fear of and dependence on the abuser (Powers *et al*, 2002).

Women living with disabilities often face violence by an intimate partner. As a result of society's negative perceptions, as well as the myths that surround disability, many women living with disabilities remain trapped in these relationships, as they find themselves dependent on the abuser for affection, communication, financial assistance and physical support. Other common barriers that keep women with disabilities from escaping interpersonal violence include embarrassment, not having a trusted person to talk to, not being believed, the fear of losing independence of connections with family and fear of retaliation (Powers *et al*, 2009).

Children living with disabilities are abused by friends, family members, community members, caregivers, teachers etc. They are often abused and bullied on their way to or from school and in the classrooms. Martinez (2017) reports about a Johannesburg mother who had to remove her 12-year-old autistic son from his school after two serious incidents of violence perpetrated by teachers. "One day, he came back home. He had damage to his head and scars on his back ... The head teacher said one of the teachers was holding him down on the floor ... then I was told one of the teachers was holding and beating him with a stick ... My son didn't want to go to school after that." After numerous incidents at the school, the boy began to experience regular epileptic fits.

Legislation

South Africa has ratified international and regional treaties which entrench the rights of all people living with disability. These include:

- The United Nations Convention on the Rights of the Child;
- The African Charter on the Rights and Welfare of the Child; and
- The United Nations Convention on the Rights of Persons with Disabilities.

The South African constitutional and legislative framework entrenches the rights of all people living with disability and includes the following:

- The Constitution of the Republic of South Africa 1996, which includes the Bill of Rights;
- The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. The following offences, specifically related to disability, are prohibited by Act 32 of 2007:
 - section 23 prohibits the sexual exploitation of a person who is mentally disabled; being involved in, furthering, benefitting from or living from the earnings of the sexual exploitation of this person; or promoting sex tours with persons who are mentally disabled;
 - section 24 prohibits the sexual grooming of a person who is mentally disabled or promoting the sexual grooming of this person;
 - section 25 prohibits exposing or displaying or causing the exposure or display of child pornography or pornography to a person who is mentally disabled; and
 - section 26 prohibits using or benefitting a person who is mentally disabled for pornographic purposes.
- The Children's Act 38 of 2005; and
- The Mental Health Care Act 17 of 2002.

In addition, the Prevention and Combating of Hate Crimes and Hate Speech Bill, will soon be tabled in Parliament (Makhofola, 2018). Clause 3(1) of the Bill states that "A hate crime is an offence recognised under any law, the commission of which by a person is motivated on the basis of that person's prejudice, bias or intolerance towards the victim of the hate crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his/her family member: (l) disability ...".

The Bill further states in clause 4(1) -

“(a) Any person who intentionally, by means of any communication whatsoever, communicates to one or more persons in a manner that -

(i) advocates hatred towards any other person or group of persons; or

(ii) is threatening, abusive or insulting towards any other person or group of persons, and which demonstrates a clear intention, having regard to all the circumstances, to -

(aa) incite others to harm any person or group of persons, whether or not such person or group of persons is harmed; or

(bb) stir up violence against, or bring into contempt or ridicule, any person or group of persons, based on ... disability ...”

The South African Human Rights Commission has a duty to promote human rights and equality of opportunity and to work towards the elimination of prejudice against, hatred of and hostility towards members of groups, including people living with disabilities. It is important that action must be taken to remove the stigma from disability as well as barriers that hamper reporting, recording and prosecuting which can lead to the successful conviction of perpetrators.

Reporting crime against people living with disabilities

While many crimes are committed against people living with disabilities, there are, generally speaking, low reporting rates and despite all the legislation, the conviction rate for sexual abuse of people living with disabilities remains low.

Grainger (2016) stresses that there are various barriers to reporting and recording abuses against people living with disabilities, particularly to the police. Physical, procedural and attitudinal barriers discourage these people from reporting and the cumulative impact of these barriers can result in these people feeling that they are not being taken seriously or that they are being treated as if they are the offending party. Many girls and women living with disabilities and their families are reluctant to report sexual or other forms of violence. Bornman (2014) argues that this may be due to social isolation and discrimination against these individuals, as well as their high levels of dependence on caregivers (who are often the perpetrators). The relationship between the victim and the perpetrator can also hamper the victim's willingness and ability to report the abuse. People living with disabilities may blame themselves for what has happened to them, or may simply come to accept that these incidents are part of everyday life (Grainger, 2016). Issues such as fear, guilt and stigma might also play a role in why the abuse is not reported.

Monama (2017) reports about an incident in which an Orange Farm community were seeking justice for a 15-year-old girl living with a mental disability. She was raped and married off to the person who allegedly sexually assaulted her at a day care centre for children living with disabilities. The accused was dismissed from the centre and was criminally charged with the sexual assault. These charges were

In South Africa, children living with disabilities are three to four times more likely to be abused than their typically developing peers.



Experts conservatively estimate that people living with disabilities are at least four times more likely to be victims of abuse and crime than people without disabilities.

subsequently dropped after the victim was allegedly forced into a customary union with her attacker. According to the chairperson of Sidinga Uthando Self-help Group, a support group was established for parents with children living with disabilities in Orange Farm. When the case first came to their attention, the mother wanted to open a criminal case against the alleged rapist. Shockingly, after a while, the mother said the rape never happened and that the man was going to marry the girl. The criminal case was withdrawn. The community however decided to open the case to investigate the child marriage and abuse because the criminal matter had been withdrawn. The chairperson of the support group explained: “It is hard to take care of a child (living) with disabilities. When parents are offered money, sometimes they keep the issue quiet. Sometimes it is also because they don't want more stigma.”

While most cases remain invisible, an incident which happened in September 2017 was caught on camera, and those responsible were taken to court. A video which was taken by a child on a schoolbus, showed a 16-year-old girl living with multiple disabilities cowering in her bus seat as she was struck repeatedly by her caregiver. Seconds later the driver appears and drags the girl violently off the bus, dumping her onto the street where she crumples to the ground. They then drive off, leaving her on her own. The caregiver has been charged in connection with the incident in Soweto and has been released on bail (Martinez, 2017). This case also highlights the importance of adequate transportation for children living with disabilities to go to school, as transportation must be safe and easily accessible to these children.

Dickman *et al* (2006) remind that once the police are involved in a case where a person living with disability has been the victim of violence, they may respond poorly due to assumptions made about disability or an inability to recognise the need for additional support. Bornman (2014) found that some research has also shown that police do not always treat crimes against people living with intellectual disabilities seriously, as they fear that these individuals would make unreliable witnesses. According to Keilty and Connelly (2001), police views reflect the general community stereotypes of people living with intellectual disability and that it has an impact on taking their statements. These include issues such as that the individual is lying, that they are sexually promiscuous and that they cannot be reliable witnesses. Naidu *et al* (2005) stress that another social myth that police officials sometimes believe, is that people living with disabilities cannot be victims of crime as long as they are in the safety of an institution or a family home. They further doubt the legitimacy of abuse allegations by people living with disabilities which results in the crime not being investigated. The Centre for Disability Law and Policy and the Gender, Health and Justice Research Unit (2012) reports that police officials in Community Service Centres appear to have an entrenched view of people living with disabilities (specifically towards individuals with intellectual or psychosocial or mental disabilities) and regard them as mad, unreliable and generally unable to provide adequate statements. Furthermore, police officials also often believe sexuality-based myths such as that women with intellectual disabilities are “over-sexed” and “go looking for it” (Naidu *et al*, 2005).

Bornman (2014) found that people living with disabilities face five main barriers when attempting to access the criminal justice system namely:

- difficulties in accessing the legal system;
- difficulties in coping with police interviews and legal formalities;
- difficulties with understanding the complex court proceedings;
- difficulties with testimony and giving evidence; and
- difficulties with decision-making tasks.

The perception also exists that people living with certain disabilities are unable to testify in court on their own behalf due to their poor ability, as well as the legal regulations regarding hearsay, confrontation and leading the witness. All of these factors result in perpetrators having little or no fear for the consequences of their acts. Perpetrators recognise this vulnerability and regard these individuals as easy targets (Bornman, 2014).

Only a few cases dealing with the abuse of people living with disability make it through the criminal justice system. Bornman (2014) argues that this can be due to the fact that the police, lawyers, judges and even rape crisis counsellors, who all form part of the legal protection system, often have no knowledge of how to help a person with a severe communication disability. However, there is a case of a 15-year-old girl living with cerebral palsy, who testified in a South African court using a Bliss communication board about being sexually abused. Initially the prosecuting team thought that she was not capable of

producing reliable evidence, due to the fact that she had little or no functional speech. The speech-language pathologist at the victim's school then explained the girl's academic achievements in mathematics and other content subjects. It was also the first time that a graphic symbol-based system, where the Bliss symbols were accompanied by written glosses, was used. Prior to this, only manual signs (South African sign language) had been used in court. The judge insisted on a neutral interpreter (the court social worker) who was trained by the speech-language pathologist. The girl testified successfully, resulting in a conviction and a 20 year sentence (Bornman, 2014). In another case the perpetrator was caught red-handed. What happened was that a 28-year-old Port Elizabeth man attended a birthday celebration of a relative of his victim on 4 June 2016. When both he and his victim, a woman living with mental disability who has the intellectual capacity of a toddler, disappeared from the party, the family and community members started to look for the woman. At a half-built house a few metres away from the home in Bethelsdorp where the 21st birthday celebration was held, her uncle caught the rapist with his pants pulled down. Throughout the trial the rapist denied that he had raped the victim and later claimed that he was unaware that she suffered from a disability. He later denied attending the birthday celebration claiming instead that he had merely walked past the half-built house and heard the woman calling his name before going inside. In November 2017, Nathan Fourie was sentenced to life incarceration (Sain, 2017).

As the police and the rest of the criminal justice system sometimes let down people living with disabilities, the community sometimes take the law into their own hands. In May 2013, two men were severely beaten by angry Khayelitsha residents after they were accused of raping a girl living with mental disability and epilepsy. The 15-year-old girl was playing outside her home when the two men allegedly lured her to a shack, promising to give her money. After about two hours of torture and abuse, the girl managed to escape and sound the alarm. Within 24 hours, the community had tracked down the suspects, beating them senseless with sticks, sjamboks and fists, and handed them over to police. The two suspects were known to the family of the victim (Lepule, 2013).

* * *

It is truly shocking to read how much violence is meted out against people living with disabilities despite them already living complicated lives. The South African government has a legal obligation to protect all its citizens, in particular the most vulnerable ones such as people living with disabilities, as they have the same rights as we all have, including a right to live as normal a life as possible. Many people living with disabilities already have a difficult life and therefore it is unacceptable that people who are supposed to care for them and protect them, make their lives even harder by abusing them and ignoring them as if they are invisible and voiceless. If no effort is made to take better care of them, people living with disabilities will remain the silent victims who are easy targets for perpetrators.

Editor's note

The list of references is published on pp 73-74.



Elderly abuse

The worst form of disrespect

Many adults have fond memories of their grandparents - visiting them during holidays, being treated with sweets or sitting on their laps listening to numerous stories. This picture has changed in many communities where, in recent times, grandparents increasingly have been taking over the primary care responsibility of their grandchildren due to absent parents who either work in cities or have died due to the HIV pandemic. How ironic and tragic is it not that society is increasingly showing less respect for our elderly by abusing and mistreating them - especially since those are the people towards whom we often have so much to be grateful.

At the end of January 2018, the community of Mpophomeni location in Emagwababeni, Pietermaritzburg protested outside the Howick Magistrates' Court demanding that no bail be granted for a 39-year-old man accused of raping and strangling a grandmother who, according to her family, was 107 years old. This *gogo* was allegedly found by neighbours lying helplessly on her kitchen floor with strangle marks on her neck, but still breathing. Her granddaughter told the media that the suspect had allegedly broken into her grandmother's house, gaining access through a window. This happened while her sister, Zinhle, and her friend were sleeping. "He raped *gogo* on her bed. Zinhle woke up when she heard *gogo* screaming for help. While *gogo* was screaming for help he strangled Zinhle. She passed out. He went to Zinhle's friend and tried to strangle her but she managed to run out of the

house. Neighbours came in to help. *Gogo* was lying on the kitchen floor. They helped her to the sofa. She asked for water and died," said the shocked granddaughter (Ngubane, 2018).

Not an isolated incident

Tragically, the abuse and rape of this 107-year-old *gogo* from Pietermaritzburg was not an isolated incident. In fact, criminal incidents at residential facilities for older persons and old age homes are not uncommon. At the end of August 2017, the Apricot old age home in Bonteheuwel on the Cape Flats was vandalised by heartless criminals who had broken into the home and vandalised the community hall used by the pensioners. The caretaker got a shock when she passed the hall early the following morning and noticed water running - that's when she realised that taps and other items had been stolen. Upon inspection it was revealed that the criminals had apparently made a hole in the fence, ripped the alarm box open and deactivated the alarm. The home, which is run by the City of Cape Town, is used by pensioners who receive social grants and who do not have relatives with whom they can stay. As one can expect, this incident left the pensioners feeling vulnerable with one of the 73-year-old residents saying: "Now the gangsters are coming in. It is not safe for us here." The home's caretaker believed that "Tikkoppe" (methamphetamine addicts) were responsible for the crime and she urged the community to come forward with any information which could lead to their arrest (Duval, 2017).

Sadly, very few of these cases where older persons fall victim to crime are reported. In fact, the World Health Organisation (2017 and 2018) estimates that only one in 24 cases of elder abuse is reported, although one in six older persons would have experienced some form of abuse in the past year (WHO Elder Abuse Factsheet, June 2017 and January 2018).

Abuse

In addition to the specific forms of abuse defined and discussed in the Older Persons Act 13 of 2006 (see below), Ferreira and Lindgren (2008) write that the definition of elder abuse is complicated in that older persons have been encouraged, in a series of consultations, to report practices they perceive as abusive, which have shaped some definitions. However, within the South African context, where violence is not uncommon, forms of abuse include the horrific rape of older women by sons and grandsons in order to extort pension money and their social grants. Allegations of witchcraft against frail and vulnerable older women in order to seize assets, both which have severe consequences for the women, are also common.

Are older women more vulnerable to crime?

HelpAge International, an international NGO helping older people to claim their rights, challenge discrimination and overcome poverty, in their discussion paper of November 2017, argues that older women are frequently subjected to one or more forms of violence, abuse and neglect based on their age, gender and other characteristics. This can be driven by ageism, sexism, the intersection of different characteristics or as a result of accumulated discrimination across their life course. Although violence against older women is widespread, it remains mostly hidden. This makes sense since the perpetrators often include intimate partners, family members (including male and female adult children), caregivers or members of the wider community, according to the World Bank Group (2016). Subsequently, many older women experience one or more types of physical, sexual, economic and psychological violence, abuse and neglect. But, it does not stop there - older women can also experience structural and systemic discrimination based on their age and gender, for example, in terms of discriminatory land inheritance laws or deprivation of autonomy in institutional care settings. They can also be subjected to harmful practices such as witchcraft accusations, as are noted elsewhere in this article.

Across all these examples, social stigma surrounding violence, abuse and neglect in older age leave older women invisible and unable to access redress or adequate support. This is confirmed by the words of a 63-year-old woman from Columbia who is quoted in this discussion paper as having said: "I always imagined a quiet old age and next to my husband, but I learnt that violence against women can come in every age. Now, I only can advise women, especially older women, not to tolerate such situations of abuse."

What does the law say?

The Older Persons Act 13 of 2006 is an important piece of legislation to be used to deal effectively with the plight of older persons by establishing a framework aimed at the empowerment and protection of older persons and at the promotion and maintenance of their status; rights; well-being; safety and security; and to provide for related matters.

Apart from dealing with the social aspects of older persons, Chapter 5 of Act 13 of 2006 deals with the protection of older persons, which according to this Act, are defined as men older than 65 years and women older than 60 years. Simultaneously, the provision of the Domestic Violence Act (DVA) 116 of 1998 must also be taken into consideration when abuse of older persons, who are in a domestic relationship with another, takes place. In fact, section 24 of Act 13 of 2006 provides that the provisions of Act 13 of 2006 must not be interpreted as limiting, amending, repealing or altering any provisions of the DVA. Nor should it be interpreted that it exempts any person from any duty or obligation imposed by the DVA or prohibiting any person from complying with any provision of the DVA.

The Older Persons Act 13 of 2006 is explicit in what needs to happen with older persons who are in need of care and protection in that professionals who notice such a need, have to report the matter to the Director-General of Social Development or a social worker and that these persons have to investigate such reports.

Depending on the outcome of the investigation, this investigator needs to either facilitate the removal of the older person to a hospital, in case of an injury, or to a shelter whereafter a report should be made to the police. If an alleged crime has been committed against the older person, s/he must be assisted to file a complaint with the police.

Specific offences committed against older persons

An older person who is in need of care and protection is, according to section 25(5) of Act 13 of 2006, someone -

- whose income, assets and/or old age social grant is taken against his/her will, or that the person suffers from economic abuse. This form of abuse is defined as "the deprivation of economic and financial resources to which an older person is entitled under any law; the reasonable deprivation of economic and financial resources which the older person requires out of necessity; and the disposal of household effects or other property that belongs to the older person without the older person's consent";
- who has been removed from his/her property against his/her wishes or who has been unlawfully evicted from any property which they occupy;
- who has been neglected or abandoned without any visible means of support;
- who lives or works on the streets or begs for a living;
- who abuses or is addicted to a substance and without any support or treatment for such addiction;
- who lives in circumstances which may harm that older person physically or mentally;
- who lives in circumstances which are likely to cause or will be conducive to seduction, abduction or sexual exploitation; and/or
- who is in a state of physical, mental or social neglect.

Act 13 of 2006 makes it clear that whenever someone is aware that an older person suffers from an abuse-related injury or has been abused (physically, sexually, economically) that a person has to notify the Director-General of Social Development or a police official immediately. **Those who have knowledge of such abuse and who fail to comply with the legal provision to notify the authorities are however guilty of an offence in terms of section 26(3) of Act 13 of 2006.**

The role of police officials

In order to protect the older person further, authorities must act in that person's best interest - if that means that the alleged offender has to be removed from the home or place where the older person resides, that must be done by the police official to whom such a report has been made. Act 13 of 2006 is clear as to what the role of such a police official is, including that s/he must issue a written notice containing the name, surname, residential address, occupation and status of the alleged offender. The police official shall then call upon the alleged offender to leave the home or place where the older person resides and inform them that s/he has to refrain from going to such home or place or to have contact with such older person until the court proceedings take place in the magistrates' court. Among other reasons, the alleged offender will have to furnish the court with reasons why s/he should not be permanently prohibited from entering the home or place where the older person resides. The magistrate will issue an order relating to the interim conduct of the alleged offender such as whether or not s/he is granted access to the home or place where the older person resides, or whatever the court finds in the best interest of the older person.

In addition, section 30 of Act 13 of 2006 specifies that **any person who abuses an older person is guilty of an offence**.

Abuse is not limited to physical abuse, but refers to any conduct or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress or is likely to cause harm or distress to an older person. Furthermore, section 30(3) describes specific forms of abuse namely -

- **sexual abuse** meaning any conduct that violates the sexual integrity of an older person;
- **physical abuse** meaning any act or threat of physical violence towards an older person;
- **psychological abuse** meaning any pattern of degrading or humiliating conduct towards an older person which includes name calling, repeated insults and ridicule; repeated threats to cause emotional pain; and/or repeated invasion of an older person's privacy, liberty, integrity or security; and
- **economic abuse** which has been described supra.

Section 30(4) is clear that, if a court finds that **a person, who has been convicted of any crime or offence, has abused an older person during the commission of that offence, it must act as aggravating circumstances for sentencing purposes**.

Convicted - not suitable to work with older persons

In a similar provision to the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, the Older Persons Act 13 of 2006 also stipulates that **the Minister of Social Development has to keep a register of persons who have been convicted of the abuse of older persons or any crime contemplated in section 30(4) of this Act. These persons whose names have been added to the register may not**

in any way operate or be employed by any residential facility (in other words a place that is used primarily for the purposes of providing accommodation and/or a 24-hour service to older persons); and/or provide any community-based care or support service to an older person.

Adequate legislation - but does it make a difference?

Ferreira and Lindgren (2008) caution that despite the government having rewritten various policies since 1994 to implement its transformation agenda, concerns of older persons have been marginalised. "... the application of legislation may be less systematic in the case of older persons, who may have difficulty in accessing legal protection and whose rights may be violated in numerous arenas," they write. Sadly, many other legal provisions aimed at protecting the elderly's rights are not utilised due to the notion that "they are old" or because charges are withdrawn against a perpetrator, due to pressure from family, that perpetrator being a provider or caretaker or because an already overloaded justice system simply rejects the case.

* * *

The World Health Organisation estimates that the global population of people aged 60 years and older will more than double from 900 million in 2015 to about 2 billion in 2050. Furthermore that elder abuse is predicted to increase as many countries are experiencing rapidly ageing populations. This says little about the respect we show for older people.

If nothing else is taken from this article but the reminder that the Older Persons Act 13 of 2006 provides for **mandatory reporting of suspected abuse by every citizen**, not only professionals, then I have fulfilled my duty as a writer. Ferreira and Lindgren (2008) remind that the reporter of such abuse is assured of protection from liability should a report be found upon investigation to be unfounded. This confirms that staff members of residential facilities and old age homes who report suspected abuse should not fear losing their job. Sadly, too many professionals and citizens like you and I remain ignorant of a mandatory requirement to report the abuse of our older people. Similarly, too many police officials do not fulfil their constitutional obligation of preventing, combating and investigating crime - irrespective of who the victims or the suspects are.

Let's give our older people an opportunity to lead a quality life as they take it slower after having had to work so hard for so many decades. Let's play our part in protecting them from harm and abuse since they are so vulnerable due to decreasing strength and health. Sadly, it seems that we fail those people whom many of us have known not only our grandparents but also as our parents.

Where to find help

If your rights as an older person are being violated or if you want to help someone who is being abused, neglected or exploited, contact a magistrates' or equality court and visit a police station.

You can also contact one of the following organisations for help:

Action on Elder Abuse SA

E-mail: action@actiononelderabusesa.co.za or tel: (021) 426 5255

Halt Elder Abuse Line (HEAL)

Toll free: 0800 00 30 81

Editor's note: The list of references is published on p 74.

