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RESEARCH REPORT ON AN ANALYSIS OF MURDER DOCKETS

IDENTIFYING THE NATIONAL PROSECUTING AUTHORITY REQUIREMENTS OF AN EFFECTIVE MURDER INVESTIGATIONS

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DEFINITION OF KEY CONCEPTS

A “**docket**” is a case files containing all relevant information about a recorded criminal case and generally include basic facts and demographic information about the incident, statements by victims and witnesses, details of the activities undertaken by the police officers dealing with the case, and the progress of the case through the criminal justice system.

“**Enrolment of cases**” are cases placed on court rolls for a hearing and decision by presiding officer (NPA Annual report 2020/21)

“**Clearance ratio**” equals the number of new cases received divided by the number of cases disposed (excluding cases diverted before enrolment in terms of the CJA) (NPA Annual report 2020/21); or a percentage of cases finalised with a guilty verdict divided by the number of cases finalised with a verdict

“**Investigation**” is the examination, study, search, tracking and gathering of factual information that answers questions or solves problems.

“**Investigating Officer**” a member of the South African Police Service responsible for the investigation of an alleged murder offences or any other offence. Also referred to as a detective, hence the two titles are used interchangeably in this report.

“**Murder**” as described in the context of South is the unlawful and intentional killing of another person. The act of killing should be intentional and that the victim should die as a result of the act committed by the perpetrator.

“**Prosecution**” is the institution and conducting of legal proceedings against someone in respect of a criminal charge.

“**Prosecutor**” refers to a person duly appointed as a prosecutor, and who is tasked by the state to present evidence in court as to the facts of a criminal case.

“**Trial-ready case docket**” is a fully investigated case docket, whether it includes one or more charges (investigation finalised), which can be used by the NPA for the purpose of proceeding with a trial of an offender(s), on charge(s) linked to the case docket.

ACRONYMS

CJS	: Criminal Justice System
CCTV	: Closed-Circuit Television
CPA	: Criminal Procedure Act 51 of 1977
CPF	: Community Policing Forum
DoH	: Department of Health
DNA	: Deoxyribonucleic Acid
DPP	: Directors of Public Prosecutions
NDDP	: National Director of Public Prosecutions
NDP	: National Development Plan
NPA	: National Prosecuting Authority
PGI	: Prosecutor Guided Investigation
SAPS	: South African Police Service
SOCA	: Sexual Offences and Community Affairs
VISPOL	: Visible Policing

EXECUTIVE SUMMARY

The murder rate in South Africa has grown from 17 068 cases in 2013/14 to 21 325 cases in 2020/21.¹ Stakeholders in the Criminal Justice System (CJS) are symbiotically dependent on each other to ensure efficient and effective investigations, prosecutions, and convictions. A very small percentage of reported crimes are accepted by the National Prosecuting Authority (NPA) for prosecutions, resulting in a high conviction rate. Against this backdrop, this study was aimed to determine the obstacles confronting the SAPS performance which results in attrition of cases with a view to assist the SAPS and the NPA. The primary research question of the study was to identify the NPA requirements of effective murder investigations.

This study, through the value chain lens, delves into the investigation and prosecution processes in order to gain a holistic understanding of factors influencing prosecutorial outcomes, focusing on the perceptions of the prosecutors - specifically those that are dealing with the prosecution of murder dockets. This component of the study forms part of a broader research work-package which entailed various sub-projects, namely: (i) analysis on the SAPS Detective Service Murder Dataset for the period 2013/14 to 2017/18; (ii) analysis on the murder docket, and (iii) interviews on detective commanders and detectives.

The stakeholders in the value chain of the CJS have a critical role to play in ensuring improved service delivery in order to improve the public's confidence in the CJS. Prosecutors require a case docket with a prima facie case against the accused with all the necessary evidence linking the suspect with the murder to make it possible to prosecute the case. The prosecutors were adamant that they generally provide adequate support to the SAPS to ensure that the murder dockets submitted by the SAPS are fully investigated, and can be enrolled in the courts. Critical to the process is that the NPA consider a murder case to be trial ready when the matter is set for trial than when the investigation is completed and the case is brought for decision.

¹ In 2020/21, the murder went down to 19 972 illustrating the effect of the disaster containment measures. The decline in murder can only be sustained through addressing the drivers of murder such as illegal firearms, structural inequalities – poverty and unemployment.

Withdrawn cases due to insufficient evidence were also linked with no prima facie case or cases lacked sufficient evidence that links the accused with the crime. For instance, DNA, fingerprints results, forensic evidence and cooperation from eye witnesses. Adequate investigation and support from different stakeholders, are required for the case docket to be enrolled by the prosecutor. Typically, all required documents such as witnesses' statements, chain evidence statements of all the relevant role players; forensic evidence such as Deoxyribonucleic Acid (DNA), ballistics report, blood test, toxicology report, finger prints, photo album, and post mortem report; and weapon used in the commission of murder if possible to be tested for any forensic evidence such as fingerprints (knife), ballistics (gun), and poison, are required to make the case docket trial ready.

Much criticism was levelled at the police's Forensic Science Laboratory for delays in processing forensic evidence and the resultant backlogs, which is negatively influencing the justice system's ability to successfully prosecute perpetrators of serious crimes. Enrolment of murder docket is also affected by delays in receiving hospital medical reports. These context paints a bleak picture of service delivery deficits, and in some cases inadequate collaborative efforts within the SAPS and the entire CJS, that compromises on the justice system. Cases can be stricken off the roll when the required scientific evidence and witnesses statements are not obtained; confession made to lower ranks other than commissioned officer, or when there is failure in ensuring procedural compliance with the law. Meanwhile these have an implication on the legitimacy of the CJS to achieve its mandate in the face of citizens.

Gleaning from the study findings, poorly investigated murder cases may be linked with a host of factors including the lack of professionalism from some detectives who do not adhere to timeframes and instructions of prosecutors. Neither is the prosecutor guidance always matched with appropriate supervision and direction from commanders, as well as accountability for detectives who neglect their work. The police detectives may face pressure to arrest a suspect, yet not resulting in a successful prosecution.

As if this is not enough, the environment within which the detectives operate is also not fully supportive of the investigation process such as the lack of specialisation for police detectives; lack of experience of some detectives in handling murder cases; and high workload of the SAPS detectives. The respondents are of the view that murder is a serious offence and need to be investigated by Captains and/or Lieutenant Colonels. Taking into consideration high number of murder cases reported to the SAPS annually, it will be impossible for all murder cases to be investigated by commissioned officers such as Captains and/or Lieutenant Colonels. However, they should be available during interrogations and guide non-commissioned officers throughout the investigations of murder cases.

The overall finding of this study indicates that there is a good relationship between the prosecutors and detectives, due to fact that they need each other to be able to give justice to the victims of crime and bring perpetrator to the full might of the law. Furthermore, prosecutors across all the provinces indicated that there is a need for the NPA and the SAPS Detective Services' performance indicators to be aligned and enhanced to ensure that they are working towards the same direction. Thus, the Medium Term Strategic Framework (MTSF) planning need to reflect on this understanding accordingly.

The following are the recommendations emanating from this study:

- **The SAPS and NPA to undertake a project for undetected murder cases:** The respondent suggested that the NPA can play a role to help in reducing undetected murder with the sub-category suspect unknown by undertaking a review project for of all these cases and prosecute once suspects are identified and linked to the murder case. The respondents indicated the following suggestions on how the police can reduce the number of undetected murder cases with respect the sub-category suspect unknown:
- **Addressing delays in providing forensic evidence reports:** The backlog and subsequent outstanding reports from SAPS laboratories have resulted in many cases either being postponed or withdrawn. Eradicating these backlog is

paramount, as these samples are vital in cases of murders and various other criminal matters. Capacitation of FSL was required by some prosecutors.

