In this edition of SACQ, the articles focus on matters relating to the need for South Africa to have an independent anti-corruption agency, and suggest how this may be achieved. This special edition of SA Crime Quarterly was funded by the Open Society Foundation of South Africa.
As a leading African human security research institution, the Institute for Security Studies (ISS) works towards a stable and peaceful Africa characterised by sustainable development, human rights, the rule of law, democracy, collaborative security and gender mainstreaming. The ISS realises this vision by:

- Undertaking applied research, training and capacity building
- Working collaboratively with others
- Facilitating and supporting policy formulation
- Monitoring trends and policy implementation
- Collecting, interpreting and disseminating information
- Networking on national, regional and international levels

© 2012, Institute for Security Studies

Copyright in the volume as a whole is vested in the Institute for Security Studies, and no part may be reproduced in whole or in part without the express permission, in writing, of both the authors and the publishers.

The opinions expressed do not necessarily reflect those of the Institute, its trustees, members of the Council or donors. Authors contribute to ISS publications in their personal capacity.

ISBN 1991-3877

First published by the Institute for Security Studies,
P O Box 1787, Brooklyn Square 0075
Tshwane (Pretoria), South Africa

www.issafrica.org

Editor
Chandré Gould  e-mail cgould@issafrica.org

Editorial board
Jody Kollapen
Jonny Steinberg
Ann Skelton
Jamil Mujuzi
Cathy Ward
Dee Smythe
Lukas Muntingh
William Dixon
Rudolph Zinn

Cover
Chair of the parliamentary portfolio committee on police, Lydia Sindisiwe Chikunga, (now Deputy Minister of Transport) listens to the former National Commissioner of the SAPS, Bheki Cele, after a meeting in the Old Assembly Chamber on 13 October 2011, just days before his suspension. © David Harrison.

Production Image Design + 27 11 469 3029
Printing Remata
CONTENTS

SA Crime Quarterly
No. 40 | June 2012

Editorial .........................................................................................................................1

Policing powers, politics, pragmatism and the provinces ....................................................3
Revitalising policing oversight in the Western Cape
David Bruce

The code of silence ..........................................................................................................15
Revisiting South African police integrity
Sanja Kutnjak Ivković and Adri Sauerman

Look before you leap ......................................................................................................25
Hate crime legislation reconsidered
Bill Dixon and David Gadd

Lost, stolen or skimmed ..................................................................................................31
Overcoming credit card fraud in South Africa
Trevor Budhram

On the record... ..............................................................................................................39
Interview with Sindiswa Chikunga, Chair of the Parliamentary Portfolio Committee on Police
Chandré Gould
Over the past few years the South African Police Service (SAPS) has lurched from crisis to crisis. It seems as though each week brings fresh allegations of mismanagement, corruption and political interference in the work of the police. The allegations of poor management practices, weak control and abuse seem particularly prevalent at the highest management levels.

In many ways it is not surprising that we find ourselves in this situation. Both former President Thabo Mbeki and current President Jacob Zuma placed political cronies at the head of the police service; people who may have had strong struggle credentials, but whose personal integrity when in a position of power was found to be wanting. The numerous failings of these two men have had an effect on the SAPS at every level; however, the systemic failures in the SAPS cannot solely be laid at their door. While it is vitally important to ensure that the next National Commissioner is a skilled manager, and a person of integrity, this will not be enough to fix the systemic problems in the SAPS. These are the result of the same factors that undermine service delivery in other government departments: weak management, promotion for reasons other than merit, difficulty in forming a cohesive organisational culture, and more.

In the SAPS these problems, along with dysfunctional training systems that have allowed individuals without the necessary skills and knowledge to take up arms and don a uniform, are particularly concerning, because the police exercise the state’s power over life and death. For this edition of SA Crime Quarterly I interviewed the chairperson of the Parliamentary Portfolio Committee on Police, Sindsiswa Chikunga, who speaks about the importance of civilian oversight of the police, and its limits. She also speaks about the problems that arise from promotions improperly made. Shortly before SACQ went to print Ms Chikunga was promoted to the position of Deputy Minister of Transport.

Also shortly before this edition went to print the Portfolio Committee passed the SAPS Amendment Bill (the subject of SACQ 39), which will leave the Hawks in a stronger position to tackle corruption and fend off political interference – but the Hawks remain a directorate of the SAPS with the head appointed at the discretion of the Minister of Police. This may yet prove to be a serious shortcoming. In the interview Ms Chikunga tells us why the Committee were so adamant to keep the Hawks in the SAPS.

Staying with the issue of police oversight, David Bruce describes efforts by the Western Cape to give effect to the constitutional obligation for the province to play a more active role in overseeing the police, a move that drew criticism from the minister who intends to challenge the Western Cape Community Safety Bill.

Also in this edition, Sanja Kutnjak Ivković and Adri Sauerman present the findings of their research into the code of silence between police officers in South Africa, which serves to protect corrupt acts from detection.

Moving away from issues of policing, Bill Dixon and David Gadd respond to the article by Juan Nel and Duncan Breem (SACQ 38) that argued that South Africa needed to legislate against hate crimes. Dixon and Gadd present the counter argument, that hate crimes legislation is not always, or necessarily, in the best interests of the victims of crimes of prejudice, or the most effective way to counter such crimes. Finally, Trevor Budhram provides an overview of the extent of credit crime fraud in South Africa.
The call for abstracts for the Crime and Justice Programme’s third international conference: National and international perspectives on crime reduction and criminal justice, is now open. Visit our website: http://www.issafrica.org/eventitem.php?EID=827 for more information about the conference, or to register or submit an abstract. The conference will take place on 25 and 26 October. We hope to precede the conference with a workshop for first time journal authors. If you would like to take part in that workshop, which will feature a panel of people who are themselves editors of peer-reviewed journals, or who have a great deal of publishing experience, please respond to the call for expressions of interest: http://www.issafrica.org/pgcontent.php?UID=31490

Chandré Gould (Editor)

POLICING POWERS, POLITICS, PRAGMATISM AND THE PROVINCES

Revitalising policing oversight in the Western Cape

DAVID BRUCE

davidbjhb@gmail.com

The draft Western Cape Community Safety Bill, introduced in the provincial legislature in February 2012, is part of a broader provincial government initiative to tackle issues of safety in the province. The Bill sets out to concretise the powers allocated to provincial governments by the Constitution. Specific provisions reflect the wish to give effect to Section 206(1) of the Constitution in terms of which provinces are to be consulted in the formulation of national policing policy. But the main focus of the Bill is on provincial policing oversight powers. In line with the Civilian Secretariat for Police Service Act, the Bill aims to formalise the role of the provincial Department of Community Safety as distinct from the provincial secretariat. The Bill provides for inspections to be carried out at police stations by Community Policing Forums (CPF). This aspect of the initiative has the potential to redefine the relationship between CPFs and the police. It is also envisaged that a provincial ombud’s office will be created, in line with provisions of the Constitution, authorising provinces to investigate complaints against police. The Bill is of interest as it provides a model for fuller engagement by provincial governments in policing matters. At the same time the introduction of the draft Bill raises questions about potential political interference that the Bill does not address.

One of the characteristics of the South African Constitution is the clear language in which it is written. But one section that consistently causes confusion is Section 206. This deals with the distribution of powers between the national and provincial governments over policing matters. The section is the product of contestation during the negotiations that preceded the formal transition to democracy over whether police should be controlled at national or provincial level. Ultimately political authority over the SAPS lies with the national Minister of Police who is ‘responsible for policing’ and ‘must determine national policing policy’, though s/he must do this ‘after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives’.

In Section 206 terms such as ‘overseeing’, ‘assessing’, ‘monitoring’ and ‘promoting’ are used to define provincial powers. This is generally taken to indicate that the powers that may be exercised by a province fall short of the authority to directly intervene in operational decision making. In this respect the constitutional provisions are consistent with democratic norms, which broadly provide that police should be

* David Bruce is an independent researcher.
Western Cape Community Safety Bill (henceforth ‘the Bill’). A principal purpose of the Bill is to comprehensively outline the oversight powers of the provincial government in terms of section 206 of the Constitution. The Western Cape provincial government has interpreted Section 206 of the Constitution as authorising it to perform the following police ‘oversight’ functions:

1. Monitoring police conduct
2. Overseeing the effectiveness and efficiency of the police
3. Promoting good relations between the police and the community; and
4. Dealing with complaints against the police about inefficiency or a breakdown in relations between the police and community

The Bill is of considerable interest in that it represents an attempt by the provincial government to remove ambiguities about the policing powers that it exercises. Some of the key features of the Bill include provision for mandatory reporting by the police to the provincial government, the inspection of police stations that is envisaged will be carried out by CPFs, the creation of a provincial ‘Ombud’s office’, and the deployment of oversight teams to observe and record police conduct at demonstrations.

After outlining the political context that forms the background to the Bill this article will focus on four issues raised by the Bill that are relevant to the nature of civilian oversight of police and the architecture of police accountability in South Africa. These relate to the implications of the Bill for:

- Optimising the provincial contribution to police policy making
- Provincial institutional arrangements
- The function of CPFs
- Mechanisms for dealing with complaints by civilians against the police

In conclusion the article returns to the question of political interference.
POLITICAL CONTEXT

It is common cause among the major political parties in South Africa that issues of crime and safety are one of the biggest concerns of the electorate. In response, national government has, over the past ten years, annually increased the number of police personnel and the size of the police budget. The SAPS is now one of the largest national police services in the world with a staff complement of 194 201, including 152 830 operational police officers and a budget amounting to R65 billion in the 2012-2013 financial year.

In the Western Cape the total staff complement of the SAPS is 24 304, representing 12.5% of the national total, including 19 653 operational police officers. The Western Cape SAPS therefore constitutes a substantial body of personnel, utilising several billion rands of public money. Notwithstanding this substantial investment in policing, crime continues to be a serious problem in the Western Cape. For many years the province has recorded one of the highest murder rates in the country. In 2010-2011, for instance, the official murder rate in the province was at 44.2 per 100 000, second only to that of the Eastern Cape. The province also has a prominent gang culture.

From 1994 to 2009 the Western Cape provincial government was controlled by the ANC but in the 2009 elections the ANC was defeated by the Democratic Alliance (DA), with the DA winning 22 seats in the 42 seat provincial legislature. Since then the DA has published a programme of action that includes initiatives focused on ‘increasing safety’ in terms of ‘Strategic Objective 5’. This includes optimising its use of constitutional police oversight powers as well as other initiatives to increase the provincial government’s overall contribution to safety (see box). The Bill is intended to advance this broad objective. In addition to improving provincial oversight of the police the Bill provides for the accreditation of neighbourhood watches, partnerships with community organisations, the registration of private security organisations, and the establishment of a Provincial Safety Advisory Board.

The DA is not only a political presence in the Western Cape but constitutes the main opposition to the ANC in the national parliament, and wishes to present itself as a credible alternative to the ANC at national level. It may therefore be assumed that the Bill is motivated by the DAs desire to optimise its leverage to intervene in the policing and safety arena, not only with a view to improving safety in the province but also, presumably, to win credibility with the broader
South African electorate. As such, the Bill may be seen as an expression of a broader political strategy and may for this reason be contested by the DA’s political opponents. Lynne Brown, the ANC leader in the Western Cape, has already criticised the Bill, stating that it will turn the province into a police state and draw the province into a constitutional crisis.32

No doubt in anticipation of criticism of this kind the Bill is explicitly framed within the parameters of the Constitution and of co-operative government. The Bill is also consistent with provisions of a new ANC discussion document that motivate that the roles and responsibilities of provinces ‘be legislated so as to remove any uncertainty and disputes’ and that the powers and functions of provinces be strengthened.33 The explicit purpose of the Bill is to strengthen oversight over police and the suggestion that it will turn the province into a police state is unfounded. Nevertheless the ANC criticism may be valid in so far as it emphasises the point that the consolidation of provincial powers provided for in the Bill may enhance the risk of political interference or influence.

This is also not the first time that a provincial government has sought to comprehensively re-orientate its safety and security strategies. In 2006 the Gauteng Provincial Government developed a ‘Gauteng Safety Strategy’,34 which had much in common with the Western Cape initiative. One significant difference was however that the Gauteng strategy included a focus on shaping the police response to armed robbery35 and arguably therefore involved direct intervention in aspects of operational policing. The Gauteng strategy was driven by the MEC for Safety and Security at the time and lost impetus once the MEC was moved to another portfolio. On the one hand this highlights the point that the future prospects for the Western Cape strategy may depend on the electoral fortunes of the Democratic Alliance in the province. But unlike the Western Cape initiative, the Gauteng strategy did not involve provincial legislation. Unless it is subsequently repealed it will therefore not only be an instrument of the current government but also of governments that succeed it.

Unlike the current Western Cape initiative, the Gauteng initiative was undertaken by an ANC-led provincial government at a time when the national political leadership of the police and the national secretariat was largely dormant. Since then the political environment has changed, with the national secretariat having been revitalised and involved in its own initiative to define the policing policy environment in the form of a White Paper review that is expected to be published shortly.36 A question that is therefore yet to be answered is how policy measures provided for in the Bill will compare to those in the White Paper review. With this currently unanswerable question in mind this article now turns to an examination of specific provisions of the Bill.