BEING A WOMAN in a man's world



* Dr Jansen van Rensburg is a recipient of the Women in Research (WiR) grant. The research grant is aimed at conducting interviews and hosting seminars on gender-related issues within safety and security organisations. These seminars are exclusively funded by the WiR grant. The study targets women working in the safety and security industry. If you would like to be interviewed by a WiR team member, based on your experiences working in the safety and security industry and/or would like a seminar to be hosted at your workplace, please contact Dr Jansen van Rensburg by sending her an e-mail at sissisk@unisa.ac.za

The **CHALLENGES** faced by **WOMEN** working in the **SAFETY & SECURITY INDUSTRY**

Introduction

Women empowerment is a foundational aspect in building economies, development and sustainability. Ultimately, it improves the quality of life for men and women as well as their families, communities and society at large (Ackermann and Velelo, 2013; UN Women, 2017). Evident in South African statistics, women are increasingly entering the workplace (making up just less than half of the labour force) (Statistics South Africa, 2016) and thus feminising the labour force. This increase is due to a variety of reasons. Barker (2007) suggests the primary reasons are the declining number of birth rates, the decrease of women being dependent on employed men (for reasons such as death of partners, unemployment of men, divorce or single parenthood) as well as the incline of formally educated women. In addition, the increase in remuneration and access to jobs, owing to the decrease in gender discrimination, are noted as contributing factors to the increase of the presence of women in the labour force. In South Africa, post democracy, women, a previously marginalised group, were placed as a priority on the government's mandate (Ackermann and Velelo, 2013). This mandate was substantiated through the Employment Equity Act 55 of 1998 which advocates

against discrimination and promotes equity. However, in spite of the country's legislation, policies and initiatives, South Africa is still one of the most unequal societies in the world (The Department of Women: Republic of South Africa, 2015).

Women working in male-dominated environments are particularly vulnerable to an array of gender-associated difficulties and industries specialising in safety and security services tend to be largely male-dominated. This trend is substantiated in both local (Govender, 2012; Kole, 2015; Louw-Vaudran, 2015) and international (Eichler, 2013; Goldfine, 2014; Hinton and Friedman, 2016) findings. Subsequently, this male-dominated work environment has implications for the holistic well-being of the women working there. Some of the challenges women working in the safety and security industry face are outlined below and strategies to overcome these challenges are explored.

Challenges faced by women

The following highlights some of the challenges faced by women. These challenges are often regarded as trivial in male-dominated work environments.

■ Perceived female inferiority

Historically, it was legally and socially acceptable to discriminate against women concerning education and employment. In ancient times, women were defined as “mutilated males”. Furthermore, men were advocated as being psychologically and biologically superior to women (Roseberry and Roos, 2014). Although no longer legalised or socially acceptable, women are often still perceived as the weaker sex in industries specialising in safety and security. Society portrays men as the protectors of vulnerable people such as women and children and therefore it may be difficult to instil the same trust in women who want to occupy a similar role. Subsequently, women working in the safety and security industries are given administrative, menial and organisational job tasks despite their qualifications or position. This affects their opportunities for advancement, promotion and overall job satisfaction.

■ Tokenism

Tokenism refers to minority groups (particularly women) who are employed based on their difference to the rest of the employees. This appointment serves as evidence that there is no discrimination against the minority group in question. Subsequently, token appointments remain outsiders within an organisation and can even be excluded if they stray away from the group's expectations. Tokenism can manifest in visibility (the increased attention to perform), contrast (social isolation due to the vast differences between the token and the rest of the employees) and assimilation (the role taken on by the token due to the stereotypical perception of the group) (Datta and Bhardwaj, 2015). As women

are deemed a priority group in terms of available career and developmental opportunities, tokenism may come into effect in the safety and security workplace.

■ Sexual harassment

Sexual harassment in the workplace is divided into three components. The first is gender harassment which is regarded as behaviour which is sexist and promotes gender exclusion and hostility. The second component refers to unwanted sexual attention which can be verbal and through body language. Sexual coercion is the third component and is an effort to receive sexual cooperation in exchange for employment benefits or advances (Reich and Herschcovis, 2012). In Port Elizabeth, a lieutenant-colonel in Port Elizabeth was being investigated for the alleged rape, harassment and bullying of female police members. The Sexual Harassment Task Team compiled a preliminary report of which some of the findings include that the victims who were targeted were vulnerable, intimidated and afraid to come forward with information. Also, incidents reported to senior staff members were not dealt with (Wilson, 2017).

■ Caregiving responsibilities

In most circumstances, women have proven to be caring and nurturing human beings who carry the largest load when it comes to caregiving within the family. Caregiving is often extended beyond children and can include parents and frail family members (Lloyd-Jones, Bass and Jean-Marie, 2014). This is true according to the African principle spirit of “Ubuntu” (kindness and assistance to others) whereby women extend themselves to nurture and care for those close to them.

Recommendations to overcome the challenges

Recommendations to overcome the challenges faced by women working in the safety and security industry should be customised to the particular organisation. However, the following key factors should be applied in all safety and security industries.

■ Work-life balance initiatives

The objective of work-life balance is to support employees to manage their work and personal lives successfully. This will contribute to the overall well-being of women as an effective and functional part of society (Kossek, Lewis and Hammer, 2010). Where possible, flexible work schedule options should be introduced which could be particularly useful for employees who work shifts. Introducing the option of a compressed workweek, which consists of four 10-hour days, is an example. Additionally, job-sharing initiatives can be implemented whereby two employees share the responsibility of one position. Often, women would like to start having children at the same time as reaching a peak in their careers. This would compel working mothers to choose between developing a career and having a family. When balancing work and a family, women may find that their career development progresses at a slow pace and that they are excluded from promotions and important projects. Employers should be aware of this dynamic and make provisions to prevent it from occurring. Nevertheless, all organisations should strive to create a family-friendly workplace. In this way, the impact of work on the family should be minimised resulting in a more efficient and effective female employee (Lloyd-Jones et al, 2014)

■ Awareness campaigns against gender inequality

Often in male-dominated work environments, management does not realise that there are specific challenges faced by women resulting in these challenges not being recognised or addressed. Sensitivity towards the needs of women should be uncovered and applied (Srinivasan, 2015). Awareness campaigns advocating against a culture of gender inequality, sexism and patriarchy should be continuously developed and implemented.

Concluding remarks

Women play a pivotal part in the South African labour force and economy. Sadly, women have been marginalised in the labour force previously and are still struggling to secure an equal position in the safety and security industry today. Thus, the challenges women working in the safety and security industry face, should be recognised and pragmatic strategies to overcome them should be realised.

Editor's notes

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The list of references is published on p 74.

Crime Series

By Kotie Geldenhuys

Paying a hitman to eliminate his unwanted wife

Part 1



Jayde and Christopher sharing seemingly happier times

It was a cold, grey morning in the friendly city of Port Elizabeth when a beautiful, petite brunette, dressed in a grey jacket, black trousers and black boots walked out of the townhouse complex where she and her husband, Christopher, and her two Yorkies, lived. The 29-year-old Jayde Panayiotou and her friend Cherise Swanepoel took turns to drive to the Riebeeck College Girls' High School in Uitenhage where both of them were teaching. On Tuesday morning, 21 April

2015, it was Cherise's turn to fetch Jayde. She had sent a message earlier to Jayde to inform her that she was filling up the car and wanted to know whether she should come in to fetch Jayde, because it was slightly drizzling. Jayde replied that she would come out. When Cherise arrived at Jayde's home at the Stellen Glen townhouse complex in Deacon Road, Kabega Park at approximately 06:27, she sent Jayde a WhatsApp message. Cherise found it strange that the message did not

go through and that she did not receive a reply. She waited a while and tried to call Jayde, but her call went directly to voice mail.

With Jayde nowhere to be found, Cherise called Jayde's husband to tell him that Jayde was not outside the complex when she arrived to pick her up. He seemed surprised and asked: "How do you mean? She's gone to work." She told him that it was impossible since Jayde knew that she was on her way to fetch her. Christopher said: "Hang on, I'll let you in." When she got to the door, he said that something was wrong. The two got into his vehicle to look outside the complex. "En route, we passed by a police van and we stopped them and told them that we were looking for his wife," said Cherise. Christopher said that he often told Jayde not to stand outside their complex because people were hanging around looking for work. Jayde, typically carrying a laptop bag and schoolbooks, would usually be the only one standing outside the gate, apart from domestic workers walking to their jobs.

Back at the complex, Cherise drove around the complex, thinking that maybe Jayde had fainted on her way to the gate. She also found that Jayde's car was still inside. When she returned to Christopher and Jayde's house, the police were there. An intensive search was immediately launched and photos of Jayde were distributed widely across social media platforms. Concerns escalated when it became known that R1500 (the withdrawal limit on Jayde's account) had been withdrawn from an ATM at the KwaNobuhle Shopping Centre in Matanzima Street just before 08:00. Cherise, Christopher and Jayde's father drove to

When people fall in love and get married, they think about living a life together, happily ever after. Unfortunately, some of these brides who stand next to her groom while he promises to protect and to take care of her, fall victim to abuse at the hands of this very same man. Some react to early warnings and escape the situation by getting divorced, but some of these women end up in their graves. While some men will kill their own wives, others opt to pay hitmen to eliminate their wives. By using this option, such a “widower” hopes to win the support of friends and family members for his “terrible loss”. But committing the perfect crime is almost impossible and at some stage such a widower will have to face justice.

KwaNobuhle to see whether they could find Christopher's wife.

The following day a R50 000 reward was offered for her safe return. In a post on her Facebook page, Jayde's sister, Toni Inggs said: “All I can do is hope and pray that my sister will be home unharmed and well today! There are absolutely no words to describe how we all feel waiting every moment, every second for news, any news on the wellbeing of my beautiful sister!” (sic)

Searching for Jayde

A police task team, comprising role-players from Uitenhage and Kabega Park Police Stations, senior detectives from the Mount Road Cluster Office, and crime intelligence, were quickly formed. Members of the public also joined the police in their search. The massive search continued throughout that Tuesday night and Wednesday morning, but Jayde was nowhere to be found.

On the morning of 22 April 2015, the SAPS's Air Wing helicopter was dispatched to search the isolated farm area outside KwaNobuhle following reports that a resident in the area had heard gunshots at approximately 07:00 on the day when Jayde went missing. As the police flew over the area, they spotted something among the bushes, and alerted the team on the ground. Sadly, that team recovered the body of Jayde Panayiotou where she was

lying on her back in the grass - a pool of blood under her head saturated the soil.

Looking for suspects

After Jayde's body was found, the police focused on tracking down the suspects responsible for her brutal murder. Brig McClaren, the provincial head of the Eastern Cape Detective Services based in East London, met with members of the Directorate for Priority Crime Investigation (DPCI) in Port Elizabeth and established a task team consisting of detectives, crime intelligence officers and forensic experts, under the leadership of Capt Rhynhardt “Kanna” Swanepoel to spearhead the investigation and find Jayde Panayiotou's murderers. The new task team continued to follow-up leads on the case, while those involved in the initial search returned to their regular duties. Speculations included that the perpetrators in this case could be the same ones as in a recent case where a woman was kidnapped in the parking area of a shopping centre in Port Elizabeth. The initial investigating team also released an image of one of the suspects, taken from security camera footage at an ATM in KwaNobuhle as well as photographs of the victim's engagement ring and wedding band which were allegedly removed from Jayde's hand - their hope was that these steps would help them track down her murderers. It later turned out that the footage was not from the same ATM as where Jayde's bank cards were used.

A march for Jayde

On the same evening as when Jayde's body was found, thousands of people took to the streets, demanding “Justice for Jayde”. This impromptu gathering was organised via social media, with news of the get-together spreading like wildfire. The head of the Nelson Mandela Bay Ratepayers Association, Kobus Gerber, led the march down Cape Road, with crowds of people chanting “Enough is enough”; and “Ons is g@!vol”. Traffic was brought to a standstill as the crowds filled all three lanes of the street. Parents and children, some already wearing their pyjamas, marched alongside elderly couples with walking sticks and individuals with their dogs. Many carried candles and some had posters with pictures of Jayde Panayiotou printed on them. A number of local tow truck vehicles and other emergency services followed the crowd, with their emergency lights flashing. When the crowd arrived opposite the police station, a moment of silence was observed before a lone bagpipe played Amazing Grace. One of Jayde's former learners stood up and told those gathered that Jayde Panayiotou was more than just a teacher to them: “She was one of those teachers, when she reached for your hand, she touched your heart. She was an amazing person, always so sweet and so kind,” she said. The crowd demanded that the death penalty be brought back and that those responsible for Jayde's death be brought to justice. A moment of silence in recognition of the Addo farmer, Allan Clarke, who was murdered during the early morning hours of 20 April 2015 and whose body had then been dumped on the outskirts of Greenbushes was also observed. That was followed by a short prayer whereafter the crowd joined in and sang Amazing Grace, before quietly dispersing.

Who was Jayde?

Jayde grew up in Uitenhage as the eldest daughter of Michelle and Derrick Inggs. She had a younger sister Toni. After school Jayde obtained a Bachelor of Arts with Psychology and English as major subjects, at the Nelson Mandela Metropolitan University before completing her teaching qualification through Unisa. She taught at Muir College for a year, before moving to Riebeeck College at the beginning of 2008. Jayde and Christopher got

married on 22 June 2013 after dating for more than nine years. Her friend Cherise said: "She adored Chris. In fact, they were besotted with each other. She would often tell me how, if anything was to happen to him, she wouldn't know what to do."

People close to Jayde described her as a fun-loving person who dedicated much of her time to looking after animals and volunteering at children's shelters. Her school principal Marilyn Woods, described Jayde as a loving person who had a passion for teaching. "Jayde was something special. I taught her when she was a little girl at Riebeeck and she's been teaching here since 2008. Jayde was a special person. For her teaching was not a job, teaching was a calling and her passion," she said. Jayde was a Grade 7 class teacher, and also taught life orientation to Grades 4 to 7 pupils. The school had been hard hit by the news of her disappearance and her subsequent murder. Ms Woods said after she had been informed that police had found Jayde's body, she told the staff, before revealing the sad news to the rest of the school. Close personal friends of Jayde's were sent home. The learners were heartbroken when they heard the sad news and staff and some of the senior girls had walked around during break to console them.

Funeral

On 28 April 2015, hundreds of friends, family and members of the public gathered at the Mater Dei Catholic Church in Port Elizabeth for the funeral service of Jayde Panayiotou. Her husband, Christopher, led the pallbearers into the church as the funeral service got under way. During the service he paid a moving tribute to his loving late wife by saying: "Jayde is not gone, she is everywhere. Jayde resides in the wind like an elemental force. She can be experienced in the blooming of flowers, she is the yellow in daffodils of her favourite flower. She is the crest in every breaking wave, she is the fertile soil; she is the enduring embers of the fire ... to my bride, my wife, my best friend and love of my life, it seems as words fail me. You were the salt in my sea, the stars in my sky and

my sand on earth. You have always been and will forever be beautiful in my eyes. You exuded a radiance that took my breath away, you cast a glow on everything and everyone around you, rendering them purer and more lovely than ever." Christopher said it was an honour that Jayde had chosen him to be her husband. "I looked forward to a life that we had ahead of us in which we worked each day to bring out the best in each other. We had the potential to live full and gratifying lives, to be a positive influence on those around us ... I was honoured to be with her for the last 11 years and I am staggered by her sudden passing. She made me feel like the luckiest man alive and I never quite figured out why she gave her heart to me. Jayde was my drive to do better, Jayde kept me going."

It later appeared that sections of this eulogy was part of a tribute written by Charles Atkins called "My Sweet Wife's Eulogy" dated October 2010. When Christopher was later asked why he used it, he explained that he is not good with words which was why he Googled "eulogy" to get examples.

First arrests announced shortly after the funeral

While many grieved at the tragic loss, police continued their search to track down the men responsible for Jayde's death. The breakthrough occurred when Capt Willie Mayi, the head of the SAPS Vehicle Hijacking Division in Port Elizabeth, received a call from an informant which led to the arrest of a suspect.

The police held their cards close to their chest by only announcing a breakthrough in the case two days after Jayde's funeral. They announced that two suspects, aged 31 and 28, had been arrested and that they had ruled out robbery as a motive for Jayde's murder.

Trapping Christopher

After Thando Siyoni was arrested, he immediately identified Christopher as the mastermind and Sizwezakhe Vumazonke as the shooter. Thando was a bouncer at Christopher's Infinity club, in Algoa Park.

He also handed the money he had received to the police and indicated that he would cooperate with them. An operation was then set up to trap the 28-year-old Christopher Panayiotou. During the evening of 28 April 2015, the police gave Thando Siyoni a phone of which the caller ID had been disabled, to contact Christopher Panayiotou, but Christopher said he couldn't speak as he had family with him. Shortly after 20:30, Thando was handed his own cellphone and he sent a SMS message to Christopher. This message read as follows: "Boss if am arrestd thy wil mak me talk nd they wl b after u" (sic). Although Christopher did not call Thando back immediately, there were a number of missed calls from Christopher on Thando's cellphone, as well as a missed call from the landline of the OK Grocer in Algoa Park. Capt Swanepoel asked Thando to send another SMS to Christopher. It read: 'Why are taking so long.i stell need cash boss.pls.or i cn come2 u bt nt ok' (sic). When Thando spoke to Christopher later, he arranged to meet Thando in Cape Road, but he later changed the venue. The vehicle Thando was in, together with an undercover police official as the driver, was bugged with audio and video devices. Christopher set up a meeting point and when he arrived, he circled the meeting point before he stopped next to the vehicle and then climbed in. He asked the driver to get out of the vehicle, which he did. Christopher then removed the battery and SIM card from his own phone and instructed Thando to do the same. Christopher then gave Thando R5000 to disappear and also searched him for a wire. An hour after his meeting with Thando, Christopher contacted a police official and told him that Thando had contacted him and that he was on his way to East London. He did not tell police that he had met with Thando. Later that same evening Christopher was arrested at his parents' house, where he was found in possession of another cellphone and SIM card.

On 4 May 2015, a group of people protested outside the Port Elizabeth Magistrates' Court where the "close relative" appeared. Wearing a black suit and shirt, Christopher Panayiotou made his first appearance in court. He showed no emotion when he was charged with murder, conspiracy to commit murder, kidnapping

and robbery with aggravating circumstances. He remained in custody until 19 June 2015 while the police continued their investigation. His attorney was Alwyn Griebenow who has, over the years, handled various high profile cases including the case of serial killer Stewart “Boetie Boer” Wilken; the case of Livingstone Makasholo who was accused of dealing in drugs, corruption and money laundering; and the case of former Grand Slam doubles champion, Bob Hewitt, who stood trial for the rape and sexual assault of minors. Following his court appearance, Christopher was taken to the St Albans Correctional Facility where he was on a 24/7 watch as the police feared that he might try to commit suicide while he was awaiting trial.

Arresting the hitman

At the time of Christopher’s arrest, a third suspect, the man believed to be the one who pulled the trigger, was still on the run. But not for long. The manhunt for the 30-year-old Sizwezakhe Vumazonke was triggered by the revelations made by Thando Siyoni. A SAPS tracking team set off in search of this suspect to Cape Town, but he was warned that the police was in hot pursuit and so he returned to Port Elizabeth. After their fruitless search in Cape Town, the tracking team followed up on certain leads in Port Elizabeth and saw Sizwezakhe at a party in KwaNobuhle on 3 May 2015. They followed him when he left in a silver grey VW Polo Vivo sedan to a tavern where he stopped, got out of the vehicle and spoke to another man. He then got back into the vehicle, still speaking to the man, whom, when he saw the tracking unit’s members approaching the vehicle, ran away. Vumazonke then opened the door in an attempt to flee as well. Police members tried to prevent his escape and in the process, he hit his head against the side floor panel of the vehicle. Sizwezakhe was arrested and transported to Kabega Park Police Station. The police seized a number of cellphones from the vehicle.

Sizwezakhe Vumazonke appeared briefly in court on 5 May 2015. His right eye was

swollen shut and he claimed in court that the police had beaten him. But the police denied the claim stating that he was injured when they removed him from the vehicle prior to his arrest. They also confirmed that the correct procedure was followed after the suspect had sustained the injury, that his injuries were reported and that he was offered medical assistance. At the time of his arrest, Sizwezakhe was out on bail following his alleged involvement in a robbery at Dales Liquor in Mount Pleasant, Port Elizabeth on 23 December 2014. He was also convicted in July 2011 of theft and possession of a stolen firearm, for which he had been sentenced to five years’ incarceration. He was released on parole in October 2013 after serving two-and-a-half years of his sentence in St Albans prison. Despite still being on parole when he was arrested in connection with the Dales Liquor robbery, he was granted bail in the robbery case. As with Christopher, Sizwezakhe also remained in custody until 19 June 2015.

Tracking the Polo’s owner

The silver Polo Vivo Sizwezakhe had been driving at the time of his arrest was registered in the name of Mrs Zulfa McCarthy from ZEMS Vehicle Rental Company. D/W/O Johannes Botes from the Mount Road Vehicle Theft Unit asked Mrs McCarthy about the Polo Vivo and was informed that Sizwezakhe had also hired a white Toyota Etios from ZEMS. She said that he had hired a Toyota Etios from 9 April to 23 April 2015. That vehicle was out with another customer, but they got the customer to return the vehicle. Upon the Etios’s return, Capt Kanna Swanepoel confiscated it. Mrs McCarthy informed the police that the vehicle had a satellite tracker and they checked its record for 21 April 2015, the day Jayde went missing. It revealed valuable information which was later used in court.

Christopher’s bail application - a lengthy exercise

On 14 May 2015, during Christopher Panayiotou’s bail application in the Port Elizabeth Magistrates’ Court, his counsel,

Adv Terry Price SC said the conditions in the holding cells at St Alban’s prison are “despicable” and against the Constitution and the Correctional Services Act. But the State prosecutor, Adv Marius Stander said that these conditions related to communal cells, which did not apply because Christopher was in a single cell. Awaiting trial and convicted prisoners are not held together. Between 50 and 60 prisoners awaiting trial are kept in one cell.

Adv Terry Price SC said that Christopher had already given his passport to his attorney and had instructed his lawyers to give it to the police if they wanted it. During the bail hearing, Magistrate Abigail Beeton heard that Christopher managed the OK Grocer in Algoa Park in which he had a 10% share and that he was responsible for 60 employees. His legal team argued that if Christopher remained in custody, his business would collapse which would affect his employees. Adv Stander, however told the court that he found it very hard to believe that Christopher’s father, as the 45% shareholder, would allow the business to go down because of the unavailability of the lesser shareholder of the business.

Christopher indicated that he was prepared to pay whatever the court set as his bail and that he will be pleading not guilty because no motive for the murder has been put forward. In his affidavit, Christopher said that there had been many other more serious murders committed where the suspects had been released on bail. His counsel had told him that the chances of his trial taking place that same year or even in the first half of the following year was unlikely and that he did not know how long he would survive in the holding cells. Additional affidavits were read into the record to vouch for him as a person, his role at the OK Grocer and at his other business, Infinity Cocktail Bar, also located in Algoa Park. In one affidavit he was described as “the best boss I’ve ever had”, in another, as a “boss and friend”.