- **Capacitation and consequence management:** There is a need for consequence management for errand detectives and detective commanders. Crime management and investigation skills are required for VISPOL and detectives. The study findings indicated that due to the high workload, the detectives are not able to focus on murder investigations as they have other cases that they still need to investigate. Adaptation to technology is a requirement for the CJS, in order for the courts to deliver seamless services to communities.
- **Specialised unit for murder cases:** This concept is used in the organised crime cases (NPA's Specialised Commercial Crime Unit) and rape cases (Sexual Offenses and Community Affairs). There is no reason as to why the same concept is not applied for murder cases within the NPA. Similarly, the SAPS can improve murder investigation through establishing a specialised unit that focuses on murder.

1. INTRODUCTION

Due to the different yardsticks used by the SAPS and the NPA, one of the more reliable measures is to base the performance of both the SAPS and the NPA on murder statistics. Murder is the most reliable variable for measuring crime,² as it is most likely to be reported to the police due to the presence of a body. In 2017/18, SAPS recorded 20 277 new murder cases and it was recorded that 26 156 trial ready murder dockets were finalised that year.³ It is important to note that the 26 156 trial ready cases includes several thousand cases rolled over from previous financial years, and the 2017/18 cases still being investigated would not have yet been forwarded to the NPA. A total of 4 636 verdict cases of the 26 156 trial ready cases were finalised by the NPA, which means the NPA pursued a prosecution or declined to prosecute a case; only giving a finalisation rate of 18%. The NPA obtained a 78% (3 601) conviction rate of the 4 636 verdict cases.⁴ This suggests that only 14% of trial ready murder dockets resulted in a conviction⁵, and even lower percentage of murders committed resulted in a prosecution. In effect, 14% of murders resulted in a prosecution.

The low conviction rate is of great concern as it suggests that there are no legal consequences for the vast majority of murderers, and no justice for the many families of the victims. In context of these discussions, this study seeks to identify where and what are the critical shortcomings in the Criminal Justice System (CJS) value chain. This calls for an in-depth analysis of police dockets from 2013/14 to 2017/18 to determine whether the SAPS investigations are rigorous and if the NPA has sufficient information to secure a prosecution, and what other reasons could be the result of such low conviction rates.

²Civilian Secretariat for Police Service. 2018. The State of Democratic Policing in South Africa Research Report. South Africa, Pretoria

³ The total number of trial ready dockets includes cases that are carried over from the other financial years. Therefore, the current reported cases of murder cases will not tally with the recorded number of trial ready dockets

⁴ National Prosecuting Authority. 2018. 2017/18 annual report, 10 April 2020; Available at: <https://www.npa.gov.za/sites/default/files/annual-reports/NDPP%20Annual%20Report-%202017-18.pdf>

⁵ The conviction rate is calculated by the numbers of NPA convictions divided by the trial ready murder dockets of SAPS (3601/26 156). This allows for the measuring of the performance of the system as a whole. It joins the measure of SAPS performance and the NPA combined. This is the way in which the systemic weaknesses of the CJS can be identified. See Advocate Batohi's argument.

2. PROBLEM STATEMENT

The police and the prosecution service are two distinct and separate institutions in South Africa. The low prosecution rates for murder are partly due to differing responsibilities of the SAPS and the NPA. The SAPS is responsible for investigations and securing evidence in cases and the NPA is responsible for translating the evidence into successful prosecutions. The differing responsibilities has given rise to situations where the NPA holds the SAPS responsible for the low prosecution rates stating that the trial ready dockets are lacking in information, and the SAPS blames the NPA for the low prosecution rates, citing that the dockets are adequate, or could be made adequate with better NPA cooperation. An analysis of murder dockets can be used to clarify the extent to which these entities are justified in their claims.

3. AIM AND OBJECTIVES OF THE STUDY

3.1. Study Aim

The main aim of the study was to analyse the SAPS murder dockets to identify the strengths and shortcomings of murder investigations and prosecution.

3.2. Study Objectives

The objective of the study is to identify the NPA's requirements for an effective murder investigation. The two criteria were used to identify attrition of cases - where along the value chain do cases fall out of the system, and reasons thereof; and analyse how frequently and for what reason the NPA referred back murder dockets to the SAPS for further investigations.

The study responded to the following research questions:

- What are the strengths and shortcomings of murder investigations and prosecutions?
- What are the prosecutors' reasons for referral back of murder case dockets to the SAPS?

- What criteria do the NPA use to measure whether the information in a docket can be used towards a successful prosecution?
- What process is used to ensure dockets are trial ready for the NPA?

4. RESEARCH METHODOLOGY

A mixed research design was used in this study, which is dominated by qualitative research design for collection of rich data. On the other hand, a quantitative research approach is only applied to enable the quantification of numeric data in identifying the patterns emanating from the interview data. The study was conceptualised in a phased approach, leading to three phases that are equivalent to three research work packages. Phase 1 of the study entailed a desktop analysis conducted in the financial year 2020/21 focusing on the literature review and fieldwork preparation. Phase 2 undertaken in the financial year 2021/22 entailed in-depth interviews with detectives and detective commanders from the SAPS. Phase 3 was also conducted in the financial year 2021/22, focusing on analysing actual dockets at selected police stations in the nine (9) provinces.

This research report entailing the interviews with the prosecutors was conceptualised as part of financial year 2021/22 (Phase 2) research work-package. However, access to the required sample from the NPA was only provided in the financial year 2022/23.

4.1. Population and Sample

A total of 15 out of a total of 18 sampled respondents from the NPA took part in the study, including Chief Prosecutors, State Advocates and Senior State Advocates; this is an 83.3% participation rate. The NPA provided a sample of respondents that are representative of each province. The Directors of Public Prosecution (DPPs) were responsible to nominate senior officials per division, specifically those that are dealing with the prosecution of murder dockets.

The CSPS was responsible for the logistical arrangements and scheduling of the interviews with the nominated officials. There were three non-responses from Western Cape (WC) and KwaZulu-Natal (KZN) and Limpopo. One person refused or failed to cooperate in the study, and two people failed to respond to emails or telephonic requests.

Due to the limited timeframe allocated for the data collection, the three (3) respondents were then ruled out of the study. Despite a small sample, the responses of prosecutors indicated saturation on key issues, meaning that key issues were exhausted and no additional matters were coming out in the engagements. In some instance this was applicable despite the prosecutors having opposing views / responses on a topic such as the other group having disagreed (no) and the other ones having agreed (yes) on the same question; for instance, on performance measures applicable to prosecutors. Additionally, in many respects their responses confirmed the findings of the previous components of this research work-package.

4.2. Data Collection and Analysis

Semi-structured interviews were conducted with prosecutors from the NPA. The semi-structured interview guide was developed in response to the research objectives and questions. It was then piloted to test the reliability of the tool, and the identified gaps were subsequently addressed. Both virtual (Microsoft Teams) and face-to-face interviews were conducted with the nominated respondents in all the nine (9) provinces. Microsoft Teams allowed for the interviews to be recorded which was advantageous over face-to-face interviews, and it also has the cost-saving benefits. Nonetheless, due to some nominated officials experiencing connectivity challenges, face to face became the dominant mode of interviews. The researcher could then draw the benefits of face-to-face interviews, which, not only allowed for probing of responses; but also facilitated easier building of rapport, and taking advantage of body language to enrich the engagements.

Thematic analysis was adopted to identify, analyse and report patterns⁶ coming from the identified themes, and in response to the specific questions from the interview guide. The steps that were followed included going through the written transcripts, coding or extracting the main concepts, and then generating themes from the codes. This was

⁶ Braun, V., & Clarke, V. 2006. Using thematic analysis in Psychology, 17 June 2020; Available at: https://www.researchgate.net/publication/235356393_Using_thematic_analysis_in_psychology

followed by reviewing themes, defining and naming themes; and lastly, writing up based on the data captured under all the themes.⁷

4.3. Ethical Considerations

The study applied anonymity to respondents by not revealing their names; and confidentiality was guaranteed by not identifying the respondents in this report or any other communication. Informed consent in this study was attained through emailing a letter of access to respondents in informing them in advance about the nature of the study. Respondents had an option to choose whether or not to participate, which was respected by the researchers.