THE BILL

Police reporting and provincial policy making

Section 15 of the draft Bill provides for mandatory reporting by the SAPS provincial commissioner to the provincial government on a number of prescribed matters, including lost or stolen police firearms, arrests and convictions, and service delivery complaints received by the police.37 This is intended to ensure that police cooperate with provincial government requests for information. Surprisingly, however, reportable matters listed under Section 15 of the Bill do not include crime statistics, though there is a clause allowing for the MEC to require that reports be provided on ‘any other matter as may be prescribed’. The omission of crime statistics appears to reflect a strategic decision on the part of the provincial government to avoid the inclusion of provisions that are likely to bring it into open conflict with national government around the Bill. In so far as this may jeopardise the potential for provincial access to up-to-date crime statistics, it may have negative implications for oversight. Current information on reported crime is fundamental to timely oversight of police service delivery.

The provisions that require police to provide information to the province are supposed to assist it to make better use of its right to be consulted in...
the determination of policing policy by the national minister. As mentioned earlier, Section 206(1) of the Constitution requires that the minister must take into account ‘the policing needs and priorities of the province as determined by the provincial executive’ in formulating national policing policy. Information received from the SAPS as well as from other sources (see the discussion of station inspections below) will be fed into an ‘integrated information system’ also provided for in the Bill, that is intended to be used to analyse provincial needs and priorities. In turn this will provide the basis for an annual report on policing in the province that will inform the determination of policing needs and priorities by the provincial cabinet.

It is not clear how the national minister will respond to an attempt to increase the role of the province in shaping policing policy. One commentator suggested that the Bill is likely to have little effect since the national minister needs only to be able to demonstrate that he has ‘consulted’ the provinces, and ‘taken into account’ their views, but he or she can nevertheless ‘do whatever he likes’.40

In late 2011 the Western Cape government made an initial foray into this area, calling for specialised gang and drug police units to be reinstated in the province. A subsequent press report indicated that a decision had been made not to re-establish the units. A meeting had been held between the national minister and the provincial premier, the MEC for Safety and the SAPS Commissioner, at which it had been decided not to ‘impose’ on the operational level, with the minister indicating that he had been informed by the provincial commissioner that ‘right now, there is no need for a gang unit’. The incident illustrates the limitations of provincial powers to shape policy. Whether or not provincial policy proposals are taken seriously may depend very much on the whims of the national minister. In addition, if the national minister is not engaged with the policing portfolio, or is otherwise hostile to provincial proposals, this may have the effect of neutralising provincial policy contributions.

In order to fully understand the implications of the Bill it is necessary to mentally disentangle the ideas of ‘provincial secretariat’ and provincial ‘Department of Community Safety’. Since the mid-1990s when they were established there has been a tendency for these entities to be conflated. This is illustrated by a sign previously outside the Western Cape Department of Community Safety which included the words ‘Provincial Secretariat for Safety & Security’ under the name of the department, indicating that the names were, in effect, interchangeable. It was not seen as necessary to differentiate between them, as provincial secretariats were believed to be ‘independent of the national secretariat’ and primarily accountable to the MEC.

The provisions for a ‘police civilian secretariat’ in terms of Section 208 of the Constitution indicate that this is a national entity to be provided for by ‘national legislation’ and to take direction from the Minister of Police. Though the Constitution makes no reference to the provincial secretariats, these are now defined by the 2011 Civilian Secretariat for Police Service Act (the Secretariat Act) as arms of the national secretariat that are responsible for fulfilling its ‘objects’. These include, amongst others, oversight over the police and advising the minister on policies. Though subject to the ‘principles of co-operative governance and intergovernmental relations contained in Chapter 3 of the Constitution’, each provincial secretariat must ‘align its plans and operations’ and ‘integrate its strategies and systems’ with those of the national secretariat.

In terms of the Secretariat Act the provincial secretariats are in their entirety instruments for giving effect to the ‘objects’ of the national secretariat for police. They have nothing to do with the powers of oversight, conferred on the provinces, in terms of Section 206. Provincial governments that wish to give effect to their powers in terms of Section 206 and engage in other safety initiatives, and wish to avoid conflicts of authority with the national secretariat, must
therefore establish the provincial ‘community safety’ department as an entity which is entirely separate from the provincial secretariat. The Western Cape Bill therefore defines the provincial Department of Community Safety as an agency of the provincial government for giving effect to its Section 206 powers.50 This appears to be consistent with the Secretariat Act, which institutionalises the distinction between the provincial department and the provincial secretariat with the heads of the two agencies defined as different from each other.51

There may however be some duplication of functions between the two agencies. One of the nine ‘objects’ of the civilian secretariat provided for in the Secretariat Act is ‘civilian oversight’ and some of the wording used in Section 17(2) of the Act resembles wording in Section 206(3) of the Constitution on the powers of the provinces. For legal purposes this is purely incidental and does not mean that the provincial secretariats are instruments for giving effect to the provisions of Section 206(3).52 But in practice, if the provincial secretariat does give effect to these provisions in the Western Cape, there may be a duplication of functions with the provincial Department of Community Safety. As a result there is likely to be a need to rationalise and coordinate these functions. In principle this should not be a problem, as the Secretariat Act and draft Bill both emphasise the need for cooperation between the provincial government and the Secretariat.53

One point of difference between the Secretariat Act and the Bill concerns the appointment of the head of the provincial secretariat. According to the Secretariat Act this may only be done by the MEC ‘in consultation with’ the national minister.54 The Bill confirms this provision, indicating that this must be done ‘in consultation with’ the national Minister of Police. But the Bill adds that the provincial premier must also be part of this consultation. In this respect therefore the Bill modifies the Secretariat Act and reasserts provincial authority within the appointment process. This would appear to be compatible with the intention that the provincial secretariats are not exclusively instruments of the national secretariat but also instruments of ‘co-operative governance’.

CPFs and provincial inspections

When Community Policing Forums (CPFs) were first established in South Africa in the mid-1990s, it was envisaged that they would function to hold the police accountable at local level.55 In practice, however, they have proved largely unable to perform this function. This is because of the power imbalances between CPFs and police, since police are not subject to CPF authority. In addition, related to the fact that CPFs are composed of non-specialist voluntary personnel, they often lack the capacity to make inputs into policing matters at station level that the police regard as credible.56 The Western Cape initiative now intends to re-emphasise and re-instate the accountability function of CPFs, but as instruments of provincial rather than local level accountability.

The provincial government envisages that inspections (in terms of Section 4(1)(c) of the Bill) will be carried out by CPFs.57 This approach is informed by and mirrors to some extent the operation of the Independent Prison Visitors System of the Judicial Inspectorate of Prisons.58 It is envisaged that a standardised check-list will be provided to the CPFs. In return for conducting the inspections and providing the province with the data gathered the CPFs will receive a monthly financial allocation. They may distribute up to 60% of this to members to reimburse them for costs, or use it to pay members a stipend. CPFs will submit the results of each inspection electronically and these data will be analysed, along with other data, in the assessment of provincial needs and priorities.

It is envisaged that these inspections will be carried out up to ten times per month at each of the 149 police stations in the province. This implies that 1490 inspections will be carried out each month in the province.59 This is far more extensive than any existing system of inspection and may prove to be excessive. For instance, the National Secretariat’s 2011/2012 performance plan
envisages that a total of 100 inspections will be carried out each year nationally.60 The province may also find that if there are stations that consistently perform well against the aspects listed on the check-list, the focus of inspections may need to be changed as they will quickly become redundant.

The effect of these measures will therefore be that, at least in carrying out these functions, CPFs will operate as mechanisms of provincial accountability rather than local accountability, sometimes thought to be a key aspect of their responsibilities. In reality this will result in very little change since CPFs only function to hold police accountable at local level in a limited manner and are in general not equipped to perform this function independently of outside support and assistance.61 Some analysts who have in the past argued that accountability at local level needs to be strengthened, now argue that this must be a local government function rather than a function of CPFs.62

In so far as the inspections may contribute to strengthening provincial oversight over the police, and result in decentralisation of police accountability, these measures may prove to be positive.63 However, the inspections may negatively impact the partnership role of CPFs. Many CPFs provide support to police that is intended to improve the effectiveness of station responses to crime. This partnership role is facilitated by cordial relationships between the police and CPF members. By subjecting police more overtly to scrutiny, CPF inspections may destabilise these relationships. Police are typically resistant to efforts to extend scrutiny over them and some resistance to these inspections may be anticipated. In so far as station commissioners value their partnerships with the CPF it will be in their interests to support the CPF inspections. If the partnership role played by CPFs is undermined, police may have less direct support from community members. Harmonious police-community relations may therefore increasingly depend on mutual respect, as opposed to CPFs playing a lap-dog type of role.

This aspect of the Western Cape government’s initiative is likely to contribute to reconfiguring the interface between police stations and CPFs. In principle the initiative is correct in seeking to ‘promote good relations’ more holistically by addressing issues of misconduct by police and improving their overall effectiveness. Addressing police-community relations is much broader than simply a question of whether the police and CPF members enjoy an amicable relationship. During an interview in preparation for this article, UCT academic John Cartwright argued that giving CPFs greater authority would be likely to increase their sense of self respect. Many of them would be performing a more productive role, and be less subordinate to, and dependent on the police than they have been in the past.64 CPFs themselves may end up having a less cordial relationship with the police. But in so far as the inspections enhance accountability they may ultimately contribute to greater overall community confidence in the police and improved police-community relations more broadly.

It is not as yet clear how CPFs themselves will respond to this new approach to their role. Due to the fact that CPFs will now receive a regular, though modest, financial allocation it might be assumed that they will welcome this initiative. However, if CPFs choose to allocate a proportion of this income to reimburse members who are involved in inspections this may prove divisive and demotivating to those who are not paid. The financial allocations may therefore detract from the ability of CPFs to mobilise local voluntary energy. In addition, the Bill may result in CPFs and police being forced to renegotiate their relationships with each other. It remains to be seen how this will work in practice.

The Ombud and service delivery complaints

In addressing complaints against police and police misconduct, representatives of the Western Cape provincial government have indicated that a major part of their emphasis will be on strengthening the functioning of existing mechanisms. One of the anticipated uses of the integrated
Institute for Security Studies

The Ombud is comparable to this. But instead of locating this function within a complaints monitoring unit within the provincial department, the Ombud will be external to the Department of Community Safety and therefore serve as a distinct and identifiable mechanism for dealing with complaints. It is envisaged that matters investigated will include ‘serious complaints’, though in terms of the Bill any person may submit a complaint to the Ombud.

On paper the jurisdiction of the Ombud is defined by Section 206(5)(a) and is distinct from that of the IPID. However it is not clear what types of cases will be regarded, for instance, as dealing with a ‘breakdown in relations’ between the SAPS and the community. The term may potentially include virtually any matter contributing to dissatisfaction on the part of one or more community members. This may imply that there are few limitations on the type of complaints that the Ombud can deal with. However, though Ombuds personnel will have a range of powers they will not have the full powers of criminal investigation provided to IPID members. It may make sense for the Ombud to refer complaints of serious crimes to the Western Cape IPID and monitor IPID progress in addressing these. The Ombud will also be able to refer matters to other agencies, including the SAPS Provincial Commissioner, where appropriate.

Particularly if it can effectively coordinate its activities with those of these other agencies the Ombud may add substantially to the capacity to engage with complaints against police within the province. But in so far as the Ombud’s mandate does overlap with that of the IPID, or other bodies, this may feed into confusion on the part of members of the public about whom to turn to when they have complaints against police. There will be a need for publicly accessible information that guides complainants on these questions.

CONCLUSION – THE LIMITS OF PROVINCIAL POWERS?

It has been argued elsewhere that there is a need to amend Section 206 of the Constitution in order to
spell out the powers of the provinces more clearly. The current provisions are unnecessarily restrictive, even when considering that provinces have the potential to misuse their powers over police. Provinces could have a ‘subordinate’ policy-making authority, allowing them to develop policy as long as it does not conflict with national policies. The requirement that provinces can only shape national policy through the national minister has a number of disadvantages, not the least being that it makes the policy-making process unnecessarily cumbersome and limits the potential for responsiveness in policing policy.75

Rather than advocating for constitutional change, the route being followed by the Western Cape provincial government is the more pragmatic one of clarifying its powers, and seeking to optimise its contribution to safety and security, whilst working within the current constitutional and legislative framework. The draft Bill is of considerable interest partly because of the extensive consideration that has been given to how to optimise the provincial safety contribution within this framework. As such the initiative provides a sophisticated model for provincial governments to increase their role in promoting safety and security. Along with other Western Cape provincial government initiatives it has the potential to deepen the provincial government’s contribution to policing and safety, and may have considerable value. Interventions in policing matters have up to this point been highly centralised and focused at national level. More substantive engagement by provincial governments holds the potential to contribute to a greater degree of flexibility, innovation and responsiveness within the South African policing system.

