DAY 1
Thursday 15 October 2015

Inquiring into policing

Commissions of inquiry into police in South Africa, 1910–2015: context, concerns and remedies

Prof. Elrena van der Spuy, Centre for Criminology, University of Cape Town, South Africa

Public inquiries into aspects of policing are not uncommon in twentieth century South African history. A cursory glance reveals a number of major inquiries established in response to a range of concerns which emerged at periodic intervals as the white-dominated state evolved, became consolidated and was then disbanded to make space for a constitutional democracy. Within this larger historical context, the Marikana and Khayelitsha Commissions of Inquiry constitute mere contemporary variations on a larger theme of ad hoc and independent investigations into the police. This presentation provides an overview of the post-1990 context(s) and substantive concerns around which commissions have convened and the ways in which expert evidence have been utilised to address organisational-specific issues and wider systemic challenges.

What does the Marikana Commission of Inquiry tell us about leadership in the South African Police Service and does it matter?

Gareth Newham, Head, Governance, Crime and Justice Division, Institute for Security Studies, South Africa

Increasingly, official government policy documents have started to focus on the issue of police leadership. The National Development Plan (NDP) adopted by the Cabinet in November 2012 speaks of a 'serial crises of top management' and a number of its recommendations are aimed at improving the quality and competencies of senior police management. It appears to place the issue of leadership at the heart of what is required to address the various challenges facing the South African Police Service (SAPS).

More recently, the draft White Paper on Police states early on that, 'South Africa is entitled to a police service … that exhibits exemplary leadership and management'. At various times the document refers to the importance of ethical and honest leadership and that the organisation should strive to possess it.

Neither the NDP nor the White Paper however, outline the reasons for this focus on police leadership. No diagnosis of the failings of past and the current SAPS leadership is presented. Nor too are any explanations provided as to how these failings may be the cause of key challenges facing policing in South Africa or the limitations that leadership may have on addressing structural challenges facing the SAPS.

This presentation reflects on the above issues through the prism of the Marikana Commission of Inquiry findings. This will include consideration of what the SAPS leadership did or did not do in the run-up to, during and following the events that took place on 16 August 2012 when police officials shot at 112 striking mineworkers, killing 34 of them. Moreover, the SAPS leaderships' approach to and engagement with the Commission of Inquiry will also be considered to assess whether the focus on police leadership in official government documents is justified or not.

The Khayelitsha Commission of Inquiry: perspective of an evidence leader

Adv. Thembalihle Sidaki, Evidence Leader, Khayelitsha Commision of Inquiry, South Africa

In 2012 the Premier of the Western Cape responded to a complaint from community organisations by establishing the Khayelitsha Commission of Inquiry. The complaint outlined the prevalence of various and serious crimes in the community and a strong view that because of inefficiency, the police were unable to deal with the situation.

The Minister of Police was unsuccessful in his attempts to stop the work of the Commission, first turned down by the Western Cape High Court and later, on appeal, by the Constitutional Court, which judged that a province was entitled to undertake an investigation or resort to a commission of inquiry into complaints of police inefficiency or of compromised relations between the police and a community.

The presentation will look at: i) the opportunities arising from a platform created by a commission of inquiry as opposed to a research study or such like from the perspective of community members, police members and other stakeholders; ii) the difficulties of a limited focus on police and policing where the problem potentially implicates the criminal justice system as a whole; iii) challenges in securing evidence to lead at a commission of this nature; iv) salute those who had the courage to speak.

Linking access to justice with broader developmental issues: cases from a range contexts

Peter Chapman, Program Officer with the Open Society Justice Initiative, South Africa

The post-2015 Sustainable Development Goals – now referred to as Agenda 2030 – include a specific focus on expanding access to justice. This addition corrects the mistake the Millennium Development Goals made in focusing on narrow sectors of development, overlooking issues of justice and governance. Justice systems contribute to the resolution of disputes, help keep governments accountable for the delivery of services, and give businesses the confidence to enter and enforce contracts against each other. Agenda 2030 is an opportunity to deepen collaboration and partnership in realising access to justice and inclusive development. Recent years have seen the proliferation of innovative models and tools for understanding and meeting justice needs. This presentation will discuss how national actors – governments, civil society and philanthropy – can harness the momentum of Agenda 2030 to catalyse and institutionalise holistic strategies to ensure access to justice.

The argument for institutionalising community advice offices as vehicles for promoting justice

Winnie Martins, Director at the Centre for Community Justice and Development, South Africa

Access to justice in rural KwaZulu-Natal (KZN) is wholly inadequate, particularly where crimes against women and children are concerned. Despite the enactment of a range of post-1994 criminal justice statutory frameworks, the majority of rural people – especially women – experience barriers to accessing justice. Yet the fight against injustice cannot be left solely to the police, lawyers and courts. Rather, there is a need to involve other stakeholders, such as the community-based paralegal (CBP) sector.