5. RESEARCH FINDINGS

The research results emanate from the main aim of this study which focuses on an analyses of the SAPS murder dockets to identify the strengths and shortcomings of murder investigations and prosecution. The following are the key thematic areas derived from interviews with the Chief Prosecutors, State Advocates and Senior State Advocates as derived from data:

- Prosecution of trial ready murder cases
- Withdrawn and undetected murder dockets
- Guidance provided by the public prosecutors in the investigation process

The ensuing discussion begins with the key thematic area on prosecution of trial ready murder cases.

5.1. Prosecution of Trial Ready Murder Cases

The CSPA study established that from 2013/14 to 2017/18 financial year, there were 112 463 trial ready murder cases from the SAPS, out of which only 25 370 (22%) were enrolled.⁸ The SAPS trial ready murder dockets are increasing on a yearly basis,

⁷ Caulfield, J. 2019. How to do thematic analysis, 17 June 2020; Available at: <https://www.scribbr.com/methodology/thematic-analysis/>

⁸ CSPA. 2021. Case Dockets: The golden thread linking the SAPS and NPA.

accompanied by fewer prosecuted murder cases. Although, the conviction rate on the enrolled murder cases is very high, prosecution against reported cases and trial ready cases is very low. The National Director of Public Prosecutions (NDPP), Advocate Shamila Batohi cautioned against the high conviction rate figures of the NPA conceding that measuring the effectiveness of the CJS by solely focusing on conviction rates is misleading.⁹ This argument was based on the premise that the prosecution rate has to be considered to get a holistic and unbiased picture. The NDPP argued that the high conviction rate occurs in parallel to the low prosecution rate.

Against this context, the prosecutors were engaged to provide their experiences with respect to the root causes for fewer enrolment of trial ready dockets in context of the huge number of SAPS trial ready murder dockets; common challenges experienced by prosecutors in dealing with murder dockets submitted by the SAPS; and interventions suggested to strengthen the prosecution of trial ready murder dockets in relation to the key stakeholders involved in the CJS value chain.

Generally, respondents indicated that SAPS is supported by the NPA in the process of ascertaining that murder dockets are made trial-ready, and require that there be a prima facie case or evidence that links the suspect with the murder. The following factors need to be attained for a case docket to be trial-ready:

- Eyewitnesses' statements;
- Forensic evidence such as Deoxyribonucleic Acid (DNA), ballistics report, blood test, toxicology report, finger prints, photo album, and post mortem report;
- Chain evidence statements¹⁰ of all the relevant role players; and

⁹ De Lange, J & Versluis, J.M. 2019. Rising Crime, Low Prosecution Rates: How Law Enforcement in SA Has All But Collapsed, 09 April 2019; Available at: <https://city-press.news24.com/News/rising-crime-low-prosecution-rates-how-law-enforcement-in-sa-has-all-but-collapsed-20191021>

¹⁰ Chain evidence statements proves the integrity of a piece of evidence. A paper trail is maintained so that the persons who had charge of the evidence at any given time can be known quickly and summoned to testify during the trial if required. A record of the chain of evidence must be maintained and established in the court whenever presenting evidence as an exhibit. Badiye, A., Kapoor, N., & Menezes, R.G. 2022. Chain of Custody. National Library of Medicine, 07 March 2023: <https://www.ncbi.nlm.nih.gov/books/NBK551677>

- Weapon used in the commission of murder if possible to be tested for any forensic evidence such as fingerprints (knife), ballistics (gun), and poison.

5.1.1. Root causes for fewer enrolment of trial ready dockets in relation to high number of SAPS murder trial ready dockets

The findings of this study specify root causes for fewer enrolment of SAPS trial ready dockets, which is heavily influenced by the process approach. For instance, the NPA consider a murder case to be trial ready when the matter is set for trial; while the police consider a murder case to be trial ready when the investigation is completed and the case is brought for decision.¹¹

Fewer enrolment of the SAPS trial ready dockets also relates to a performance culture that causes perverse effects, such as when there is no prima facie case, yet the “*police arrest first and investigate later*”. In some instances, pressure to arrest may be due to a high profile nature of a case, or when the police are measured on the number of arrests made and not on the number of cases enrolled in court.

Another root cause for fewer enrolment of trial ready dockets raised by the respondents pertains to delays in receiving forensic evidence reports¹² including hospital medical reports, which was also raised as a common challenge experienced by prosecutors regarding case dockets received from the SAPS. Much criticism was levelled at the police’s Forensic Science Laboratory,¹³ on delays in processing forensic evidence and the resultant backlogs; with some respondents stating that the DNA backlog is crippling the justice system’s ability to successfully prosecute perpetrators of serious crimes such

¹¹ In terms of the requirements of the Chief Justice’s Norms and Standards (“the CJNS”) published on 28 February 2014 (Government Gazette 37390 GN 147) no matter may be enrolled for hearing unless it is certified trial ready by a Judicial Officer. Chief Justice’s Norms and Standards. 2017. Criminal Practice Directives for the Regional Courts in South Africa, 5th Revision, 6 February 2023 at: <https://www.justice.gov.za/legislation/rules/RegionalCriminalCourt-PracticeDirectives-2017.pdf>.

¹² Forensic evidence refers to physical evidence that is obtained either at the scene of a crime or from the victim of a crime and analysed by using scientific methods and processes in a crime laboratory in order to produce scientifically based information that is then presented in court by an expert witness or as an expert’s testimony to link the accused to the crime. Olaborede, A and Meintjes-Van Der Walt, L. 2020. The Dangers of Convictions Based on a Single Piece of Forensic Evidence, Potchefstroom Electronic Law Journal, 2020(23), 6 February 2023: <http://www.scielo.org.za/pdf/pej/v23n1/15.pdf>

¹³ FSL is comprised of six (6) units responsible for ballistics, scientific analysis, document analysis, biology services, chemistry services as well as explosives.

as murder and rape. Ultimately, delayed forensic evidence may influence the decision by judges to strike the case off the court roll, as articulated by a prosecutor that *“a magistrate or judge will not keep a case on the roll, while sitting with a suspect who is maybe in custody for almost six months or a year while waiting for forensic evidence”*.

Non-compliance with procedural requirements has a negative implication on enrolment of murder dockets. According to the respondents, murder suspects should be interrogated by commissioned officers¹⁴ than non-commissioned officers, for the confession to stand the scrutiny of the courts. This goes in line with section 217 (1) of the Criminal Procedure Act 51 of 1977 (CPA), which provides that confessions can only be admissible in criminal proceedings when the suspect made them to a peace officer - freely and voluntarily, and are based on sound and sober senses.¹⁵

Another factor reiterated by some respondents is the high workload of the SAPS detectives and murder cases that are investigated by lower ranks such as Constables who are fresh from the Police College. The respondents were of the view that murder is a serious offence and need to be investigated by the Captain and/or Lt Colonel. The respondent tied inexperienced IOs as contributing to poor investigations, and suggested that the SAPS need to train, mentor and pair them with experienced IOs.

Incomplete investigations result in fewer enrolment of trial ready murder cases. The respondents in this study indicated that judges and the magistrates will strike off matters from their court roll due to delays to finalise the investigation within the required timeframe because the delayed matters impact negatively on the performance of the court.

Poorly investigated murder cases without chain of custody statement contribute to fewer enrolment of murder cases. Instances where investigating officer do not write in their pocket book (SAPS 206) to recollect events, or the police fail to obtain statement(s) timely

¹⁴ A non-commissioned officer of the SAPS, such as Warrant Officer, is not a justice of the peace in terms of section 4 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, and therefore not entitled to take confessions (In The High Court of South Africa (Eastern Cape Local Division, Mthatha), Case No. 216957, in the matter between: The State and Andile Sinethemba Njiva & Sandile Zakhele Tshezi, 6 February 2023: https://juta.co.za/media/filestore/2017/03/S_v_Njiva.pdf

¹⁵ Peace officer refers to any magistrate, justice, police official, correctional official (Criminal Procedure Act 51 of 1977).

from witnesses such as after three (3) months, have a negative implication on enrolment of murder cases because of the decline in memory retention over time. For instance, transient memory occurs when there is memory deterioration or loss over time; there can also be memory distortions such as suggestions and incorrect recall of information.