However, as indicated above, any authority to intervene in policing matters may potentially be abused to provide cover for political or other interference in policing, as has recently become a problem at national level. It may therefore be appropriate for the Bill to set out a ‘non-exhaustive list,’76 including, for example, decisions to investigate, arrest or charge in a particular case or decisions ‘to appoint, deploy, promote or transfer individual police officers’. This list will define in

which matters members of the provincial government may not intervene. The Bill could also include provisions to ensure greater transparency in provincial government dealings with the police. It could, for instance, require that any instruction or request from the provincial government to the police is set out in writing, with a copy subsequently presented before the provincial legislature within a specified time frame. This has been done in some Australian jurisdictions.77

Should it become law, the Bill will define the powers of the current Western Cape government as well as any other government that may succeed it. It will be strengthened considerably if it not only sets out the powers of the provincial government on policing matters, but also clearly sets out the limits on these powers.

To comment on this article visit http://www.issafrica.org/sacq.php

NOTES

1. This article was commissioned by the ISS at the request of the Western Cape Department of Community Safety. The Western Cape provincial government facilitated research for this report by paying for one night’s accommodation in Cape Town as well as transport in Cape Town whilst interviews were conducted. The content and analysis were not subject to review by the Western Cape Department of Community Safety and reflect the author’s own views and assessment. Thanks are due to Chandré Gould of the ISS and an anonymous reviewer for assistance and direction with this paper.

3. Mark Shaw, Point of order: Policing the compromise,  

4. C o  

5. Philip Stenning, Governance of the police: independ-


7. Bruce, Newham and Masuku, In service of the people’s democracy, 49.  

8. Mistry and Klipin, Strengthening civilian oversight,  

9. Dan Plato, Wet wil alle W-Kapenaars veiliger maak,  


14. Ibid, Section 206(3)(b) and (d).  

15. Ibid, Section 206(3)(c).  


17. Draft Western Cape Community Safety Bill, Section 15.  


19. Draft WC Community Safety Bill, Section 4(1)(a)  


28. Situational crime prevention focuses on reducing opportunities to commit crime.  

29. The Western Cape government had adopted a policy of referring to MECs as ‘Ministers’. This article however uses the term MEC, which is generally used to refer to members holding this portfolio.  

30. Draft WC Community Safety Bill, Section 7(1)(c).  


37. Section 16 provides for similar reports to be submitted by municipal police services.  

38. Draft WC Community Safety Bill, Section 8.  

39. Draft WC Community Safety Bill, Section 17.  

40. Mike Wills, The Cape safety bill has a massive hole in it, Cape Argus, 22 February 2012.

42. Sibusiso Nkomo, Police put gangs ‘under pressure’ – targeting of drug turf ‘is leading to feuding’, Cape Argus, 12 December 2011, 4.

43. A 2007 report for instance indicated that ‘there is no distinctive policy direction provided by the Minister to the SAPS’; Bruce, Newham and Masuku, In Service of the People’s Democracy, 46.

44. Note that not all provinces have a ‘Department of Community Safety’. For instance the Free State has a Department of Police, Roads and Transport.

45. Mistry and Klipin, Strengthening civilian oversight, 19.


47. Legal provisions governing the provincial secretariats prior to the Civilian Secretariat for Police Service Act 2011 (2 of 2011), were ambiguous as to their functions. See sections 2(1)(b) and 3(5) of the South African Police Service Act 1995 (68 of 1995), Section 2(1)(b) for instance provided that the establishment of provincial secretariats by provincial governments was at their discretion.

48. Civilian Secretariat Act, Section 17(1).

49. Ibid. See also Section 17(2).

50. Draft WC Community Safety Bill, Section 1.

51. Civilian Secretariat Act, Section 1.

52. This is because the provincial secretariats are not subject to the provincial government and cannot be regarded as an instrument for exercising provincial powers even if their functions are described in a way that is in some respects similar to those of the provincial government.

53. In the Secretariat Act this is addressed in Section 17(1). The introduction to the Bill provides that the Bill is intended to provide for ‘the support of and cooperation with the Secretariats’. Section 2(c) indicates that the purpose of the Act includes supporting the objects of the national and provincial Secretariat. Section 3(v) provides that the functions of the MEC include facilitating close cooperation between the Department, the Civilian Secretariat, the Provincial Secretariat and the police in the performance of the functions in terms of this Act. Section 8(c) provides for the Secretariats to be consulted in establishing the integrated information system.

54. Civilian Secretariat Act, Section 18(1)


56. Ibid.

57. Section 5 of the Bill provides for regulation of community police forums (CPF) by the provincial government. However Section 5 is not in itself an adequate guide to provincial thinking on the role to be performed by CPFs.


59. Email message, Gideon Morris, 14 March 2012.

60. Civilian Secretariat for Police, Annual Performance Plan, 30.


63. Ibid; Bruce, Unfinished business.

64. Interview John Cartwright, 8 March 2012.

65. Draft WC Community Safety Bill, Section 8(4)(e).

66. Standing Order 101 provides instructions to police stations for addressing complaints from members of the public who are dissatisfied with the service they have received from the SAPS or how they have been treated by SAPS personnel.

67. Draft WC Community Safety Bill, Section 9. The bill refers to an Ombudsman but staff of the Western Cape provincial government indicated that the gender neutral term Ombud would be preferred. Interview Gideon Morris and Mireille Wenger, 7 March 2012.

68. Draft Western Cape Community Safety Bill, Section 11.

69. Interview Gideon Morris and Mireille Wenger, 7 March 2012.


71. See section 28 of the Independent Police Investigations Directorate Act 2011 (Act 1 of 2011). The ICD became the IPID on 1 April 2012 when the Act came into operation.

72. Department of Community Safety, Western Cape, Section 15.

73. Draft WC Community Safety Bill, Section 12(1).

74. In terms of the Section 14 of the Bill they will be authorised to direct people to submit affidavits or declarations, to appear before the Ombud to give evidence, and to produce documents. Section 4 of the Bill also provides for persons authorised by the MEC to have the authority to enter police buildings or other property.

75. Bruce, Unfinished business, 8-11.

77. For example see Section 4.6 of the Queensland Police Service Administration Act, 1990, and Sections 6 and 7 of the South Australia Police Act, 1998, cited in Newham and Bruce, Provincial Government Oversight of the Police.
In exploring the contours of the code of silence among South African police officers, our 2005 survey of 379 police officers from seven provinces found that a substantial proportion of respondents were keen to protect various forms of police corruption. Between July 2010 and August 2011 we engaged in the second sweep of the survey, encompassing 771 police officers (commissioned and non-commissioned) from nine South African provinces. Our results provide further evidence of the presence of the code of silence covering various forms of police misconduct. At least one quarter of the respondents would protect a fellow officer who verbally abused citizens, covered up police driving under the influence (DUI) accident, accepted gratuities, or failed to react to graffiti. At least one out of eight police officers showed willingness to cover up internal corruption, striking a prisoner, a kickback, a false report on drug possession, and protection of a hate crime. The results further indicate that the respondents' willingness to adhere to the code of silence is directly related to their estimates of whether other police officers in their agency would protect such behaviour with silence, as well as to their estimates of the seriousness of misconduct and expected discipline.

THE CONTOURS OF THE CODE OF SILENCE

The reluctance of police officers to report their colleagues' misconduct is an almost inevitable police organisational trait, developed through the fusion of solidarity, loyalty, and mutual trust among police officers in a paramilitary environment often characterised by extensive rules and an overt emphasis on readily quantifiable performance measures (i.e., arrest numbers). In circumstances in which this synthesised loyalty to the group clashes with the supposed responsibility and accountability to the larger society and/or with legality, the code often prevails. The presence of the code of silence has been documented in several police agencies in the US, as described by commission reports regarding corruption in the New York Police Department,¹ the Philadelphia Police Department,² and the Los Angeles Police Department,³ as well as a body of prior research.⁴

The contours of the code of silence vary among police agencies. In those characterised by widespread misconduct, be it corruption, excessive force or other miscellaneous forms, the code tends to be strong.⁵ Here the reticence of reporting is motivated as much by the fear that the department could investigate all cases of misconduct and discipline all police officers thus caught, as it is by the department's proven, draconian and exemplary punishments and the possible public
outrage over the existence of widespread misconduct.

The Klockars et al survey of the prevalence of integrity among police officers in thirty US police agencies illustrates the dramatic differences found across police agencies. In fact, Klockars and colleagues found that the strength of the code of silence in two agencies on the opposite ends of the integrity spectrum, measured as the percentage of police officers who would not report misconduct, could vary as much as 40%. Addressing the notion that the code is not equally applicable to all forms of misconduct, the study further suggests that, when presented with the same form of misconduct, the prevalence of the code among the respondents also did not hold equally for all cases.

To date, very few studies have attempted to measure the code of silence among the South African Police Service (SAPS). Newham’s study focuses on the willingness of police officers in one police station in Johannesburg to report misconduct. His survey included 104 police officers who responded to 11 hypothetical scenarios based on the model developed by Klockars and Kutnjak Ivković. Newham finds that a strong majority of police officers (two thirds or more) indicated that they would report the behaviour of their colleagues only in the three scenarios depicting the most serious forms of corruption. Newham also reports that the police officers expected their colleagues to adhere to the code of silence even more than they themselves felt they would.

In 2005, Kutnjak Ivković and Sauerman conducted a country-wide survey of 379 SAPS supervisors representative of seven of the country’s nine provinces, all attending training sessions at SAPS centres. In responding to the 11 hypothetical scenarios based on the model developed by Klockars and Kutnjak Ivković, the respondents were more likely to protect the acceptance of gratuities and off-duty employment than they would a crime-scene theft, bribery, or internal corruption. A worrisome finding suggests that about 25% of the officials would protect some of the worst forms of police corruption and misconduct. Similar to the Newham finding, the Kutnjak Ivković and Sauerman data suggest that the respondents assumed that their colleagues would be more likely to adhere to the code than they would themselves.

In this paper we further explore the contours of the code of silence among the SAPS officers. We present the analyses of a survey of 771 police officials from all nine South African provinces. The surveyed SAPS members were inclusive of almost all the ranks within the SAPS. We study their own adherence to the code of silence and their perceptions of others’ adherence to the code, and briefly compare these findings with the 2005 data.

CONTROLLING CORRUPTION AND THE CODE OF SILENCE IN THE SAPS

The SAPS’s questionable reaction to police misconduct and its apparent tolerance of corrupt activities within its ranks have been exposed comprehensively in both media accounts and research studies. Similar perceptions are also found among the South African public, who seem sceptical of the SAPS’s capacity for accountable policing. Both the 2003 and 2007 National Victims of Crime Surveys (NVCS) identified the police, among numerous public service departments, as a prominent initiator of acts of corruption. Members of the organisation seem equally concerned about the SAPS’s levels of integrity. In reviewing SAPS personnel research studies for the period 2001 to 2009, Newham and Faull found that SAPS members believe corruption to be a problem at their stations and a ‘serious challenge’ facing the SAPS.

A lion’s share of these media, public and police official concerns can be attributed to the SAPS top management, who, through dubious decisions and apparent oversights, have derailed a very promising anti-corruption strategy implemented during the early stages of the SAPS’s transformation from a force to a service. Reflecting on this series of unfortunate
management resolutions, Bruce concludes that 'not only has the SAPS actively undermined its corruption control mechanisms but it has done so whilst management systems, which constitute the basic mechanism of control, have been undermined.'

In response to a study of corruption levels within the SAPS, the first national Anti-Corruption Unit (ACU) was established in 1996, a reactive measure that proved very effective in curbing the escalating occurrences of police corruption – by 2001 the ACU had already tallied 3,045 SAPS member arrests on charges related to corruption. To Newham, the sheer arrest numbers indicate the presence of widespread corruption within the SAPS, although a significant number of these cases were 'related to “petty” corruption, or “once off” incidents of bribery or other misuse of police powers for personal gain.' Controversially, this unit was closed down in 2002 under the auspices of the then National Police Commissioner, Jackie Selebi, who stated that the ACU had become superfluous because its functions had been duplicated by the Organised Crime Unit (OCU). At about the same time, in an occurrence foreboding of events to come, the KwaZulu-Natal head of the OCU was convicted on corruption charges on the basis of a strong ACU investigation.

Following the establishment of the SAPS in 1995, several independent, civilian-led bodies were created and tasked with the formal overseeing of policing and police accountability within the country. Regrettably, serious structural problems, coupled with increased police resistance to external investigations, laid waste to any profound effect that these bodies could have had on service delivery and corruption complaints. Despite these voids in both internal investigative powers and external oversight bodies, the SAPS still insisted in its 2004 annual report that 'a considerable effort has been made to put mechanisms in place to detect alleged cases of corruption and to implement restorative actions aimed at dealing with potential shortcomings that may result in or contribute to corruption.'

Contradictory to these claims, however, Newham and Faull refer to an unpublished, 'high-level SAPS Policy Advisory Council report' that warned about the insufficient capacity of the SAPS to investigate corruption during the 2006/7 period.

Reflecting on this period, Faull concludes that corruption within the SAPS is 'widespread, widely acknowledged, but seldom acted upon,' and that the organisation 'has since 2002 lacked an applied corruption fighting strategy.' During this absence, it would appear that opportunities for corrupt behaviour within all echelons of the organisation have increased, with high profile police officials at the centre of recent integrity-related controversies. A case in point – Jackie Selebi, the then National Police Commissioner, Interpol president, and the driving force behind the abolishment of the ACU – was officially charged in March 2008 with corruption and defeating the ends of justice related to his alleged links with key figures of organised crime syndicates. In 2010 he was convicted on the corruption charges, involving R1.2 million (roughly $165,000), and received a fifteen-year prison sentence. Regrettably, this serendipitous opportunity to alter the corrupt image of the SAPS was not taken advantage of as, even after he had been formally charged, Selebi was publicly defended by several senior SAPS members. The presence of the code of silence among these senior officials not only raises serious concerns about the integrity of the remaining management of the SAPS, but it also, as Newham and Faull suggest, sends the inevitable message to the public and SAPS members alike that loyalty among police officials is more important than adherence to the country's constitution and its laws.

