

Reference: COM 19112019\_1

Enquiries: Mr JJ Brand

The Chief Whip  
Provincial Parliament  
Western Cape  
Cape Town  
8000

Dear Me. Wenger

**REPORT ON UNACCEPTABLE BEHAVIOUR: ENDANGERS THE LIVES OF OTHERS BY DISREGARDING SAFETY RULES OR OBLIGATIONS: SOUTH AFRICAN POLICE SERVICE (SAPS) WESTERN CAPE**

Your correspondence to my office, concerning complaints from the public that SAPS vehicles are driven recklessly and negligently when transporting inmates to and from Pollsmoor Correctional Facility, submitted on the 5<sup>th</sup> of November 2019 bears reference.

**BACKGROUND**

When the fifteen (15) complainants were interviewed, as indicated in your correspondence, they indicated that SAPS vehicles are indeed driven recklessly and negligently, when transporting inmates to and from Pollsmoor Correctional facility. They could unfortunately not provide the dates, times or particulars of the SAPS vehicles involved. As my office did not want to close the complaint due to insufficient information, it was deemed necessary by notice in the Provincial Gazette, in terms of Section 17 (3) of the Western Cape Community Safety Act, Act 3 of 2013, make this investigation known, which is conducted by this office and stated that any person may before 31 January 2020, make written representation to the Ombudsman regarding the investigation. Hence the reason why the complaint was not finalized within our usual time frame of three months.

A notice for public comments was published in the Government Gazette, with number

125/2019. The notice was circulated in the main stream – and local newspapers requesting public comments. Several radio stations also had broadcasts about the investigation. A total of 96 comments from the public were received.

## **FINDING**

The following roads were mostly affected by the reckless and recklessly driving of the SAPS vehicles as identified by the comments received:

- M3
- M5
- Baden Powell Drive
- Lakeside Road
- Tokai Road
- Steenberg Road

SAPS Case reference numbers could not be detected from the comments received. Upon investigation, it was discovered that the following cases were registered by SAPS on the Crime Administration System:

- **Strand CAS 293/09/2008:** Culpable homicide: On 10 September 2008, a police officer was transporting inmates from Strand Magistrate's Court to Pollsmoor Correctional facility in a police truck with registration number BMD 009 B. At the corner of Broad Road and Main Road on the said date, the police officer ignored the red robot and collided with a motor cycle. The driver of the motor cycle passed away as a result of her injuries. On 13 January 2010, the police officer was convicted for culpable homicide. On 12 March 2010, he was sentenced to three (3) years imprisonment, suspended for five (5) years on certain conditions at the Strand Magistrate's Court.
- **Muizenberg CAS 129/2/2019:** Reckless and negligent driving: On 12 February 2019, a police officer from Strand SAPS was transporting inmates from Pollsmoor Correctional Services to Strand Magistrate's Court in a prisoner's truck with registration number BTL 492 B, when he collided with a pedestrian in Muizenberg. The Investigating Officer has submitted his statement dated 26 November 2019 that the victim is in Switzerland. On 9

December 2019, the Senior Public Prosecutor at Muizenberg Magistrate's Court declined to prosecute on the matter.

- **Muizenberg CAS 44/12/2018:** Reckless and negligent driving: On 4 December 2018, a police officer from Khayelitsha SAPS, was driving a prisoner's truck with registration number BTD 096 B. He dropped off inmates at Pollsmoor Correctional facility and was on his way back to Khayelitsha SAPS, when he collided with a Toyota Corolla motor vehicle with registration number CFM 70144 at Sunrise Circle in Muizenberg. It is evident from reading the statement of the driver of the Toyota Corolla, that the driver of the police vehicle drove recklessly and negligently. No witnesses' statements were obtained. The accident occurred in peak traffic. There was no plan to the accident scene. The case docket was referred to the Senior Public Prosecutor for a decision taking into consideration that investigation was outstanding in this matter. On 23 September 2019, the Senior Public Prosecutor at Muizenberg Magistrate's Court, declined to prosecute on the matter with no reasons stipulated in the case docket. The case docket was poorly investigated by SAPS.
- **Mitchells Plain CAS 1115/09/2017:** On 22 September 2017, a police officer from Khayelitsha SAPS, was transporting forty-three (43) inmates from Pollsmoor Correctional Facility to Khayelitsha Magistrate's Court in a SAPS prisoner truck with registration number BTT252B. At the corner of Eisleben and Spine Road in Portlands, Mitchells Plain, a Toyota Quantum taxi with registration number CA 549361 collided with the police truck. The inmates in the SAPS prisoner truck and in the Toyota Quantum taxi, sustained serious to minor injuries. The medical reports of the victims are outstanding. A witness statement filed in the case docket indicates that the police truck was driving on the shoulder of the road with blue lights visible and sirens visible. This is an indication that the driver of the police vehicle violated the National Road Traffic, Act 93 of 1996, by driving on the shoulder of the road and not within the designated road lanes. A qualified Road Crime Crash Scene Investigator from the SAPS Accident Response Team visited and analysed the accident crime scene. She stipulates in her Crash Investigation Report that she is of the opinion that the driver of the taxi had driven recklessly or in a negligently manner. She also recommends criminal charges be brought against the driver of the taxi for contravening the National Road Traffic Act, Act 93 of 1996, for driving recklessly and negligently. This office does not concur with the opinion of the investigator that only