5.1.2. Common challenges experienced by prosecutors while dealing with murder dockets received from the SAPS

The findings in this section indicate a lack of witness cooperation as the common challenge experienced by prosecutors when dealing with murder dockets received from the SAPS. Respondents in all of the provinces identified a wide range of problems pertaining to witnesses which contribute to cases being declined for prosecution, such as witness subpoena being served late, or return of the service¹⁶ not being enclosed in the docket. In addition, witnesses may be threatened leading to fear in testifying in court. In some instances, witnesses disappear without trace. There are also issues of identity disputes caused by identity parade that does not take place timeously, which affect the recall and identification of suspects.

The lack of supervision and direction from detective commanders poses a challenge to investigation and prosecution of murder cases. In some instances, weekly, monthly and brought forward inspections are not implemented in the SAPS.¹⁷ Once more, respondents linked performance with workload, stating that police detectives are investigating quite a number of cases, including murder cases. As if as this is not enough, detectives do not adhere to clear instructions on stipulated timelines from prosecutors, which then limits the investigation to provide evidence that is necessary for a successful prosecution. Clearly, this concern is also indicative of lack of supervision.

The findings constantly iterated the lack of specialisation as contributing heavily to challenges in investigations. Some respondents suggested that Specialised Unit for

¹⁶ Every officer to whom a subpoena is delivered for service shall make return thereof in writing as to the time, place, and manner of service of the subpoena. Department of Justice. Rule 9 – Service of Process, Notice and Other Documents, 1 March 2023: https://www.justice.gov.za/rules_board/rules/MCR%209%20SERVICE.pdf.

¹⁷ Detectives commanders are responsible for conducting a 24-hour inspection on a case docket, followed by a monthly inspection.

Murder and Robbery be re-instated as it previously had well experienced detectives who were dedicated to investigating case of murder and robbery. This would go in line with the National Development Plan (NDP) 2030, which recommends that specialised units be re-established, “staffed with highly trained and professional police officers, to respond to changing crime trends such as narcotics, cybercrime, human trafficking and international crime syndicates”.

5.1.3. Common reasons for declining to prosecute murder case after the SAPS submitted a docket for decision

Respondents commonly agreed that they would decline to prosecute a murder case in the absence of prima facie evidence that links the suspect with the murder, including the absence of any eye witnesses. Some respondents decline to prosecute in cases of no reasonable prospect of conviction emanating from non-linkage of forensic evidence to the suspect; when there is an absence of eye witnesses’ statements; and if they receive representation from the accused’s lawyers on evidence that proves self-defence or contradict the evidence of the state.

Turnaround times are critical in the investigation and prosecution of cases. Therefore, prosecutors commonly said that they decline the prosecution of murder case when: investigations are not done timeously, the case takes too long to finalise or the matter has been on the court roll for too long. Other reasons for declining to prosecute a murder case include cases where the accused is deceased; and if the witnesses change their statements or contradict each other during consultation with the prosecutors.

5.1.4. Interventions suggested to strengthen the prosecution of trial ready murder dockets in relation to the relevant key stakeholders

The following are the key interventions that require improvement, as gleaned from the prosecutors’ responses:

- **Visible Policing (VISPOL):** VISPOL members should be capacitated with training on crime scene management as first responders including statements taking and securing all the possible evidence at the scene of crime.

- **Detectives Services:** Most suggestions were centred on continuous training for the detectives, which should include interviewing skills for witnesses and suspects towards addressing witness statements contradiction, amongst other factors. It was further suggested that the detectives should attend training to improve computer literacy for fast-tracking the investigation process. A few respondents specified that IOs should be able to access information from laptops, and retrieve reports from EMS system. Furthermore, the SAPS should reduce the workload of detectives they deal with murder cases and other crime cases, amidst shortage of resources, which is affecting their performances. The findings of this study further show that detectives lack support and guidance from their detective commanders. Most of the respondents highlighted that detective commanders should play an active role by providing detailed directions and instructions to guide the investigation process, and not just by complying with the instructions from the prosecutors.
- **Forensic Services Lab (FSL):** All the provinces reiterated that there are delays in receiving DNA, toxicology and ballistic reports.
- **Crime Intelligence (CI):** Majority of the respondents have never worked with the Crime Intelligence (CI) teams in any of their murder cases. Furthermore, they cited that the CI should assist the detectives in tracing potential witnesses and suspects, planting informers and maintaining their database to contribute towards the reduction of crime in the country.
- **Local Criminal Record Centres (LCRC):** The majority of suggestions raised by respondents requires the LCRC to improve turnaround time in attending crime scene to avoid scene contamination; and also enhance turnaround times for production of photo albums. It was further suggested that LCRC members should be capacitated in gathering and collection of all the exhibits at the crime scene.
- **Department of Health (DoH):** One of the major improvement required by the prosecutors across all the provinces is the enhancement of turnaround times for

post mortem and J88¹⁸ reports. Post mortem reports can even take three (3) to six (6) months to be submitted to the SAPS, with some respondents complaining about hand written post mortem reports that can be deciphered. Another suggestion made is for DoH to improve the working environment to attract and retain employees particularly the pathologists.

5.2. Withdrawn and Undetected Murder Dockets

The 2020 CSPA research study on the SAPS Detective Dataset¹⁹ identified more than 10 000 murder cases between 2013/14 and 2017/18, which were withdrawn due to insufficient evidence.²⁰ The report further highlighted that between 2013/14 and 2017/18 financial years, there were 17 360 and 17 766 undetected murder cases where suspects are unknown.

Against this context, this section outlines the root causes or reasons for withdrawal of murder cases; and how the police can reduce the number of undetected murder cases with respect to the sub-category suspect unknown.

5.2.1. Reasons for withdrawal of murder dockets

Respondents were asked to elaborate on the root causes of withdrawal of murder cases based on (a) insufficient evidence, (b) triviality (De Minimis Lux)²¹ and (c) untraceable witness, as per the ensuing thematically analysed responses:

(a) *Withdrawal in court due to insufficient evidence*

Respondents reiterated that a murder case will be withdrawn in court if there is no prima facie case or insufficient evidence that links the accused with the crime, for instance DNA,

¹⁸J88 form is a report by the medical doctor regarding the medical examination of a person to determine physical condition such as injuries, sobriety or psychological condition) (report of district surgeon) (National Certificate in Resolving of Crime NQF 5 version 1/2010).

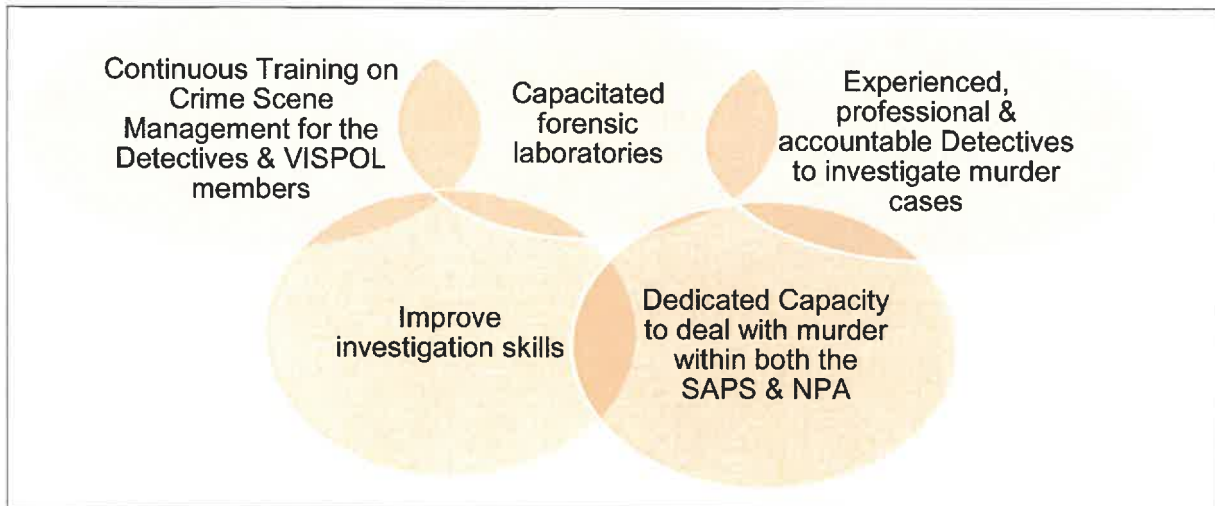
¹⁹ CSPA. 2021. Case Dockets: The golden thread linking the SAPS and NPA.