This argument is founded on the empirical evidence obtained from community advice offices (CAOs) in the province of KZN. Information from KZN reveals the connection between the engagement of CBPs by rural community members and the broader criminal justice system and its personnel and also traditional authorities. The evidence shows that for many in marginalised communities justice may actually not be realised via the institutionalised formal legal system.

The evidence reveals that CAOs play a critical role in supporting victims and perpetrators of crime in an environment of legal pluralism using community restorative justice approaches. This presentation will look at this evidence and make an argument for institutionalising advice

offices – which tend to be located in areas where the most dispossessed and marginalised people live – as vehicles for promoting justice in an unequal world.

The role of the South African Human Rights Commission in advancing access to justice

Adv. Mohamed Shafie Ameermia, Commissioner of the South African Human Rights Commission (SAHRC)

Globally, an estimated four billion people – many of them in the developing world – live outside the 'protection of the law'. Most of them are poor, disenfranchised and on the margins of society. Indeed, the inclusion of 'access to justice' in the post-2015 sustainable development goals (SDGs) – also referred to as Agenda 2030 – presents immense opportunities for interventions that ensure the realisation of social justice. This panel proposes to bring together a combination of local and global actors in the field of social justice to discuss – at the local level – the experiences of community advices offices (CAOs) in assisting and empowering poor and marginalised individuals and communities to access various services and to realise the rights enshrined in the Constitution of South Africa. At global level, the international framework and the space provided to try to link justice and broader development outcomes will be discussed.

This will be infused with insights from the interventions by the National Alliance for the Development of Community Advice Offices (Nadcao) to push for the inclusion of 'access to justice' in Agenda 2030. All this will be framed by the experiences of the South African Human Rights Commission (SAHRC) – a key actor in South Africa – to promote and protect human rights in line with global imperatives and best practices as enshrined in the country's constitution.

Migration and xenophobia

Categories and social cohesion: countering xenophobia by silencing difference

Dr Loren B Landau, South African Research Chair in Human Mobility and the Politics of Difference at the African Centre for Migration and Society, University of the Witwatersrand, South Africa

Over the past decade, scholars, activists and regional policy makers have decried repeated incidence of 'xenophobic violence' within South Africa's townships and informal settlements. Reluctant to address the attacks that have killed hundreds of immigrants and other outsiders, the South African government's responses have included overt denialism, depoliticisation and a compression of xenophobic violence into broader patterns of criminality. Policy interventions have followed suit in ways that cognitively shift xenophobia and xenophobic violence from the realm of politics into that of the criminal and social. While these spaces are undeniably interlinked, these moves draw attention away from the national and micro-politics motivating the attacks. Moreover, they do so in such a way that denies historically constituted yet evolving categories

of social difference based on ethnicity, language, political affiliation and nationality. In making such cleavages invisible, government and civil society responses have unwittingly expanded the space for mobilisation to exclude on the basis of locally determined rights and values.

Dangerous spaces: the structural context of violence against foreign nationals in South Africa

Dr Alexandra Hiropoulos, Post-Doctoral Research Fellow with the African Centre for Migration and Society at the University of the Witwatersrand, South Africa

This study examines the spatial nature of violent incidents against foreign nationals in the Republic of South Africa and the effect of structural conditions on the occurrence of anti-foreigner violence. Since nationwide riots targeting foreign nationals in townships in 2008, there has been increased awareness of anti-foreigner violence but limited empirical academic research on its causes. This study takes advantage of improving access to crime data and examines incidents of anti-foreigner violence occurring between 1994 and 2012 with spatial/geographic information on locations and surrounding structural characteristics.

The study uses geographic information systems (GIS) to establish the spatial distribution of violent anti-foreigner incidents across South Africa. It utilises the social ecological framework to examine the spatial nature of anti-foreigner violence and interpret the influence of structural factors on its occurrence. Focusing on contextual effects, the study examines whether social structural conditions indicating economic deprivation and social marginalisation in areas have a direct impact on the occurrence of violence against foreign nationals.

For this purpose, the study estimated a multilevel, multivariate model in which the rate of violence was predicted by several structural variables believed to be linked to anti-foreigner violence. Findings highlight the influence of racial heterogeneity, unemployment, education levels and access to basic services on the occurrence of anti-foreigner violence. Furthermore, this study calls attention to the relevance of spatial context in attempting to understand this phenomenon.