This message became louder still as the dubious influence of political powers emerged during the Selebi scandal. In a bizarre turn of events, the agency responsible for investigating this high-level corruption case – the National Prosecuting Authority's (NPA) elite investigative unit, the Scorpions – was incredulously accused by the ANC-led government of 'Hollywood style tactics,' leading to the suspension of the head of...
the NPA on grounds of incompetence and the subsequent disbanding of the Scorpions.\textsuperscript{35} Another investigative void thus created, it would certainly appear that corruption control is not high on the priority list of those with political power. During 2009, the Directorate for Priority Crime Investigations (DPCI), or the Hawks, was established to target ‘criminal high flyers’ with functions inclusive of the prevention, combating and investigation of national priority offences with a particular focus on serious organised crime, serious commercial crime, and serious corruption.\textsuperscript{36} With the Hawks’ commanding officer in Mpumalanga recently charged for allegedly stealing money from a detained suspect,\textsuperscript{37} it remains unclear whether the switching of investigative units was indeed in the interest of law enforcement or whether murkier political agendas were appeased.

Meanwhile, Bheki Cele had replaced Selebi as National Police Commissioner and was quick to claim that the police were dealing swiftly with corruption and criminals found within their ranks: ‘a stern warning has to be sent to those who think that being in the police means you can do as you wish, you can treat people with contempt…there are such potatoes.’\textsuperscript{38} In February 2011, less than a year after the conviction of Jackie Selebi, the office of the Public Protector issued this ‘stern warning’ by releasing a report in which the new Police Commissioner was accused of ‘conduct [that] was improper, unlawful and amounted to maladministration,’ by violating laws and regulations while failing to seek competitive bids in the leasing of police offices. It was also noted that the real estate company involved in this scandal was headed by ‘a close friend of the country’s president.’\textsuperscript{39} Here, Newham and Faull also comment on the SAPS backlash during this new scandal. Instead of embracing corruption investigations, the SAPS reacted with strong-arm tactics aimed at intimidation by first arresting the journalist who ‘broke’ the story, and then releasing him without charge.\textsuperscript{40} Even the office of the Public Protector was not spared. In an action ‘widely perceived as police intimidation,’ SAPS Crime Intelligence officials arrived at these offices shortly after the release of the damning report, and requested documents pertaining to the allegations.\textsuperscript{41} In October 2011, General Cele was relieved from his duties as National Police Commissioner ‘pending the outcome of an investigation into unlawful police lease agreements.’\textsuperscript{42}

The demise of both police commissioners in such a brief period of time surely cannot bode well for the already floundering trust of both the public and police members in the management of the SAPS. The fact that both investigations were prompted by the involvement of either independent third parties or journalists further underscores the SAPS’s lack of corruption control structures. Unfortunately, this type of informal corruption control seems the only available measure at present, with Newham and Faull reflecting on the absence of any independent body with the capacity to undertake a criminal investigation into the actions of the SAPS National Commissioner, ‘as this capacity resides solely within the SAPS, [which falls] under his direct command.’\textsuperscript{43} The present uncertain, and possibly hostile, climate with regard to anti-corruption investigations – which in itself is the product of political interventions – raises troublesome questions regarding the SAPS’s independence as a policing agency and its overall ability and willingness to report integrity challenged behaviours.

**METHODOLOGY**

The questionnaire developed by Klockars and colleagues\textsuperscript{44} contains descriptions of 11 hypothetical scenarios describing instances of police corruption, use of excessive force, and failure to execute an arrest warrant. We added three more scenarios describing the protection of a hate crime, accepting a bribe from a speeding motorist, and not reacting to graffiti. The respondents were asked to evaluate each hypothetical scenario in terms of its seriousness, appropriate and expected discipline, and willingness to report. This questionnaire has already been used in countries as diverse as the United States,\textsuperscript{45} Croatia\textsuperscript{46} and South Korea.\textsuperscript{47} In its present, enhanced form the second
questionnaire is still largely based on the original as developed by Klockars and Kutnjak Ivković, which was successfully utilised across the world, including South Africa.

During 2010/2011, we surveyed SAPS officers at their assigned police stations and in units of specialised policing operations. The response rate was about 87.5%. The sample included 771 police officers surveyed across the country (154 from Western Cape, 82 from Eastern Cape, 43 from Northern Cape, 75 from Free State, 109 from KwaZulu-Natal, 137 from Gauteng, 49 from Mpumalanga, and 64 from North West).

Most respondents were assigned to detective/investigative units (33.5%), patrol (26.3%), or community policing (COP) (11.9%). About 43% were constables, 8% sergeants, 21% warrant officers, 2% lieutenants, 16% captains, and 8% had a higher rank. The majority of the respondents were employed in somewhat larger police agencies: medium-sized police agencies with 76 to 200 sworn officers (24.8%), large police agencies with 201 to 500 sworn officers (13.9%), or very large police agencies with over 500 sworn officers (26%). Most of the respondents held non-supervisory positions (63%). About one-half of the respondents had been police officers for more than 16 years (46%), and 49% had between three and ten years of experience.

**ADHERENCE TO THE CODE OF SILENCE**

After reading each scenario, the respondents were asked a series of questions, including whether they would personally report the police officer who engaged in the described misconduct and whether, in their opinion, other officers in their agency would report. The answers ranged from 'definitely not' to 'definitely yes' on a five-point Likert scale.

The results, shown in Table 1, indicate that the code of silence is not a flat prohibition of reporting. Rather, it varies across the scenarios,

### Table 1: Respondents’ own perceptions of reporting and perceptions of others’ reporting

<table>
<thead>
<tr>
<th>Scenario number and description</th>
<th>Own reporting</th>
<th>Others’ reporting</th>
<th>Value of the percent difference</th>
<th>McNemar Chi-square test</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percent not reporting (rank)</td>
<td>Percent not reporting (rank)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scenario 1 – Free meals, gifts from merchants</td>
<td>25.7% (3)</td>
<td>45.9% (1)</td>
<td>-20.2</td>
<td>179.5***</td>
</tr>
<tr>
<td>Scenario 2 – Failure to arrest friend with felony warrant</td>
<td>9.3% (11)</td>
<td>26.2% (11)</td>
<td>-16.9</td>
<td>72.0***</td>
</tr>
<tr>
<td>Scenario 3 – Theft of knife from crime scene</td>
<td>6.9% (13)</td>
<td>23.1% (12)</td>
<td>-16.2</td>
<td>115.1***</td>
</tr>
<tr>
<td>Scenario 4 – Unjustifiable use of deadly force</td>
<td>8.7% (12)</td>
<td>18.0% (14)</td>
<td>-9.3</td>
<td>309.8***</td>
</tr>
<tr>
<td>Scenario 5 – Supervisor: holiday for errands</td>
<td>16.3% (8)</td>
<td>26.3% (10)</td>
<td>-10.0</td>
<td>311.7***</td>
</tr>
<tr>
<td>Scenario 6 – Officer strikes prisoner who hurt partner</td>
<td>19.1% (6)</td>
<td>34.6% (6)</td>
<td>-15.5</td>
<td>288.1***</td>
</tr>
<tr>
<td>Scenario 7 – Verbal abuse of motorist</td>
<td>34.1% (1)</td>
<td>42.8% (2.5)</td>
<td>-8.7</td>
<td>394.9***</td>
</tr>
<tr>
<td>Scenario 8 – Cover-up of police DUI accident</td>
<td>30.0% (2)</td>
<td>42.4% (4)</td>
<td>-11.5</td>
<td>329.4***</td>
</tr>
<tr>
<td>Scenario 9 – Auto body shop 5% kickback</td>
<td>20.5% (5)</td>
<td>35.8% (5)</td>
<td>-15.3</td>
<td>270.9***</td>
</tr>
<tr>
<td>Scenario 10 – False report of drug possession on dealer</td>
<td>12.5% (10)</td>
<td>27.3% (9)</td>
<td>-14.8</td>
<td>236.8***</td>
</tr>
<tr>
<td>Scenario 11 – Sgt, fails to halt beating of child abuser</td>
<td>16.2% (9)</td>
<td>32.4% (7)</td>
<td>-16.2</td>
<td>198.3***</td>
</tr>
<tr>
<td>Scenario 12 – Protecting hate crime</td>
<td>18.0% (7)</td>
<td>29.3% (8)</td>
<td>-11.3</td>
<td>203.2***</td>
</tr>
<tr>
<td>Scenario 13 – Bribe from red light violator</td>
<td>5.8% (14)</td>
<td>18.8% (13)</td>
<td>-13.0</td>
<td>163.4***</td>
</tr>
<tr>
<td>Scenario 14 – Not reacting to graffiti</td>
<td>25.4% (4)</td>
<td>42.8% (2.5)</td>
<td>-17.4</td>
<td>308.7***</td>
</tr>
</tbody>
</table>
with the percentage of officers saying that they would not report varying across the described behaviours from as many as 34% (Scenario 7) to as few as 6% (Scenario 13). Between one quarter and one third of the respondents said that they would not report the verbal abuse of a motorist (Scenario 7), the cover-up of police DUI accident (Scenario 8), the acceptance of gratuities (Scenario 1), and the failure to react to graffiti (Scenario 14). On the other hand, fewer than 10% of the respondents said that they would not report the acceptance of a bribe from a red light violator (Scenario 13), the theft of a knife from a crime scene (Scenario 3), the unjustifiable use of deadly force (Scenario 4), and the failure to execute an arrest warrant on a friend (Scenario 2).

There were statistically significant differences between the respondents’ own adherence to the code, to their perceptions of their fellow officers’ likelihood of reporting in all scenarios (Table 1). In all but two scenarios, the differences were above 10%, suggesting that the differences were substantively large as well. The results show that the respondents perceived that other police officers would be more likely to adhere to the code of silence than they would.

We also explored potential differences between the results from the 2005 survey and the present, 2010/2011 survey. Six scenarios are comparable across the two versions of the questionnaire. Some have exactly the same wording (Scenarios 8, 9 and 13), and others are similar (Scenarios 1, 3 and 5). The respondents’ own expressed willingness to report misconduct was very similar in four out of six scenarios; the differences slightly exceeded the 10% mark (10.7 and 12.3%, respectively) in only two scenarios (1 and 13), suggesting that a somewhat narrower code was expressed by the 2010/2011 respondents.

The differences in the perceptions of others’ code of silence between the police officers surveyed in 2005 and 2010/2011 were even more similar than their own perceptions were; in only one scenario (Scenario 1) did the respondents in 2011 expect a narrower code of silence than their counterparts in 2005. In five out of six scenarios the contours of the expected code of silence among other police officers were very similar, within 10%.

Table 2: Logistic coefficients from the regression of willingness to report on respondents’ attitudes and background characteristics

<table>
<thead>
<tr>
<th>Scenario 1: free meals, gifts from merchants</th>
<th>Scenario 2: failure to arrest friend with felony warrant</th>
<th>Scenario 3: theft of knife from crime scene</th>
<th>Scenario 4: unjustifiable use of deadly force</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>s.e.</td>
<td>B</td>
<td>s.e.</td>
</tr>
<tr>
<td>Violation of rules</td>
<td>2.628 ***</td>
<td>0.416</td>
<td>1.025 *</td>
</tr>
<tr>
<td>Own seriousness</td>
<td>1.774 ***</td>
<td>0.284</td>
<td>1.906 ***</td>
</tr>
<tr>
<td>Expected discipline</td>
<td>1.089 ***</td>
<td>0.246</td>
<td>-0.068</td>
</tr>
<tr>
<td>Others’ reporting</td>
<td>2.623 ***</td>
<td>0.305</td>
<td>1.665 ***</td>
</tr>
<tr>
<td>Length of service</td>
<td>0.396</td>
<td>0.809</td>
<td>-0.330</td>
</tr>
<tr>
<td>Rank</td>
<td>0.396</td>
<td>0.809</td>
<td>-0.330</td>
</tr>
</tbody>
</table>

* p < 0.05; ** p < 0.01; *** p < 0.001

1 The dependent variable is coded as follows: 0 = no; 1 = yes.
2 Violation of rules is coded as follows: 0 = no; 1 = yes.
3 Own seriousness is coded as follows: 0 = not serious; 1 = serious.
4 Expected discipline is coded as follows: 0 = none or verbal reprimand; 1 = written reprimand or more severe discipline.
4a Because of the small percentage of the respondents selecting either “no discipline” or “verbal reprimand” (below 20 percent) we reclassified the variable expected discipline for several scenarios as follows: 0 = none, verbal reprimand, or written reprimand; 1 = suspension or more severe discipline.
5 Others’ reporting is coded as follows: 0 = no; 1 = yes.
6 Length of service is coded as follows: 0 = above 10 years; 1 = 2 years or less; 2 = 3-10 years.
7 Rank is coded as follows: 0 = Lt. or higher, 1= Constable; 2 = Sgt.; 3 = Warrant Officer.
### Table 2: continued