²⁰ CSPA. 2021. Case Dockets: The golden thread linking the SAPS and NPA.

²¹ "SSP -Triviality (De Minimis Lux)" (NPA) the principle that the law is not concerned with insignificant or minor matters. The principle may be used as justification for not instituting a criminal prosecution and it is hardly used for serious crimes.

fingerprints results, forensic evidence and cooperation from eye witnesses. Respondents suggested the following improvement areas as per Figure 1 below:

Figure 1: Suggestions on how to improve withdrawal due to insufficient evidence



CSPS: Adapted from the interview data

(b) Withdrawn cases by the SPP as Trivial (De Minimis Lex)

De Minimis Non Curat Lex, hereafter called De Minimis Lex, means that the law is not concerned with trivial matters. According to the SAPS Detectives Dataset, there were 180 cases in this category between 2013/14 to 2017/18.²² Respondents were then asked whether they have ever withdrawn cases on the basis of De Minimis Lex, and all of them said that they have never withdrawn a murder case based on triviality, because of non-applicability to a serious crime such as murder where loss of life occurs. The respondents were also not aware of other prosecutors who may have withdrawn cases on the basis of De Minimis Lex. Some prosecutors suggested that this need to be resolved between the SAPS and NPA. There was speculation on possibility of data errors in the SAPS Detective Dataset, pertaining to murder cases withdrawn by SPP on the basis of De Minimis Lex.

(c) Withdrawal in court due to untraceable witnesses

²² CSPS. 2021. Case Dockets: The golden thread linking the SAPS and NPA.

The majority of respondents agreed that there are gaps within the investigation process that lead to witnesses being untraceable such as: failure of the police official to take complete and detailed statements that have contacts details of relatives and neighbours, as well as addresses and different cell phone numbers used by the witnesses. Notably, witnesses may lose interest when the case drags for too long or there are postponements. It was further reiterated that witnesses often fear for their own lives and that of their families, when facing gangsters' intimidation and/ or when the suspect stays in their neighbourhood; and that suspects may sometimes pay-off the witness or the witness end up being killed. At times, forced migration is a consequence of these intimidation, whilst in other instances, labour migration influences movement from witnesses' residential addresses that are known by the police. However, the lack of communication between detectives and witnesses exists, to such an extent that witnesses relocate without reporting to the respective detectives.

In addition, the respondents suggested the following improvement areas, as demonstrated in Figure 2 below:

Figure 2: Suggestions on how to improve withdrawal due to untraceable witnesses



CSPS: Adapted from the interview responses

(d) *Effectiveness of witness protection in protecting the witnesses*²³

²³ The Witness Protection Act, 1998 (Act No. 112 of 1998), provides for the protection and support of intimidated and vulnerable witnesses as well as their families where there is reason to believe that the safety of those individuals is being threatened. This function is performed by another unit of the NPA known as the Office for Witness

A question was posed to the respondents to determine if the Witness Protection Programme is effective with specific reference to cases of murder. The majority of respondents indicated that Witness Protection Programme is effective in offering protection to witnesses who are willing to testify in murder cases and adhere to the Programme's strict rules. Even though the respondent said that the Programme is effective, they also acknowledged challenges such as budgetary cuts; witnesses that are unwilling to participate in the Programme due to its strict conditions, and in some instances, witnesses fear losing their livelihoods. The Programme offer protection only during the trial thereafter the witness is on his or her own, which can make the witness fearful of threats from the suspects.

On the other hand, a few respondents who indicated that the Programme is ineffective because witness cooperation is not guaranteed, in other words witnesses may not be willing to testify in matters that are on court roll. Similarly, most of the witnesses are unwilling to comply with the strict conditions of the Programme.

5.2.2. How to reduce number of undetected murder cases pertaining the sub-category on suspect unknown²⁴

As already mentioned, there were 17 360 and 17 766 undetected murder cases where suspect is unknown between 2013/14 and 2017/18 financial years²⁵. The discussions in this sub-section emanate from the suggestions made by the prosecutors on how the (a) police and (b) prosecutors can reduce the number of undetected murder cases, particularly when the suspect is unknown.

Protection. NPA. Undated. A Manual Compiled in Terms of Section 14 of The Promotion of Access to Information Act, 2000 (Act No.95 of 2000).

²⁴ There are two types of undetected cases. The first consists of cases where the suspect is unknown, and where there is insufficient evidence to enable the police to identify a suspect. The second type of undetected case is where the suspect is known and a warrant for his arrest has been issued, but his whereabouts are unknown, and he has not been charged. Undetected case dockets are usually perused by the police on a yearly basis, especially in serious cases such as murder, to ascertain whether new evidence has come to light in the interim which would warrant the reopening of the case (Schönteich, M. 1999. Assessing the Crime Fighters: The ability of the criminal justice system to solve and prosecute crime, Institute for Security Studies, No: 40, 01 March 2023: <https://journals.co.za/doi/abs/10.10520/EJC48919>).

²⁵ CSPS. 2021. Case Dockets: The golden thread linking the SAPS and NPA.

(a) How can the SAPS reduce number of undetected murder cases?

A number of suggestions were made by the prosecutors focusing on how the police can reduce the number of undetected murder cases.

- **Cooperate with the communities and other key stakeholders:** The majority of the respondents implored the police to get to know their communities and respond to their policing needs and problems, which will contribute to building trust in the police. SAPS should collaborate with community leaders and contribute towards improving the functionality of CPFs, educate the communities on crime intelligence and reporting crimes in their areas, and recruit informers. This would also improve the efficiency of the detectives as communities would be able to make information available to the SAPS. The respondents alluded that the detectives should improve their collaborative work with the forensic team, prosecutors, informers, and Department of Home Affairs to solve murder cases. There should be cooperation internally within the SAPS stakeholders.
- **Use of technological resources:** Respondents identified technology that can support the reduction of undetected murder. For instance, cell phones tracing and data downloading from network service providers; surveillance and sensory technologies such as CCTV networks, automated number plate recognition and patrolling car cameras; identification technologies such as DNA testing, facial recognition, ShotSpotter system that are used in Cape Town flats.
- **Proper crime scene management:** The police are required to improve crime scene management, ensuring collection of all the available evidence and interviewing people at the crime scene, getting witnesses' information, and following up immediately on all relevant matters.
- **Intelligence driven murder investigation:** Some respondents required Crime Intelligence to help with murder investigation using intelligent driven investigation whereby suspect can be traced and information gathered about their whereabouts.

Other respondents said that the police should use the available forensic capability to solve murder cases.

- **SAPS resource allocation:** The responses of the respondents had highlighted that the shortage of vehicles and manpower does impact on undetected murder cases because of limited resources within the detective service. In addition, the respondents suggested that there should be an increase in visible policing which might assist the police to apprehend suspects. Moreover, allocation of vehicle will be able to facilitate the investigation process to avoid situations where IOs cannot trace suspects or attend to witnesses due to shortages of vehicles.
- **SAPS to bring all murder cases with unknown suspect for review by NPA:** It was further suggested by some of the respondents that the SAPS should bring all the undetected murder cases where suspects are unknown for decision by the prosecutors, and to assess whether cases should be taken for inquest so that the prosecutors can drive the investigations on these cases further. It was also suggested that the SAPS should re-investigate thoroughly the undetected murder cases where suspect is unknown, and verify the docket for possible evidence that can be collected to try and identify the suspect(s) involved in murder.

Some prosecutors appreciated the difficulties facing the detectives where crime interface with aspects such as migration or movement of people across borders; lack of witnesses, and night murders where there are no cameras or witnesses, which affects the investigation process.