the driver of the taxi must be charged for reckless and negligent driving. This office is of the view that the taxi driver and the police member be charged for reckless and negligent driving in terms of the National Road Traffic Act, Act 93 of 1996.

On 18 March 2019 at about 07:35, a member of the public was driving her vehicle in Tokai (opposite the American Embassy), when a SAPS prisoner's truck side swiped the right side of her vehicle. She indicated that the side mirror was ripped off from the vehicle and the said vehicle was scratched. The driver of the SAPS prisoners truck failed to stop after the accident. The damages sustained to the vehicle was approximately R45000. She reported the accident at Kirstenhof SAPS and was provided a SAPS Accident Report (AR) reference number, 58/3/2019.

This office has enquired from the American Embassy if closed circuit television(CCTV) footage is available of the incident. The security head at the American Embassy has indicated to this office that the incident was not captured on CCTV.

On 28 October 2019, another member of the public was travelling in Steenberg Road in Tokai in her vehicle. The driver of a police vehicle with registration number BSB 111 B, escorting a police prisoner truck from Pollsmoor Correctional Services to Cape Town High Court, collided with her vehicle in Steenberg Road. The damages sustained to the vehicle amounted to R45000. The police member made an Occurrence Book (OB) entry at Kirstenhof SAPS with regard to the incident, Kirstenhof SAPS OB 1591/10/2019 refers.

SAPS National Instructions 13 of 2016, Duties of Station Commander, Paragraph 3 (16) stipulates that, "The Station Commander must peruse the Occurrence Book (OB) daily and must ensure that the required arrangements regarding entries that need further attention are made. These aspects must be highlighted by means of a personal entry in the Occurrence Book which must be signed by him or her.

The Station Commander of Kirstenhof SAPS did not detect the irregularity of OB 1591/10/2019 that in terms of SAPS NI 4 of 2011, Paragraph 82(2), a case docket had to be registered for the said incident.

SAPS National Instruction (NI)4 of 2011, State Vehicles, Paragraph 82(2) stipulates that, "Whenever a state vehicle is involved in an accident on a public road, irrespective of whether it has sustained damage or not, a docket must be registered at the police station in whose area the accident occurred immediately after the accident is attended to or before the relevant member reports off duty". There were no case dockets opened at Kirstenhof SAPS with regard to two incidents above.

Although Assistant Commissioner Mfazi 's issued a circular, via reference 1/1/4/1(7) dated 2 October 2006, with regard to the use of sirens and blue lights by members of the service, the contents of the circular are not adhered to. Paragraph 2 of the said circular stipulates the following, "It was also brought to the attention of this office that prisoner trucks, as well as vehicles escorting these trucks use sirens in the residential area of Tokai when picking up and dropping off inmates at Pollsmoor prison. The use of blue lights and sirens whilst conveying inmates should be used with circumspection, taking into consideration all factors. The following factors must be considered, namely:

- It is a high-profile prisoner
- Is there an identified threat regarding an attempt to escape, or to set this prisoner/s free."

The use of state vehicles by SAPS is governed Section 58 of the National Road Traffic Act 93 of 1996 and SAPS National Instructions 4 of 2011, State Vehicles. Section 58 of the National Road Traffic Act 93 of 1996 stipulates that:

- (1) Subject to subsection (3), no person shall, unless otherwise directed by a traffic officer, fail to comply with any direction conveyed by a road traffic sign displayed in the prescribed manner.
- (2) In any prosecution for a contravention of or a failure to comply with a provision of subsection (1), it shall be presumed, in the absence of evidence to the contrary, that the road traffic sign concerned was displayed by the proper authority under the power conferred by this Act and in accordance with its provisions.
- (3) The driver of a fire-fighting vehicle, a rescue vehicle or an ambulance who drives such vehicle in the performance of his or her duties, a traffic officer who drives a vehicle in the carrying out of his or her duties or any person driving a vehicle while engaged in

civil protection as contemplated in any ordinance made in terms of section 3 of the Civil Protection Act, 1977 (Act No. 67 of 1977), may disregard the directions of a road traffic 15 sign which is displayed in the prescribed manner: Provided that:

- (a) he or she shall drive the vehicle concerned with due regard to the safety of other traffic; and
- (b) in the case of any such fire-fighting vehicle, rescue vehicle, ambulance or vehicle driven by a person while he or she is so engaged in civil protection, such vehicle shall be fitted with a device capable of emitting a prescribed sound and with an identification lamp, as prescribed, and such device shall be so sounded and such lamp shall be in operation while the vehicle is driven in disregard of the road traffic sign.