But Christopher Panayiotou’s hopes of being home soon were dashed on 14 May 2015 when Adv Stander said that some of the issues that had emerged from the affidavits needed further information and asked that the case be

postponed until 20 May 2015. On 20 May 2015, a haggard and pale-looking Christopher Panayiotou arrived in court after spending three weeks behind bars. He exchanged a few words with his defence attorney Alwyn Griebenow before sitting in the dock and staring resolutely in front of him while the media jostled with each other to take his photograph. There were no signs of Adv Terry Price SC and the magistrate was not happy when attorney Theuns Roelofse told the court that Adv Terry Price SC would resume his duties as Christopher's counsel the following day. However he would be unable to make it to court on time as he was travelling from Johannesburg to Port Elizabeth. The case was then postponed to the following day, when Adv Price SC was in court with his client - he apologised to Magistrate Beeton for his absence the previous day as was explained.

In opposing bail, the investigating officer's affidavit was read into record. Capt Kanna Swanepoel said that Thando approached at least three men to conduct the hit and that it was while Thando was looking for someone to commit the deed, when it became known that the intended target was Jayde. He said that Sizwezakhe agreed to do the job and that a vehicle was rented. Cellphone tracking and the tracking device of the rented vehicle showed that Sizwezakhe had visited Cherise's home at least twice. It also showed that Sizwezakhe followed Jayde on numerous occasions and visited the site at the townhouse complex in Kabega Park on several occasions to scout it prior to Jayde's murder. It became clear that on the evening after Jayde went missing, Christopher travelled to Kwazakhele where he met Thando and paid him. The meeting was confirmed through cellphone mapping of both parties, as well as Thando's girlfriend, who was present at the time. Christopher however, in his responding affidavit, said that it was not true. He admitted that he had met with Thando, but that he done so because they had information that money had been withdrawn from Jayde's account in the area, and that he had asked Thando to help

him search for her since he was familiar with the area.

According to the investigating officer's affidavit, which was read to court by Adv Marius Stander, Christopher killed his wife to stop him from getting further into debt as he was trying to keep his mistress happy. "The motive for killing the deceased is actually very simple. The applicant was in financial difficulty. He hardly managed to keep head above water. He was now in the process of acquiring a further R2.2 million debt (for a new house), which meant it would be impossible for him to keep his mistress and his wife happy. He was being forced into creating more debt so he decided to have the deceased killed, not to gain financially, but to curtail his ever-increasing debt." Christopher refuted this in his responding affidavit, submitting a list of his assets and liabilities which showed his net worth exceeded R3 million. He, however, admitted to having an affair with 26-year-old Chanelle Coutts during the previous three years, but he said that it had no bearing on the case. Chanelle was the personnel manager at the OK Grocer in Algoa Park which he co-owned.

The court further heard that Christopher often bought Chanelle gifts and that they met secretly at hotels, restaurants and even in Christopher and Jayde's townhouse complex when Jayde went to visit her family on their farm. Capt Swanepoel's affidavit stated that Christopher's father had discovered the affair in October 2014 and as he loved Jayde like his own daughter, he told Christopher that if the relationship continued he would be disinherited. His father however decided not to tell Jayde about the affair.

Adv Stander noted that Thando Siyoni cooperated with the police from the moment he was arrested and agreed to assist them with a sting operation. Adv Stander read out a transcript of that conversation between Christopher and Thando to the court which became one of the most damning pieces of evidence submitted by the State.

Adv Stander further raised concerns that Christopher was a flight risk as he had applied for a Cypriot passport, which was issued to him in March 2015. His family own property in Cyprus and he had dual citizenship. Christopher said he had applied for the passport but was not aware that it had been issued and that he had not collected it. He pointed out that the last time he was in Cyprus was in 2009.

It was further found that Christopher's cellphone had been wiped clean and that no information was available before 26 April 2015. Adv Stander told the court that Christopher had, on numerous occasions, interfered with potential evidence, including enabling the resetting of his own and his mistress, Chanelle Coutts's cellphone to the factory setting. Adv Price SC said that information from Christopher's phone was wiped because he did not want evidence of his sexual relationship with Chanelle to become known. Adv Stander however pointed out that Christopher's attorney had said in an interview with eNCA that Christopher's actions were because he was afraid that the police were investigating him in connection with the murder. Defence Adv Terry Price SC objected, saying that what happened outside the court was irrelevant to the case and that if that interview were to be brought before the court it would need to be submitted as an additional affidavit. However, Magistrate Abigail Beeton allowed Adv Stander to continue. "If it pleases the court I was so shocked by what I had heard that I waited for the news bulletin to repeat an hour later and recorded the interview on my cellphone and will happily make that available," Adv Stander said. He pointed out that it was likely that Christopher had deliberately reset the phones to wipe all information that could be retrieved by police forensics, rather than just hide evidence of the affair. Adv Stander also argued that a normal person would delete incriminating information like text messages and images, but not reset their phones to the factory setting or wipe their lovers' phone as well.

Following many twists and turns, heated exchanges between the State and the defence and numerous delays, both sides finally

concluded their arguments in Christopher's bail application. Magistrate Beeton indicated that, as this had been more than a normal bail application, there was a substantial amount of information that had been submitted before her. She addressed Christopher Panayiotou directly and made it clear that she wanted to apply her mind to the case. While she accepted that he had already been in holding for a while, he would need to wait a little longer before she handed down her ruling.

Magistrate Beeton gave her judgment on 5 June 2015 when she said: "The court's finding is that the applicant has failed to show exceptional circumstances. Bail is refused." As the ruling was read out, Christopher dropped his head. The Magistrate considered the murder a Schedule 6 offence, which made it more difficult for the accused to get bail. She told the court that she would provide reasons for her decision on 12 June 2015 and that she anticipated that there could be an application for leave to appeal her decision. Magistrate Beeton stressed that although it was unusual to wait to provide reasons, she decided on this approach as there had already been many delays and that bail, by its nature, was an urgent application. His bail application had dragged on for more than a month, but there was a huge outpouring of relief when Christopher Panayiotou was denied bail and told to return to prison while awaiting trial for the murder of his wife Jayde.

On 12 June 2015, Magistrate Beeton said that reasons for not granting Christopher bail included that at first he claimed he had nowhere to flee, but it later emerged that his father owns a house in Cyprus and that he had dual citizenship with the country. She said that if Capt Swanepoel had not told the court that the accused had dual citizenship, the court would have remained ignorant to the facts surrounding his travel documents. "It's my view that Christopher Panayiotou was misleading the court when he said that he had nowhere to go," she said. It was clear that he had a high standard of living, and, being financially over-

extended, he would leave a trail of debt behind. She referred to the late George Louka, who skipped the country and fled to Cyprus after being accused of the murder of Lolly Jackson. Louka was eventually brought back to South Africa where he made startling claims that Radovan Krejcir had killed Lolly Jackson. Magistrate Beeton said that the State's case against Christopher Panayiotou was "reasonably strong" and "decisive" and that the offence carried a sentence of life imprisonment if the accused was convicted.

On 19 June 2015, the three men accused of murdering Jayde Panayiotou appeared together for the first time in the Port Elizabeth Magistrates' Court. The case was postponed to 13 August 2015.

Appealing the bail decision

On 20 July 2015, Christopher Panayiotou's defence team again tried to get bail for their client, by appealing to the Grahamstown High Court. This time with a new counsel, Adv Mike Hellens SC, who has held a position as an acting judge and has represented Czech fugitive Radovan Krejcir; murdered mining mogul Brett Kebble; and former Fidentia boss J Arthur Brown. Adv Hellens SC, assisted by Adv Terry Price SC and attorney Alwyn Griebenow, told the Grahamstown High Court that Magistrate Beeton had erred in her judgement and that Christopher Panayiotou should be granted bail. He said that the conditions at St Albans Prison in Port Elizabeth "where human beings are packed together and forced to defecate in front of each other" were inhumane. Judge Glen Goosen heard that Christopher was kept in a single cell and was only allowed out for one hour a day. The accused was not present during his lawyer's appeal for bail.

On 28 July 2015, Judge Nomathamsanqa Bheshe dismissed Christopher Panayiotou's appeal against his refusal of bail. Judge Goosen's detailed judgment explained why he had denied the appeal. "I am unable to find that the magistrate erred or misdirected herself in relation to those issues put forward by the defence

and the findings made. Magistrate Beeton's judgment contained a full discussion of the nature of the onus which rested upon an accused person charged with a Schedule 6 offence seeking bail. It was not argued that the magistrate had erred in relation to the test to be applied. It was however suggested in heads of argument, although not argued before me, that the magistrate had set the bar impossibly high in her application of the test of exceptional circumstances to the facts of the case. I do not agree. The test was applied correctly. The magistrate considered all factors which are ordinarily taken into account and those which the appellant has advanced in his application. She came to the conclusion on the totality of the evidence that the appellant had not discharged the onus to establish, on a balance of probability, that exceptional circumstances exist, which in the interests of justice, permit the appellant to be released on bail. I am unable to find that the magistrate was wrong in so doing," Judge Goosen said. Speaking to the media briefly afterwards, Michelle Inngs, Jayde's mother said this judgment was "the best two seconds of my life".

Section 204 witness recalls plans to get rid of Jayde

After the police arrested Thando Sinyoni on Sunday 26 April 2015, he made a confession. "It became clear to me that I was in deep trouble and decided to cooperate with the police. On request I made a few telephone calls to Chris which resulted in a meeting in a vehicle that I was told would be recorded. This statement was made in the presence of my lawyer" (sic). On 12 August 2015, the National Prosecuting Authority (NPA) confirmed that charges against Thando Sinyoni were dropped and that he would turn State (section 204) witness.

In his section 204 statement, Thando explained in detail how Jayde's murder was planned. He said that in October 2014 Christopher asked him if he knew someone who can kill someone. Christopher also used his finger to cross his throat. Thando was interested in this plan as he believed he could gain financially from it and he started to look for someone. He first went to a guy called Lama of Motherwell. Thando was not sure

whether Lama himself would kill the person but was hoping that he would know someone. He told Lama about Christopher's request and Lama requested a meeting with Chris. A few days later Thando introduced Christopher to Lama close to the Dan Qeqo Stadium in the parking area of Nqabane tavern. But, after this meeting Lama evaded Thando.

Christopher again put Thando under pressure to find someone else. Thando then went to Trompie whom he knew would not kill the person himself but would get someone to do the job. Trompie was interested in the proposal and he also requested to meet with Christopher. Christopher and Trompie met at Infinity but again nothing came from meeting and Christopher put more pressure on Thando. This was the first time that he told Thando that the person he wanted to be killed was his wife, Jayde. He told him that it must happen before the school holidays because once the school holidays begun, his wife would not be easily found. According to Christopher, Jayde spent too much money, while he had to work long hours for his money - he further told Thando that he had to sell one of his vehicles as he has financial problems. Christopher also said that he was forced to buy a home for him and Jayde and that he did not want to do so. He became more adamant by the day to find someone to kill his wife.

The school holidays had long since passed and in February 2015, Thando met Sizwezakhe Vumazonke in Gqoko's Tavern. Thando told him about the job and Sizwezakhe said that he was interested. The two exchanged numbers and a few days later he contacted Thando. They met at Infinity a few days later and Thando showed him the places where he could find Jayde. Then Sizwezakhe disappeared and Thando was back to square one. Thando started looking for other people again as Christopher had almost reached panicking stage.

Thando contacted his neighbour, Touch, at his gym, but he was also not interested.

Desperate to get the job done, Thando contacted Sizwezakhe via Facebook messenger and informed him that the prize for the hit was R40 000. He replied that Thando must SMS his number to him and a few days later Sizwezakhe pitched at Thando's gym. That was early in April 2015.

A plan was put in motion, namely that Christopher had to take Jayde on 5 April 2015 for a Sunday lunch to Infinity Club in Algoa Park in her vehicle. Sizwezakhe and his friends would then follow her as they could not kill her in front of the club. The plan was however cancelled as Jayde did not want to go to Infinity.

Sizwezakhe and his assistants wanted to use a rented car to do the job. Christopher gave Thando cash to rent a vehicle and from 9 April 2015 Sizwezakhe's cellphone and the white Toyota Etios travelled together. Christopher then decided to show Thando another possibility where Jayde could be taken out, namely at Cherise's house since Jayde and Cherise were travelling together to school. One morning Sizwezakhe and his friends followed her, but as it was raining they did not succeed. Since Sizwezakhe did not succeed that week, he requested Thando to ask Christopher to let him into the complex and the home, but Christopher said that it was too risky as the complex was too secure and that a policeman was staying opposite them. Christopher insisted that it had to look like a robbery or hijacking outside the gate.

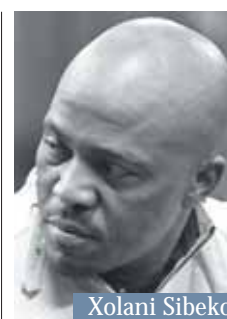
Sizwezakhe made another plan. On Tuesday morning 21 April 2015 he and Sinethemba Nemembe went to the Stellen Glen complex where the Panayiotous lived. Sizwezakhe dropped Sinethemba outside the Stellen Glen complex and circled the complex in his rented vehicle before stopping next to Jayde where she was waiting for her lift. Jayde was hit over the head and put into the vehicle's boot, before they drove towards KwaNobuhle with her. They stopped in an isolated area near Rooihoogete Road and pulled Jayde from the boot. Jayde was carried into the veld where either



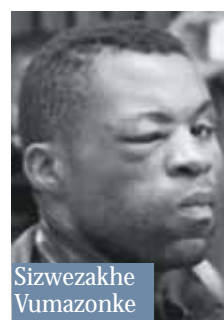
Christopher Panayiotou



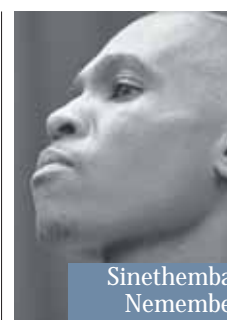
Thando Siyoni



Xolani Sibeko



Sizwezakhe Vumazonke



Sinethemba Nemembe

Sinethemba or Sizwezakhe shot her twice in the back and in the head at close range. Sizwezakhe phoned Thando from the scene to tell him that they had "completed the job" and wanted payment. They then went to an ATM and withdrew R1500 from Jayde's card but when they tried to withdraw more money at a second ATM, the card was swallowed.

In the meantime, Thando went on foot to Infinity to get the money. The arrangement was that Christopher would leave money with Knox, but Knox did not have the money.

However, he did not phone Christopher as he did not want any telephonic link with him. While he was with Knox, the news broke on Facebook that Christopher's wife was missing. Thando went outside and phoned Sizwezakhe and told him that he saw that what he told him was true. He also informed Sizwezakhe that he was looking for the money from Christopher. Christopher only phoned Thando one time during that day from Infinity, but did not say much as he was with people. Thando eventually went to the home of his girlfriend, Babalwa Breakfast. Very late that night, Christopher called Thando and asked him to meet him in Ntonjeni Road. "I got into his white Golf. Once inside the Golf he asked me where the guys put her. I could not answer that question," Thando said. He gave Thando a plastic bag containing money when they were in front of Babalwa's house. Thando went inside and gave the plastic bag to her before he left again. He got into Christopher's Golf again and they drove around as if they were looking for possible suspects. Christopher then returned him to Babalwa's house, where he, Babalwa and her brother counted Sizwezakhe's money. It was R40 000. At 01:00 on Wednesday morning, Thando called Sizwezakhe and told him that he could fetch his money. Minutes later Sizwezakhe was there and he and Thando drove to Njoli square where Thando bought KFC - they were caught on CCTV. Sizwezakhe then took him home. On the Friday after the murder, Sizwezakhe called Thando and said that the people who did the job wanted more money. By that time he was driving another vehicle as he had returned the Etios to the rental agency. Thando gave the message to Christopher, who later told him to get rid of his cellphone and SIM card - he gave Thando R1000 to replace his cellphone and SIM card. Thando took the money, but destroyed neither the cellphone nor the SIM card.

Another suspect arrested

While waiting for a High Court date for the trial, a fourth suspect was arrested in connection with the murder of Jayde

Panayiotou: Sinethemba Nenemba, who assisted Sizwezakhe Vumazonke. He briefly appeared in the Port Elizabeth Magistrates' Court on 30 October 2015 on charges of murder and kidnapping. Sinethemba was already in custody at the St Albans Correctional Facility in Port Elizabeth in connection with the murder of 72-year-old Denise Webber, when he was linked to Jayde's case. Sinethemba, who is believed to have graduated with a computer studies degree, was also linked to an aggravated robbery on a farm near East London earlier in 2015.

More postponements and attempts to get bail

In November 2015, Adv Price SC mentioned that Christopher Panayiotou wanted to bring a new bail application and that they therefore needed access to the case docket. Magistrate Beeton cautioned Adv Price SC that, should he wish to lodge a new bail application on behalf of his client, he would need to bring new evidence and not simply reshuffle previous arguments. After lengthy arguments, the defence indicated that it would withdraw the new application for the time being.

After several postponements, Christopher Panayiotou and his co-accused, Sizwezakhe Vumazonke and Sinethemba Nenemba, appeared in the Port Elizabeth Magistrates' Court on 3 May 2016. This time they were told to wait another two weeks before getting a date for a pre-trial hearing in the High Court due to a delay on the side of Sinethemba Nenemba's defence.

By the end of May 2016, Christopher Panayiotou made another attempt to secure bail. In his application for bail based on new facts, Christopher Panayiotou stated that a family friend, W/O Leon Eksteen, whom he accused of acting as a double agent, along with Sgt Aldre Koen coerced him into meeting with Thando Siyoni after Thando's arrest. In fact, Capt Swanepoel told the court: "At no stage did either Sgt Koen or W/O Eksteen suggest or encourage Christopher Panayiotou to meet with Thando Siyoni in order to build a case

against Thando. The meeting point was determined by Christopher Panayiotou." Capt Swanepoel also pointed out how Christopher had only told Sgt Koen of his meeting with Thando afterwards and had given the incorrect vehicle registration details. He also told the police that Thando was going to East London, when Thando had told him he was planning on going to Jeffreys Bay. "If Christopher Panayiotou intended to obtain information from Thando in order to assist the police to build a case against Thando surely he would not give Thando R5000 or search him for the presence of a recording device. If the plan was to obtain information from Thando, surely Christopher would want a witness. Lastly, if it was the intention to gather information for the police to build a case against Thando, surely one would expect Christopher to convey the content of the conversation to W/O Eksteen and Sgt Koen as a matter of urgency. This was not done," said Capt Swanepoel.

The case was postponed and on 6 June 2016 the State argued that Christopher Panayiotou has not presented the Port Elizabeth Magistrates' Court with any new evidence to warrant a new bail application. State prosecutor Adv Marius Stander argued that while a lot had been said in court, it did not amount to new facts that would warrant a new bail application.

Another arrest

In July 2016, the police arrested 35-year-old Zolani Sibeko at his mother's home in St Albans, for conspiracy to murder Jayde. After a month-long investigation, which included cellphone plotting, it showed that he was with Sizwezakhe Vumazonke and Sinethemba Nenemba, at least once while they were monitoring the route Jayde used to travel to work. Cellphone plotting also showed that Zolani was with Sizwezakhe and Sinethemba outside Jayde's house only five days before she was kidnapped.

End of part 1.

(This crime series will be continued in the May 2018 issue of **Servamus**.)

Community Safety Tips

Listeriosis: A Guide to What We Need to Know to Protect Ourselves and Our Families



Compiled by Annalise Kempen

On 4 March 2018, the Minister of Health, Dr Aaron Motsoaledi revealed that the source of the *Listeria* bacterium was found in processed meats from a specific manufacturer in Polokwane. If South Africans did not pay attention to listeriosis earlier, despite the 180 deaths (at that time) from the bacteria, they surely did after it was announced at this media conference that there was a chance that the deadly rod-shaped *Listeria monocytogenes* bacterium could be lurking in our fridges.

What is listeriosis?

Listeriosis is a serious bacterial disease caused by the Gram-positive, rod-shaped bacterium, *Listeria monocytogenes*. The bacterium is widely distributed in nature and can be found in soil, water, vegetation, the faeces of animals and contaminated food. Vegetables can become contaminated through soil or the use of manure as fertilizer. Ready-to-eat food can also become contaminated during processing and the bacteria can multiply to dangerous levels during distribution and storage (WHO, 2018).

Patients who have been infected with *Listeria* usually present with gastro-enteritis with symptoms ranging from mild to severe. The danger for vulnerable patients, those with a weak immunity such as older persons, is that listeriosis can lead to meningitis or septicaemia. In pregnant women, listeriosis may result in pregnancy loss (abortion) along with

meningitis of their infant (Department of Health, 2018).

Ironically, listeriosis is nothing new since the first documented outbreak of this deadly disease was between August 1977 to April 1978 where 14 cases from the Johannesburg area were reported. Thereafter, sporadic cases occurred throughout South Africa. In January to September 2015, seven cases were reported from a tertiary hospital in the Western Cape Province (NICD, 2016).

Where does listeriosis come from?

During the media conference, Dr Motsoaledi said that up to 2 March 2018, the total of laboratory-confirmed cases had risen to 948, counting from January 2017. Of these 948, a total of 659 patients have been traced of whom 180 have unfortunately died. This constitutes a 27% case fatality rate. The National Institute for Communicable Diseases (NICD) has ever since had a constant search for the source of the listeriosis and found that of the patients they interviewed, 85% had eaten processed meats - specifically polony, followed by viennas and other processed meats. This information, along with a series of laboratory tests performed on food products from manufacturing plants, eventually led to the recall of a variety of cold meat products in terms of section 60(2) of the Consumer Protection Act 68 of 2008. As a consequence, thousands of South Africans streamed to retail shops to get a refund on these recalled

products while shops removed all implicated products from their refrigerators.

As a further result, the Minister advised members of the public to avoid all processed meat products that are sold as ready-to-eat. "While we know that polony is definitely implicated, there is a risk of cross-contamination of other ready-to-eat processed meat products, either at production, distribution or retail. This is because *Listeria* on the exterior casing (packaging) of polony can be transferred to other products it comes into contact with, including viennas, Russians, frankfurters, other sausages, and other cold meat products that are typically not cooked before eating," said Dr Motsoaledi.

How is listeriosis transmitted?

Processed meats are not the only potential food source through which listeriosis can be transmitted. According to the NICD (2016), listeriosis is usually spread through the ingestion of contaminated food products - most frequently with raw or unpasteurised milk and soft cheeses, but also through vegetables, processed foods, ready-to-eat meats and smoked fish products. The problem is compounded with the fact that the *Listeria bacterium* can survive in normal temperatures associated with refrigeration (4 °C). In addition to food sources, the *Listeria bacterium* can also be transmitted from a pregnant woman to her unborn baby during pregnancy or at the time of birth, while direct contact with the organism can cause skin lesions.

Who are specifically at risk?

According to the Department of Health (2018), some groups of people have a higher risk for contracting listeriosis namely pregnant women; neonates (first 28 days of life); very young infants; elderly persons - those older than 65 years; and anyone with a weakened immune system due to HIV infection, cancer, diabetes, kidney disease, liver disease, people with transplants and those on immuno-suppressive therapy such as oral corticosteroids, chemotherapy, or anti-TNF therapy for auto-immune disease.