(b) How can the NPA help the SAPS to reduce number of undetected murder cases

Most respondents said that, generally the NPA will only get into the case once there is a suspect arrested by the police. The prosecutors get this type of docket from the DPP, which has been submitted for inquest processes. A concern was raised by one respondent that *"sometimes the police keep the docket for too long and it is brought to the NPA after 3 or six years"*. One of the respondents said that: *"this means the police are looking for the prosecutors to be inquest administrators"*.

In seeking a solution to address undetected murder cases, respondents reiterated that the SAPS and NPA should undertake a review project of all the undetected murder cases. SAPS should then submit these cases to a team of prosecutors to examine them, and prosecute these cases once the linkage with the suspect is established.

5.3. Guidance Provided by the Prosecutors in the Investigation Process

This section establishes the specific instructions or recommendations provided by prosecutors to the police detectives to inform the murder investigations. In addition, the study looked at the following pertinent issues that have an implication on the investigation and prosecution processes:

- The relationship between the prosecutors and the SAPS detectives;
- Platforms provided for detectives and prosecutors to discuss murder cases; and
- Alignment between the NPA and the SAPS Detectives Services' performance indicators

5.3.1. Specific instructions provided by prosecutors to the police detectives to improve murder investigations

Majority of the respondents indicated that the guidance provided to the police detectives depends on each specific murder case. However, all the respondents mentioned that they give instructions to detectives to ensure that all the outstanding evidence such as witness statements, chain of custody statements, post mortem reports, DNA, ballistics, toxicology, blood tests, finger print results, medical records, cell-phone data, photo album, identity parade, car tracking data, video footages, admission and confession statement, identification of the crime scene or where the body was disposed of, are attended to by the detectives.

In some instances, prosecutors said that they write to forensic laboratories to expedite analysis of forensic evidence. Furthermore, prosecutors advise the detectives on: how to interview the suspects, taking or retaking witness statements, finalising the investigation and closing any gaps that are in the docket. They also give instructions to the detectives

to bring witnesses to court, ensuring timely submission of dockets to the courts, and conduct follow-ups with the forensics laboratories and DoH.

Some respondents suggested that the SAPS need to re-establish the Murder and Robbery Unit, as much as the SAPS has Family Violence, Child Protection and Sexual Offences²⁶ Units. The respondents said that the NPA has the Sexual Offences and Community Affairs (SOCA)²⁷ which deals with rape cases and these can be adapted to the Detective Services Unit to deal effectively with murder. Similarly, the NPA was advised to also have a dedicated unit to deal with murder cases, capacitated with members who have the required knowledge and experience.

Prosecutors were asked if detectives follow their instructions. The majority of the respondents indicated that their instructions are “sometimes” followed by detectives. A few respondents agreed in totality with compliance of detectives towards their instructions, while a few others provided a negative response. These are serious findings that indicates non-compliance or possible negligence of duties that also defies efforts of Prosecutor Guided Investigation. It then illustrates a counter-productive behaviour that derails an endeavour by prosecutors to support the SAPS in the process of ensuring that case dockets are trial ready. Clearly, this demonstrates the contribution of the detective environment towards creating weaknesses in murder investigations and prosecutions.

5.3.2. The relationship between the prosecutors and the SAPS detectives

The findings indicate that the relationship between the prosecutors and detectives is very good because they need each other to be able to give justice to the victim of crime and bring perpetrators to book. One respondent said that they have adopted police stations which allow prosecutors to check the dockets and build relationship with the detectives

²⁶ The FCS unit was re-launched in 2010 and it is involved in the policing of sexual offences against children, person-directed crimes (where the family is involved), the illegal removal or kidnapping of children under 12 and crimes facilitated by electronic media.

²⁷ The main focus SOCA unit is the prosecution of cases involving the victimisation of women and children. Other areas of responsibility include sexual offences, human trafficking, domestic violence, the management of young offenders and the enforcement of child maintenance orders. NPA. 2023. Sexual Offences and Community Affairs (SOCA), 01 March 2023: <https://www.npa.gov.za/sexual-offences-and-community-affairs>

and management of the police station. It then gives the prosecutors and police space to discuss the issues without magistrates and judges being present.

On the other hand, there are challenges associated with detective-prosecutor relationship due to non-compliance with prosecutors' instructions, leading to frustration for prosecutors. Some respondents pointed to the root causes of non-compliance with instruction as partly influenced by overloaded detectives. Nevertheless, there are instances where prosecutors do not give out proper instructions. Overall, the symbiotic relationship where both side are dedicated to their respective duties, is deemed as of utmost importance for successful investigation and prosecution of murder cases.

When prosecutors were required to rate the Detective Services on with regards to specific areas pertaining to the investigation of murder dockets, they provided the following responses, as per Table 1 below, and provided reasons for their ratings.

Table 1: Ratings regarding specific areas in the investigation process

Variables: Factors in the investigation process	Ratings				
	Excellent	Good	Fair	Bad	Total
Turnaround times for investigation of murder cases by the SAPS	-	-	11	4	15
Detective commander's ability to oversee the investigation process	-	2	8	5	15
Detective's ability to conduct the investigation process	1	2	10	2	15
Completeness of the docket with respect to the required documents in the docket	-	2	10	3	15

CSPS: Adapted from the interview responses

The SAPS Detective Services was rated fairly by all the prosecutors pertaining to the investigation processes stated in the above table. Most prosecutors rated the SAPS fairly when it comes to turnaround times for investigation of murder cases, citing delays at forensic laboratories as beyond the control of detectives. They also mentioned that detectives are overworked and face shortages of resources such as vehicles and

manpower. Another issue raised was poor investigation of murder cases which affects prosecution of these cases including failure of detectives to adhere to return date or comply with the instructions issued by prosecutors.

A few respondents who rated the Detective Services as performing badly on turnaround times reiterated challenges with forensic DNA, that it can even take up to 2 years while waiting for the results; and detective commanders do not play an active role to supervise detectives and also ensuring they attend to the instructions; and that inexperienced detectives do not liaise with the prosecutors.

Generally, the detective commanders were rated fairly when it comes to their ability to oversee the investigation process, although there are still well experienced detective commanders who were acknowledged. A majority of prosecutors stated that they are the ones doing the work of detective commanders by issuing instructions and making sure the instructions are implemented by the detectives, meaning that the detective commanders and detectives rely on the prosecutors for direction of the investigation. Other participants said that the detective commanders do not hold detectives accountable and they lack the required experience, which when combined with inexperienced detectives, it is a recipe for disaster. Those who rated the Detective Commanders' performance as bad, reiterated the same responses stating that there is a deficit in management and supervision when it comes to detective commanders. *They are invisible throughout the investigation process, and do not monitor and guide detectives regarding queries from the prosecutors, some inquest dockets were never seen by the detective commanders.* They further reiterated the overworked detectives who lack resources.

Most prosecutors rated the detectives fairly when it comes to their ability to conduct the investigation process, stating that the investigation process is affected by lack of training, specialisation and inexperience. Other participants said that the detectives try their best to investigate cases and need to be resourced with vehicles and manpower. A few prosecutors rated detectives having "good" investigation skill because of those who are experienced and do it well, despite a lack of resources. The few prosecutors who rated the detectives' ability to conduct the investigation process as "bad", said detectives lack

basic investigation ability such as *making their own decision about the linkage of the suspects, hence they wait for the guidance from the prosecutor.*

With regards to the completeness of the docket, most prosecutors rated detectives as “fair”, saying that most of the dockets are not complete and the turnaround time for investigations is too long. It was further indicated that prosecutors have to follow up on detectives to get the required documents such as J88, postmortem reports, chain of evidence statements, and section 205. According to the prosecutors, this shows that detective commanders do not go through the dockets before they are brought to courts. Those who rated detectives as “bad”, said they attend to the investigation only after they receive guidance and queries from the prosecutors, and they neglect the case docket. They also stipulated that the backlog from FSL and no support from their superiors to obtain the outstanding FSL documents, does no justice to the detectives.