<table>
<thead>
<tr>
<th>Scenario 5</th>
<th>Scenario 6</th>
<th>Scenario 7</th>
<th>Scenario 8</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B</strong></td>
<td><strong>s.e.</strong></td>
<td><strong>B</strong></td>
<td><strong>s.e.</strong></td>
</tr>
<tr>
<td>Violation of rules 1</td>
<td>1.139 **</td>
<td>0.464</td>
<td>1.312 *</td>
</tr>
<tr>
<td>Own seriousness 1</td>
<td>1.832 *</td>
<td>0.521</td>
<td>2.814 ***</td>
</tr>
<tr>
<td>Expected discipline 1</td>
<td>0.990 **</td>
<td>0.303</td>
<td>0.855 **</td>
</tr>
<tr>
<td>Others' reporting 1</td>
<td>3.659 ***</td>
<td>0.344</td>
<td>4.053 ***</td>
</tr>
<tr>
<td>Length of service 1</td>
<td>0.000</td>
<td>0.878</td>
<td>0.081</td>
</tr>
<tr>
<td>Less than 2 Years</td>
<td>-0.639</td>
<td>0.819</td>
<td>-0.382</td>
</tr>
<tr>
<td>3-10 Years</td>
<td>-0.002</td>
<td>0.878</td>
<td>-0.081</td>
</tr>
<tr>
<td>Rank 2</td>
<td>0.038</td>
<td>0.592</td>
<td>-0.350</td>
</tr>
<tr>
<td>Constable</td>
<td>0.452</td>
<td>0.525</td>
<td>-0.165</td>
</tr>
<tr>
<td>Sergeant</td>
<td>0.149</td>
<td>0.479</td>
<td>0.377</td>
</tr>
<tr>
<td>Warrant Officer</td>
<td>-3.118</td>
<td>0.931</td>
<td>-4.123</td>
</tr>
<tr>
<td>Constant</td>
<td>0.632</td>
<td>0.634</td>
<td>0.710</td>
</tr>
<tr>
<td><strong>Pseudo R²</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Scenario 9</th>
<th>Scenario 10</th>
<th>Scenario 11</th>
<th>Scenario 12</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B</strong></td>
<td><strong>s.e.</strong></td>
<td><strong>B</strong></td>
<td><strong>s.e.</strong></td>
</tr>
<tr>
<td>Violation of rules 1</td>
<td>1.265</td>
<td>0.489</td>
<td>1.279 *</td>
</tr>
<tr>
<td>Own seriousness 1</td>
<td>1.821 ***</td>
<td>0.471</td>
<td>2.699 ***</td>
</tr>
<tr>
<td>Expected discipline 1</td>
<td>1.109 ***</td>
<td>0.274</td>
<td>1.305 ***</td>
</tr>
<tr>
<td>Others' reporting 1</td>
<td>3.601</td>
<td>0.338</td>
<td>3.912 ***</td>
</tr>
<tr>
<td>Length of service 1</td>
<td>0.720</td>
<td>0.729</td>
<td>-0.860</td>
</tr>
<tr>
<td>Less than 2 Years</td>
<td>0.888</td>
<td>0.758</td>
<td>0.102</td>
</tr>
<tr>
<td>3-10 Years</td>
<td>-0.414</td>
<td>0.519</td>
<td>-1.180</td>
</tr>
<tr>
<td>Rank 2</td>
<td>-0.206</td>
<td>0.418</td>
<td>0.452</td>
</tr>
<tr>
<td>Constable</td>
<td>-0.708</td>
<td>0.387</td>
<td>-0.413</td>
</tr>
<tr>
<td>Sergeant</td>
<td>-4.106</td>
<td>0.931</td>
<td>-3.031</td>
</tr>
<tr>
<td>Warrant Officer</td>
<td>0.590</td>
<td>0.609</td>
<td>0.525</td>
</tr>
<tr>
<td><strong>Pseudo R²</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Scenario 13</th>
<th>Scenario 14</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B</strong></td>
<td><strong>s.e.</strong></td>
</tr>
<tr>
<td>Violation of rules 1</td>
<td>1.578 *</td>
</tr>
<tr>
<td>Own seriousness 1</td>
<td>0.721</td>
</tr>
<tr>
<td>Expected discipline 1</td>
<td>-0.489</td>
</tr>
<tr>
<td>Others' reporting 1</td>
<td>4.183 ***</td>
</tr>
<tr>
<td>Length of service 1</td>
<td>0.513</td>
</tr>
<tr>
<td>Less than 2 Years</td>
<td>1.660</td>
</tr>
<tr>
<td>3-10 Years</td>
<td>-2.121</td>
</tr>
<tr>
<td>Rank 2</td>
<td>0.809</td>
</tr>
<tr>
<td>Constable</td>
<td>0.865</td>
</tr>
<tr>
<td>Sergeant</td>
<td>0.963</td>
</tr>
<tr>
<td>Warrant Officer</td>
<td>-2.121</td>
</tr>
<tr>
<td>Constant</td>
<td>0.526</td>
</tr>
<tr>
<td><strong>Pseudo R²</strong></td>
<td></td>
</tr>
</tbody>
</table>

*p < 0.05; **p < 0.01; ***p < 0.001

1. The dependent variable is coded as follows: 0 = no; 1 = yes.
2. Violation of rules is coded as follows: 0 = no; 1 = yes.
3. Own seriousness is coded as follows: 0 = not serious; 1 = serious.
4. Expected discipline is coded as follows: 0 = none or verbal reprimand; 1 = written reprimand or more severe discipline.
4b. Because of the small percentage of the respondents selecting either “no discipline” or “verbal reprimand” (below 20 percent) we reclassified the variable expected discipline for several scenarios as follows: 0 = none, verbal reprimand, or written reprimand; 1 = suspension or more severe discipline.
5. Other’s reporting is coded as follows: 0 = no; 1 = yes.
6. Length of service is coded as follows: 0 = above 10 years; 1 = 2 years or less; 2 = 3-10 years.
7. Rank is coded as follows: 0 = Lt. or higher; 1= Constable; 2 = Sgt.; 3 = Warrant Officer.
MULTIVARIATE MODELS OF THE CODE OF SILENCE

To further explore the code of silence, we used the logistic regression analysis (see Table 2). The dependent variable in each of the logistic regressions (see Table 2) was the respondents’ own willingness to report. The independent variables were the respondents’ perceptions of whether the behaviour violates official rules, perceptions of behaviour seriousness, expected discipline, and estimates of others’ adherence to the code of silence. In addition, we related the respondents’ length of service and rank to their expressed willingness to report misconduct. We excluded the respondents’ views about the appropriate discipline because of the multi-collinearity issues.

The multivariate analyses show that the respondents’ evaluations of rule-violating behaviour, evaluations of behaviour seriousness, expected discipline, and estimates of others’ willingness to report are the key explanatory variables in most of the models (see Table 2). The respondents’ estimates of others’ willingness to report were related to their own expressed willingness to report in all 14 scenarios; depending on the scenario, the odds that the respondents who thought that others would report said that they would report the described misconduct themselves are 5.29 (Scenario 2) to 492 times higher (Scenario 4) than those of the respondents who thought that others would not report (Table 2).

Perceptions of seriousness evaluations were significant in 13 out of 14 scenarios (Table 2). Depending on the scenario, the odds that the respondents who evaluated these behaviours as more serious would say that they would report misconduct are 3.16 (Scenario 12) to 47.46 (Scenario 4) times higher than those of the respondents who evaluated the scenarios as less serious. Similarly, the respondents’ evaluations of behaviour as rule violating, as well as the severity of the expected discipline, were statistically significant in 12 out of 14 scenarios (Table 2). Depending on the scenario, the odds that the respondents who evaluated the behaviour as rule violating would say that they would report misconduct are 2.79 (Scenario 2) to 13.85 (Scenario 1) times higher than those of the respondents who did not evaluate the behaviour as rule violating. Finally, depending on the scenario, the odds that the respondents who expected more severe discipline would say that they would report misconduct are 2.12 (Scenario 14) to 9.42 (Scenario 4) times higher than those of the respondents who expected less severe discipline.

Lastly, out of the two demographic variables included in the models, length of service was not statistically significant in any of the 14 scenarios (see Table 2). Rank was not statistically significant overall, but it turned out to be significant for three scenarios (Scenario 7, Scenario 11 and Scenario 12) and for a very limited number of comparisons.

CONCLUSION

The post-apartheid government has started a complex process of transforming the SAPS. Although the reforms have been evaluated as successful overall,51 the results of the public opinion polls and existing research can be interpreted as an indication that the control of police misconduct could be substantially enhanced. The South African public has, after all, evaluated the SAPS as the second most corrupt public service department in the country.52 Bheki Cele had, at the time of writing, been suspended pending corruption charges53 and Jackie Selebi, the preceding police commissioner, was convicted to 15 years of imprisonment.54

Our prior research55 detected the presence of a strong code of silence among our respondents. A strong minority of our respondents, mostly police supervisors in the SAPS, adhered to the code and was not willing to report even the most serious forms of police corruption. At least one out of four supervisors would allow police bribery, theft from a crime scene, and theft of money from a found wallet to continue without reporting it.

The results of our 2010/2011 national survey provide further evidence of the presence of the code of silence covering various forms of police
misconduct. At least one quarter of the respondents would protect a fellow officer who verbally abused citizens, who covered up police DUI accident, who accepted gratuities, and who failed to react to graffiti. At least one out of eight police officers showed willingness to cover up internal corruption, striking a prisoner, a kickback, a false report on drug possession, and protection of a hate crime.

According to our results, the respondents’ willingness to adhere to the code of silence was directly related to their estimates of whether other police officers in their agency would also protect such behaviour in silence. This result is in accordance with our analysis of the 2005 data. On the other hand, the respondents’ estimates of rule violations, perceptions of seriousness, and expected discipline turned out to be related to their expressed willingness to say that they would report misconduct.

The finding that the expected discipline matters is a novel one; the analysis of our 2005 data showed that the expected discipline carried little weight on the respondents’ expressed willingness to report. We assumed that this was the case because the respondents expected no discipline or very mild discipline. Although the respondents participating in the 2010/2011 survey did not expect severe discipline either, recent events – the conviction of Jackie Selebi and the suspension of Bheki Cele – may indicate that the likelihood of discovery of police misconduct may be increasing and thus potentially, more weight should be attached to the police agency’s reaction to police misconduct. If police commissioners are not attached to the police agency’s reaction to police misconduct, they may very well not be immune either – a discovery of police misconduct may be increasing outside of the reach of the official system, police misconduct. If police commissioners are not attached to the police agency’s reaction to police misconduct and thus potentially, more weight should be given to their expressed willingness to say that they would report misconduct.

To comment on this article visit http://www.issafrica.org/sacq.php

NOTES

7. Ibid.
9. Ibid.
12. Ibid.
13. Ibid.


32. Staff Reporters, A National Embarrassment – Selebi gets 15 years as actions ruled ‘incomprehensible’, The Star, 4 August 2010.


41. Ibid, 24.


43. Newham and Faull, Protector or predator? Tackling police corruption in South Africa.

44. Klockars et al., The contours of police integrity.


49. Ibid.

50. Ibid.


52. Van Vuuren, Small Bribes, Big Challenge: Extent And Nature Of Petty Corruption In South Africa.


54. A National Embarrassment – Selebi gets 15 years as actions ruled ‘incomprehensible’, The Star.


56. Ibid.

57. Ibid.

58. Ibid.
In this response to Duncan Breen and Juan Nel’s article on the need for legislation to enhance the sentences imposed on those convicted of hate crime, we draw on the international literature and our own research on racially motivated offending to argue that South Africa ought to adopt a more circumspect approach than the UK and the USA if it wishes to deal effectively with this kind of offending. We also warn that hate crime law brings with it some significant and undesirable unintended consequences for those it is meant to protect.

**LEAPING**

In the December 2011 issue of *South African Crime Quarterly*, Duncan Breen and Juan Nel made the case for introducing new legislation to address ‘the apparent scourge of hate and bias-motivated crimes.’ They argue that, notwithstanding the constitutional vision of South Africans as a people ‘united in ... diversity,’ the country continues to experience ‘ongoing patterns of crimes specifically targeting people on the basis of their race, nationality, religion, sexual orientation or other such factors.’ Breen and Nel explain that what are known internationally as hate crimes ‘undermine social cohesion and have been shown to have an especially traumatic impact on victims.’ Notwithstanding a battery of recent legislation to combat discrimination, they argue that South Africa lacks law ‘specifically tailored to address’ this issue. Consequently, they endorse the Department of Justice and Constitutional Development’s (DoCJD) plans to bring forward legislation in order ‘to strengthen the role of police and justice officials in holding [hate crime] perpetrators accountable and as a result send a clear message to society that such crimes will not be tolerated.’