Symptoms and treatment

According to the World Health Organisation (2018), listeriosis presents in two types. The non-invasive form (*febrile listerial gastroenteritis*) is a mild form of the disease affecting mainly otherwise healthy people. Symptoms include diarrhoea, fever, headache and myalgia (muscle pain). The incubation period is short (a few days) and outbreaks of this disease have generally involved the ingestion of foods containing high doses of *Listeria monocytogenes*. The other more severe form of the disease is invasive listeriosis which affects certain high risk groups of the population, including pregnant women, patients undergoing treatment for cancer, AIDS and organ transplants, elderly people and infants. This form of disease is characterised by severe symptoms and a high mortality rate (20% to 30%). The symptoms include fever, myalgia (muscle pain), septicemia and meningitis. The incubation period is usually one to two weeks but can vary between a few days and up to 90 days.

It is important to note that pregnant women are about 20 times more likely to contract listeriosis than other healthy adults and that it can result in miscarriage or stillbirth. Newborn babies may also have low birth weight, septicaemia and meningitis. People with HIV/AIDS are at least 300 times more likely to get ill than those with a normally functioning immune system (WHO, 2018).

Fortunately, the WHO (2018) notes that listeriosis can be treated if diagnosed early. Antibiotics are used to treat severe symptoms such as meningitis and when infection occurs during pregnancy, prompt administration of antibiotics prevents infection of the foetus or newborn.

Prevention is always better than cure

The NICD (2016) provides the following advice in an effort to prevent further listeriosis cases. Since *Listeria monocytogenes* can grow in refrigerated foods that are contaminated, it is recommended that fridge temperatures be set below 4 °C and freezer temperatures below -18 °C. Those groups of vulnerable people mentioned earlier who are at a high risk of contracting the bacterium, should avoid the following foods:

- Raw or unpasteurised milk, or dairy products that contain unpasteurised milk, including ice cream;
- soft cheeses such as feta, goat and Brie;
- foods from delicatessen counters including prepared salads and cold meats that have not been heated/reheated adequately - even coleslaw and bean sprouts; and
- refrigerated pâtés (WHO, 2018).

Since there is no vaccine or pre-exposure prophylaxis for preventing infection, the best prevention is to always follow good basic hygiene. This includes following the golden food safety rules.

- Use safe water and raw materials
Various food sources such as ice cream, drinking water, ice cubes and unpasteurised dairy products can easily be contaminated with dangerous microorganisms or chemicals if they are made from contaminated ingredients. If in doubt avoid them. If available, use bottled water as drinking water - especially if the water source is unknown - but double-check that the bottle has not been tampered with. Alternatively, boil your water before using it.
- Thoroughly cook raw foods from animal sources, such as beef, pork or poultry
Avoid raw seafood, poultry meat that is still red or the juices are pink or minced meat/burgers that are still rare since they contain harmful bacteria throughout.

Proper cooking kills dangerous microorganisms and one of the most effective ways to make food safe.

- Always wash your hands with soap or use hand sanitiser with an alcohol base before preparing food, before eating and after going to the toilet

Since dangerous microorganisms are widely found in soil, water, animals and people, it can be carried on hands and transferred to food. If you visit a food market, be aware of this when touching raw food and in particular raw meat, and wash hands thoroughly after handling these foods. Always wash your hands after touching/playing with your pets.

- Keep vegetable/fruit and meat products separately

Cooked food and raw food that could contaminate it, should be kept separately. When frequenting street food vendors or buffets in hotels and restaurants, keep this in mind and avoid any uncooked food, apart from fruits and vegetables that can be peeled or shelled.

Never use the same utensils and surfaces when preparing raw meat and vegetables/fruit. Wash and decontaminate kitchen surfaces and utensils regularly, particularly after preparing raw meat, poultry and eggs, including industrial kitchens.

- Wash raw vegetables and fruits thoroughly before eating
- Keep food at safe temperatures

It could be a major risk for food-borne diseases if cooked food is held at room temperature for several hours. Avoid these foods at buffets, markets, restaurants and street vendors if they are not kept hot or refrigerated/on ice.

By holding food refrigerated or on ice (at temperatures below 5 °C) or piping hot (above 60 °C) the growth of microorganisms is slowed down or stopped.

Editor's note

The list of references is published on p 75.





Welcome back ~~General~~ Honourable *Minister,* Mr Cele

During President Cyril Ramaphosa's Cabinet reshuffle at the end of February 2018, the former national police commissioner, Gen Bheki Cele, made a dramatic return to politics when he was appointed as the Minister of Police. As he is no stranger to the policing environment and understands it well, many senior police officers as well as members working on ground level welcomed his appointment as the new police minister.



and in the fight against crime. The morale of the SAPS has been boosted by the appointment of Minister Cele as we are familiar with the energy with which he executes his tasks and have experienced the passion he has for policing. It is a contagious energy which urges one to go beyond the call of duty without hesitation. As he has worn the uniform, he intimately understands the challenges ahead and how best to face them." The National Commissioner further said that Mr Cele has been at the forefront of fighting crime and that with his experience and distinct leadership he will lead the police into a new dawn.

Gen Sitole told Minister Cele that he has been pronouncing on the SAPS's Turnaround Vision since his appointment. "As we welcome you back to the SAPS family Minister, we look forward to your dissecting, devising and interjecting strategic leadership and policies which will enable us to

Article and photos
by Kotie Geldenhuys

On 9 March 2018, a special parade was held at the SAPS Tshwane Academy where the National Police Commissioner, Gen Khehla Sitole, officially welcomed Mr Cele in their midst. The two dignitaries arrived at the podium with a small cart pulled by a white horse from the Mounted Unit - the podium was surrounded by a display of

vehicles from various units including the K9 Unit, the Water Wing, Public Order Policing, the Special Task Force and the Air Wing. Upon arrival, the National Commissioner welcomed the Minister back to the policing family and congratulated him on his appointment. Gen Sitole said that this appointment marks a new chapter in the history of the SAPS. "I embrace the distinct privilege to be part of this significant occasion as we forge ahead with a new path to the future

move forward in an effective and efficient manner. Having worked under your command previously, I know that you will embrace your new role with relentless eagerness.” Gen Sitole further pledged the SAPS’s full cooperation, commitment and support to Mr Cele on all levels.

After Mr Cele and Gen Sitole inspected the parade, the Minister delivered his keynote address. He thanked Gen Sitole “for welcoming me, but I am also welcoming myself back home”. As he spoke to the members on parade and the commanders on the pavilion, the Minister urged police members to sharpen their skills to enhance their ability to fight crime. He reminded them that police members are deployed to make South Africa a safer place for all and told them that it would be expected of police members to always be out in the field fighting crime, rather than spending time in offices.

Mr Cele sent a sharp message to criminals when he made it clear that the SAPS are not going to share any space with criminals as the space is too small. “This space belongs to the people of South Africa. This space belongs to the women and children of South Africa who cannot be terrorised and assaulted and fear walking on the streets of the country,” he said. He continued by saying: “We are not at war with the community of South Africa and we shall never be at war with the community of South Africa. Whoever declares war against us and innocent communities, which include women, children and the elderly, will be dealt with. You want war, you get war. You want peace, you get peace. If you decide to engage in war with us, there is only one side that is going to survive and that side is us. We shall refuse to fall and kneel in front of criminals,” Minister Cele said. He warned criminals to stay away from any criminal activities such as cash-in-transit heists, house robberies and women and child abuse, as they will be facing justice.

When he spoke to the members, he made it clear that the SAPS does not belong to those who do not know what else to do and then join the police. He warned that they will not tolerate anyone who tarnishes the name of the Service. “If you are here for other things, please walk away now,” he said. The Minister stressed that the SAPS is an asset of the people of South Africa and that it is important to take care of this asset.

“Police members must feel welcome in the SAPS, but I also urge them to take care of their communities.” He referred to the Midrand Police Station incident where three members were suspended on 7 March 2018 after a video of a complainant, threatened to be assaulted by a policewoman, went viral. The Minister said this is unacceptable as the police members at station level are at the critical point of service delivery and that he will not tolerate such behaviour.

* * *

Servamus wants to wish Mr Cele all of the best for his new job in an environment which is familiar to him and for which he clearly has a passion. You have a mammoth task ahead of you to lead the SAPS into a new dawn. We trust that you will lead by example and help to restore faith in the SAPS.

#BringBackPride #CrimeMustFall



POP Reserve Units launched

(Public Order Policing)

Article and photos
by Kotie Geldenhuys

16 August 2012 marked a bloody day in the history of South Africa. In the week prior to this day, there were several clashes between the SAPS and protesting Lonmin mineworkers, costing the lives of two police members and two security officers. On that fateful day in Marikana, the police shot and killed 34 protesting mineworkers. The events of that week placed public order policing (POP) in the spotlight and, following the Marikana Massacre, former President Zuma appointed the Farlam Commission to investigate this incident that still haunts South Africa. Following their lengthy enquiries and interviews with role-players, the Farlam Commission recommended that the SAPS had to redress its Public Order Policing (POP) Units and its ability to properly deal with demonstrations. Some of the many recommendations made in this regard were that POP Units should be both adequately trained and resourced.

The SAPS are adhering to these recommendations resulting in the appointment of a panel of experts, based on the Commission's findings, to evaluate policing at public protests and benchmark international best practices to improve policing. The mandate of the panel is in line with the



National Development Plan's vision of professionalising the SAPS. During the launch of the National POP Reserve Units on 16 March 2018 at the SAPS Tshwane Academy, the National Police Commissioner, Gen Khehla Sitole said that the panel has almost concluded its report. This report will assist the SAPS in enhancing public order policing as a whole and to conduct policing in an integrated manner, while cooperating with communities. The findings of the report will be adopted to develop,

implement and monitor effective measures to ensure public order in the country.

Recently the police have put a lot of effort into the POP Units to capacitate them, to train new members and to retrain current (older) members through refresher courses. New police recruits now also receive compulsory crowd management training as part of the curriculum for the Basic Police Learning Development Programme at the SAPS academies. Senior officers at the POP Head Office visited several countries to benchmark on international best training practices and crowd management techniques. State-of-the-art equipment, such as new generation Nyalas, water cannons, vehicles, video cameras and protective gear, to name but a few, were procured to enable our POP members to effectively perform their duties of crowd management and public order policing throughout the country. Last year, the POP Units received equipment to the value of more than R50 million while the human resource capacity was also increased (refer to [Servamus](#): July 2017). All these efforts are necessary to respond to the ongoing violent protests which often result in damage to and the destruction of property, injury of people or even loss of life.

The first reserve POP unit was launched on 1 April 2013 and was mainly operating in Gauteng. Three more reserve POP Units have now been established and are stationed in Marianhill in KwaZulu-Natal, in Faure in the Western Cape and in Matsulu in Mpumalanga and were launched on 16 March 2018. These Units are responsible for enhancing the response capacity of the POP Units to address public violence and crowd management. They can be deployed within the boundaries of South Africa as the need arises. These reserve units are in a position to operationally mitigate previous challenges with regard to

response time during deployment as well as the lack of capacity. The placement of these units in provinces, is strategic in order to mitigate the response time at deployment and to provide a swift and effective response capability.

With the launch of these reserve units the SAPS now have a total of 41 POP Units (37 provincial POP Units and four national POP Reserve Units). The full implementation of the POP enhancement and capacitation process will result in four established national reserve units and 50 fully equipped provincial units, with a staff complement of approximately 11 000 members. This is in line with both the findings of the work study and the Farlam Commission of Inquiry. During the launch, Gen Sitole said that although they are not yet at the 11 000 staff complement for POP Units, the approximately 5600 trained members can effectively maintain law and order. If one looks at the statistics of the 2016/2017 report year, POP Units had to respond to 14 693 incidents of which 3715 were considered unrest-related.

Before Mr Cele and Gen Sitole inspected the parade, Gen Sitole proudly said that the SAPS had made great strides and overcome many challenges to become an organisation with one of the best crowd management and public order policing components in the world.

As he took the stand, Mr Bheki Cele, the Minister of Police told the POP members on parade that they are at the coal face of working in communities and therefore had to work with community members in a “soft” manner. “You respond to communities who have issues to raise. You must go there and maintain order and prevent damage which they can possibly cause,” Mr Cele said. Although they have to use a soft approach, the Minister made it clear that they must not put themselves into danger. He argued that the police have a duty to serve and protect and should do so without taking any lives, unless lives are threatened. He said: “I am not calling for police to be trigger happy, however



Mr Cele and Gen Sitole inspect the parade of the POP Units



Minister Cele sitting in one of the new Nyalas - testing the equipment



they will not die in the course of duty. Theirs is to defend themselves and defend the defenceless communities. Respond with minimum force levels and increase the force levels depending on the situation at hand.” Earlier during the event, Gen Sitole quoted Mary Francis Berry: “When you have police officers who abuse citizens, you erode public confidence in law enforcement. That makes the job of good police officers unsafe.” This is so true and explains why a softer approach is (sometimes) important.

Mr Cele urged the POP members to draw the line between policing and politics. He told them to distance themselves from politics when responding to community protests. “Keep to your core business of policing and perform your duties to the best of your abilities. Don’t ask for political affiliations when you are deployed to communities. Leave politics to politicians,” he said. Mr Cele stressed that POP members must refuse to be used as a tool by politicians as they are not there to serve political organisations, they are there to serve all South Africans, regardless of their political affiliation, beliefs or religion. He said that when people are protesting for service delivery, councillors and mayors should be on the ground and do their work and not overwork police members. “They cannot use the SAPS to rectify their mistakes. They must take responsibility for their actions,” the Minister added.

Mr Cele gave strict orders to the POP members that they must keep to the discipline of policing within the prescribed laws of the country. He further issued a strong warning and word of advice to the members to stay away from any form of temptation and acts of bribery. “Always align your behaviour to the police code of conduct, don’t be diluted by the realities on the ground, keep to the oath at all times.”

He reminded them to avoid situations that tainted their reputation and said that they must never give the community a reason to say bad things about the SAPS. “Do the tough job you have, until the whole country feels safe.”

The Minister said that human capital investment is important and will be prioritised to ensure that the organisation does justice in taking care of police personnel. “No organisation will ever win if they do not take care of their personnel. Take care of the members and they will take care of the South African community. Our members remain our strongest asset in this organisation, their well-being is our priority,” Mr Cele added.

In conclusion, Mr Cele promised to keep to his word of walking the streets with the members and spending more time on the ground than in the office. “We will walk the streets of the so-called no-go areas, we will clean the streets and we will continue to do this until the people of South Africa say we are safe and that they feel safe,” Mr Cele concluded.

* * *

Following their training and with their new equipment, POP Units are ready to respond to public unrest and crowd management situations. Unfortunately a sad reality is that many of these situations have nothing to do with the police. The majority of incidents are service delivery and wage-related where those who should take responsibility for the situation are seldom at the scene paying attention to the complaints of the protestors. We cannot agree more with Mr Cele that those responsible for the chaos must sort out their own mistakes, and start serving their communities by ensuring that they get what they deserve.



The simulation exercise, involving members of the POP Units, Metro Police Departments and an Oryx helicopter from the South African National Defence Force, showcased a professional and coordinated approach to crowd management

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Your ATM transaction, is their opportunity...
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TIP

Be cautious of strangers offering to help as they could be trying to distract you in order to get your card or PIN.

TIP

Always cover your PIN when you enter it into the ATM keypad.

TIP

Set a minimum daily withdrawal limit that suits your needs, to reduce losses in the event that your card and PIN are compromised.

TIP

Know what your ATM looks like so that you are able to identify any foreign objects attached to it.

TIP

Do not insert your card if the screen layout is not familiar to you, and looks like the machine has been tampered with.

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Organised disruption

The name of the game in fighting INSURANCE

By Annalise Kempen

Photos courtesy of the Insurance Crime Bureau (ICB)

For many consumers, short-term insurance is a grudge expense, until that day when they are involved in a vehicle accident or they return home from work or holiday to find that they have been the victim of a burglary and they need to register a claim with their insurer. But these days when we think about insurance, we should also think about how criminals are devising ways to defraud the industry.

On 21 and 22 February 2018, the Insurance Crime Bureau (ICB) hosted its second conference in Midrand, entitled "Organised disruption", looking at ways in which the insurance industry and involved parties can significantly disrupt syndicated criminal activities through common efforts and partnerships. The thought-provoking presentations by industry specialists led to many interesting discussions and questions being asked. These not only included case studies and showcasing the ingenious ways in which criminals are trying to defraud the industry (ultimately impacting on consumers). Some presenters also discussed the importance of employing staff in the industry whose integrity was beyond reproach to ensure that criminals themselves don't infiltrate the industry.

Conference highlights

Since no conference report would ever be able to be a true reflection of everything that happened at a conference, we will therefore only point out some of the highlights during the conference.

The conference started off on a high note when **Angela Mhlanga**, the CEO of **Hollard Partner Solutions**, spoke about the importance of developing people in order to grow South Africa. She noted how unemployment has increased since 2014, and that the gross domestic product has recorded low growth rates. As a related consequence, about 30% or more than 17 million South Africans are dependent on social grants - something South Africa could no longer afford. Angela noted that people development was necessary for a large group of people to no longer depend on social grants. She also reminded the delegates that they were part of an industry which has to deal with the consequences and outcomes of our high crime rates, which could also be linked to a lack of people development. Angela noted the importance of developing our people in order to get them to be employable or become entrepreneurs. The added benefits of having people developed include that they will enjoy employment and therefore be able to pay for education; their medical bills; food and housing and that they would not have to resort to crime to provide for their basic needs. Angela gave various examples of how individuals and companies could get involved in people development, such



with
the

as by teaching them new skills like basic computer literacy or how to replace car parts. Hereafter they should be given a platform from where they could repeatedly practice those new skills as interns. Angela concluded by using examples of the work done by Harambee and the Jobs Fund and those interested in getting more ideas on how to "lend a hand" could get some inspiration by visiting www.jobsfund.org.za and www.harambee.co.za

The CEO of MiWay, **René Otto**, gave a thought-provoking presentation about organisational ethics and how their company drove a values-based culture in various ways. One of these was by regularly awarding a (real) samurai sword to the individual staff member who set the best example of the company's values-based culture. Nominations and motivations for this award are done by peers and as a qualifying criteria, the nominations have to address all four of MiWay's values namely freedom, attitude, energy and accountability and showcase how that employee had fulfilled them. René quoted interesting research about employees' ethics that showed that 20% of employees have indicated that they will never steal from their company; 60% indicated that they will not steal unless they were presented with an opportunity; while 20% of employees were thinking of ways to steal from their employers all the time, ie by exaggerating travel claims. These statistics should give all employers sleepless nights.

However, these statistics do not have to be a reflection of your company if a values-based culture was entrenched and employees knew that they have to do the right thing all the time, and also knew what the right thing was. René said that MiWay has adopted a zero tolerance attitude

towards non-compliance with their values-based culture, especially regarding dishonesty and a lack of accountability. The reasons were simple: if employees were dishonest, it led to a lack of trust; a lack of trust led to a permanent breakdown of employer-employee relationships and ultimately necessitates that a bad apple needs to be removed before s/he contaminated the rest of the box. Ultimately, it is not important what an employee tells you about him-/herself during an interview, but how they behave - do their words and behaviour match?

Getting technical

On a technical level, David Hartley from the SAS Institute explained during his presentation how technology is used to identify, track and combat syndicated crime. That was done after he had sketched a background of the extent of insurance fraud in different parts of the world. For example, in Britain it was estimated that undetected fraud costs insurers £3 billion (R48 billion) a year; in Switzerland it is estimated that 10% of claims are fraudulent; the United States estimates losses of as much as \$80 billion per year due to insurance fraud; while a survey conducted in Finland in 2014 showed that 19% of respondents said that they knew a person "who has deceived his/her insurance company". The question is how do insurance companies detect and prevent potential fraud? From David's presentation it was clear that analytical software can play a vital role in detecting fraud and that data can be used to find unexplained anomalies. David noted that such analytical software allows for swifter decisions in terms of further investigations and ultimately in more efficient investigations. In Turkey for example, using analytical software has resulted in a 66% increase in fraud detection. It therefore makes sense that insurance companies use these types of tools to detect and prevent fraud.

Ever thought about how classified adverts can be an excellent source of information for investigators? Those who never considered it were left in awe of how the Mohawk system could scan through active and inactive classified adverts and provide insurance investigators with information about those possessions that were reported as "lost" or "stolen". Roland Wöerner from Mohawk Security used various examples during his presentation of how their software was able to search through 116 South African online sources featuring an estimated 150 million advertisements to look for items that clients typically report as stolen or lost. In one case, the system flagged that an expensive vehicle that was reported as stolen was in fact offered for sale on several platforms before the so-called theft. Other examples also proved that what clients had reported as losses were nothing short of complying with the elements of crime and making it clear that the clients tried to commit insurance fraud.

Digging deeper

Dr Chris de Kock, a retired head of the SAPS's Crime Information Analysis Centre (CIAC), gave delegates a glance of the possible impact of crime analysis on organised crime. He said that it was vital for CIAC officials at police stations to pinpoint hotspots, via GIS mapping, for example where hijackings or smash-and-grab incidents were frequently taking place or at places where vehicle theft was rife, and then determine what contributes to crime in those hotspots. For example, if an open veld, no fences, easy access to a highway or other factors made it easier for criminals to escape, that information should be brought to the attention of the station commanders who could address these tendencies through policing interventions.

Chris also advised that interviews could be conducted with victims of similar crimes to gather more detailed information about that crime. In this regard he also

highlighted that the SAPS's Crime Administration System (CAS) provided for victims' details to be captured and that such information could be used to indicate repeat victims. This information could be used to question whether there is something wrong with the victim's behaviour or luck of continuously being at the wrong place at the wrong time, resulting in falling victim to crime, or that the "victim" might be involved in insurance fraud. Linkage and pattern analysis, combined with crime intelligence, could further be used to identify syndicates.

On a practical level, Chris advised insurance companies to follow the same protocol as his short-term insurance company in that they had sent an investigator to question the circumstances surrounding him being hijacked. This investigator apparently questioned what Chris, as the victim, had been doing two hours before the incident and even two hours after the crime had taken place. This information Chris suggested could be entered into a central insurance repository (for example managed by the ICB) which could be used to link similarities, identify organised crime tendencies and thus criminal syndicates. Chris made it clear that by analysing crime tendencies, insurance companies could go far in identifying repeat claimants; fraud and ultimately also syndicates.

Louwrens (Lieb) Liebenberg, senior project manager at the ICB, does not only have years of investigative experience in vehicle crime, but he is highly respected by his peers. Lieb was therefore a popular "return" speaker at the conference, sharing information about the war on vehicle clones and how NaTIS was being used to identify syndicates. Lieb noted that up to 60% of stolen and hijacked vehicles remained in South Africa and that cloned vehicles were a market-driven enterprise. Some of these vehicles were used to commit other crimes such as cash-in-transit heists, while others were "legally" put back into the system, thanks to the ingenuity of criminals. He explained the typical payment structure for the different role-players from the hijacker to the person who "legally" peddles the vehicle back into the system up to the person who eventually resells the vehicle.