In terms of Regulation 176 of the National Road Traffic Regulations, 2000, a member of the Service or a member of the Municipal Police Service, a Traffic Officer or a member of the South African Defence Force may in the execution of their duties use a blue light.

Dular Omar Institute for Constitutional Law, Governance and Human Rights submitted the following comments to this office,

- “Moreover, it is not clear why SAPS have persisted in the use of bakkies and trucks when the ‘police bakkie’ has such a negative connotation from apartheid days.
- We regard the transportation of people in trucks and bakkies as degrading and unsafe. Secure buses and mini-buses are used in other countries and also in South Africa by the Department of Correctional Services.
- Given the way in which the vehicles are driven and the nature of the seating, it is also likely that physical hardship may be experienced by those being transported. It is unclear whether safety restraints such as seatbelts are provided.
- It is similarly unknown if segregation requirements are being adhered to (e.g. males from females; adults from children). It is also not known if the driver and escort have sight of the detainees whilst in transit. It is, however, known that the driver and on-board escort do not have sight of the rear of the back or truck, thus creating a security risk.

- In the collision which occurred in September 2017 in Mitchells Plain between a detainee transport truck and a minibus taxi, it was reported that 43 inmates were taken to hospital. This suggests that at least 43 inmates were being conveyed in the truck at the time, suggesting crowded conditions in the truck. See paragraph 6.2 for analysis of the case docket.
- The potential for sound-induced hearing loss for detainees transported with persistent sirens sounding should also be taken into account".

In terms of SAPS National Instructions 4 of 2011, State Vehicles, stipulates that:

- Paragraph 34(1), "If an employee —drove a state *vehicle* unnecessarily fast or in a reckless, negligent or inconsiderate manner, his or her authorization to drive state vehicles may be suspended or terminated by a delegated official".
- Paragraph 48(4), "A driver of a state vehicle must exercise care in the handling of the vehicle and may not drive a vehicle recklessly, negligently, inconsiderately or unnecessarily fast".
- Paragraph 49(1), "All employees must comply with the provisions of the National Road Traffic Act, 1996, and regulations and related directives of the Service regarding the loading and the transportation of goods and persons in state vehicles".
- Paragraph 50. (1), The number of inmates or arrested persons who may be transported in a patrol van or riot truck, may under no circumstance exceed the following numbers:

Description of vehicle	Maximum number of inmates/detainees
Patrol van, long-wheeled base 1 ton with compartment	<b>8</b>
Patrol van, short-wheeled base without compartment 1 ton	<b>8</b>
Patrol van, short-wheeled base 1 ton with compartment	<b>6</b>
3-Ton prisoner truck	<b>20</b>
4-Ton prisoner truck	<b>20</b>
5-Ton prisoner truck	<b>25</b>

The Tokai Residents Association that represents approximately 2000 residents of Tokai indicated that they are inundated with complaints from the residents with regard to:

- Sirens being used excessively
- The vehicles drive at high speed up and down Tokai Road usually accompanied by support vehicles.

The Tokai Residents Association also indicated that they have written repeatedly over the past few years to the Director of Prisons Services complaining about the issues mentioned above and were informed that the transport of inmates is a SAPS responsibility.

On 17 January 2020, this office directed an email to the City of Cape Town Traffic Services for their comments. The Deputy Chief of Traffic Services, Mr Andre Nel, responded as follows, "The National Road Traffic Act 93 of 1996 allows for certain vehicles and persons to use identification lamps prescribed in the Act when in the execution of their duties. The prison transport is conducted by the SAPS and their members are authorised to use blue lights and sirens during the execution of their duties provided that they do so with due regard to the safety of other road users. I am not aware of any case of reckless driving that has been registered against any driver by a traffic officer. In my opinion it is not necessary to have covert operations as the transport of the inmates happens every day and can be observed openly by any driver on the routes that the inmates are transported. I am positive that you have engaged with the SAPS on this matter. We normally refer complainants to the SAPS to deal with any specific issues that they are raising". When Mr. Nel was requested to provide the particulars of the complainants/correspondence to SAPS on the complaints received, he indicated that "there are no complaints logged on these mechanisms. I am waiting on feedback on any complaints from our manual registry and emails. It would appear that there are very few recorded complaints relating to this matter on our systems and that these were either via what's app or mails but I will keep you informed if I can trace some." At the time of drafting this report, no additional information was received from Mr. Nel.