When it comes to the detail of the legislation, Breen and Nel remain open-minded about which of two ‘legal models of hate crime legislation’ – the ‘hostility’ model or a more expansive ‘discriminatory selection model’ – South Africa should adopt, warning that ‘careful consideration’ would have to be given to ‘past, present and future trends of hate crime’ before taking a decision one way or the other. Whichever of these two models were to be adopted, an important decision would have to be taken about the characteristics to be given legislative protection. Here Breen and Nel take the constitutional prohibition of discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion,
conscience, belief, culture, language and birth contained in section 9(4) of the Bill of Rights as a starting point. But they suggest that some additional characteristics, such as gender identity and expression and HIV status also merit protection. Finally they reserve judgement on how best to achieve the objective of punishing hate crimes more severely either by creating new substantive offences or providing for evidence of the presence of 'hate' or 'bias' to be treated as an aggravating circumstance in sentencing for existing ones (or, even, as has been done in England and Wales, by combining both approaches).8

LOOKING

Breen and Nel cite, in passing, what is probably the most celebrated book-length critique of sentence-enhancement laws, Jacobs and Potter’s Hate Crimes: Criminal Law and Identity Politics, but they give no sense of either the extent or the asperity of what is often referred to as ‘the hate debate’.9 In response, we urge the DoJCD and civil society supporters of further law-making to take stock of several key elements of this debate. Breen and Nel also take great care not to make exaggerated claims about the extent of the hate crime problem in contemporary South Africa. They call for more data to be collected before either of the legal models – ‘hostility’ or ‘discriminatory selection’ – is adopted.10 We endorse this approach. But, based on our own research on racially motivated offenders in the UK and our reading of the international literature, we anticipate that data of this kind are likely to raise further doubts about whether legislation is either a necessary or a sufficient response to hate or bias-motivated offending.

Do hate crimes hurt more?

One area of uncertainty surrounding hate crimes anywhere is whether, as Breen and Nel claim, they have an ‘especially traumatic effect on victims’.11 Or, to put it more broadly, do ‘hate crimes hurt more’ than crimes that are not motivated in this way?12 Opinion is divided on this point. Some studies suggest that victims of hate crime suffer greater psychological trauma than those who have experienced other forms of crime.13 Other scholars struggle to identify enough reliable data to support the view that hate crimes have a qualitatively different impact on their victims.14 Persuasive evidence of greater hurt being caused by hate crimes might justify stiffer punishment on retributive grounds. But it is worth remembering the lessons of South Africa’s past here and how the desire for retribution, however understandable, may bring with it a risk of exacerbating conflicts with deep historical roots. It is also the case that, as many survivors of sexual assault – a hate crime that is rarely recognised as such – have long argued, the traumatic effects of violence may more readily be alleviated by providing better support, understanding, security and aftercare to those who have experienced it than by punishing the minority of offenders who are successfully prosecuted more severely.

Improving professional practice?

Another line of argument implicit in Breen and Nel’s article is that hate crime legislation is needed to encourage police, prosecutors, judicial officers and other professionals to recognise this kind of offending for what it is, treat it seriously and respond to victims appropriately. Here again there are good reasons to be sceptical about the connection between legislation, the development of ‘related service provider guidelines’ and observable improvements in official responses to hate crimes and their victims.15

In reality, recording and other official practices in relation to hate crime can be improved without passing new legislation. For example, the critical factor in sensitising the police in England and Wales to the problem of racially motivated crime and improving recording practices was not the creation of a new category of racially aggravated offences under the Crime and Disorder Act 1998, but the recommendation contained in the report of an inquiry into the murder of a black teenager, Stephen Lawrence, that the police should adopt a subjective definition of a racist incident as ‘any incident which is perceived to be racist by the
that the “symbolism” of law is mobilised in the drive to ‘condemn violating behaviours’:
'introducing hate crime legislation will send a clear message that hate will not be tolerated'.
We have discussed the notion that hate crimes are 'message' crimes to which society needs to respond, using the criminal law, elsewhere. So we will add only a few comments here with South Africa's situation specifically in mind.

Unlike the British, who live in a country with a famously unwritten non-constitution, few South Africans can be in much doubt about their society's foundational values. It follows then that hate crime legislation can do no more than add force to the already unambiguous statements contained in the preamble to the Constitution and the equality provisions of section 9. It also follows that, insofar as any new law would only enhance the punishment attached to conduct that is already sanctioned as a crime, the additional deterrent effects of that punishment are likely to be marginal, far outweighed by those resulting from the institution of criminal law itself and potentially negated by inefficiency and delay in enforcement.

But what of the denunciatory message of hate crime legislation that Breen and Nel seem to have uppermost in their minds? The evidence we collected from potential members of the target audience for this kind of message in England suggests that what civil society hears is not necessarily what the legislature intends. Very few people pay much attention to the fine detail of court reports and, when they do, whether they believe what they are told depends on their assessment of the credibility of the medium and their own life experiences. So, when, in our own research, we discussed a local newspaper story about the prison sentences imposed on three brothers for a racially aggravated attack on a Turkish man with a group of young white British offenders, their reactions ranged from thinly disguised approval for what the brothers had done, to attempts to explain how an apparently unprovoked assault might be an understandable reaction to a chance remark or a 'funny look', particularly if the assailants had been drinking. Victim-blaming was paramount.

South Africa's experience with legislative innovation in other areas provides further grounds for caution. At a recent conference organised by the Institute for Security Studies, Stefanie Röhrs presented findings from a recent study of the implementation of the Sexual Offences Act 32 of 2007. Based on 27 interviews with police officers and data on 131 rape survivors, Röhrs and her colleagues found that service delivery by the South African Police Service routinely failed to meet the standards set out in the new law. Similarly, and more instructively for those who want to enhance the sentences imposed by the courts on hate crime offenders, the impact on judicial behaviour of the mandatory and minimum sentencing provisions of the Criminal Law Amendment Act 105 of 1997 have been much debated and found to be less significant than legislators might have hoped. Sloth Nielsen and Ehlers, for example, come to the conclusion that the legislation had not brought more consistency to the sentencing of those convicted of the most serious offences, nor had it succeeded in its wider aim of reducing levels of serious and violent crime.

Sending a message?

In the conclusion to their article, Breen and Nel indicate that what is of the 'utmost importance' is victim or any other person. Indeed, experience in England and Wales and various jurisdictions in the United States suggests that the police are often reluctant to enforce sentence-enhancing hate crime legislation that runs counter to deeply ingrained cultural prejudices, and compels them to make difficult judgements about offender motivations in what may turn out to be politically and ethically charged situations. Whether the South African Police Service will prove more amenable is doubtful if Steinberg is correct in arguing that the xenophobic violence of May 2008 was in many ways a re-enactment of police action:

[W]hen the mobs sang of foreigners stealing jobs, houses and women, their distinctive language, which equated the use of urban goods by foreigners with crime, was borrowed from a decade of observing police action.

But what of the denunciatory message of hate crime legislation that Breen and Nel seem to have uppermost in their minds? The evidence we collected from potential members of the target audience for this kind of message in England suggests that what civil society hears is not necessarily what the legislature intends. Very few people pay much attention to the fine detail of court reports and, when they do, whether they believe what they are told depends on their assessment of the credibility of the medium and their own life experiences. So, when, in our own research, we discussed a local newspaper story about the prison sentences imposed on three brothers for a racially aggravated attack on a Turkish man with a group of young white British offenders, their reactions ranged from thinly disguised approval for what the brothers had done, to attempts to explain how an apparently unprovoked assault might be an understandable reaction to a chance remark or a 'funny look', particularly if the assailants had been drinking. Victim-blaming was paramount.
No less problematic in the context of the denunciatory effects of hate crime legislation are the terms in which it is framed. Valerie Jenness captures the problem well:

Hate crime laws are written in a way that elides the historical basis and meanings of such crimes by translating specific categories of persons (such as Blacks, Jews, gays and lesbians, Mexicans etc.) into all-encompassing and seemingly neutral categories (such as race, religion, sexual orientation and national origin). In doing so, the laws do not offer these groups any remedies or protections that are not simultaneously available to all other races, religions, genders, sexual orientations, nationalities and so on. Minorities are treated the same as their counterparts.26

The implications for South Africa of what Jenness calls the ‘norm of sameness’ are easy to imagine. Controversies over so-called ‘farm attacks’ and suburban robberies, not to mention the claims to victimhood advanced by Brandon Huntley, the self-styled white refugee who sought shelter in Canada, give some indication of how hate crime legislation might further inflame a national debate about crime that is already over-heated and racially charged. There is also a danger that resentful locals, encouraged by populist politicians, might seek to interpret offences committed by foreign nationals against South Africans as hate crimes perpetrated by malevolent makwerekwere.

Unintended consequences

It is at this point that we begin to stray into the unintended consequences of hate crime legislation; for unintended consequences there will surely be. In the United States, for example, ‘laws appear to be contributing to increased penalties against African Americans, one of the groups they were designed to protect’.27 Similarly, in England and Wales, we found that the hate crime provisions of the Crime and Disorder Act 1998 were often used by the police against multiply disadvantaged people, including members of minority ethnic groups.28

The use of hate crime laws against minorities and other relatively disadvantaged groups raises a wider problem that Breen and Nel are anxious to avoid: the creation of what they call a “‘prejudice hierarchy”, where some experiences are valued over others’.29 Unfortunately, this is an almost inevitable consequence of selecting certain characteristics – ‘race’, ethnicity, nationality, sexual orientation and so on – for protection under hate crime laws while ignoring others. Precisely which characteristics should be protected, and the somewhat arbitrary way in which these matters are decided, has been much discussed in the literature, with one critic, having considered the ‘hurt’ caused by unacknowledged ‘hate crimes’ against the homeless and high school ‘geeks’, suggesting that:

... there are forms of crime not picked out by our current conception of hate crimes which are structurally similar and as morally serious as the crimes we currently recognise as bias crimes.30

Some US states have sought to address such concerns by extending protection to homeless people,31 and a British judge has recently expressed the view that attacking two young Goths solely because of their unusual appearance was a ‘serious aggravating feature’.32 It was, he said, equivalent to ‘other hate crimes where people of different races, religions or sexual orientation are attacked because they are different’. Meanwhile other US states, with more conservative electorates, continue to refuse to recognise sexual orientation as a protected characteristic.33

Only time will tell if the ‘balkanisation’ argument advanced by Jacobs and Potter in the United States presents a real danger, but there are undeniable risks associated with encouraging people to think of themselves as ‘black’ or ‘white’, ‘coloured’ or ‘Indian’, ‘gay’ or ‘straight’ in a society still struggling to ‘heal the divisions of the past’ (as the preamble to the Constitution has it). While such cases are relatively rare, there have been occasions in the British courts when those passing sentence have had to mediate what Freud memorably called the ‘narcissism of minor
differences.\textsuperscript{34} In \textit{R v White}, for example, a man born in the West Indies who self-identified as African was convicted of a racially aggravated offence after he called a bus conductress of Sierra Leonean origin an ‘African bitch’.\textsuperscript{35} Similarly, in our own research, we encountered a woman of mixed heritage who had been put on probation for a ‘racially aggravated assault’ on four male shop-workers she had referred to as ‘Pakis’ after they had called her a ‘dirty lesbian’.

\section*{CONCLUSION}

In contemplating the prospect of hate crime legislation South Africa finds itself in the position of someone who has already had a few drinks but is considering ‘just one more for the road’: Passing a new law, or emptying that final glass, can seem a good idea at the time; but the longer term effects may give cause for regret. If South Africa is not to suffer from an unpleasant legislative hangover, now is the time to pause for thought. As we have tried to show, law-making may prove to be neither a necessary nor a sufficient response to the problem of hate crime. And it may have some very undesirable unintended consequences too.

As Barbara Perry, a North American criminologist by no means unsympathetic to the case for hate crime legislation, has observed:

\begin{quote}
[T]he past two decades of the 20th century saw a flurry of hate crime legislation and other state activities, none of which have had an appreciable effect on the frequency or, certainly, the severity of hate crime. Such initiatives are insufficient responses to bias-motivated violence in that they do not touch the underlying structures that support hate crime.\textsuperscript{36}
\end{quote}

Hate crime legislation might see some of those who attack foreign nationals or rape lesbian women languishing behind bars for longer. But it would do nothing to relieve the multiple deprivations suffered by the residents of Diepsloot and Du Noon – South Africans and ‘foreigners’ alike – or deal with the homophobia, misogyny, racism and embattled masculinity implicated in incidents of ‘corrective’ or ‘curative’ rape.\textsuperscript{37}

\section*{NOTES}

4. Ibid.
6. Ibid.
7. Breen and Nel, South Africa – a home for all?, 34-5.
9. Ibid.
11. Breen and Nel, South Africa – a home for all?, 33, 35.
13. A standard citation here is P Iganski, Hate crimes hurt more, \textit{American Behavioral Scientist}, 45(4) (2001), 626-638.


24. See Gadd and Dixon, *Losing the Race*, 96-7, for further discussion of these points.


32. Quoted by Lord Judge CJ in *R v Ryan Herbert and Others*, [2009] 2 Cr App R (S) 9, para. 20. And see J Garland, The victimisation of goths and the boundaries of hate crime, in N Chakrabarti, *Hate Crime*. Goths are members of a distinctive sub-culture readily identifiable by their hair, make-up and clothing.


35. [2001] 1 WLR 1352 (CA).