Lieb reminded that the problem with reregistering the stolen vehicle onto NaTIS did not lie with the National Administration Traffic Information System (NaTIS), which is regarded as one of the best in the world. It rather resided, as Lieb described it, with the "interface" - the face between the keyboard and the hands, which means some of the officials who have access to NaTIS. Since NaTIS is a database of vehicles and vehicle owners and related resources to provide effective road traffic management, its primary function is not to prevent crime. However, NaTIS acts as a barrier for vehicle crime enterprises in that it contains certain precautions to prevent the reregistration of vehicles.

Unfortunately, any system is as good as those who operate it and regrettably, not enough has been done in the past to screen those officials who have access to NaTIS. This has augmented the problem of criminal syndicates targeting individuals who could manipulate the system to get these vehicles "legally" back on the road. Fortunately for law enforcement, NaTIS leaves a footprint, and that information could be used to fight this form of vehicle crime and corruption through partnerships. Lieb elaborated on the role of the ICB in identifying and profiling vehicles, individuals, companies, institutions (such as testing stations) and system users that are involved in the cloning process. He also mentioned how the ICB used technology and systems such as Mohawk and automatic number plate recognition to trace, identify and ensure recovery in line with public private partnerships. Lieb then showed examples of how the footprint left by NaTIS enabled authorities to use linkage analysis to connect the same user with different registration authorities and the registration and duplicate registration of various vehicles. He concluded his presentation by noting how ultimately the right people are brought to the table in order to address an identified network - including the Road Traffic Management Corporation; the relevant units from the SAPS, such as the Vehicle Crime Investigation Unit (VCIU), Cross Border Crime, the National Investigation Unit (NINU) and the Directorate for Priority Crime Investigations (DPCI). This could lead to the prosecution and the disruption of criminal networks.

During his presentation **Anton Keet from 1Life** elaborated on the challenges faced by the life industry where the types of fraud perpetrated are mainly through impersonation (identity theft/fraud), exaggeration or non-disclosure of information. He reminded that employees were potential role-players in facilitating insurance fraud where internal investigators with credible backgrounds in law enforcers have been found guilty of fraud. Anton reiterated the importance of partnering with role-players such as the ICB and the South African Fraud Prevention Services, but also on the necessity to open criminal cases with the SAPS for every single fraud case - even if it means more work for the internal investigating team. This he said was worthwhile in the end as it not only protected the industry from more fraud being perpetrated by the same criminals and criminal networks, but also protected customers, employers and other shareholders.

Follow the money and identify the body ...

Identity theft and fraud is a much bigger issue than many people realise. It could have a serious impact on them and their financial credibility when their identities are stolen. **Manie van Schalkwyk, the Executive Director of the South African Fraud Prevention Services (SAFPS)** explained the role of the SAFPS for both the public and the insurance and other financial industry role-players. He said that the SAFPS shares information about confirmed fraud on a closed user group of 45 members which include all major banks, financial groups, retailers, screening bureaus, telecommunication and vehicle finance institutions. The principle of this relationship is based on members bringing their data to the table and the SAFPS "packaging it" in order for other member companies to be aware of fraud cases in order to mitigate their own risks. The majority of categories of fraud reported include impersonation; forged documentation; the misuse of account information through fraudulent conduct; employee, Internet, insurance and business fraud. The information provided by the SAFPS is then used extensively in credit extensions, human resource management, forensic departments, insurance, cybercrime and health care. For those who thought that fraud was not such a big issue, Manie noted that their database contained 115 000 records, of which the fraud database contained 70 000 records and that their fraud listings increased by 56% in the 2017 year! Their victim listings increased by 52% - year to date to December 2017. The fraud listings of the major banks increased by 15%, but

through the services provided by SAFPS, saved them R2.2 billion!

The SAFPS also provides valuable services to individuals in that they offer them free protective registration when their ID documents have been lost or stolen; and offer free protection to victims of impersonation when their personal information has been used by a fraudster. Manie reminded that fraudsters are not industry-bound "their job is to be fraudsters" - he therefore urged the industry to share information as "we are fighting the same perpetrators". **Report suspected identity fraud to the SAFPS's helpline: 0860 101 248 or visit www.safps.org.za.**

There is a saying in law enforcement to "follow the money" and **Pieter Alberts from the Financial Intelligence Centre (FIC)** explained possibilities for the FIC to cooperate with the insurance industry in fighting crime. Since the FIC's legal mandate includes identifying the proceeds of unlawful activities and combating money laundering activities, there were many similarities - specifically in terms of dealing with criminal syndicates. Pieter noted that the insurance industry - especially life insurance - was one of the entities that was vulnerable to money laundering and that all such listed entities had a legal obligation to report suspicious transactions. He then explained money laundering vulnerabilities in the insurance sector by noting how launderers could move funds and receive a payment from an insurer while making the funds seem legitimate. Pieter also elaborated on where the real money laundering risks were for the insurance industry and highlighted how life insurance products could be abused for this purpose. He also explained how the short-term insurance industry was another rich source of information for law enforcement especially in terms of high value assets. If the short-term industry were to file suspicious transaction reports it would enable better tracking of criminal trends in the insurance industry and go a long way in enabling the FIC to fight fraud, corruption, money laundering and the financing of terrorism even more extensively.

An important role-player one would not typically connect to assisting the insurance industry was **Brig Leonie Ras from the SAPS's Victim Identification Centre (VIC)**





within the Forensic Science Division. After explaining the work done by the VIC in the identification of victims, she invited the insurance industry to utilise the Centre's services where they can identify bodies that were not supposed to be identified, such as with life insurance claims. Brig Ras noted that there were many unidentified victims whose bodies could be used for fraudulent purposes, such as undocumented foreign migrants who were involved in taxi accidents or missing persons who nobody reported as such. Gauteng alone has more than 1000 bodies that are buried annually as paupers.

* * *

In South Africa, the annual short-term insurance claim spend is estimated at R35 billion. If 20% of submitted claims are considered to be fraudulent, this equates to a shocking R7 billion lost per annum. Insurance fraud specialists, the South African Police Service (SAPS) and other related agencies agree that a significant percentage of crime, including insurance fraud and insurance-related crimes, is highly organised and perpetrated by syndicates. This confirms why the industry needs to work together to fight insurance fraud and why the ICB will continue to play a leading role in gathering information, sharing it with their members and in so doing mitigate their risk of falling victim to insurance fraud. The ICB conference provided a valuable platform and networking platform for these industry role-players by reminding them that their fight is against the same crime, even though they work for different companies.



Report insurance fraud

Insurance fraud can be reported safely and easily using the toll-free Insurance Fraudline at 08600 02526; sending an SMS to 32269 or sending an e-mail to: insurance@fraudline.co.za. Remember, you may stay anonymous.

Who and what is the Insurance Crime Bureau?

Almost ten years ago, in July 2008, Hugo van Zyl, the current Chief Operating Officer of the Insurance Crime Bureau (ICB), was tasked with establishing a fusion centre and a leading authority to fight organised crime in the insurance industry. The ICB's establishment followed a four year investigation by the South African Insurance Association (SAIA) on the best way to address crime and fraud committed against companies in the short-term insurance industry. It was decided to follow a holistic approach, by establishing an independent organisation, namely The Insurance Crime Bureau, to address the vast and ever-increasing problem of insurance fraud and crime. SAIA was instrumental in the formation of the ICB and all current member companies are members of SAIA.

It was vital that such a fraud/crime bureau would be able to utilise existing data sources, including those sources outside the control of individual insurers, to manage the insurance fraudline and to establish an investigative unit. Nevertheless, a clear distinction exist between the activities of the ICB and the individual insurance companies' investigative units in order to ensure cooperation.

Hugo van Zyl, who was at that stage the sole employee, not only had to establish the offices, but had to hand pick technically qualified and experienced key individuals, whose ethical values were consistent with those of the organisation they were going to represent. Also on his priority list was implementing and customising the analytical and case management tools.

Hugo realised that without partnerships the ICB would not be able to fulfil its mandate to lead a united effort against fraud in insurance companies, particularly organised crime syndicates that target multiple carriers simultaneously. With ten member companies supporting the newly formed venture, it was important that they get a return on their investment and, along with its partners, the ICB held its first vehicle pound clean-up in 2010. The four month-long operation saw approximately 2500 vehicles returned to the insurance industry and an additional 4500 vehicles being returned to uninsured vehicle owners in South Africa. This was the first of many similar operations to follow and an example of how the ICB was going to prove their weight in gold to the insurance industry.

Ten years later, the successes speak for themselves since all the major short-term insurers and life insurers have joined forces with ICB as members, in addition to four associate members. Other stakeholders and partners with whom the ICB works closely include the South African Police Service and the DPCI; the National Prosecuting Authority and the Asset Forfeiture Unit; microdotting companies; the South African Revenue Services; Sabric; credit bureaus; salvage dealers; tracking companies; and the Road Accident Fund, to name but a few.

For those wanting to know what the numbers say, insurance companies currently get an 450% return on their investment with the ICB. Even the uninsured have benefited from the work of the ICB and their partners, with more than R200 million's worth of vehicles that have been returned to vehicle owners who do not have short-term insurance. Sounds like a win-win partnership for those who partner with the ICB!

For more information, visit www.saicb.co.za

In the NEWS

Bryte SA Crime Tracker: July 2017 - September 2017

On 7 March 2018, Bryte Insurance, a proactive business risk specialist, released its Q3 2017 Crime Tracker; an indicator of long-term crime trends in South Africa as captured by insurance claims for the period July to September 2017. The **Q3 2017 Bryte Crime Tracker** measures the annual change, on a quarterly basis, in crime-related claims due to hijacking, robbery, theft and malicious damage committed against South African businesses.

The Bryte Insurance Crime Tracker is an aggregate of the various crime-related claims submitted by Bryte Insurance business customers during a given quarter, and as such presents a representative sample of specific crimes experienced in South Africa. The Bryte Crime Tracker is part of the education and awareness campaign against crime, as it is a helpful platform to share information and tips with businesses and consumers to ensure they proactively reduce their exposure through better risk decisions.

In essence, Bryte has noted the following:

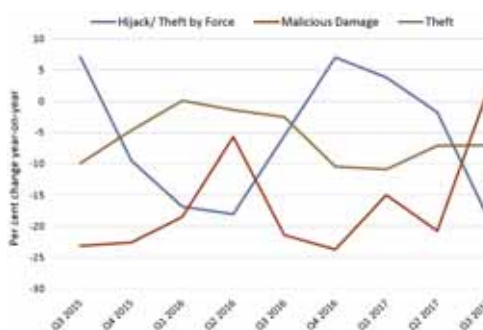
- A continued slowdown in overall crimes against businesses
- Incidents of malicious damage increased
- Cash-in-transit heists gain momentum

The notable decrease in overall crimes against businesses may be attributed to proactive measures undertaken by businesses to reduce exposure to incidents of crime. "While we have noted a slowdown in overall crimes against business, the reality is that some businesses remain more exposed than others. That said, fighting crime takes effective, industry and nationwide collaboration. To quote President Cyril Ramaphosa: 'In improving the quality of life of

all South Africans, we must intensify our efforts to tackle crime and build safer communities.' I am particularly enthused by the planned deployment of additional resources at various police stations, the implementation of the much-anticipated community policing strategy and the launch of the youth crime prevention strategy," said Cloud Saungweme, Chief Claims Officer at Bryte.

Commenting on the increased measures undertaken to help customers mitigate against exposure to crime, Mr Saungweme added that Bryte continues to actively educate brokers and customers in an attempt to reduce their exposure to crime. Some of the tools employed include this quarterly crime tracker and regular roadshows in addition to issuing advisories around key periods such as the festive season/Easter and events such as the ongoing droughts/rainy season.

Contact Crime, Malicious Damage and Theft: July - September 2017



The above graph compares business crime data - specifically contact crime (hijack/theft by force), malicious damage and theft - over a two-year period - based on percentage growth or decline.

Malicious damage

Of the three defined categories - contact crime, malicious damage and theft - the rise in incidents of malicious damage (to fixed and movable assets) has in Q3 2017 reflected a 1.8% acceleration - a sharp increase when compared to the 20.7% contraction noted in Q2 2017 - and the 21.4% contraction noted in Q3 2016.

Theft

The theft category decelerated to a 7% annual contraction in Q3 2017 when compared to a 2.5% contraction in Q3 2016, reflecting a decrease in the incidents of theft. Similarly, a decrease in hijackings overall was also reported, with stats reflecting an 18.6% annual contraction in Q3 2017 when compared to a 5.6% contraction in Q3 2016.

When examining industry-wide claim stats, the Insurance Crime Bureau (ICB) noted that motor claims for theft exceeded those relating to hijackings by 9.8% in Q3 2017.

Contact crime

Contact crime (robberies and hijackings) was at its highest level in Q3 2015, reflecting an acceleration to 7.1% with progress noted as contact crime decelerated, contracting to 5.6% in Q3 2016 and 18.6% in Q3 2017. A continued decline in the incidents of contact crimes over the past three quarters is also noted.

Cash-in-transit heists gain momentum

Armed robbery (specifically cash-in-transit (CIT) heists) is among those that are of great concern - a trend that corresponds with Bryte data. The rise of organised crime syndicates - many of whom seem to have access to insider information - is driving up the success rate of heists/business robberies. **Some statistics suggest that 90% of business-related armed robberies are committed with the help of an insider/information supplied by them.**

According to Kalyani Pillay, Chief Executive of the South African Banking Risk Information Centre (Sabric), a 49% increase was noted when comparing

1 January to 31 August 2017 to the same period in 2016.

"Cash remains enormously attractive to criminals, hence the propensity towards CIT heists. Often, organised crime syndicates access critical information by either bribing employees or intimidating them by threatening their security as well as that of their family," added Mr Saungweme. **"It is imperative that businesses rigorously screen employees in critical positions and regularly monitor them to minimise exposure to such threats. Furthermore, businesses need to encourage employees to report any propositions/threats from criminals, create an understanding of the severe consequences of crime and provide appropriate security to the threatened employee and their family to ensure their safety."**

Bryte provides the following tips for regular screening of employees (particularly in the banking and jewellery industries), which could include:

- annual credit checks to assess if the employee may be in financial difficulty and thus more prone to bribes;
- twice annual/annual police record checks to determine whether the employee may be affiliated with offenders; and
- regular reviews of the employee's social media profiles to gauge any irregular activity.

Businesses also need to maintain general vigilance, ensuring that the recommended security systems are in place and that security measures are being strictly adhered to. "While you may be operating in an industry/area that is not prone to certain criminal activities, that does not mean that your business is not vulnerable," concluded Mr Saungweme.

Reference

"Bryte SA crime tracker: July - September 2017." - Media statement issued by Bryte Insurance Company Limited dated 7 March 2018.

For more information, please visit <http://brytesa.com/>

In the NEWS

Sisters with blisters giving abuse the boot



Compiled by Pelican Baloyi
Photos provided by Lt-Col Niemand

On 10 March 2018, members of the Gauteng Family Violence, Child Protection and Sexual Offences (FCS) Unit, took part in the Sisters with Blisters 2018 walk which took place at the St Stithians College in Johannesburg.

The Sisters with Blisters walk is an annual **Jacaranda FM** initiative which is hosted in conjunction with **1st For Women Insurance**. The purpose of this event is to raise awareness for women and child abuse in South Africa. This initiative also assists in addressing the three pillars of support against women and child abuse, namely prevention, preparation and provision.

The walk is usually planned in line with the National 16 days of Activism against women and child abuse which runs from 25 November to 10 December each year. This year the event was planned in line with International Women's day which was celebrated on 8 March 2018. The theme of this year's walk was "Together let's give abuse the boot".

Brig Palko and members of the Gauteng FCS



have been taking part in the annual Sisters with Blisters walk since 2013. Their support shows the community of greater Gauteng that the South African Police Service is committed to the fight against crime involving women and children.

The Gauteng FCS partnered with Mr Buddy Vroom of **MiWay Insurance** and Miranda Jordan and her team of Women and Men against Child Abuse (WAMACA) on the day of the walk to raise awareness. Also showing their support, were boys from WAMACA aged between six and 15 years who joined while they walked for 5 km.

The money raised by **Jacaranda FM** will be donated to WAMACA and a fraction of the money will be utilised to assist in rendering a free service to abused children at Teddy Bear Clinic in Gauteng.

Helping others is important - when we do we create a much better world and a better place in which to live.

Reference

Media statement issued by the provincial office South African Police Service - "Gauteng provincial FCS taking part in the sisters with blisters 2018 walk" dated 14 March 2018.

On the Road again



By Ashref Ismail

The most lethal road traffic offences in South Africa

South Africa loses an average of 17 000 people to road crashes annually. That averages around 46 people who are killed needlessly and senselessly on our roads due to recklessness, negligence and corruption each day. Corruption is so endemic within road traffic management that it is heartening to note the progress being made by the Hawks and the Road Traffic Management Corporation (RTMC) in arresting culprits at vehicle testing stations, licence testing centres and roadside traffic checkpoints. Apart from only arresting the corruptee (receiver of the bribe), the corruptor (the giver of the bribe) should also be charged to send out a clear message to other road users who think paying is an easy way out.

The consequences of paying a bribe is often only felt later when one is haunted by the realities of the aftermath of a road crash, especially when there has been a casualty. Because of our shortcuts, we do not understand that a vehicle in the hands of an untrained driver who bought his/her way, is a lethal weapon, hence we find the results in the inordinate number of people killed

by way of road crashes.

The most lethal road offences definitely attest to the fact that the authorities need to act vigorously and decisively to deal with this lawlessness in the country. The judiciary too, must impose harsh penalties so that road crashes are made socially unacceptable.

1. **Speeds too high for circumstances are the number one killer on the roads.** People want to conduct academic debates about today's modern vehicles that have sophisticated active and passive safety features and how a modern vehicle travelling at 150 km/h is far safer than a "skedonk" doing 90 km/h in a 100 km/h zone. There are two aspects to this debate: First, one cannot have two sets of rules: one for modern vehicles and another for older ones and second, the simple scientific fact of the matter is that the faster you go, the more time and space you need to bring the vehicle to a standstill, and if you cannot, the harder the impact and the resultant damage and casualties. By travelling not just within the speed

limit, but also suitable to the conditions you are giving yourself sufficient time to identify the hazard and react accordingly.

2. **Driving and walking while under the influence of alcohol and drugs.**

According to the Medical Research Council, more than 60% of crashes over weekends are as a result of the abuse of alcohol, either by the driver or by a passenger. Ask any traffic chief how many drunk driving roadblocks were conducted in the last six months, and listen to the excuses about not having overtime funding, not having sufficient breath testing equipment, delays at blood laboratories, how the police refuse to open cases and how the judiciary metes out light sentences etc.

3. **South Africa has among the highest fatality rates among pedestrians in the country.** More than 40% of our annual fatality rates comprise pedestrians. This is either because of drunken walking, jaywalking, walking on freeways, wearing

clothes that are not visible at night, as well as distracted walking.

4. **Reckless and negligent driving** is another major source of headaches for the authorities as well as the innocent road users. No day passes without us witnessing bad behaviour by the usual culprits, the taxi drivers who will jump red traffic lights, overtake dangerously, overtake despite barrier lines and/or in the face of oncoming vehicles and travel at excessive speeds in overloaded and unroadworthy vehicles. This is now spilling over to other road users as well. Bad behaviour takes place because road traffic law enforcement is perceived (maybe rightfully so) to be corrupt, incompetent, inept and hopelessly inadequate. Even if you are caught, "tjo-tjo" or "lunch money" will get you out of most situations. So what happens, we see overloaded freight vehicles, unroadworthy passenger transport vehicles like minibus taxis and buses and general road users committing all sorts of offences with impunity because they know they can - legal consequences are zero.

5. **Distracted driving**, which includes more than just using your cellphone whilst driving. It includes any act that takes your eyes and mind away from the business of driving: eating, fiddling with the radio/air-con, turning to give the baby the milk bottle and the likes are all dangerous as your concentration is compromised. The idea of being able to multi-task is a proven myth. Our minds have been designed to do only one thing at a time. When you're doing what you think are two tasks at a time, what your brain is actually doing is wavering between the two tasks and when it comes to driving, getting involved in a crash because of distraction means that the brain was caught between doing one and the other task.

6. South Africans have a high propensity for **taking risks**, especially on the road. Our knowledge of road rules and regulations are inadequate and our understanding of the forces of nature and the laws of physics acting on a vehicle means that we do not appreciate the inherent dangers of driving. Added to this is the thinking that "it cannot/will not happen to me" which,

coupled with our fatalistic attitude, is a huge recipe for disaster. We need to start by buckling up at all times, front and rear and irrespective of the distance. It is the right and safest thing to do. Not forgetting that it is compulsory for children younger than three years old to be seated on an appropriate child restraint (car seat).

We need to really re-assess our attitude to driving. Whilst it may be somewhat late for current and older generations, let us not rob our children of learning to do the right thing from an early age. The sooner they learn the correct way of behaviour the better road safety will be for the coming generations.

Be safe out there.

About the author:

Ashref Ismail is an Advanced Driving Skills Instructor and founder of FleetMax Africa, a training company that provides innovative road safety solutions to corporate and government fleets. He can be contacted at cell: 061 447 8506 or by sending an e-mail to: ash@fmxafrica.co.za



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Road safety & the law

Dealing with pedestrians @ junctions - Shame or sorry it's wrong!

Pedestrians at junctions and on public roads are a developing, yet very serious problem that faces law enforcement and its administrators. Is this only a nuisance to motorists or are these pedestrians on the wrong side of the law? Traffic Chief Mbongiseni Ndlovu aims to clarify the issue.

These days, pedestrians tend to stand, kneel or lie down in the middle of public roads or at junctions (intersections) and beg for donations, distribute promotional material or sell merchandise. This fast growing industry is illegal in South Africa and it is a mirror reflection of the level of quality of enforcement provided and the rate of non-compliance with traffic laws in the particular jurisdiction where it occurs.

Most people are inclined to take an ethics-based approach (the so-called “shame! s/he is suffering” stance). This approach is not necessarily a bad thing per se, but legally speaking this stance is dominated by sympathy for the social conditions of the pedestrian rather than paying attention to the actual conduct of the pedestrian in committing a crime. In a sympathetic response, people will give donations or buy the merchandise while in traffic and in doing so sometimes disrupt the traffic flow and violate some road traffic rules and other road signals such as the directions given by a set of robots.

There is no shortage of examples of such events, especially at the larger intersections in metropolitan municipalities. One of the worst cases is at the Tongaat Plaza Tollgate in Stanger, KwaZulu-Natal where pedestrians have completely taken over the public road - almost turning it into a roadway flea market. This is a freeway, by the way, but pedestrians there enjoy the freedom of weaving on foot between vehicles while plying and touting for sales.