Persuading the police to call a spade a spade: why is the South African Police Service so reluctant to classify xenophobic attacks?

Laura Freeman, Programme Officer at the Safety and Violence Initiative, University of Cape Town, South Africa

Emmanuel Josias Sithole's murder – captured through the camera lens of a journalist – provided some of the most striking images of April's xenophobic attacks in South Africa. The photographs were published widely and generated shock and anti-xenophobic sentiment in South Africa and globally. And yet, the South African Police Service (SAPS), and the South African government more broadly, has not classified his murder as xenophobic. Rather, it has been categorised as 'ordinary criminality', as is often the case with crime against foreign nationals.

This presentation interrogates the SAPS's reluctance to classify xenophobic attacks. It finds two broad explanations. First, the SAPS is hesitant to make judgments on the intent of criminal behaviour. This is, to some extent, understandable. It is part of a wider practice within the police where, for example, 'death of unnatural causes' is the term used until intent – typically murder or culpable homicide – is established. However, the current practice of classifying crimes where foreign nationals are victims as 'general criminality' does place a judgment before intent is proven. In effect, it biases police judgments against assigning xenophobic intent. Second, the SAPS reflects a wider discourse coming from policy makers and government officials. There is a general unwillingness to recognise (i) that non-nationals are the disproportionate target of crime, or (ii) that xenophobia exists in South Africa. Together, these narratives are problematic, and limit the effectiveness of police work and the understanding of crime against foreign nationals.

Approaches to preventing crime and violence

Can social cohesion prevent collective violence? A case study of Khayelitsha township

Dr Vanessa Barolsky, Research Specialist at the Democracy, Governance and Service Delivery Programme at the Human Sciences Research Council, South Africa

This presentation will seek to understand collective violence in South Africa in the context of local and international engagements with the concept of social cohesion and collective efficacy as factors that can potentially 'protect' communities against violence at a neighbourhood level. Social cohesion is a broad concept but generally refers to the factors that 'hold a society together'. Collective efficacy looks at how these ties can prevent violence when they are translated into collective action at the neighbourhood level. Thus far, however there has been little empirical research on social cohesion and its relationship to violence in the global south. Using empirical material from a study on violence and social cohesion in the township of Khayelitsha in the Western Cape, this presentation will investigate the meaning and application of the concept of social cohesion as a factor which can prevent or increase violence in a context such as South Africa. Based on a period of extended ethnographic fieldwork that investigated the violence-prevention intervention Violence Prevention through Urban Upgrading (VPUU), the research shows that Khayelitsha, like many South African townships, is characterised by informal social networks often drawing on communitarian ethics and social practice. While these networks can be a source of support they can also be a source of violent exclusion of the 'other'. This presentation engages with the implications of these factors for the efficacy of violence-prevention efforts intended to build forms of social cohesion that could prevent violence.

Development and validation of the Violence-Propensity Scorecard for youth violence-reduction interventions

Ian Edelstein, Independent Researcher and PhD Candidate, Department of Sociology, University of Cape Town, South Africa

The Khayelitsha Youth Violence Panel Study followed more than 300 young male subjects over a three-year period from 2012–2014 to explore pathways to violent behaviour and pro-violent attitudes, along with the violence-intervention effects of a sport-based life skills programme. Pathways to violence and possible intervention effects from the Khayelitsha Youth Violence Panel Study were presented at the 2014 ISS Conference.

Through the panel data, a unique violence-potential 'scorecard' was developed and tested through confirmatory factor analysis, test-retest reliability, and correlation with self-reported violent behaviours and an external assessment (from the subject's primary maternal caregiver). The 20-item scorecard combines sub-scales of deviant/criminal associates, favourable attitude toward gangs, and positive attitude toward the use of interpersonal violence, along with a measure of physical fighting, and is scored on a 100-point scale. The 100-point scoring system makes for simple pre/post evaluation (of within-subject change or group change), allowing for the measurement of changes in violence-risk over time.

In this presentation, I will present the development and testing/empirical validation of the short-form Violence-Propensity Scorecard, and advise on how it can be easily administered by youth development practitioners with minimal training.

Representing violence: theory in the practice of violent crime prevention

Prof. Anthony Collins, School of Media, Language and Communication at the Durban University of Technology, South Africa

This work emerges from teaching a tertiary course on violence in South Africa for students of social sciences and journalism. It raises problems with the traditional research and reporting focus on the facts of violence, and instead explores the relationships between empirical data and the explanatory accounts in which they are presented. Here particular attention is given to the implicit theories that are often hidden within attempts to present the facts, and how these theories shape understandings of the causes of violence and thus also the possible violence-reduction interventions that are developed in response to them. These relationships between facts, theories and interventions are further mapped in interactions between information media, popular culture and scientific understandings.