The use of credit cards has become a way of life in many parts of the world. Today, credit cards are used like cash. All credit cards have one thing in common, namely that the bearer can obtain something of value simply by presenting the card. However, credit card fraud results in high losses both for the banking industry and consumers, and seems to be increasing. According to the South African Banking Risk Intelligence Centre (SABRIC), financial losses resulting from credit card fraud increased by 53% between 2010 and 2011. Total losses to the sector amounted to R403,15 million, an increase from 2010 of R263,8 million. The high rate of card fraud perpetrated should thus be a major concern for establishments accepting credit cards, the banking industry, and especially for individual users.

AN OVERVIEW

Credit card fraud takes many forms, from ‘thieves using stolen credit cards to buy goods, to the greater, more sophisticated problem of criminals altering security features’. According to Snyman, fraud is defined as the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another. Despite a host of hi-tech anti-fraud measures, the battle against fraud continues as criminals continue to ‘poke and prod at the card industry’s weak spots’. In the early days of the card industry, card fraud was a crime of opportunity, originating from a sales slip found in a dustbin or a card found in a lost or stolen wallet. An example from case law can be found in S v Salcedo (2003) where the accused committed credit card fraud by picking up a credit card that had fallen out of the account holder’s pocket in a mall and going on a spending spree the same day. The accused was convicted on nine counts of fraud and sentenced to six months imprisonment on each count. Since then the crime of credit card fraud has evolved into a highly organised business that reaches around the world.
When a person receives a credit card from the bank s/he enters into a legal relationship with the bank. Van der Bijl states that ‘the legal relationship between the parties to the credit card agreement is regulated by the contract itself, the general principles of contract law and the National Credit Act 34 of 2005.’ The Act provides that the cardholder bears all the risks for unauthorised transactions until the issuer is informed, whereafter the issuer will bear the loss. With regards to the ‘unauthorised use of the original credit card and alleged unfair contractual terms’ in a leading case of Diners Club SA (Pty) Ltd v Singh and another,10 the account holder was found guilty for authorising certain transactions that occurred with his card in London. The case discussed ‘numerous issues surrounding the encryption of the pin and the possibility of the card being cloned.’ The court ruled that an original card and pin were used to perpetrate the fraud and not a duplicate card. The court was however critical of the risk specific to the contract, in that it was one-sided and favoured the issuer, so that the risk of wrongful use is placed on the customer.11

Different types of credit card fraud exist, ranging from counterfeit card fraud to lost and stolen card fraud. ‘Lost and stolen card fraud is opportunistic and can be controlled by precautionary measures being adopted by cardholders, whilst counterfeit card fraud involves a number of technological fraud types such as cloned cards, altering of information on the magnetic stripe and the re-embossing of details onto cards.’ Credit card fraud does not exist in a vacuum. Often credit card fraud is ‘linked with other crimes, such as burglary, mail theft and organised crime’.

**TYPES OF CREDIT CARD FRAUD**

**Fraud with stolen and lost credit cards**

Fraud with stolen and lost credit cards is the most common type of credit card fraud and involves the ‘theft of genuine card details that are used to make a purchase through a remote channel such as the phone, fax, mail order or the Internet,’ and/or by presenting the card at a till point. Combined, these two categories constituted the highest percentage card fraud incidents in South Africa in 2007/2008 (68%). It further constituted the highest card fraud losses in South Africa on RSA issued cards year on year between 2005 and 2008 (57,1m in 2005/2006, R122,9m in 2006/2007, R150m in 2007/2008 and R33,1m in 2008/2009).15

However, according to SABRIC, the use of this fraud type decreased by 60% in 2010. This was attributed to the roll out of the chip-and-pin card, which requires a person to enter a pin code when transacting with the card. The South African Police Service (SAPS) Annual Report for the period 2010/2011 shows that a total of 339 cases were recorded in this category with an actual loss of R22 599 546 (a substantial decrease since 2007/8). As with counterfeit card fraud, the legitimate card holder may not be aware of this fraud until they check their bank statements. To counter this, banks, for example First National Bank, have started to send out sms alerts to account holders’ mobile phones and e-mail addresses whenever a transaction is made.

**Counterfeit card fraud**

Counterfeit card fraud involves a card that has been illegally manufactured from information stolen from a magnetic strip of a genuinely issued card. In other cases, lost and stolen cards and old cards are encoded with information stolen from a genuine card for the purposes of committing counterfeit card fraud. The information needed for counterfeit card fraud is usually stolen through ‘skimming’ a genuine card. Van der Bijl states that ‘skimming entails that the magnetic strip on the back of the card is copied using a hand held card reader.’ Skimming can also be perpetrated by concealing a ‘skimming device in the card slot of an ATM which results in the recording of data of all cards accessing the specific ATM as well as recording the secret pin code of the card.’ According to the SAPS training manual on credit card fraud, ‘skimming normally occurs at retail outlets, particularly at
bars, restaurants and petrol stations where a corrupt employee skims a customer’s card before handing it back.\textsuperscript{21}

The year on year percentage growth of counterfeit card fraud has remained fairly constant since 2005/2006 (at an average annual growth rate of between 15\% and 21\%).\textsuperscript{22} This is an indication that counter measures, such as card awareness campaigns, merchant training and joint operations between SAPS and the card industry have not been successful. In addition the problem points to the security weakness of magnetic stripe, as the data they store can be copied. According to SABRIC, losses through this type of fraud for the year October 2009 to September 2010 amounted to R141,4 million\textsuperscript{23} and statistics for the period September 2010 to October 2011 show losses amounting to a staggering R176 million and ‘accounts for 57,2\% of overall losses to the banking sector’.\textsuperscript{24} The SAPS Annual Report 2010/2011 records a total of 4 059 cases received for this category of fraud, for which 308 suspects were arrested, resulting in an actual loss of R118 053 534.\textsuperscript{25} The discrepancy between the SAPS and SABRIC figures in the opinion of the author may be a consequence of the fact, that only cases in which suspects are identified (308 in this case) are reported to the SAPS. In addition, cardholders who are victims report their cases to the banks and hold the bank accountable for the fraud. The banks reimburse the clients and do not pursue the case nor report it to the SAPS.

\section*{Card not present fraud}

Card not present fraud ‘denotes a fraudulent transaction that occurs when the card, the card holder or the merchant representative is not present at the time of the transaction which is made online or via the telephone’.\textsuperscript{26} This means that:

\begin{itemize}
  \item The merchants are unable to check the physical security features of the card to determine if it’s genuine
  \item Without a signature or a pin it is not easy to confirm that the customer is the genuine card holder
  \item Card issuers cannot guarantee that the information provided in a card not present environment relates to the genuine card holder.
\end{itemize}

This fraud type has increased at the rate of approximately 50\% year on year since 2005/6; from R6,5m in 2005/06, to R12,8m in 2006/07, to R21,3m in 2007/08, to R30,9m in 2008/09 and amounting to R80,9m in 2009/2010.\textsuperscript{27} According to SABRIC this fraud type ‘increased by 77\% in 2011 and is the second most prevalent form of [credit card] fraud’.\textsuperscript{28} Losses amounted to R142,8 million in 2011.\textsuperscript{29} The ease and frequency with which on-line and telephonic purchases can be made contribute to the increase in the prevalence of this form of fraud. Internet and telephonic transactions provide anonymity, making it possible for the fraud to be perpetrated without fear of arrest. Online purchases may be done at internet cafes, and telephonic purchases at public phone booths, making it difficult to trace perpetrators.

The year-on-year growth in the extent of financial losses suffered by the banking industry indicates that no counter measures have been effective in reducing this kind of card fraud.

\section*{MEASURES TO SECURE CREDIT CARDS}

Over the past 25 years there has been a constant race between the credit card industry developing new security features to deter counterfeiting, and criminals working hard to compromise the technology and manufacture counterfeit cards. The discussion that follows shows two types of VISA credit cards, indicating the different security features and where they are located. The security features endorsed on the cards have been in effect worldwide since May 2006.

The Visa Mini Dove Hologram and Visa Dove Hologram are among the most prominent features on the front of a credit card. Rapp explains that ‘holograms are small metallic oblongs, containing a laser-etched image on their surface’.\textsuperscript{30} The image changes shape and colour depending on the
viewing angle, and is very difficult to forge. The Visa mini dove hologram appears on the back of the card (see Figure 1) whilst the Visa dove hologram appears on the front of the card (see Figure 2). The design is three dimensional. The last four digits of the embossed account number are incorporated in the hologram.33

Very few counterfeit holograms have actually been used.34 In most cases of counterfeit cards, the hologram is not a hologram but a look-a-like item that is reflective rather than refractive. Holograms are refractive, that is, the item in the hologram appears to actually move, whereas a reflective item is only a photo on a reflective material. Forged holograms have included printed images, using a variety of materials and inks. Some have used plain foils and/or diffraction grating foils.35 Fraudulent holograms comprise flat images of a dove which includes no movement or colour change. This is one way in which vendors can determine whether a card presented for payment is a genuine card or one that has been forged.

Of equal prominence is the embossed or printed account number. 'Embossing is the oldest security or identification technique for marking payment or ID cards in machine readable form.'36 The account number must appear clear, clean, and uniform in size and spacing. The four digit number printed below the embossed account number must match exactly with the four digits of the account number. Both must begin with a '4'.

A feature that cannot be viewed with the naked eye is the ultra violet feature. This is found on the Visa logo and on the signature panel. (See Figures 1 and 2.) Criminals do not interfere with this security feature because they are unaware of its existence.37 Rapp states that 'some cheques and credit cards have images or symbols printed in ultraviolet ink.'38 These are invisible to the naked eye in normal light, but show up very clearly under ultraviolet light. The Ultra Violet V, found in the VISA brand mark, is such an example. The Ultra Violet V is 'visible over the Visa Brand Mark when placed under an ultra violet light.'39
Another highly visible feature is the pre-printed bin situated below the first four digits of the embossed account number, which shows the issuing bank’s identification number. In Figure 1 it is referred to as ‘Four-Digit number’ and in Figure 2 ‘printed first 4 digits of account number’. This is a four digit printed number that matches the first four digits of the embossed account number. If the two numbers do not match, the card has been altered or is a counterfeit.

Affixed to the back of the card is a stripe of magnetic tape, which contains essential cardholder and account information. The magnetic stripe can store about 130 characters or numbers. It allows a transaction to be processed when it is read at an electronic point of sale at a merchant by ‘swiping it across a reading head, either manually or automatically’. The information includes the account number and expiry date, which must correspond with those embossed on the face of the card. Although it is technically possible to remove a magnetic stripe from a card and replace it with another, or re-record over it, in practice it is uneconomical.

Below the magnetic stripe is the signature panel, which contains an ultra violet element that repeats the word VISA.

Chemical eradicators have allowed some card criminals to remove the legitimate signature from a stolen or lost card and substitute their own. This made it necessary ‘to over print a signature strip with a light coloured pattern using a special ink that would change colour when it came in contact with ink eradicator’. The ink will also rub off if any attempts are made to remove the signature with a rubber eraser. If an attempt is made to erase the signature panel the word ‘VOID’ will be displayed. The three digit Card Verification Value 2 (CVV2) are reverse-italic, indented printed numbers which must appear in a white box to the right of the signature panel or on the signature panel. Part of this number is an ‘algorithmically calculation which the issuer can verify as genuine’. The value can be checked when a merchant is required to refer to the issuer of an account for authorisation of a transaction where an electronic approval is not available or permissible. See Figure 1.

Figure 2

Source: Visa Merchant Quick Guide 2006
The high rate of credit card fraud has prompted the various card associations to develop new technology in an attempt to try and curb the counterfeiting of credit cards. Magnetic stripe technology has proven to be vulnerable and now, after ‘more than 30 years of providing security the magnetic stripe is to be replaced with new technology, namely the microchip’. Cards now have an embedded integrated circuit or microchip, which is found on the left side of the card above the embossed or printed account number (see figure 2). The card has electronic logic to store data, and in some cases, a microprocessor that can process data. Also known as a ‘smart card’ or ‘relationship card’, it can be ‘contact’ (activated when terminals touch a smart card reader) or ‘contactless’ (activated by radio waves when passed near a transmitter). The type of chip cards currently used range from fairly simple memory devices to sophisticated microprocessors. The latest generation of chip cards contain a microprocessor, a liquid crystal display and a power source, which enable the card to be used independently of a card reader.

**PREVENTATIVE COUNTER-MEASURES**

The vulnerability of the magnetic strip to skimming has resulted in banks replacing this technology with chip-and-pin technology. The chip-and-pin technology has so far proved successful in countries such as the United Kingdom, where total counterfeit card fraud decreased by 32% in the past two years. In South Africa not all cards will have the chip-and-pin feature because not all merchants have the systems installed to support chip-and-pin cards. This means that magnetic stripe technology will remain in use for some years to come.

Banks in South Africa have, however, deployed sophisticated IT programmes that help to detect, prevent and reduce bank card fraud. Examples include SMS confirmation of transactions, the implementation of authorisation parameters and thresholds, and forensic investigations. These measures are, however, reactive and banks should consider an intelligence-led approach to combating card fraud. However, in order for this approach to be successful it requires co-operation between SAPS and the banks. This approach requires a combined use of crime analysis and criminal intelligence in order to determine crime reduction tactics.