My question is whether our enforcement has lost its enforcement compass? Needless to say, there is a correct approach to this matter which focuses entirely on the human conduct and compares the conduct with existing law.



For those who doubt whether there is a law regulating this matter in South Africa, well, surprise, surprise! South African law does indeed regulate the conduct of pedestrians on public roads and this is implicit in regulation 316 of the National Road Traffic Regulations, 2000 (see information at the end of the article).

It is illegal in South Africa to stand in the middle of an intersection for purposes of selling merchandise, distributing pamphlets or any promotional material, pushing a highly laden trolley along the left-hand side of the roadway or sit, lie or perhaps stoop in the middle of a public road in order to beg for donations or sell any newspapers. It is the role of law enforcers to stamp out conduct that is not acceptable in society and in that way achieve the promotion of acceptable behaviour in order to restore safety, security, orderliness and peaceful social conditions among the people.

More than a law enforcement problem

This matter is not only a headache for law enforcement as some people might prefer to brand it, it is a societal problem. It undermines existing laws, causes a nuisance and promotes opportunities for further crimes, such as smash-and-grab incidents, to take place at



intersections while vehicles wait for the green light. It even presents the opportunity for a motorist to be charged with culpable homicide if a pedestrian has been run over. With many people driving while under the influence of alcohol, it is a matter of time before we have fatality statistics connected to this problem. The reality is that this current state of affairs undermines the country's crime prevention initiatives and imperatives. With such problems being ignored, our efforts towards a safe and secure environment for all citizens will remain adrift.

Chasing such pedestrians away from the roadways could seem like a short-term solution for some law enforcers. When the pedestrian later returns to the middle of the road, the enforcer may become hopeless. However, that is not really the headache since the law provides effective tools to deal with this new problem. The real headache for law enforcement is the continued "don't care attitude of law enforcers" and at worst, some of their supervisors who are nonchalant or unfazed about being surrounded by this problem.

In addition, there is always the potential for a higher danger to a pedestrian who conducts him-/herself illegally on a public road, namely the danger of being run over and killed by moving vehicles. This danger increases when the pedestrian is kneeling or lying down in the middle of the road.

Another challenge for traffic officers and law enforcement officers appointed by municipalities is that when they reach the police station with a suspect who may have been arrested for violation of the provisions of the National Road Traffic Act,

police members tend to treat these as strange or minor offences - so minor that the offences are not worthy of prosecution. These police sentiments are often influenced by the ethics-sympathy factors which may likewise be adopted by prosecutors. Some prosecutors seem to look at this social problem from the limited view of a single case coming to court rather than in the context of a niggly societal problem or criminal behaviour.

In a vicious cycle, the challenges experienced at police stations and at some of the prosecutors' offices contribute significantly to the unwillingness or rather laid-back attitude of many law enforcers in relenting to rid our intersections, junctions and freeways of criminal offences and offenders. Law enforcers may thus feel that due to the attitude displayed by the police and prosecutors, why do they need to worry about this sort of problem. The irony is that all SAPS members are, according to section 1 of the National Road Traffic Act 93 of 1996, also traffic officers. As such, police officers also have a legal duty to act against this type of crime which is taking over our intersections.

According to the judgment in the Carmichele case (**Carmichele v Minister of Safety and Security and Others (2001) AHRLR 208 (SACC 2001)**), prosecutions have always owed a duty to carry out their public functions independently and in the interests of the public.

Some law enforcers, including supervisors and prosecutors, are excellent in making excuses for not dealing with the problem. These range from "it's not in my job description"; "we are not trained to handle such offences"; "pedestrians

could, for all you know, be mental patients or insane"; "the police must deal with maniacs;" to "we are traffic, we only do traffic". It also represents a distorted view of the role of traffic and law enforcement officers in road safety. The view also fails to recognise the existence of a legal duty to act against any offence and the constitutional mandate of providing a safe and secure living environment.

I dare to remind you that it is indeed our job to deal with this problem. It is also my conviction that if execution of a particular policing function is contingent upon the vesting of power in a particular public official (eg a peace officer) which may otherwise not legally be performed by any other person, except if that person also falls within the same category of persons (peace officers) so empowered, then there is clearly a legal duty on the first mentioned person to perform the duties or exercise the powers relating to such offences with reference to which the power is given. The strength of this point lies in the question as to "who will or should then deal with the offences that law enforcers were appointed to deal with, when they (peace officers) relent?" Should members of the public then, out of sheer indignation, arrogate themselves peace officer powers and take the self-help route in order to ensure that crimes are dealt with in society? I do not agree.

As the law enforcement function is primarily a constitutional mandate of the SAPS and by legal delegation also a mandate and function of peace officers who are traffic officers, traffic wardens and law enforcement officers, a

legal duty to exercise the powers conferred on them with reference to all offences that fall within their scope of powers, must arise. Who else must take action against such offences?

Where a legal duty is present, failure to act positively by enforcing the law could be regarded as delictual and easily attract civil liability. Maybe at this point, I should remind peace officers that section 334 of the Criminal Procedure Act 51 of 1977 states that: "The Minister may ... declare that any person who, by virtue of his/her office, falls within any category defined in the notice, shall, within an area specified in the notice, be a peace officer for the purpose of exercising, with reference to any provision of this Act or any office or any class of offences likewise specified, the powers defined in the notice". It is evident that if a peace officer fails to act in accordance with the powers conferred on him/her, the purpose of the appointment is without reason and defeated.

What does the law say about pedestrians on roads?

Regulation 316(5) of the National Road Traffic Regulations, 2000 provides as follows: "No pedestrian on a public road shall conduct him-/herself in such a manner as to or as is likely to constitute a source of danger to him-/herself or to other traffic which is or may be on such road. When invoking these provisions against a pedestrian, evidence of the following elements will be required, namely that:

- the offence was committed by a person found to be on foot on a road;
- the offence took place on a road which is a public road; and
- the person charged (suspect) conducted him-/herself in a manner that is likely to constitute a source of danger to him-/herself or danger to other traffic which is or may be on such road.

The court will readily admit evidence that the situation of a pedestrian who is standing, sitting or lying down in the middle of the roadway which is not closed, busy and open to moving vehicles, is a dangerous one. Where the pedestrian does this in the dusk of the evening or in rainy conditions, this will only serve to aggravate the offence due to the reduced visibility and extended stopping distances attendant to wet conditions.

The National Road Traffic Act 93 of 1996 prescribes where a pedestrian should walk where the road has no sidewalk. Regulation 316(2) states that the pedestrian must walk "... as near as is practicable to the edge of the roadway on his/her right-hand side so as to face oncoming traffic ...". When a road sign prohibits walking, pedestrians may NOT even begin to traverse such a road. Trolley pushers who push highly laden shopping mall trolleys and walk along the middle of the road, in the median of divided roads or on the left-hand side of a roadway are equally acting illegally.

Regulation 323(2) generally forbids walking on foot on freeways. The exceptions clearly exclude the selling of merchandise, distributing promotional material and street begging.

So colleagues in traffic law enforcement - let's all realise that we have a legal duty to enforce the law. It really does not require rocket science to remove pedestrians from our roadways. I have done it in Richards Bay, but it obviously recurs because it needs a concerted effort of all available law enforcers to gang up on the problem.

About the author

Mbongiseni Ndlovu has been a traffic officer for 22 years since 1996. In 2014, he was promoted to a Chief Traffic Officer for the City of uMhlathuze in Richards Bay, KwaZulu-Natal. In 2016, he attended a crime prevention summit at Indaba Hotel in Johannesburg where he received a complimentary copy of the *Servamus* magazine. "I immediately fell in love with the Pollex column so much that every evening when I retired to bed I made sure I read all those column articles," he writes. **If you share Mbongiseni's passion about law enforcement and traffic-related issues and want to engage with him, send an e-mail to: M44E@mail.com**

Regulation 322 is clear about trading on public roads in that it forbids the selling or displaying of goods, offering goods for sale or delivering goods in pursuit of a sale on or alongside a public road and within 5 m from any intersection within an urban area. It is only allowed if it takes place on or in premises properly zoned or demarcated for such trading in goods or in accordance with requirements of a by-law.

NB! No competent authority may zone or demarcate the middle of an intersection as a place for trading with goods as this would also be against the law - so as to fit in with the provisions of Regulation 316.

Municipal councils have legislative powers and may make by-laws. However, a by-law permitting the distribution of promotional material or selling of any merchandise at an intersection shall not prevail against a provision in the National Road Traffic Regulations, 2000. If such a by-law is passed, the relevant parts shall not come into force because the NRTA already has a provision in regulation 316(5) that is contrary to any such activity.

In municipal jurisdictions, by-laws that create offences against any nuisances are often passed. Depending on the approach preferred in a by-law, violations may require the issuing of a compliance/nuisance abatement notice before the issue of a section 341 notification is permitted. Pedestrians' conduct at intersections may also constitute a nuisance in terms of a municipal by-law and therefore, where a by-law prohibiting nuisances exists, it can be used to deal with this problem.

Traffic officers may use both the NRTA and nuisance by-laws to deal with this problem. Traffic wardens may only use the NRTA and law enforcement officers appointed by a municipality may also use nuisance by-laws. Section 56 notices may not be issued for by-law offences.

Wanneer 'n persoon 'n beroepsbesering of -siekte opdoen, is hy/sy dikwels in 'n moeilike posisie. Dit is belangrik dat so 'n persoon bewus is van sy/haar regte sodat sy/hy nie persoonlik aanspreeklik gehou word vir die betaling van mediese behandeling wat met 'n beroepsbesering of -siekte verband hou nie.

Beroepsbeserings en -siektes word gereguleer deur die Wet op Beroepsbeserings en -siektes 130 van 1993 wat onder die administrasie van die Vergoedingskommissaris staan. Die Vergoedingswet maak voorsiening vir sekere voordele/vergoeding vir sowel werkgewers as werknemers in gevalle van arbeidsongeskiktheid wat deur werknemers opgedoen word in die loop en uitvoering van diens, of vir dood as gevolg van sodanige beserings of siektes.

Voordele waarop die werknemer geregtig mag wees, sluit in vergoeding vir mediese koste, tydelike arbeidsongeskiktheid en blywende arbeidsongeskiktheid. Hierdie voordele is onderhewig aan beperkings wat deur die Vergoedingswet gestel word en die unieke omstandighede van elke eis is bepalend daarvoor.

Die Vergoedingskommissaris beskik oor die diskresie om te besluit oor die toereikendheid, noodsaak en aard van mediese behandeling. Dit is belangrik om te let dat **slegs redelike mediese koste** gedek sal wees - dus daardie koste wat redelikerwys verband hou met die ongeval en nie langer as twee jaar duur nie. Dié twee jaar word bereken vanaf die datum van die ongeval. Die Vergoedingskommissaris oorweeg dit wat redelik sal wees ten opsigte van die tipe besering en die tydperk wat nodig sal wees vir daardie besering om te herstel op grond van die mediese verslae, veral die eerste mediese verslag. Die kousale verband tussen die besering en die behandeling word dus oorweeg en bepaal. Dit is duidelik uit artikel 73 van Wet 130 van 1993 wat as volg lui:

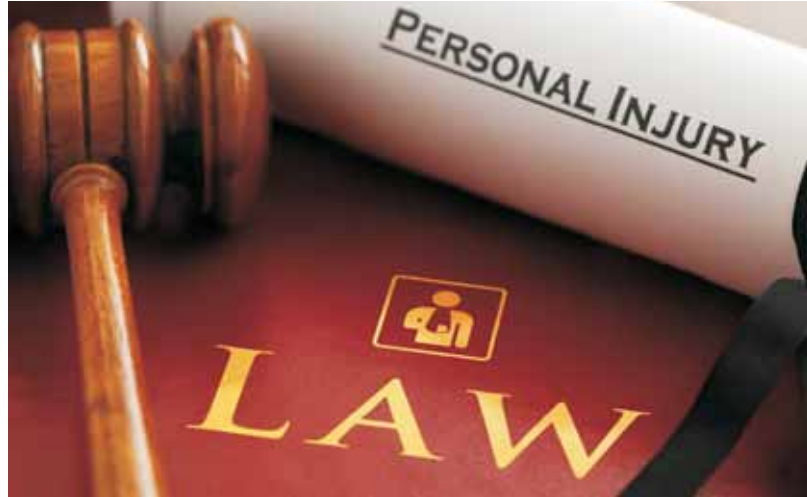
"73. Geneeskundige onkoste

(1) Die Direkteur-generaal of die betrokke werkgewer individueel aanspreeklik of onderlinge vereniging, na gelang van die geval, betaal vir 'n tydperk van hoogstens twee jaar vanaf die datum van 'n ongeval of die aanvang van 'n siekte bedoel in artikel 65(1) die redelike koste deur of namens 'n werknemer aangegaan ten opsigte van geneeskundige hulp wat deur die ongeval of siekte genoodsaak is."

Die aanspreeklikheid vir betaling van redelike mediese koste verstryk ook wanneer die beseerde werknemer se toestand gestabiliseer het. Dit kan te enige tyd voor die verloop van die twee jaar gebeur indien die behandelende dokter dit so aandui op die mediese verslag. Hierdie mediese verslag is dan die finale mediese verslag. Hoewel dieselfde vorm gebruik word vir die vorderingsverslag as vir die finale mediese verslag, het die finale mediese verslag die uitwerking dat die eis gesluit word. Indien die finale mediese verslag nie uitgereik word voordat die tydperk van twee jaar verstryk het nie, sluit die eis outomaties aan die einde van die tweejaar tydperk en, sou verdere behandeling benodig word, moet aansoek gedoen word vir die heropening van die eis wat deur die behandelende geneesheer voltooi en elektronies ingedien moet word. Daarbenewens moet die werknemer die eerste konsultasie vir heropening self betaal. Vergoeding vir blywende arbeidsongeskiktheid sal bereken word op grond van die inligting wat in die finale mediese verslag vervat word.

Dit staan die werknemer vry om te besluit oor diensverskaffers soos dokters, aptekers, fisioterapeute, hospitale ensovoorts en inmenging in hierdie voorreg van die werknemer word nie toegelaat nie, solank die keuse redelik en sonder benadeling van enige party uitgeoefen word. In die geval van 'n verandering van die geneesheer wat 'n werknemer behandel, sal die eerste geneesheer wat die werknemer behandel het, behalwe in gevalle waar die werknemer na 'n spesialis verwys is, as die lasgewer beskou word. Oor die algemeen word verandering van geneesheer, tensy voldoende redes daarvoor bestaan, nie aangemoedig nie.

Volgens artikel 5 van die Wet op Nasionale Gesondheid 61 van 2003, mag 'n gesondheidswerker of diensverskaffer nie weier om noodbehandeling te verskaf nie. Sodanige



Beroepsbeserings en -siektes

Die betaling van mediese kostes

Deur Adv Hanlie Jansen van Vuuren

behandeling kan egter nie goedgekeur word alvorens aanspreeklikheid vir die eis kragtens die Vergoedingswet aanvaar is nie. Geen mediese onkoste sal betaal word as die eis nie deur die Vergoedingsfonds aanvaar word nie.

Die Vergoedingswet belet enige bydraes deur werknemers tot hul eie vergoeding wat mediese koste insluit maar hou in gedagte dat 'n werknemer geneeskundige behandeling op sy eie risiko aanvra en sou aanspreeklikheid vir 'n eis afgewys word, die werknemer in dieselfde posisie sal verkeer as enige lid van die publiek wat betaling van geneeskundige koste betref. Die aanspreeklikheid vir mediese koste vanweë beroepsbeserings is dié van die Vergoedingskommissaris, of indien die werkgewer 'n staatsdepartement is, is daardie departement aanspreeklik, maar binne die raamwerk van die wet. Dit beteken dus dat die SAPD aanspreeklik sal wees vir persone wat aangestel is kragtens die Wet op die Suid-Afrikaanse Polisiediens 68 van 1995 terwyl die Vergoedingsfonds aanspreeklik sal wees vir die mediese koste van ander werknemers binne die SAPD. In albei gevalle berus die mag om oor die geldigheid van die eis te besluit egter **uitsluitlik** by die Vergoedingskommissaris en staan die staatsdepartement onder instruksie van die Vergoedingskommissaris. Dit word dus aanbeveel om eers die status van die eis vas te stel alvorens behandeling ondergaan word indien die omstandighede dit toelaat. Sou die werknemer later vasstel dat die eis afgewys is, mag beswaar teen daardie beslissing ingevolge die voorgeskrewe prosedure aangeteken word.

Solidariteit se afdeling vir Beroepsgesondheid en -veiligheid se doel is om die regte en belange van lede van Solidariteit in die strewe na 'n veilige werkplek te beskerm. Hierdie doelwit is een van die belangrikste skakels in Solidariteit se waardeketting wat daarop gemik is om omvattende beskerming aan lede te bied. Lees meer hieroor op Solidariteit se webtuiste www.solidariteit.co.za onder vakbondvoordele.



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Water crisis in South Africa

According to all indications, South Africa has, or is heading for a water crisis. As far as the Cape Peninsula in the Western Cape is concerned, the crisis is already upon its inhabitants.

As a result of this crisis (and/or pending crisis in some areas), Pollex predicts that “new” laws - be it national, provincial or municipal by-laws* - regarding water-related issues, will escalate.

Pollex further predicts that the income from water supplies to the authorities, will decline which means that the authorities will have to look elsewhere to compensate for this deficiency. Accordingly, this compensation will most probably have to come from water-related fines (as have been implemented in Cape Town) and/or traffic fines, as well as the increase of tariffs in areas where the taps are still running. As a result, Pollex appeals to all law enforcement agencies and its employees not to go overboard regarding both water- and traffic-related issues, by concentrating on (harmless) “soft targets” instead of concentration on (harmful) “hard targets”.

As far as **water-related offences** are concerned, see **S v Mostert and Another 2010 (1) SACR 223 and 2010 (2) SA 586 (SCA)** as discussed by Pollex in **Servamus**: August 2010. Also see “**Water in the criminal law**” in Ask Pollex in **Servamus**: April 2012.

This issue about **water-related offences** is not as straightforward as it appears. For example, in paragraph [24] of the **Mostert** judgment **supra**, the SCA states that “water flowing in a stream or river (of which the latter is a ‘water resource’ as envisaged by the National Water Act 36 of 1998) is **NOT** capable of being stolen and that ‘theft of water’ is **NOT common law theft**”.

On p491 of his **Criminal Law**, fifth edition as published by LexisNexis, the learned author **Snyman** holds the same view.

In the light of the preceding it is suggested that the same principle, namely that “theft of water” is **not common law** theft, apply likewise to tap and/or swimming pool water, bottled water and also water in some or other container.

According to the self-same para [24] of the **Mostert** judgment **supra**, the SCA states that for **water-related offences**, one has to look at **statutory law** (and not to the **common law**).

There are **two national statutes** that provide directly or indirectly for **statutory water-related offences**. (Please note that the emphasis added and words in square brackets are inserted by Pollex in respect of all references to legal provisions that follow.) The **first** of the two national statutes is the **Water Services Act 108 of 1997**. Of importance is **section 21** which provides as follows:

“**21. Bylaws** [note the spelling - no hyphen]*

- (1) Every water services authority [namely a municipality - see word definition in section 1] **must** make bylaws* which contain conditions for the provision of water services [meaning water supply services and sanitation services - see word definition in section 1], and which **must** provide for at least -
 - (a) the standard of the services;
 - (b) the technical conditions of supply, including quality standards, units or 5 standards of measurement, the verification of meters, acceptable limits of error and procedures for the arbitration of disputes relating to the measurement of water services provided;
 - (c) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
 - (d) the determination and structure of tariffs in accordance with section 10 [of Act 108 of 1997];
 - (e) the payment and collection of money due for the water services;
 - (f) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
 - (g) the prevention of unlawful connections to water services works and the unlawful or wasteful use of water.”

Subsection (2) of section 21 is about the making of bylaws* in connection with conditions under which water services are provided.

Subsection (3) is about the making of bylaws* regarding the provision of water for **industrial use**.

“(4) The Minister [of Water and Sanitation] may provide model bylaws* to be used as a guide for water services authorities.”

The **second national statute** is the **National Water Act 36 of 1998**. Of importance is section 4(1) which provides as follows:

“**4. Entitlement to water use**

- (1) A person may use water in or from a water resource [see its

definition in section 1 of Act 36 of 1998] for purposes such as reasonable domestic use, domestic watering, fire fighting and recreational use, as set out in Schedule 1 [of Act 36 of 1998 - see **infra**].”

Section 22(1)(a)(i) of **Act 36 of 1998** provides as follows:

“22. Permissible water use

- (1) A person may only use water -
 - (a) without a licence -
 - (i) if that water use is permissible under Schedule 1 [of Act 36 of 1998].”

Schedule 1 of this **Act 36 of 1998** provides as follows:

“Schedule 1

PERMISSIBLE USE OF WATER

[Sections 4(1) and 22(1)(a)(i) and Item 2 of Schedule 3]

A person may, subject to this Act [36 of 1998] -

- (a) take water for reasonable domestic use in that person’s household, directly from any water resource to which that person has lawful access;
- (b) take water for use on land owned or occupied by that person, for -
 - (i) reasonable domestic use;
 - (ii) small gardening not for commercial purposes; and
 - (iii) the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land, from any water resource which is situated on or forms a boundary of that land, if the use is not excessive in relation to the capacity of the water resource and the needs of other users;
- (c) store and use run-off water from a roof;
- (d) in emergency situations, take water from any water resource for human consumption or firefighting;
- (e) for recreational purposes -
 - (i) use the water or the water surface of a water resource to which that person has lawful access; or
 - (ii) portage any boat or canoe on any land adjacent to a watercourse in order to continue boating on that watercourse; and
- (f) discharge -
 - (i) waste or water containing waste; or
 - (ii) run-off water, including storm water from any residential, recreational, commercial or industrial site, into a canal, sea outfall or other conduit controlled by another person authorised to undertake the purification, treatment or disposal of waste or water containing waste, subject to the approval of the person controlling the canal, sea outfall or other conduit.
- (2) An entitlement under this Schedule [1] does not override any other law, ordinance, **bylaw** or **regulation**, and is subject to any limitation or prohibition thereunder.”

The heading of Chapter 16 (from section 151 to section 155) of **Act 36 of 1998** is “**Offences and remedies**”. Section 151 provides - for as far as it is relevant to this discussion - as follows:

“151. Offences

- (1) No person may -

- (a) use water otherwise than as permitted under this Act [36 of 1998]
 - (b), (c) and (d)...
 - (e) unlawfully and **intentionally or negligently** tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork;
 - (f) to (m)...
- (2) Any person who contravenes any provision of subsection (1)[**supra**] is guilty of an offence and liable, on the **first** conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a **second or subsequent** conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.”

It is suggested that the **water-related offences** referred to **supra**, apply, so to speak, under “normal circumstances”. The (current and pending) water crisis is “abnormal circumstances”. Accordingly it is predicted that virtually all laws applicable to the crisis, will be in the form of municipal **by-laws*** and, depending on circumstances, in the form of **regulations** made in terms of the Disaster Management Act 57 of 2002 (the Disaster Act)* (see **infra**).