This conceptual framing is not new: what is interesting are the ways in which South African students exposed to this analysis have experienced fundamental changes to how they react to living in a violent society in a manner that not only shapes their professional research and media

practice, but also their experience of themselves as citizens in society. This process is thus discussed as the basis for an educational model of violence prevention.

Understanding the numbers – the first step to preventing violence against women and children

Carol Bower, LINALI Consulting, South Africa

Effective prevention of violence against women and children (VAWC) requires a good understanding of prevalence and incidence, as well as a clear picture of the prevention and response interventions in place. Recently, the Medical Research Council was contracted by UNICEF to develop a surveillance system on violence against women and children, as part of the DfID-funded Safer South Africa programme. This proved impossible for a variety of reasons, and the decision was taken to instead map currently available relevant data: where it is, what is being collected and what it is being used for. This presentation considers the various sources of relevant data, interrogates the challenges posed by these data, investigates promising practice for a potential surveillance system, and makes recommendations on a way forward.

Towards accountable policing

Identification and rectification of major inadequacies in the South African Police Service: have mechanisms such as commissions of inquiry and related reviews been successful?

Dr Johan Burger, Senior Researcher, Governance, Crime and Justice Division, Institute for Security Studies, South Africa

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

This presentation explores the nature of the pervasive systemic inadequacies within the police, the absence of clear and accountable mechanisms to identify them, and the lack of decisive interventions to address them. Whether commissions of inquiry could contribute towards fixing the problem will be considered as well as the necessity of having regular internal and external reviews of police performance.

Toward the rational allocation of policing resources

Jean Redpath, Researcher at the Dullah Omar Institute, University of the Western Cape, South Africa

The Khayelitsha Commission of Inquiry revealed that areas predominantly populated by people who are poor and black are systematically allocated only a small fraction of the average per capita allocation of police personnel. These areas also suffer among the highest rates of murder and serious violent crime. Given the inequity and irrationality apparent in the allocations of police personnel, the Khayelitsha Commission recommended that this be urgently revised. This presentation will review the allocation of police resources as well as the method currently used to allocate police personnel, and suggest an alternative method.

The role of the National Statistics Office in the quality assessment of crime administrative data in South Africa

Joseph Lukhwareni, Manager of Crime and Safety Components within Statistics South Africa

Crime in South Africa has increasingly been a topic of discussion and its relatively high prevalence remains a challenge. Its impact on people's daily lives is recognised through the development, promotion and adoption of a range of strategies by national government and international agencies. Consequently, this increases the importance of, and need for, more comprehensive statistics on the patterns of crime and victimisation in the country. Policies related to safety and security can only begin to improve the living conditions of people if they are based on evidence. In this regard, comprehensive statistical databases that include information not only from administrative sources, but also from victimisation surveys are essential.

Administrative data collected by the South African Police Service (SAPS) is used as one of the main sources of crime statistics. However, questions on the quality of crime data and its credibility have always been a topic of public debate. Upon recognition of the quality concerns from various sectors of the public on crime statistics, SAPS management took the initiative to improve public trust in crime statistics by forming a partnership with Statistics South Africa (Stats SA). This partnership entails ensuring that crime statistics from police are produced in accordance with the provisions of South African Quality Assessment Framework (SASQAF). This framework was developed in accordance with the requirements of the Statistics Act (Act No. 6 of 1999) as a set of the quality criteria for official statistics. Section 14(7)(a) of the Act, empowers the statistician-general to designate as official statistics, any statistics or class of statistics, produced by any organ of state. Any national statistical products in the public domain are required to be evaluated for effectiveness, efficiency and comparative benchmarking at periodic intervals.

This presentation outlines the process of designating crime administrative data as official statistics as per the Statistics Act and highlights the role played by the National Statistics Office in South Africa.

'Smoke and mirrors': 'anti-corruption', rule of law and the politics of elite contestation for state domination and hegemony in Zimbabwe

Tamuka C Chirimambowa, Executive Secretary of the Institute of Public Affairs in Zimbabwe, and Post-Doctoral Fellow in Developmental Studies at the University of Johannesburg, South Africa

In Zimbabwe after the ZANU PF 'triumph' in the 2013 general election and leading up to and after the ZANU PF 6th Congress in December 2014, the public media was dominated by conspicuous stories of corruption involving public officials, senior managers in private corporations, implicating as well the former vice president.