The launch of the on-line verification system, a joint initiative between the Department of Home Affairs and SABRIC, on 8 November 2011 allows banks access to the Home Affairs National Identification System to verify the identity of prospective and current clients, using their fingerprints. This tool provides an added benefit to the bank client in that it offers the banks a second layer of confirmation that the persons presenting identity documents are indeed who they purport to be.

**CONCLUSION**

Credit card fraud has been committed since credit cards were first introduced; however, modern technology has increased the ways in which it can be committed. Criminals see the card industry as a lucrative business that can be exploited by the use of technology. To counter the problem, credit card companies constantly review security features and measures that are applied to cards and devote considerable resources to the maintenance of security systems and programming.

There are numerous challenges to dealing with credit card fraud, particularly since transactions do not require the physical presence of seller and purchaser. The establishment of a dedicated joint working group consisting of members from the Commercial Crimes branch in the SAPS, the Asset Forfeiture Unit, and banks, in addressing card fraud, may provide the tonic in addressing card fraud in that it brings about the joining of divergent skills, expertise and resources. The low conviction rates for counterfeit card fraud for the period 2010/2011 indicate the difficulties the police face in investigating crimes of this nature. In 2010/11, 11 276 cases of credit card fraud (counterfeit, stolen and fraud with other cards) were reported to the police for investigation. A total of 229 cases went through the court process.
and a total of 223 accused persons were convicted. It is therefore important that a new approach, for example an intelligence led approach, be considered in combating card fraud.

To comment on this article visit http://www.issafrica.org/sacq.php

NOTES
2. Ibid.
3. Visa International Law Enforcement Education Programme, Credit Cards, CEMEA Region, 2002, 8.
5. Snyman, Criminal Law, 8.
10. Diners Club SA (Pty) Ltd v Singh and another 2004 (3) SA 630 (D).
11. Van der Bijl, The cloning of credit cards, 338
15. SABRIC: Credit Card Fraud South Africa, 2008, 34.
18. SAPS Annual Report, 32.
19. Van der Bijl, The cloning of credit cards, 331.
22. SABRIC: Credit Card Fraud South Africa, 2008, 32.
24. Ibid.
30. Trevor Budhram, Examining the unique security features of a credit card with the aim of identifying possible fraudulent use, dissertation submitted for Masters degree, University of South Africa, 2007, 53.
32. Burt Rapp, Credit card fraud, 23.
33. Visa International Law Enforcement Education Programme, Credit Cards, CEMEA Region, 2000, 29.
34. Visa International Law Enforcement Education Programme, Credit Cards, CEMEA Region, 2000, 30.
35. Ibid.
37. Visa International Law Enforcement Education Programme, Credit Cards, CEMEA Region, 2000, 32.
40. Visa International Law Enforcement Education Programme, Credit Cards, CEMEA Region, 2000, 32.
42. Visa International Law Enforcement Education Programme, Credit Cards, CEMEA Region, 2000, 33.
44. Visa International Law Enforcement Education Programme, Credit Cards, CEMEA Region, 2000, 33.
45. Trevor Budhram, Examining the unique features of a credit card with the aim of identifying possible fraudulent use, 59.
46. Burt Rapp, Credit card fraud, 22.
47. Visa International Law Enforcement Education Programme, Credit Cards, CEMEA Region, 2000, 36.

ON THE RECORD...

Sindiswa Chikunga, Chairperson of the Parliamentary Portfolio Committee on Police*

Chandré Gould interviews Sindisiwe (better known as Sindi) Chikunga, Chair of the Parliamentary Portfolio Committee on Police, about the work of the Committee, and what she thinks is needed to fix the problems in the South African Police Service (SAPS).

Chandré Gould (CG): You have been highly praised for being a strong, fair and effective chairperson for the Committee. Can you tell us a bit about yourself and how you came to hold this position?

Sindisiwe Chikunga (SC): As the Committee we have a huge responsibility to hold the department (of Police) accountable on behalf of all South Africans.

Now there may be people out there who are more qualified than I am to do that, but even they rely on us to ensure that the police remain accountable.

I believe that commitment, honesty, hard work and giving your best are what will allow one to succeed. My philosophy is that with hard work and working to the best of your ability you can make things happen. I represent every South African when I work in parliament - even those who did not vote for the ANC.

This is a high calling, to serve the public. And it is not an easy job.

CG: Can you tell me a bit more about who you are and your path to this position?

SC: I was born in Muden in KwaZulu-Natal. I am the daughter of a Lutheran church pastor, Rev LD Gcaba. The child of a pastor sometimes grows up not knowing exactly where you are because you move so often. We moved from Muden to Greytown to Kopleegte.

Kopleegte was a small mission with about five houses, surrounded by farms. The school only went up to Standard 2. When my father came there he got the school to go on until Standard 4. But then from Standard 4 you had to go and stay with whoever and study further. There was nothing motivating anyone there to go on to study further, so most people didn’t. But as the pastor’s children we saw ourselves differently and were motivated, even though we were very young to leave home.

When I finished Standard 4 I went to Ephangweni and stayed with a German lady, a Lutheran missionary, and I went to high school. I managed to do my twelve years of school in ten years because I was promoted twice - so I couldn’t have been bad at my school work.

In those years if you were black there were only a few professions open to you: teaching, nursing and going into the police. So I went into nursing. My father wanted me to teach but I chose nursing
instead. I studied at Edendale Nursing College and then went to work at Ngwelezane Hospital as a midwife. I enrolled with UNISA and did a degree in Nursing Education, majoring in midwifery as a teaching subject. In 1990 I started teaching and so that which my father wanted, happened, I just took a different path to teaching.

In 1992 at Embhuleni Nursing School I became the principal of that school. I continued studying through UNISA and got my Honours degree and then did my Masters in midwifery through the University of Pretoria. My degree included major subjects such as management, community health nursing, social science, psychology and of course Midwifery as a teaching subject.

In the places where we stayed (as I grew up) I could see that something was wrong, but didn't know what it was. My father would pray with us every day and in his prayers he would ask God to be with Nelson Mandela, Govan Mbeki and Oliver Tambo, but we didn't know who these people were. When we had to pray we would mention the same names, sometimes getting them mixed up, just saying them to impress our father. But in high school I started to see that something was very wrong. In grade 11 our maths teacher left and there was no maths teacher. We wanted to study maths so badly, and close by in Estcourt there were white maths teachers but they could not come and teach us. How can things be so wrong? If there are children that want to learn and teachers available, why can't they teach them?

Then 1976 came and everyone was involved in protest. We also had an activist teacher. At the same time we put on a play titled “Ngiyazisa Ngomntanami”, and I played the part of this child who was murdered, so through that I got to know what it was to be in South Africa at that time. Subsequently I served in the DCO Makiwane Youth League, ANC at branch level, at regional levels and in the Provincial Executive Committee.

I have two grown sons. One is a civil engineer and the other has just qualified as an architect.

So that is who I am.

CG: The police portfolio committee has probably been in the public eye more than any other over the past year since serious allegations of mismanagement and corruption emerged against high ranking officers, and even the Minister. The public and media clearly have high expectations of the Committee in dealing with these problems. How do you see your role in this regard?

SC: Our role is to oversee the department and hold it accountable for how it uses public funds and implements policy. If there are allegations against people in the department it is our responsibility to deal with that as well. We do this through monitoring how the department deals with it internally, and how other monitoring institutions are drawn in to investigate and address the problem (such as the Public Protector, the Inspector General of Intelligence and the National Prosecuting Authority). We are monitoring progress in this regard. It is important to mention that the secret service fund is the responsibility of the Joint Standing Committee on State Security.

CG: What do you think is required in order to restore stability and public confidence in the SAPS?

SC: The Constitution mandates the police to fight crime. If they are doing that it would give people confidence. But who the police members are and what they actually do every day is important. We need to have people who are credible, and who have the right skills for fighting crime, at station level.

Achieving complete satisfaction with the police service might be very difficult for many reasons. Crime is a very emotional issue. So, if your house is broken into and you call the police you expect them to be there as soon as you put down the phone. At the time even a short wait is like a year. So, even if the police come within a reasonable period, or couldn't come immediately for a good reason, such as if they were called to a more serious crime, then the person who called them to the house breaking won't be satisfied.

What is important for us is to find out whether the police are doing what they should be doing. So we
need to ask: of the 16 000 people murdered, how many people have been arrested in relation to those murders, and what is the conviction rate? That is the crux of the matter. We need to know also that the courts are processing cases properly.

The one thing that I cannot accept about how the police are operating now relates to the appointment of some Deputy National Commissioners. We have seen that people are appointed at that level by the National Commissioner without even having been interviewed for the job. If there was one thing I would like to change today it would be the section of the law that allows the National Commissioner to appoint people to even the position of Deputy National Commissioner (DDG) without following procedures. It should be the exception that the National Commissioner exercises his power as per the Act, but it is the norm now. How sure are we that people who are being appointed at that level can actually do the job? I think this is wrong, unjust and should not be allowed.

That is why we want the White Paper on Policing to come to Parliament as quickly as possible. We would like to conduct public hearings all over the country, make this a massive project to change the SAPS for once and for all.

CG: The SAPS Amendment Bill was another matter that brought a great deal of public attention to the Committee. Why was the Committee adamant that the Hawks should remain within the SAPS?

SC: First, corruption, organised crime and commercial crime are all crimes. The SAPS is mandated to fight crime. We therefore need a unit in the SAPS that can investigate organised crime, commercial crime and corruption. I am not for or opposed to having another entity, such as a new Chapter 9 institution that can also deal with corruption. In fact if you read the report of the National Planning Commission it also says that we could have a number of entities looking into corruption. But I don’t believe it’s wrong to have such a directorate in the SAPS. We have tried our best to strengthen the SAPS Amendment Bill, both in terms of the requirements of the Constitution and in terms of what we believed was best for the Directorate.

I have no mercy for anyone involved in corruption.

CG: What is your opinion of the role of civil society in relation to the work of the Committee, and what would you like to see done differently?

SC: We work with many civil society organisations and I personally hold them in high regard. My own take is that we would like to see civil society organisations that are not politically influenced. When they come before the Committee it is important for us to see that they are not influenced by any ideology or party politics. That is because you can’t really work with organisations that are not objective, but who take political sides. We need a balanced view from civil society organisations.

We don’t have time to conduct research, but there are organisations that do that. When they present their findings we need to see that they are scientific and unbiased and that their methodologies are rigorous. We have had organisations presenting the findings of research that amount to opinions - we can’t use that.

Later this year we will invite organisations to make submissions about the detective service and present case studies about what other countries are doing to improve their detective services. It will be key to our work to have that information.

CG: What are some of the challenges faced by the committee, and how do you think these could be addressed?

SC: Parliament is parliament and it has a set way of doing things. For example, we have one day a week to sit as a Committee - on a Tuesday from 9am to 1pm. Now if for example you have invited Provincial Commissioners to come and brief you that is not enough time.

Another challenge comes from what we have seen at police stations. When we visit police stations, and particularly their Section 13 stores (where they
keep physical evidence) we see that many police stations are in a bad state. We see that the archives where they keep dockets are badly managed in many stations. Then we make recommendations. We have been saying the same thing over and over and over again, but nothing changes. We could call for another institution to investigate (like the Public Protector), but ultimately that won’t help if the police are not able and willing to change and address the problem.

We do have means that we can use to force them. Just now we have noted an irregular appointment of a Major General and we asked the Public Service Commission to investigate that appointment.

Issues related to promotions, for instance, are disturbing. We have decided to call the department and unions to a meeting where this matter will be clarified. For now, it looks bad.

**CG:** Is there anything that you would like to add in closing?

**SC:** I really believe that within the SAPS we have good police members, who are excellent and who are doing their work. But I believe we can do better. Huge resources have been allocated to the police and it is only reasonable for us to demand value for money.

I also want to say that as Chair of the Committee I have the best team working with me, irrespective of political affiliation. When we conduct oversight visits to police stations we don’t sit in a boardroom; we go out to visit areas of the station e.g. Community Service Centres, we open the domestic violence registers, we go into the SAPS 13 stores and archives, we ask for dockets, and see how long it takes for them to get to us. We can only do this if we work as a team and if we are prepared to work hard. My team does this.
The articles in this edition of SA Crime Quarterly are concerned with a range of pressing issues for South Africa and the criminal justice sector. David Bruce reflects on the measurement of performance set by the SAPS. Monique Marks and Sean Tait consider the changes that have taken place over the past ten years in policing public events that have led to an increase in human rights abuses by the police during public gatherings. Julie Berg and Jean-Pierre Nouveau offer new thinking about the regulation of the private security industry. Duncan Breen and Juan Nel provide an overview of the context in which the development of hate crime legislation will take place in South Africa, and make suggestions about what the law should cover. Finally, Lorenzo Wakefield assesses the first year of implementation of the Child Justice Act.

In 2011 the Constitutional Court found that the law establishing the Directorate of Priority Crimes Investigation (known as the Hawks) did not sufficiently protect the directorate from political interference and influence. The articles in this edition all focus on matters relating to the need for South Africa to have an independent anti-corruption agency, and suggest how best this may be achieved. This special edition of SA Crime Quarterly was funded by the Open Society Foundation of South Africa.

> Revitalising policing oversight in the Western Cape
> Revisiting South African police integrity
> Hate crime legislation reconsidered
> Overcoming credit card fraud in South Africa
> Interview with Sindiswa Chikunga