5.3.3. Platforms for detectives and prosecutors to discuss murder cases

Across all the provinces, respondents indicated that Case Flow Management Forums are established to identify case flow hurdles and resolve them with all relevant role players, and devise applicable interventions.²⁸ A monitoring process is embedded in the Forums, the engagements with concerned players scrutinises the factors affecting court functioning and productivity. The Forum is also responsible for monitoring courts performance statistics. Another respondent said the Forum is applicable to the Regional and District Courts.

There were challenges highlighted with regards to this Forum, namely, that it cannot be used to discuss murder investigations and prosecutions because it is chaired by judiciary (magistrate) who will preside over the case. The Forum also includes other stakeholders or role players within the CJS such as Department of Social Development, Department of Correctional Services, Legal Aid South Africa, NPA, and SAPS. Some of the respondents were concerned that the Forum is riddled by poor attendance, inability to

²⁸ Department of Justice and Constitutional Development. 2010. A Practical Guide. Court and Case Flow Management for Regional and District Criminal Courts in the South African Lower Court Division, 2 March 2023: <https://www.justice.gov.za/juscol/docs/20160819-CCFM-Guide.pdf>.

achieve its responsibilities, which makes it a mere “*talk show*” because the agreed corrective actions are not implemented, leading to the same issues being raised over and over.

There are also high level meetings where the seniors of various key stakeholders such as the DPP, chief justice senior managers, DoH: chief directors, discuss issues such as the post-mortem delays, and devise strategies and solutions on issues faced by the CJS. Operational meetings were reported by prosecutors to be effective in resolving issues related to murder cases investigations and monitoring progress of cases. These operational meetings between the NPA and the SAPS are used to report on each other’s performance. In addition, another respondent said that in their area of work, the Deputy Director at regional court meet with investigation officers and detective commanders to discuss cases that are on the court roll including any challenges related to them. There are also one-on-one meetings with detectives and detective commander which were deemed as crucial to resolve investigation challenges and factors hindering finalisation of matters on the court roll.

5.3.4. Alignment between the NPA and the SAPS Detectives Services’ performance indicators

An integrated performance system is required for the CJS to be seamless. Therefore, prosecutors were required to provide their thoughts on alignment of performance indicators for the NPA and SAPS. Overall, respondents across all the provinces indicated that there is a need for the NPA and the SAPS Detective Services’ performance indicators to be aligned and enhanced to ensure that they are working towards the same direction. This will ensure that the performance reporting of the police reflect on the performance indicators that the NPA is reporting on, such as cases that were brought forward for decision.

The respondent required that there be harmonisation when it comes to the police and prosecutors’ definition of trial ready dockets; simply meaning that there should be common meaning or definition for both the NPA and SAPS. Some of the respondents

elaborated that *withdrawal of a case does not come as negative for the police²⁹ as it does with the prosecutors, and that NPA prefer for the matter to be stricken from the court roll, which the police are against.*

The respondents who viewed alignment of performance indicators negatively argued that the NPA and SAPS are doing two different work, hence the alignment of performance indicators will not work. For example, SAPS has a performance indicator on arrest while the NPA may decline to prosecute the case due to lack of evidence. However, there those who think that SAPS and NPA can align certain indicators which will not have negative impact on the performance of the two organisations.

Prosecutors were also required to indicate performance indicators that they should be measured on. Table 2 below outlines the summary of responses by prosecutors:

Table 2: Should the NPA be measured on the following performance indicators?

Performance Indicators	Yes	No
Case enrolled	4	11
Number of criminal matter finalised	12	2
Clearance ratios on decision docket received	14	1
Conviction rate	14	1
Trial-ready murder dockets	5	10

CSPS: Adapted from the interview responses

Overall, the prosecutors are mostly in one accord for the NPA to be measured on the number of criminal matter finalised, clearance ratio on decision docket received, and conviction rate. The majority of respondents agreed that the NPA should be measured on the “number of criminal cases finalised” because it is a good criterion to establish

²⁹ The SAPS definition of trial ready: Referred to the prosecutor (i) to determine trial date or (ii) pending trial due to outstanding psychiatric evaluation; Referred to court, Remanded cases, convicted but there is no conviction report; Admission of guilt but outstanding SAP 69, Reasons for finalising cases through Alternative Dispute Resolution; and Withdrawn due to no prospect of prosecution (De Minimis Non Curat Lex). The SAPS mention De Minimis Lex cases, but exclude cases withdrawn due to insufficient evidence and suspect unknown.

effectiveness and efficiency, as *it measures the NPA success and performance*. The few respondents who had a negative response about being measured on the “number of criminal matters finalised” argued that that the indicator does not measure the quality of the case docket finalised by the prosecutor, and that it can encourage prosecutors to chase targets, leading to compromise on the quality of the case.

When it comes to “clearance ratio” on decision dockets received, the majority of prosecutors agreed with this performance measure, stating that the NPA is already been measured on the indicator with some respondents indicating that this is part of the job for prosecutors to decide on decision dockets. *Clearance ratio shows that prosecutors are working in finalising the case dockets, otherwise, there will be a pile of dockets in offices of the prosecutors*. Thus it further emphasises that decision dockets should have limited timeframes in their offices *because justice delay is justice denied for the families of the deceased*. On the other side, there was an argument made to monitor the quality of the decisions and the turnaround time for the decision ready dockets.

The majority of the respondents agreed with the “conviction rate” as a suitable performance indicator for the NPA, while one respondent disagreed with this indicator. Most of the respondents said that this measure the success of how the cases are handled or managed, the quality of work undertaken by prosecutors and it shows proper screening of cases that are taken to courts.

Prosecutors were generally in disagreement with being measured on performance indicators on (i) enrolled cases and (ii) trial-ready murder dockets. When it comes to cases enrolled, the majority of the respondents who said that the NPA should not be measured on this indicator, argued that the NPA does not have control over number of cases that are brought to the courts. Once more, prosecutors reiterated that they can only enrol cases when there is a prima facie case and they do not have control over the investigation process. Prosecutors who agreed or disagreed with performance measure on enrolled cases, shared similar reasons, stating that the NPA does not have control on (i) how many cases are brought to courts, and cases come to court because police have arrested suspects; and (ii) prosecutors can only enrol when there is prima facie case.

Majority of the respondents who said that the NPA should not be measured on trial-ready murder dockets, indicated that the completeness of case dockets depends on detectives since they have to deliver on all the objectives of the investigation. Therefore, prosecutors have no control over the investigations undertaken by police. Some respondents who agreed that the NPA should be measured on trial-ready murder dockets argued that *this indicator zooms into the process since the docket was investigated with the prosecutor's guidance or involvement based on instructions.*

5.4. Referral and case finalisation rate

The ensuing discussion are critical in further identifying weaknesses in the value chain up to the courts, which have a negative implication on prosecution and conviction of murder cases.

5.4.1. Referral Rate

Prosecutors were asked about their understanding of the referral rate for cases sent to courts. Most respondents struggled with the meaning of the referral rate. Yet there was a common agreement between high court and regional courts respondents that these are murder cases that come to the high court as Part 12. In Gauteng Province, a docket is sent to DPP when its suspected as a possible murder case. Part 12 cases include murder cases, high profile cases, political motivated case, public interest cases, gang murder, police officers murder, femicide, and rape cases. The High Courts are recipients of these cases, which are “thoroughly investigated according to detective investigative guidelines”. On the other hand, regional courts sent the cases on a daily, weekly or monthly basis to the High Court, being guided by the policy on cases which need to be referred to the High Court. Some of the respondents further explained referral rate as the number of cases received by the SAPS and sent to court for prosecution, depending on the readiness of the docket. The lower court respondents defined referral rate as the number of cases that are brought by the SAPS to court for prosecution. However, it should be noted that most of the respondents struggled to answer this question because it is interpreted differently at different court (high, regional, and magistrate court) the level of courts.

Respondents were asked to estimate their referral rate of murder cases and the majority of the respondents did not know the exact figure. Respondents could not state their referral rate because the statistics are mostly known by the regional court control prosecutors. Also most of the enrolled murder cases which have a prima facie evidence, are referred and trialled in regional or high courts.