The White Paper on Remand Detention Management in South Africa, March 2014, Paragraph 7.4.12.2 stipulates that, "SAPS will adhere to safety and security principles when collecting,

transporting and dropping off of remand detainees in courts, detention facilities and any other service delivery point".

The audio-visual remands statistics recorded for the month of January 2020 at Pollsmoor, Goodwood and Alandale Correctional facilities was provided to this office by Mr R Isaacs, the Acting Regional Head, Department of Justice on 4 March 2020. The statistics are denoted as follows:

WC: REGIONAL REPORT FOR MONTH: JANUARY 2020							
DCS FACILITY	NUMBER OF RD ATTENDED COURT FOR THE MONTH	NUMBER OF RD ATTENDED VIDEO REMAND	PERCENTAGE OF RD ATTENDED VIDEO REMAND	NUMBER OF RD CASES POSTPONED WITH VIDEO REMAND	NUMBER OF RD RELEASED AFTER VIDEO REMAND	NUMBER OF CUBICLES FOR VIDEO REMAND	COURTS LINKED TO VIDEO REMANDS
POLLSMOOR RDF	4231	132	3.1 %	119	13	4	Cape Town Athlone Mitchells Plain Khayelitsha Blue Downs
POLLSMOOR MEDIUM A	2376	24	1%	24	0	2	Cape Town Athlone Khayelitsha Blue Downs
GOODWOOD	2260	65	2.9%	60	5	1	Cape Town Blue Downs
ALANDALE	1101	3	0.3%	0	3	1	Paarl
<b>TOTAL</b>	<b>9968</b>	<b>224</b>	<b>2.2 %</b>	<b>203</b>	<b>21</b>	<b>8</b>	

The audio-visual remand utilization for the month of January 2020 by the Department of Justice, as stipulated above (2.2 %), is a matter of concern.

SAPS were given an opportunity to respond in terms of Regulation 5 and indicated that no case reference numbers were provided by the complainants.

Wrongdoing was detected on the part of SAPS.

## **RECOMMENDATION**

The complaint is found to be substantiated based on the findings made above.

The following recommendations were made to the Provincial Commissioner of SAPS in the Western Cape:

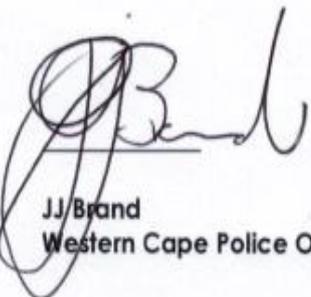
- Court proceedings for remand detainees are conducted in terms of an audio visual remand (AVR) link established in terms of Section 159 A of the Criminal Procedure Act, Act 51 of 1977. This will not only alleviate the pressure on the logistical arrangements in terms of the appearance of remand detainees in Court, but will also be a more cost-effective way of remanding cases against inmates. It is recommended that the Acting Regional Head for the Department of Justice and the Provincial Commissioner of Correctional Services, in Western Cape, be requested to ensure the optimal utilization of the visual remand link between the two departments. The Acting Regional Head for the Department of Justice has expressed his willingness to be the Chairperson of the AVR committee in future.
- SAPS members transporting inmates to and from Pollsmoor Correctional facility, work flexi hours in avoiding the congested traffic during peak travelling hours.
- The Provincial Commissioner of the Western Cape compile a Provincial Instruction with regard to the transportation of inmates to and from Correctional facilities with regard to state vehicles. This should be in line with current legislation and specifically highlight the conditions under which SAPS members are authorized to use blue lights and sirens.
- The Provincial Commissioner of the Western Cape ensures strict compliance with the proposed Provincial instruction, other SAPS instructions and directives, and also ensures that decisive consequential management is taken in future, in instances of non-compliance.
- The Tokai Residents Association indicated that they are prepared to attend any meeting to reach a satisfactory solution with regard to this matter. This office is prepared to facilitate such a meeting with SAPS and the said association.
- The case dockets highlighted on pages 2 and 3 above, are properly reviewed and appropriate corrective action is taken if necessary.

- The irregularity identified concerning Kirstenhof SAPS OB 1591/10/2019, and AR 58/3/2019 be redressed in terms of current SAPS instructions and procedures as indicated. Appropriate action should also be taken for non-compliance with instructions.

It will be appreciated if the information in this report can be treated with the necessary sensitivity as the Provincial Commissioner of the South African Police Service must be given a fair opportunity to act on the recommendations from my office.

I however recommend that this investigation report be forwarded to the Standing Committee on Community Safety, Cultural Affairs and Sport of the Western Cape Provincial Parliament, to monitor whether the recommendations are indeed implemented by SAPS in the Western Cape.

Yours sincerely,



JJ Brand  
Western Cape Police Ombudsman

**Date: 9 March 2020**