See again sub-item(2) of Schedule 1 of Act 36 of 1998 **supra** which in effect means that a **bylaw* enjoys preference** (Afrikaans: “geniet voorkeur”) **over a national statute** as far as the entitlement of water is concerned! Phrased differently: As far as water issues are concerned, we are governed by **municipal by-laws*** and, again, depending on the circumstances, **regulations** made in terms of the Disaster Act (see **infra**).

In the result it is suggested that all law enforcement agencies and its employees familiarise themselves with relevant municipal by-laws* where such agency and its employees are seated and/or stationed, and regulations (if applicable).

Returning to the issue of “soft and hard targets”. Pollex further appeals to all concerned to exercise the legal discretion conferred upon them, responsibly, wisely and rationally.

A possible grey area (**not** grey water) relating to the topic under discussion, as far as Pollex is concerned, is **common law robbery** of a container filled with water which is carried and/or conveyed by the victim (complainant), and shoplifting (**common law theft**) of a bottle and/or container filled with bottled water. It is doubtful whether by-laws* and/or regulations may be made in order to address such eventualities.

In Pollex’s opinion, **common law robbery** and **common law theft** in the form of **shoplifting**, remain **common law** offences, **irrespective** of the contents of the containers and/or bottles thus robbed and/or shoplifted.

This is, however, not the end of this story. In terms of the Disaster Act, the water crisis is in fact regarded as a “disaster” (in

Afrikaans text: “ramp”) which is, in terms of section 1 of the Disaster Act, defined as meaning “a progressive or sudden, widespread or localised, **natural** or human-caused occurrence which -

- (a) causes or threatens to cause -
 - (i) death, injury or disease;
 - (ii) damage to property, infrastructure or the environment; or
 - (iii) **significant disruption of the life of a community**; and
- (b) is of a **magnitude** that **exceeds** the ability of those affected by the disaster to cope with its effects using only their own resources”.

The Disaster Act provides for the declaration of a **national** state of disaster (section 27), or a declaration of a **provincial** state of disaster (section 41), or a declaration of a **local** state of disaster (section 55). In respect of all **three** kinds of declarations **supra**, the **Minister** for Cooperative Governance and Traditional Affairs may, in respect of a **national** state of disaster, make **regulations** (section 27(2)). Likewise may a Premier of a province in respect of a **provincial** state of disaster, make **regulations** (section 41(2)), and may a council of a municipality in respect of a **local** state of disaster, make relevant **by-laws** (section 55(2))* . Note that all the regulations and by-laws* referred to **supra**, may **include penalties** for any contravention of them. See sections 27(4), 41(4) and 55(4) respectively.

As far as the water crisis in the Western Cape is concerned, the **Western Cape Provincial Gazette** Extraordinary No 7771 dated 24 May 2017 announced that the Premier of the Western Cape has declared the latter province as a **provincial state of disaster** “as a result of the **magnitude and severity of drought** affecting the Western Cape”. **Pollex did not look up the other provinces.**

However, according to **Government Gazette** No 41439 dated 13 February 2018, the Head of the **National** Disaster Management Centre gave notice that all **provincial disasters** “in at least three provinces” (apparently referring to the Western Cape, Northern Cape and Eastern Cape) in respect of the “magnitude and severity of the ongoing drought” have, in terms of section 23(3) of the Disaster Act, been **reclassified** as a **national disaster**.

Following upon the latter **reclassification**, the Minister of Cooperative Governance and Traditional Affairs declared a national state of disaster (apparently in respect of the entire RSA) in terms of section 27 of the Disaster Act as published in **Government Gazette** No 41493 dated 13 March 2018.

So, now we will have to wait and see what happens further in this regard in respect of law enforcement, because we are now, so to speak, treading on “unprecedented territory” (Afrikaans: “ongekende terrein”).

* **Municipal by-laws** (note the correct spelling - with a hyphen) as contemplated in section 21 of the Water Services Act 108 of 1997. This section 21 grants **no** express authorisation to municipalities to provide for **penalties** of contraventions of such by-laws. Compare this for example with section 80A(5) of the National Road Traffic Act 93 of 1996. However, see sections 11 to 15 of the **Local Government: Municipal Systems Act 32 of 2000** in respect of the making of by-laws **in general**.

* **Disaster Management Act 57 of 2002** was discussed by Pollex in **Servamus**: April 2003 and September 2016.

“I spent 20 years in jail (*sic*) for a crime I did not commit”

- Per Mr Lucky Shange in a news item that appeared in News 24 dated 17 February 2018

According to the news item referred to **supra**, the 40-year-old **Mr Lucky Shange** was arrested in 1998. He spent two years being incarcerated as a remand detainee (Afrikaans: “uitstel-aangehoudene”) before being **convicted** in the **regional court** during 2000 of **murder**, robbery with aggravated circumstances and the unlawful possession of a firearm. **Mr Shange** was ultimately **sentenced** to life incarceration.

On 8 November 2001 his appeal to a full bench of three judges before the High Court in Pietermaritzburg, was **dismissed**.

On 8 September 2015 the Supreme Court of Appeal in Bloemfontein (“the SCA”) **granted Mr Shange** leave to appeal to the SCA. This appeal was heard on 2 May 2017 before a full bench of five SCA judges who held that -

- (1) The appeal is **upheld**;
- (2) the convictions and sentences in respect of **Mr Shange** were **set aside**; and
- (3) **Mr Shange** is to be **released** from custody with immediate effect.

Accordingly, Pollex traced the official, **verbatim** (word for word), three-page-long SCA judgment cited as **Shange v S (613/2016) [2017] ZASCA 51 (2 May 2017)**. From this judgment it appears that the regional magistrate had **not** sat with assessors, as required by section 93ter(1) of the Magistrates’ Court Act 32 of 1944 (remember the charge was “**murder**”). Furthermore, **Mr Shange** was **not** legally represented throughout the trial in the regional court. There is also, according to the SCA, nothing on the record to suggest that he was ever made aware of the requirement that the regional magistrate sits with assessors or of his right to choose whether assessors assist with the trial. The regional magistrate nowhere recorded that he had made such a request. **Mr Shange’s** co-accused was legally represented but there is nothing to show that he was given any choice either. And the transcription of the trial and appearance pages state nowhere that she had sat with assessors.

The SCA also reminded that the requirement regarding "assessors" is peremptory (Afrikaans: "gebiedend/bevelend").

What happened during the regional court trial **supra** is, of course, nothing new. See the **recent cases** of **Chala and Others v DPP, KZN and Another 2015 (2) SACR 283 (KZP)** as discussed by Pollex in **Servamus**: October 2017, and **S v Mathe 2017 (2) SACR 63 (GJ)** that Pollex referred to in the discussion entitled "**SAPS' motto**" in Pollex in **Servamus**: December 2017.

In both these **Chala** and **Mathe** cases **supra**, the result/outcome was similar to that of **Mr Shange's** case.

Note that in all three cases **supra** - **Shange, Chala and Mathe** - the respective accused persons were acquitted as a result of **procedural irregularities**. Phrased differently: on a **technicality**. This means that they were **NOT** acquitted on the **merits**.

For a detailed and comprehensive discussion on the issues **supra**, see "**Procedural Irregularities**" in **Servamus**: June 2009. In brief, "procedural" and/or "procedure" means "a mode of conducting a legal action" or "a series of actions conducted in a certain order or manner" and (plainly) "proceedings". Thus, procedural irregularities mean that an irregular or wrong **procedure** was followed in order to achieve some or other **objective**, for example the conviction of an accused person. Phrased differently: What happened (so to speak) "behind the scenes". Note further that in **all three** cases quoted **supra**, the procedural irregularities took place **inside** court. However, procedural irregularities can also take place **outside** of court because, as it was put in **S v Dlamini 1973 (1) SA 144 (A)** at p146 D-F, namely that "the proceedings at the 'mansion' [the court] **cannot** be divorced from the procedures in the 'gatehouse' [the police station] and the judge [or a magistrate] should take care to ensure that the confession presented in the 'mansion' was not **improperly** obtained in the 'gatehouse'".

A classic example of pre-trial procedural irregularities ("in the gatehouse") is **S v Mphala and Another 1998 (1) SACR 388 (WLD)**. What happened here was that the High Court in Johannesburg could find no fault with the damning confessions made by the two accused. However, the court held that as the confessions were made contrary to a telephonic request by the accused's attorney to the investigating officer that no statements should be taken from or before he (the attorney) had consulted with the accused, the confessions were **inadmissible**. According to the court, the confessions (made under these circumstances) were "detrimental to the administration of justice" as contemplated in section 35(5) of our Constitution. Accordingly the court, in **Mphala and Another**, held that the said confessions were inadmissible which confessions would probably in themselves (**per se**) have been conclusive of their guilt.

The phrase "**on the merits**" briefly means with regard **only** to the facts that can be and/or are proved. An example of this is where an accused person is standing trial on a charge of murder. The State/prosecution **cannot**, however, prove intention (**dolus**), but it can prove, **on the**

facts, negligence (**culpa**). Accordingly, on the merits, the accused person is convicted of **culpable homicide**.

Returning to the heading of the news item in **NEWS24** namely, that **Mr Shange** was allegedly incarcerated "for a crime I [he] did not commit". Is this, in the light of the preceding correct? The answer is that we **don't** know because the "**merits of the case**" are **unknown** to us.

Pollex always wonders - in cases where some or other procedural irregularity led to the acquittal of the accused concerned - how and what explanation is given by the SAPS investigation officer to complainants and/or victims and/or State witnesses, as well as relatives and/or friends of the **deceased** involved?

Cannibalism

The word **supra** refers to "a person who **eats human flesh**".

According to recent media reports, arrests have been made "for the crime of cannibalism" (Afrikaans: "kannibalisme") and that those persons will "appear in court on charges of cannibalism".

Pollex has never heard of such an offence or crime in South Africa - be it in terms of the **common law** or be it in terms of **statutory law**.

Can any of our readers help in this regard? And if so, also inform us what charge and/or offence must appear on the front cover of the police case docket concerned. And, don't forget, may such a cannibal be arrested without a warrant for cannibalism?

Regarding a related matter, are humans legally allowed to eat **dogs**? According to the Pretoria High Court in **S v Nkuna and Another 2007 (2) SACR 532 (TPD)** (see Pollex in **Servamus**: March 2008) the answer is "yes, we are per se (by itself/on its own) allowed to **kill and eat dogs**, provided that the **killing** (not the eating) of the dogs concerned are **not** in a manner that contravene section 2(1)(a) of the Animals Protection Act 71 of 1962".

According to the court (in **Nkuna**) further, thousands of animals were killed and eaten every day in South Africa which is a clear indication that the legislature could **not** have had the intention to criminalise **the eating of animals per se**.

Also see "**Man kills, braais and eats puppy**" in Ask Pollex in **Servamus**: January 2013. And see further "**Eating snake: What is the offence and/or charge**" in Ask Pollex in **Servamus**: October 2015.

Service delivery by government officials (the SAPS included)

Question

A reader, who is employed by a business company (let's call it **company X**), describes their business activities as being a supplier of **global** and **local** supply chain and logistics services. Company X also provides solutions for various industries such as hi-tech and telecommunications, defence and aerospace, healthcare and chemicals, consumer goods and retail, oil and gas, mining, manufacturing and engineering automotive, special projects and energy.

Due to the type of business Company X conducts, it is subjected to various government

inspections, carried out by the South African Police Service, Customs and other entities. On occasion, some of the members working for these entities require access to Company X's sites to inspect containers and/or shipments for various reasons.

Some of these members refuse to comply with the procedures and refuse to sign the access control register and/or undergo breathalyser testing. If Company X insists that they comply, they threaten to leave and in some cases actually leave the site without inspecting the containers/shipments.

Company X is dependent on these inspections so that the containers can be released and delivered to Company X's client(s) as quickly as possible. In order not to disadvantage its clients, Company X allows access without these members following procedure. Company X's concern is that it might put one of its sites at risk of a business robbery etc.

Accordingly, our reader wants to know from **Ask Pollex** how this matter can be resolved in a responsible, friendly and legal manner and to ensure the safety of all involved in entering all Company X's sites.

Answer

Important note

This is an **open letter** from Pollex to Company X, unless a specific context indicates otherwise. Government officials (including SAPS members) will act wisely if they also take note of it.

Introduction

This question **supra** sounds like a **mixture** of **ATTITUDE** and **LEGAL** issues which makes it complex.

Attitude issue

If Pollex understands this question correctly, the culprits are all government officials and

Company X is heavily dependent on sound relationships with the relevant government officials. This is necessary in order for Company X to establish and maintain sound business relationships between itself and its clients/customers which in turn generates income and which ultimately determines profits.

So let's start off with our Constitution of which section 195(1) and (2) provides as follows:

"195. Basic values and principles governing public administration

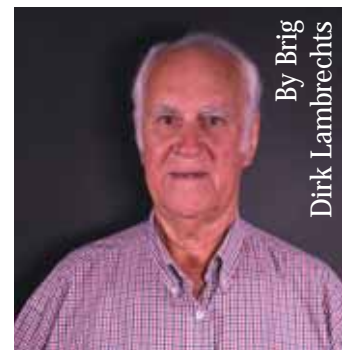
(1) Public administration **MUST** be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) A high standard of **professional ethics** must be promoted and maintained.
- (b) Efficient, economic and effective use of resources must be promoted.
- (c) Public administration must be development-oriented.
- (d) Services must be provided



sk Pollex

Leer van die beste
om die beste te wees
Learn from the best
to be the best



By Brig
Dirk Lambrechts

impartially, fairly, equitably and without bias.

- (e) **People's needs must be responded to**, and the public must be encouraged to participate in policy-making.
 - (f) Public administration must be **accountable**.
 - (g) **Transparency** must be fostered by providing the public with timely, accessible and accurate information.
 - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
 - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
- (2) The **above** principles apply to -
- (a) administration in **every** sphere of government;
 - (b) organs of state; and
 - (c) public enterprises."

"Organs of State", referred to in subsection (2)(b) of section 195 **supra**, means, for as far as it is relevant to this discussion, "any department of State or administration in the **national, provincial** or local sphere [**municipalities**] of government" (see section 239 of our Constitution).

(Emphasis added by Pollex.)

In the light of these **"constitutional instructions"** **supra** to government officials (note the word **"must"** that is highlighted in the first line of section 195(1) **supra**), what more can one say?

Maybe the **acrostic** mentioned below, is more understandable than section 195 of our Constitution **supra**. Bear in mind that this acrostic appeared for the first time on p39 of **Servamus**: February 2012 in a road traffic-related context. It is, however, suggested that it is equally applicable to all **official** activities performed by government officials. Here it is:

"Act within the law;

Take the law lawfully into your hands and **don't** be a law unto yourself;

Treat others as you would like them to treat you;

Implement the law as it is intended - not as it

suits you or your superiors or the public;

Travesty of justice (Afrikaans: 'bespotting van geregtigheid/growwe onreg') is **not** acceptable in an open and democratic society based on human dignity, equality and freedom;

Unconstitutional conduct by State officials leads to unnecessary civil actions against the State, which in turn leads to unnecessary and meaningless expenditure of taxpayers' money; **De minimis non curat lex** - the law does not concern itself with trifles or insignificance (Afrikaans: 'die reg bemoei dit nie met beuselagtighede nie').

Phrased differently: Don't concentrate on **soft** targets, go for the **hard** targets ... Like the ancient Romans who used to say **aquila non captat muscas** - eagles don't catch flies; and **Enforce the law**, all you State officials, as envisaged by section 195 of our Constitution [supra], by, **inter alia**, promoting and maintaining a high standard of professional ethics; by providing a service that is impartial, fair, equitable, without bias; accountable and transparent, and by so doing, earn the respect and cooperation of the public."

As far as members of the SAPS (and to a lesser extent, members of municipal police services) are concerned, remind them (or, be the first to inform them) of the **2016 White Paper on Policing** that appeared in **Government Gazette** No 41082 dated 1 September 2017. One of the objectives of this White Paper is to have, in the year 2030,* "a police service that is **accountable, professional, competent and highly skilled**". And moreover, "South Africa is entitled to a police service that delivers **high quality services** while maintaining high standards of **professional conduct and discipline**, and exhibits exemplary leadership [Pollex adds: **role-models**] and management" (see p69 of the **Government Gazette supra**). (Emphasis added and words in square brackets inserted by Pollex.)

Also Google **"National Development Plan (NDP): A vision for 2030/Brand South Africa"** and then click on **"Safety and Freedom from fear"**.

Accordingly, tell the SAPS members that **RIGHT NOW** is the **RIGHT TIME** in preparing to attain the visions, referred to in this **White Paper** and in the **NDP**! As far as **government officials** (excluding SAPS members) are concerned, more or less the same apply to them as to the SAPS **supra**. Also remind them of the **"National Development Plan (NDP):**

A vision for 2030/Brand South Africa" where in the paragraph entitled **"Efficient public service"** (**inter alia** government officials) it is stated that "the National Development Plan's vision is that, in 2030, South Africa's **public servants** are **skilled, professional and accountable to the people**. The public service is efficient, effective and an essential part of a capable and developmental state. State institutions are well-run and effectively coordinated, run by **professionals** who are committed to the public good and capable of delivering consistently **high-quality services**, while prioritising economic growth and reduced poverty and inequality". (Emphasis added by Pollex.)

Similarly to SAPS members, tell the government officials that **RIGHT NOW** is the **RIGHT TIME** in preparing to attain the visions, referred to in the said NDP **supra**!

Although Pollex is not fully familiar with all the different activities performed by company X, the following provisions of the **Occupational Health and Safety Act 85 of 1993** may be relevant.

Firstly, section 47 of Act 85 of 1993 "shall bind the State". So, watch out **all** you government officials (including SAPS members) when visiting sites of Company X while on official duty.

Secondly, section 15, read together with section 38(1)(a) of Act 85 of 1993, provides as follows:

"15. Duty not to interfere with, damage or misuse things

No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health and safety."

Thirdly, section 38(1)(n) of Act 85 of 1993 provides as follows:

"38. Offences, penalties and special orders of court

- (2) Any person who -
 - (n) tampers with or misuses any safety equipment installed or provided to any person by an employer or user, shall be guilty of an offence ..."

The obvious question now is "who will bell the cat"? (Afrikaans: "wie sal die kat die bel/klokkie aanbind"?). Let's hope that all government officials who subscribe to **Servamus** and who are tasked with similar functions as those described by Company X **supra**, read this. And, that subscribers **supra**

show this to **non**-subscribers.

Legal issue

The **legal issue** is partially addressed **supra** by referring to the **law** as contained in our Constitution (remember the word “**mixture**” in the introduction **supra**).

However, as Pollex understands the diverse activities of Company X, it is not, so to speak, all performed under one roof since they have branches all over South Africa. This means that whatever law is to be utilised, it will apply to all its branches. Accordingly, Pollex suggests that Company X considers being declared a **statutory body** in terms of the **Control of Access to Public Premises and Vehicles Act 53 of 1985**. As an example, the Bombela Operating Company which operates the Gautrain, is such a **statutory body** (refer to Ask Pollex in **Servamus**: November 2012).

As far as **statutory bodies** are concerned, note that (just to mention three), the United Cricket Board of South Africa, as well as all the major cricket ovals under its control, are statutory bodies. See **Government Gazette** No 23769 dated 23 August 2002. As far as sports and recreational events are further concerned, the **Safety at Sports and Recreational Events Act 2 of 2012** must **currently** also be consulted; and the Road Accident Fund (RAF) - see p52 of GG NO 27371 dated 18 March 2005; as well as the Airports Company South Africa Limited (ACSA), see GG No 29913 dated 1 June 2007. Note that as far as aircraft and airports are concerned, the **Civil Aviation Act 13 of 2009** must **currently** also be consulted.

It is suggested that the same will apply to “**critical infrastructure**” **once it is law** (see **infra**). For example, the SA Reserve Bank head office and all its branches; all SABC branches; as well as all Provincial Legislatures, are national key points.

Note further that **legally** allowed access control at **statutory bodies** are not the alpha and the omega. In terms of section 3 of the **Control of Access to Public Premises and Vehicles Act 53 of 1985**, the provisions of section 2(2) of Act 53 of 1985 - **inter alia**, furnishing of particulars of entrants and the **random** examination and search of entrants (**without** requiring a reasonable suspicion) - do **not** apply to any member of a police force (**sic**), or a member of the South African National Defence Force (SANDF). However, it appears as if all the other sections 1, 2(1),(3),(4) and (5), 3, 4 and 5 of Act 53 of 1985, in fact apply to SAPS

and SANDF members. In other words SAPS and SANDF members are, after having gained access, still subject to the **CONDITIONS*** referred to in **subsection (3)** of section 2 of Act 53 of 1985.

Note that Act 53 of 1985 does not expressly bind the State. However, the subsection (3) of section 2 is an indication that the State is in fact bound by Act 53 of 1985.

Alternatively to being declared a statutory body **supra**, Pollex suggests that Company X also considers the following:

Being declared a “**critical infrastructure**”. This is, in due course, to be the “new name” for a “national key point”. The National Key Points Act 102 of 1980 is in due course to be **repealed** but to be **replaced** by the “**Critical Infrastructure Protection Bill**”. Google the **latest** version of this Bill that appears in **Government Gazette** No 39985 dated 13 May 2016. Note in particular clause 13, as well as Chapter 4 of this Bill.

The heading of Chapter 4 of this Bill is “**Powers and duties of persons in control of critical infrastructure**”. The heading of clause 25 (which forms part of Chapter 4) is “**Access to critical infrastructure**”. It (clause 25) is copied (in the **positive** sense of the word), from section 2 of the **Control of Access to Public Premises and Vehicles Act 53 of 1985** referred to **supra**.

The heading of clause 13 of this Bill is “**Persons who may enter critical infrastructure without permission**”. The persons thus **exempted** from obtaining permission are members of the SANDF, the SAPS and of any intelligence services established in terms of our Constitution and who are required to enter such critical infrastructure in the performance of their **official** functions and carrying out their **official** duties.

Again, there is **also no** express provision that it binds the State in this Bill. However, reading this Bill as a whole, makes it clear that it in fact binds the State.

See further **Government Gazette** No 41114 dated 15 September 2017 for an explanatory summary of the **Critical Infrastructure Protection Bill, 2017**.

Note that, as is the case in respect of all Bills, it may provide differently if and when it ultimately becomes law.

Conclusion

If Company X (and, for that matter, the general public in South Africa) are of the opinion that there are too many government officials to deal with, then Pollex has news for you. Another, separate police service is on its way. At the time of writing it is called the **Border Management Authority** (BMA). This BMA is in due course to be established if and when the **Border Management Authority Bill** (Afrikaans: “wetsontwerp”) becomes law. All BMA members in waiting will be government officials. At this stage there is no indication that the **White Paper on Policing supra** will apply to them. What will, however, apply to them, is everything that was said **supra** in respect of government officials.