The majority of prosecutors indicated that attainment of higher referral rates is hampered by the fact that most of the murder cases do not have prima facie evidence. There are delays by detectives in the investigative process and backlog of forensic evidence at the FSL. They are further confronted by: detectives who fail to bring witnesses to court, unavailability of foreign language interpreters, delay caused by the accused and the accused attorney, and legal aid lawyers who sometimes lack focus on their clients' cases.

The respondents were asked to specify the interventions they took to improve referral rates, and many of the recorded responses were consistent amongst the respondents, stating that they use Prosecutor Guided Investigations (PGIs) in a form of instructions given to the detectives to guide the investigation process. A few respondents said that they attend stakeholder meetings to discuss the challenges and solutions to murder case investigation and prosecution. A few other respondents further highlighted that the NPA has put in place a team that screen all the dockets accordingly, specifically the referrals to regional or high courts and has employed extra prosecutors to improve the prosecution process. On the other hand, one respondent mentioned that a police station with higher murder cases was identified, and a team was set up to look at all the dockets emanating from the police station. Nevertheless, the respondent further explained that the SAPS uninterested in working with the NPA to help with these murder cases.

As for possible solutions that the respondents will put in place for future improve the referral rate, the majority said they will continue to play an active role in guiding the detectives in fast-tracking the outstanding forensic evidence at the FSL, and constantly communicate with the legal aid attorneys so they can prioritise their clients. Some of the respondents highlighted the suggestions that the NPA should establish a dedicated unit for murder cases, prosecutors should work together with SAPS detectives to ensure that

witnesses are brought to court on time and there is more training for detectives to improve their basic investigation skills.

5.4.2. Case Finalisation

The respondents were asked to give an estimated case finalisation³⁰ rate for murder prosecutions, some of the respondents were able to provide the estimated percentage of their case finalisation rate. Most of the respondents highlighted that case finalisation rate is one of the performance indicator they are measured on, hence they estimated the targeted percentage as 75%, on average. The respondents further highlighted several challenges affecting case finalisation rate, such as load shedding amidst lack of backup generators in some courts, non-functioning recording device in court, shortages of judges or magistrates and foreign interpreters, and courts are overloaded with work. In addition, the respondents mentioned that SAPS detective have an impact in achieving a higher case finalisation rate, because they do not attend to the prosecutors' queries or may conduct investigations poorly; witnesses are at times not being brought to court or not cooperating with detectives; and detectives are themselves facing work overload. They are also facing delays in receiving post-mortem reports and DNA results. Most of the respondents cited that the legal aid and private defense attorneys delay the process by either postponing or being absent from court when there are required.

6. CONCLUSION

The police and the prosecution service are two different and distinct agencies in South Africa. However, if they are to be successful in their efforts to combat crime, they must rely on one another. Even if a crime is thoroughly investigated, an ineffective prosecution will prevent a conviction. If the police do not find enough evidence to allow the prosecution to establish its case beyond a reasonable doubt, a perfect prosecution will result in the accused's acquittal. In essence, all it takes for the criminal justice system to experience failure is one weak link. Due to the public's typical reluctance to cooperate with law enforcement in their investigations and to testify in favour of the prosecution during

³⁰ Case finalisation rate refers to the total number of cases completed with verdict of either guilty or not guilty divided by the total number of cases enrolled in court, which is expressed as a percentage.

criminal proceedings, some cases go undetected. Better training is needed for detectives and they should be urged to continue working in their fields.

7. RECOMMENDATIONS

The SAPS Detective Services is confronted with multi-dimensional challenges that need to be addressed for an effective CJS. The following are the recommendations emanating from the findings of this study:

a) **The SAPS and NPA collaborative review project on specific murder cases**

The SAPS and NPA need to undertake a review project of all the undetected murder cases and this could be done by getting all the undetected murder dockets including a team of prosecutors and detectives to look into them also focusing on closed docket where a suspect is unknown. The prosecutors that will be involved in the review project should be prepared to prosecute these undetected murder cases once the linkage with the suspect is established. The other cases that requires a review pertains to the De Minimis Lux, of which all prosecutors were puzzled even about their existence. Hence suggesting an examination of the Detective Services Data on Murder Cases, and even some requesting feedback on the matter. In this regards, the SAPS should provide the CSPS with the examined murder cases using the case number to authenticate the data.

b) **Improved accountability, cooperation and efficient delivery of services**

- **Address the delays in forensic evidence reports:** The backlog and subsequent outstanding reports from SAPS laboratories have resulted in many cases either being postponed or withdrawn. Most of the cases are delayed or withdrawn due to DNA evidence not being available within a reasonable timeframe. This backlog has had a significant impact on the delivery of justice in the courts. A magistrate or the state prosecutor is not going to be patient with keeping a case on the court roll while sitting with a suspect who maybe in custody for the next six months or more. While the SAPS cannot give a finite date when these delays in forensic evidence

reports will be resolved. This result in the murder case taken off the court roll and the matter be enrolled once that vital piece of forensic evidence is available. Eradicating these backlog is paramount, as these samples are vital in cases of sexual assault, murders and various other criminal matters. The more the forensic laboratories are able to address these backlog, the quicker perpetrators who are standing trial can be held accountable for their crimes.

- **Accountability and cooperation within the SAPS:** Multiple layers of support are provided from national to police stations including the role played by the Provincial Heads: Crime Investigation Service to support investigations and monitoring compliance with policies, standards, instructions, directives and strategies. Furthermore, the Detective Unit Commander is also expected to ensure effective and efficient investigations and manage the Unit in line with the set instructions and directives. The SAPS need to ensure that there is compliance with policies, instructions, and directives by detectives and detectives commanders.
- **Consequence management for errand police detectives and detective commanders:** In criminal courts it is a common practice that there is continued interaction between prosecution and investigating officers. Prosecutors issues instructions to the police for further investigation and limits the investigation to evidence that is necessary for a successful prosecution as opposed to peripheral, non-essential evidence. Detectives do not always follow the prosecutor's instruction and they are not held accountable by detective commanders. It was further established that detective commanders are not doing what is expected in term of giving guidance and direction to the police detectives. In some instances, monthly and weekly inspections and brought forward are not implemented. The lack of consequence management means that the police detectives and detective commanders are not held accountable for their action or inaction. There is a need for consequence management for errand detective and

detective commanders once the matter is brought to the attention of station commanders by prosecutors involved.

c) Improve the SAPS working environment and resources

- **Implement measures to deal with SAPS Detective's high workload:** Another factor that was raised by the respondents is the high workload of the SAPS Detectives or Investigating Officers. The study findings indicated that due to the workload, the detectives are not able to focus on murder investigations as they have other cases that they still need to investigate. Due to high crime rate in South Africa, this results in SAPS detectives having to deal with a high number of other cases including murder cases. All this means that the higher the crime rate, the higher the workload for SAPS detectives must bear. The SAPS should put in place measures to ensure that the high workload of detectives is managed effectively without negatively affecting the performance of police detectives.
- Most of the respondents suggested that the detectives' workload can also be addressed through establishment of specialised units that focuses on murder and robbery. This suggestion is also emphasized in the National Development Plan 2030, that recommends that specialised units be re-established, "staffed with highly trained and professional police officers, to respond to changing crime trends such as narcotics, cybercrime, human trafficking and international crime syndicates."
- **Improvement in the implementation of relevant human resource policies and strategies:** There is a need to effectively manage retention and succession planning to preserve institutional knowledge and acceptable organisational culture. This is critical for organisational continuity that the retirement processes ensure phased skills transfer at all levels within the Detective Services. This should be accompanied by confronting the climate of the police organisation that leads to avoidable voluntary resignations, amongst other factors.

d) NPA to establish specialised unit to deal with murder cases

The respondents indicated that there is a need for a dedicated unit within the NPA that deal with murder cases. The unit will be similar to Sexual Offenses and Community Affairs on rape cases. This concept is used in the organised crime cases (NPA's Specialised Commercial Crime Unit). This can be replicated to deal with murder cases as suggested by some respondents.

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