This BMA shall fall under the control of the Minister of Home Affairs.

For a **verbatim** version of this BMA Bill, see **Government Gazette** No 39056 dated 5 August 2015.

For more information regarding this BMA in waiting, see “**Is the South African Police Service still the only police service in South Africa**” in Ask Pollex in **Servamus**: August 2017.

Accordingly, a word of advice to management having control over the government officials (including the SAPS), performing the functions/activities referred to in our reader’s question **supra**. “Take note, be on the alert. There is no smoke without fire”!

* “**In the year 2030**” is the target date when South Africa must be, what Pollex calls, a “Utopia”. See the reference to the **National Development Plan (NDP) supra**.

* **Conditions** (in Afrikaans text: “voorwaardes”) referred to in subsection (3) of section 2 of the **Control of Access to Public Premises and Vehicles Act 53 of 1985**, are **conditions** laid down by the statutory body concerned. For a comprehensive and detailed list of such “conditions”, Google “Gautrain Rules Bombela Operating Company Gautrain”.

As a matter of interest, **if and when** Company X is declared a **statutory body**, one such condition may, **for example**, be that entrants (including all government officials) “may be required to undergo a breathalyser test”.

ECF shares exciting news

Article by Jorina Penny



ELDERLY CARE FUND
for Retired Police Officials

Reg no: 1993/007507/08 ~ 001-724 NPO

Tel: (012) 345 3005 Fax: (012) 345 2994



Elderly Care Fund for Retired Police Officials (ECF) celebrated their **35th birthday** in February 2018, and are still moving forward, going strong. If you keep in mind that the organisation started with a few SAPS members who had the vision to establish an organisation who can take care of their retired members. The first event was a cheese and wine function that was held at a petrol service station and today it is an Art-21 company with 35 000 persons on their data basis.

In the beginning the goal was to make sure that Retired Police Officials have a safe place to stay, but due to the need of the Retired Police Officials over the whole of South Africa, they decided that a community service will reach more retirees. Today the ECF is proud to render a holistic service to ALL retired Police Officials. That includes social support, emotional care, help with GEPI and Polmed enquiries, financial support, bereavement counselling, guidance towards retirement and the adjustment to retirement.



One of the main support services rendered by ECF is support groups. These groups help to improve the “family” feeling under the retirees. If you feel part of a group it is a little easier to overcome difficult situations and adapt easier to retirement.



These groups also help limit abuse and self-neglect, as risk situations are identified early and the necessary services can be rendered in time.

The ECF offices is situated in Pretoria East, but with the help and support of volunteers, it is possible to render an effective service throughout South Africa. These volunteers are not only retired SAPS members, but also serving members that support the older person in need.

Volunteers as well as donors play a supportive role in the functioning of ECF. Without the donors, ECF will not be able to render any services, as ECF does not receive funding from SAPS or the government. A way to thank the ECF donors, is through the monthly prize draws. Comm Ngobeni, a Director of ECF, travels throughout South Africa, to hand over the prizes.



Part of the vision and mission of ECF, is to reach out to retirees all over the country. That is exactly the goal for 2018. Some of the highlights that are planned are the group visits in the different provinces. During these group visits, older persons will be contacted and frail and vulnerable persons will be visited at their homes. Training and support will be rendered to the volunteers and contact will be made with the local serving members. Another highlight is the celebration of the four Club 100+ members, namely Mrs Loubser (100 years), Mrs Mulder (102 years), Mrs Mpungose (104 years), and Maj Oosthuizen (105 years). What a privilege for ECF to be part of the lives of these special persons.

Not only will the Club 100+ group be contacted for their birthdays but around 500 older persons will receive birthday parcels (that includes home visits from staff members or volunteers) and 2 500 persons above 75 years will receive a birthday call and birthday card from the ECF.

With the guidance of the Board of Directors, the CEO, support of volunteers, donors and dedicated staff, 2018 will be another successful year, with optimal contact and support to all our retirees.

Please feel free to contact the ECF for more information about our program, or if you want to make use of our services.

ATTENTION

AARTO

UPDATE

all drivers

Important amendments to the AARTO Act contained in the AARTO Amendment Bill

Too many people appear to be of the view that the Administrative Adjudication of Road Traffic Offences (AARTO) Act and its Amendment Bill represent an effort from government to introduce a points-demerit system, and little more. But, that is not the whole truth.

There are much more to the AARTO Act than only the points-demerit system which represents but a small part of this Act's mechanisms and real purpose. If the introduction of a points-demerit system in South Africa was the sole purpose, then all that would have been required was to make a few minor amendments to road traffic legislation.

The real purpose of the AARTO Act is to migrate the prosecution of road traffic offences, for which an admission of guilt fine may be paid from the Criminal Procedure Act 51 of 1977 and the judicial authority of the courts, to an administrative, process-driven scheme, orchestrated by a far from independent state-owned enterprise which is funded almost entirely by traffic fines and the fees they raise.

The AARTO Act has also brought with it the concept of an alleged infringer being guilty until they prove themselves innocent.

The so-called pilot phase of the AARTO Act, which ran almost for a decade in Tshwane and Johannesburg exposed the fact that the system was somewhat expensive and bothersome to run, and allowed alleged infringers to exercise their constitutional right to a fair trial should they not wish to submit to the administrative processes. The legislators realise that they had to make amendments to dispose of what were regarded as barriers to revenue generation. This process started in 2013, with the AARTO Amendment Bill 2013.

The result thereof was the AARTO Amendment Bill 2015 which was assented to by the National Assembly on 5 September 2017. Some of its provisions include the following:

- Driving licences and operator cards are no longer the only documentation to be suspended or cancelled by the points-demerit system. Permits and operating licences issued in accordance with any road transport legislation will also be included.
- An "electronic service" will now form part of the legal means of service of infringement notices and other processes under the AARTO Act. The presumption of service has also been extended to these electronic means of service.
- There will no longer be a legal distinction between a "minor infringement" and a "major infringement". Charges in Schedule 3 of the AARTO Regulations, and the actions which may be taken with respect to them will be subject to a classification of "infringement" or "offence" only.
- Alleged infringers will no longer be allowed to elect to be tried in court. A written representation may be made to the Road Traffic Infringement Authority (RTIA). If unsuccessful, the alleged infringer may appeal to the Tribunal, if advised by a representations officer to do so, but only if such appeal is lodged within 30 days and is accompanied by the payment of an up-front fee, yet to be prescribed by the Minister. If the Tribunal subsequently rejects the appeal, the alleged infringer must approach the High Court for relief.
- If a representation is successful on the grounds of the authorities not having followed the prescribed procedures, that success will be hollow since a replacement infringement notice may then be reissued, provided that it is served within six months of the original alleged infringement.
- The reverse onus on the alleged infringer having to prove themselves innocent or otherwise take action, will be strengthened. If

an alleged infringer fails to take action, the so-called "adjudication procedure" will proceed full steam ahead, culminating in the issuing of an enforcement order.

- When an enforcement order is issued, it will not only block the issuing of a driving licence, professional driving permit and vehicle licence disc, but it will also block the issuing of any permit or licence issued in terms of any road traffic legislation or transport legislation. As before, the issuing of an enforcement order will also impose the applicable demerit points to the driving licence or operator card of the alleged (now convicted) infringer, except that such demerit points will also apply to any permit or licence issued in terms of any road traffic legislation or transport legislation.
- Whereas proxies for juristic persons, who are not operators, were previously exempt from having demerit points applied against their driving licences with respect to infringements committed by other persons driving their vehicles, demerit points will now be applied against the driving licences of juristic persons who are not operators, should such proxy fail to nominate the driver within 32 days of the [presumed] service of an infringement notice. Nominating the driver after 32 days is not allowed and this applies to all registered vehicle owners, regardless of whether they are natural or juristic persons.
- The grossly unconstitutional and otherwise illegal warrant of execution is repealed.

Section 22 of the AARTO Act, which deals with the trial and wherein subsection (4) previously held that "Despite any other law, an infringer who has been dealt with by means of administrative procedures in terms of this Chapter, does not incur previous convictions and may not be prosecuted again on the same facts", is repealed.

The concept of a "habitual infringer" is introduced and is defined as a person whose driving licence has already been suspended twice. At that stage only, will such a person become eligible for a "rehabilitation programme" which is yet to be defined and explained, in order to avoid having his/her driving licence cancelled.

Any fine imposed as part of a sentence handed down by a court with respect to a conviction in terms of an offence must, despite any other laws, be disbursed as prescribed by the AARTO Regulations. This means that the RTIA will get a share of the penalties imposed by courts for serious road traffic offences, if it is so prescribed in the regulations.

The name of the "national contraventions register" is changed to the "National Road Traffic Offences Register".

* * *

Although the publicity surrounding them has been low, public hearings have already been held in Limpopo and Mpumalanga, whilst the Western Cape and Free State are currently holding public hearings. The schedules of the public hearings in the other five provinces are not well-publicised.

Anyone who holds a driving licence or is the registered owner of a motor vehicle should take the time to read and understand the provisions of the AARTO Amendment Bill and the underlying AARTO Act and to participate in these hearings in order to have their voices heard. Even if you consider yourself to be a law-abiding motorist, you must understand that the chances of the AARTO Act impacting on your life are high.

Once the AARTO Amendment Bill is signed into law, it will be too late to do anything about it without entering into costly litigation and the AARTO Act will be rolled out nationally in a relatively short time frame.

Editor's notes

The contents of this article have been taken from a briefing made to the National Press Club in Centurion on Tuesday 27 February 2018.

Also refer to articles published about AARTO in [Servamus](#): February and March 2011.

Anyone who holds a driving licence or is the registered owner of a motor vehicle should take the time to read and understand the provisions of the AARTO Amendment Bill and the underlying AARTO Act and to participate in these hearings in order to have their voices heard.



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Femicide - Dying for being a woman

(Article published from pp 10-16)

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Labour Talk

By Div Odendaal
(BA LLB LLM)

From the round table

In the February 2018 article of Labour Talk, mention was made of the expeditious process which is gathering momentum as a mechanism to deal with disciplinary matters.

This more informal approach is novel to SAPS (and for that matter the public service at large) and therefore one can expect that the practical implementation thereof will give rise to a difference of opinion. Both trade unions admitted to the SSSBC, namely Popcru and SAPU, indicated their dissatisfaction with the expeditious process: Popcru tabled a position paper to the effect that the clause must be removed from the disciplinary code as the application thereof is not what they envisaged at the time when the code was negotiated. SAPU also declared a dispute on the said clause and referred the matter to arbitration as an interpretation and application dispute. Developments in this regard will be closely monitored and reported on in future articles.

The judges say

As mentioned in a previous article, an important judgment on the interpretation of sections 8 and 9 of the SAPS Act 68 of 1995 relating to misconduct proceedings against a provincial commissioner has been

awaited in the Supreme Court of Appeal. That judgment has now been handed down in the matter of the **National Police Commissioner V Ngobeni (2018) ZASCA 14** (15 March 2018).

The matter had its origin in a decision taken by a former Acting National Commissioner to institute a board of inquiry into alleged misconduct and/or fitness for office and/or capacity to execute duties efficiently during March 2016. Simultaneously that Acting National Commissioner also served the provincial commissioner with a Notice of Intended suspension. After receipt of her representations, she was subsequently suspended from duty. The provincial commissioner subsequently brought proceedings in the KwaZulu-Natal, Durban High Court to review and set aside the decisions to establish a board of inquiry as well as the suspension. The application was successful, hence the appeal to the SCA by the SAPS.

The central question before the court was whether the Acting National Commissioner was by law entitled to establish the board of inquiry and suspend the provincial commissioner. The court referred to the following constitutional provisions during the judgment:

- Section 207(1) of the Constitution provides for the President to appoint the National Commissioner of the Police Service.
- Section 207(3) of the Constitution provides for the National Commissioner, with the concurrence of the provincial executive, to appoint a woman or man as the provincial commissioner for that province.

The following constitutional imperatives were also cited in the analysis of the circumstances in which alleged misconduct on the part of a provincial commissioner may be investigated and resolved:

- Section 207(2) of the Constitution states that the National Commissioner must exercise control over and manage the Police Service in accordance with the National Policing Policy and the directions of the cabinet member responsible for policing;
- Section 297(6) of the Constitution provides for a scenario that if the provincial commissioner has lost the confidence of the provincial executive, that executive may institute

appropriate proceedings for the removal or transfer of, or disciplinary action against, the commissioner, in accordance with national legislation.

The national legislation being referred to is sections 8 and 9 of the SAPS Act 68 of 1995. Section 8 deals with loss of confidence in a provincial commissioner while section 9 deals with misconduct by a provincial commissioner.

The provincial commissioner in this matter contended before court that if the National Commissioner wished to institute an inquiry into allegations of misconduct against her, the route to follow would have been to refer the matter to the Provincial Executive Council of KwaZulu-Natal. If that Council formed the view that the National Commissioner's concerns resulted in a loss of confidence in the provincial commissioner, then it would have been obliged to notify the Minister. If the said Minister deems it necessary and appropriate the matter could then be referred to the National Commissioner, who is then obliged to institute a board of inquiry.

In the matter at hand the Acting National Commissioner did not follow that route and therefore it was argued that the Acting National Commissioner acted without lawful authority when he constituted the board of inquiry and suspended the provincial commissioner. The High Court upheld this argument.

In its analysis of sections 8 and 9 of the SAPS Act, the SCA came to the conclusion that the National Commissioner need not refer alleged misconduct on the part of a provincial commissioner to the Executive Council of the relevant province before appointing a board of inquiry.

The SCA concluded that the approach of the High Court was incorrect.

The above judgment paves the way for the board of inquiry to commence with its mandate.

An observation that can be made regarding the judgment is that it makes perfect sense from a labour law perspective that discipline management squarely falls within the employer-employee relationship and for it to be dependent on a third party (in this instance the executive) will be a deviation from the established rule.

Contemporary issues

Now that the mood in the country has dramatically shifted towards dealing with corruption in a decisive manner it might be opportune to reflect on the Constitutional Court's remarks about corruption in general and then focus on the Labour Court's reflection thereof in a case involving a corrupt police officer.

In the two Glenister cases in which the closure of the Scorpions was challenged, the ConCourt made the following important observations:

"Corruption has become a scourge in our country and it poses a real danger to our developing democracy. It undermines the ability of the government to meet its commitment to fight poverty and to deliver on other social and economic rights guaranteed in our Bill of Rights" - 2011(3) SA 347 (CC); and

"All South Africans across the racial, religious, class and political divide are in broad agreement that corruption is rife in this country and that stringent measures are required to contain this malady before it graduates into something terminal" - 2015(1)BCLR 1(CC).



"All South Africans across the racial, religious, class and political divide are in broad agreement that corruption is rife in this country and that stringent measures are required to contain this malady before it graduates into something terminal" - 2015(1)BCLR 1(CC).

The Labour Court also sent out a strong message in this regard in the matter of **Ragimana v Minister of Police, Labour Court case JR 1738/13** handed down on 3 March 2015.

The matter came before the court as a review application of a ruling handed down by an arbitrator. The employee, a senior police officer, was dismissed after having been found guilty of misconduct in that he submitted false claims for accommodation that he purportedly used.

In the course of the judgment the following important observation was made:

"It is the view of this Court that **it is self-evident that a senior police officer must at all times maintain the highest level of integrity and honesty in the execution of his/her duties. The nature of police work and the prevalence of corruption and**

The SCA came to the conclusion that the National Commissioner need not refer alleged misconduct on the part of a provincial commissioner to the Executive Council of the relevant province before appointing a board of inquiry.

dishonesty in society demands that any departure by a senior police officer from the highest standards of honesty and integrity be visited with summary dismissal. It would be entirely inimical to the public interest in the maintenance of law and order, to allow for any degree of deviation from this principle. In the circumstances of this matter, it is clear that the rule which was breached is not only a rule relating to travel claims. If the factual findings of the arbitrator are to be accepted then the Applicant breached rules of honesty and integrity which should be clear to any police officer without any specific explanation or recordal of such rules in writing."

If this dictum does not send out a strong message that misconduct by a police officer will not be tolerated, nothing will!

Tongue in cheek

A meeting is an event at which the minutes are kept and the hours are lost!

INVITATION TO READERS
SERVAMUS readers are invited to send labour-related topics for discussion. Note that these topics will be addressed in a general manner, as it is not envisaged that this feature will act as a forum for providing individual legal advice. If you have an interesting topic that you want to be covered please forward it to:
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By Laurie Greyvenstein

According to Statistics South Africa, the social profile of South African vulnerable groups constitutes a significant proportion of the South African population, expanding in absolute numbers as the population grows. Children and youth respectively comprised 40% and 37% of the total population in 2011, while older persons comprised less than 9% of the country's population. Data clearly shows that children, youth and older persons are the vulnerable ones in society. The dynamics of the use of power, empowerment and power

Mediation & me

The use of power, empowerment & power imbalances in dispute resolution

imbalances in mediation should be considered when dealing with vulnerable groups.

In mediation, the concept of empowerment lies in the fact that parties remain in charge of the outcome of their dispute and that the outcome will not be placed in the hands of a judge, magistrate or an arbitrator to make decisions on their behalf. In the South African context, with its history of disempowerment, the concept of empowerment should not be oversimplified. Factors such as the context of the dispute, who the parties are and where they come from should be considered. Some previously marginalised groups may have historical trust issues with the judicial system and others may have more recent fears and distrust. Some parties to a dispute may and others may not have the confidence in the courts to make

In real life, the ones with power have control over people and activities. This sometimes causes power imbalances in society and leads to strife. Power is often used to settle disputes. The use of power in dispute resolution is synonymous with litigation processes, which produces winners and losers. Empowerment on the other hand, is a key principle of mediation and it may be the foundation for people's decision to mediate. Power imbalance in mediation is an aspect which should be managed by the mediator to secure fair outcomes for all parties involved.

decisions on their behalf. Ultimately, in mediation parties do get the power to decide for themselves.

A respected name in mediation like Bernard Mayer, for example, says that “the essence of what the field of conflict resolution has to offer to disputants is an empowering approach to solving serious conflict”. An “empowerment shift” is further described as a process in which “the party moves from weakness to greater strength”.

A “custody battle” between divorcing parents for the primary or sole care over their children is a good example. Asking a court to make the final decision as to whom the children should be awarded can be a daunting task. The courts don’t love the children and will use legal criteria to make the final decision. Ultimately, the parents know their children best and they are supposed to love their children and want the best for them. Therefore, the parents, in these circumstances, are the best people to make those decisions.

It is necessary to take a closer look at the antonym of empowerment. The **Merriam-Webster Dictionary** defines disempowerment as follows: “To cause (a person or a group of people) to be less likely than others to succeed, and to prevent (a person or group) from having power, authority, or influence.”

The **Cambridge Dictionary’s** definition of disempowerment is: “To take away someone’s confidence and feeling of being in control of their life.

Training Schedule for 2018



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May	Durban	12 h Family Law 40 h Family Mediation	11-12 May 14-18 May	R2475 R10 945
June	Pretoria	12 h Family Law 40 h Family Mediation	7-8 June 11-15 June	R2475 R10 945
July	Johannesburg	12 h Family Law 40 h Family Mediation	19-20 July 23-27 July	R2475 R10 945
Aug	Eversdal, Cape Town	12 h Family Law 40 h Family Mediation	16-17 Aug 20-24 Aug	R2475 R10 945
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Training Schedule for 2018



Mediation offers vulnerable groups and individuals of such groups the best opportunity to find just outcomes for all parties to disputes.

- Empowering women doesn't mean disempowering men.
- A powerful head can sometimes disempower the teachers.”

In litigation (win-lose scenario) with the above-mentioned example, a financially strong father has more power to fight the custody battle in court - he can use his power to pay for the services of the best

lawyers to defend his case and private social services professionals to write reports to motivate why he should be awarded the primary care of the children. The financially weak mother will be less likely than others to succeed. In mediation (win-win scenario), which is an interest-based approach, the parties will have the opportunity to find solutions which suit both of them.

Social Justice Network offers various training courses countrywide on ADR, family law, mediation and restorative justice. If you have any enquiries about this article, the profession, or training courses to become a coach or practitioner, kindly contact us for further details. Contact us at tel: (021) 850 8548; e-mail: info@socialjustice.co.za; cell: 084 513 6464 or visit www.socialjustice.co.za.



Cops & Robbers

Profiting from another man's mistake

Morris went to a rabbi for some needed advice. "Rabbi, tell me if it is proper for one man to profit from another man's mistakes." "No Morris, a man should not profit from another man's mistakes," answered

the rabbi. "Are you sure, rabbi?" "Of course, I'm sure, in fact I am positive," explained the rabbi. "Ok, rabbi, if you are so sure, how about returning the 200 dollars I gave you for marrying me to my wife!"

Escaping prison

An English prisoner of war was held by the Germans. The Englishman was shot all over the place, until one day when the Germans told him, "Englander, your arm is infected with gangrene vee must cut it off."

The English prisoner said, "Well, okay, but could you drop it over England when you

go bombing?" The German replied, "Ya, that will not be a problem." A few weeks later the German tells the Englishman that they have to cut his other arm off. The Englishman says, "Well, could you drop it over England like you did last time?" "Ya, that will be done," says the German.

The next day the German tells him that they have to cut his leg off. Once again the Brit says, "Well, could you do the same as before?" The German replies, "Ya."

The next the German tells him they have to cut his other leg. "Well," begins the Brit, "could you just ..." The German snapped, "No! We think you are trying to escape!"

large counter top, which he had promised his wife. So he called Andy into his office and asked him to complete the job for him. But, alas, Andy refused. He told the warden, Gosh, I'd really like to help you but counterfitting is what got me into prison in the first place.

Reference

<http://jokes.skem9.co.uk/cat/Criminal-jokes/4>

The kidnap

A mafia boss's son sits at his desk writing a Christmas list to Jesus. He first writes, "Dear baby Jesus, I have been a good boy the whole year, so I want a new ..." He looks at it, then crumples it up into a ball and throws it away. He gets out a new piece of paper and writes again, "Dear baby Jesus, I have been a good boy for most of the year, so I want a new ..." He again looks at it with disgust and throws it away.

He then gets an idea. He goes into his mother's room, takes a statue of the Virgin Mary, puts it in the closet, and locks the door. He takes another piece of paper and writes, "Dear baby Jesus. If you ever want to see your mother again ..."

No thanks

Several years ago, Andy was sentenced to prison. During his stay, he got along well with the wardens and all his fellow inmates. The warden saw that deep down, Andy was a good person and made arrangements for Andy to learn a trade while doing his time. After three years, Andy was recognised as one of the best carpenters in the local area. Often he would be given a weekend pass to do odd jobs for the citizens of the community ... and he always reported back to prison before Sunday night was over.

The warden was thinking of remodelling his kitchen and in fact had done much of the work himself. But he lacked the skills to build a set of kitchen cupboards and a





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