This presentation critically analyses these contestations around 'public accountability', 'good governance' and 'anti-corruption' and argues that (i) the anti-corruption discourse has been hijacked by elites to 'smoke screen' real citizenship demands for state accountability and instrumentalised for 'intra-party' competition; (ii) the anti-corruption institutions and legislative framework are weak and embedded within complex 'party–state' machinery and; (iii) citizens attempts to 'discipline' the party–state are being displaced by a general nationalist authoritarianism that is marked by a general breakdown in the rule of law. The presentation concludes that debates around the possibility of a democratic developmental state in Africa need to be intensified. Perhaps the constitutional reform process in Zimbabwe and the 'new' constitution point to the possibility of an emergence of better governance architecture – this however is dependent upon the emergence of more organised and effective civil society and political opposition formations.

Malawi's 'Cashgate' scandal: response and lessons

Adv. Pacharo Kayira, Chief State Advocate in the Ministry of Justice and Constitutional Affairs, Malawi

On 13 September 2013, the Budget Director in the Ministry of Finance was shot in Malawi's capital, Lilongwe. What seemed like a typical armed robbery case triggered the financial scandal in the public sector now known as 'Cashgate'. Within weeks, it became clear that terrifying amounts of public funds had been looted. The scandal bore wide-ranging repercussions. It cost Joyce Banda the Presidency in 2014. Donors who contribute forty percent of the Malawi's national budget withheld their funds. Government took several steps to address the issue, such as passing the asset declaration legislation. Since the scandal, several suspects have been convicted.

This presentation discusses Malawi's progress in fighting corruption and fraud since 'Cashgate' and suggests that the measures taken so far have been piecemeal, inadequate and have failed to address the systematic and deep-rooted culture of theft and the abuse of funds in the public sector. It calls for bold and radical action to be taken to root out the rot in public finance management in the country.

An appraisal of the law on asset declarations for public officials in Malawi

Adv. Jean Phillipo, Senior State Advocate within the Ministry of Justice and Constitutional Affairs, Malawi

Asset declaration for public officials is considered a powerful tool in the prevention of corruption, and Malawi has enacted such a law recently. The successful implementation of this law depends significantly on the availability of resources, the government's political will and on the ability of the Directorate of Assets Declaration to verify the declared assets. Corrupt public officials often hide stolen public funds in the names of their families or close associates to avoid detection by law enforcement authorities. However, the asset verification exercise is most likely going to be hampered by the difficulty in ascertaining the identities of the associates and family members in a country where there is no national identification system. This presentation questions how effective the Directorate will be in taking this on and which institutions are key in the verification and ascertainment exercise. Will the Directorate successfully determine the assets of each and every public official? In this context, the presentation explores the possibility of applying a risk-based approach to the verification exercise.

DAY 2
Friday 16 October 2015

Personal identity, performance and deceit in the South African Police Service: assessing criminal justice policy and practice

Dr Andrew Faull, Post-Doctoral Fellow, Centre for Criminology, University of Cape Town, South Africa

Much of Judge Farlam's report on the Marikana Commission of Inquiry reads like a list of lies and cover-ups by senior members of the South African Police Service (SAPS). This presentation shows how these lies are part of a much broader, entrenched culture of deceit and sleight of hand in the SAPS. Drawing on examples from recent ethnographic fieldwork this presentation describes the types of misleading performances officers enact to ease performance pressure and satiate public scrutiny of their daily duties. In so doing I suggest that because the SAPS is often unable to achieve what is expected of it, officers present façades of accomplishment to ward off organisational and public scrutiny. But because they constantly deceive, their performances contribute to their own suspicion and mistrust of the public and of each other, and so shape the way they do their work. Four trends in organisational deception are discussed: i) public performance lies, ii) data lies, iii) internal and external lies, which lead to and are connected by a iv) culture of suspicion. This presentation suggests that the intersections between officers' personal aspirations and their tendencies to deceive contribute to the SAPS' vulnerability to political abuse.

The Marikana decision: seven questions and their answers

David Bruce, Independent Researcher, South Africa

The presentation is based on the currently available information, including information contained in the report of the Marikana Commission that was released by government on 25 June 2015, about the 'Marikana decision'. The 'Marikana decision' is here understood to refer to the decision, believed to have been taken on 15 August 2012, to launch a police operation at the

Lonmin mine in Marikana to remove striking miners, some of whom were armed, from a koppie at the Marikana mine. The koppie formed the backdrop to the area in which 17 miners were killed by police on the afternoon of 16 August at the Marikana mine. This area was referred to as 'Scene 1' during the Marikana Commission. A further 17 miners were killed by police at another location, approximately 500 metres away, referred to during the commission as 'Scene 2'.

The presentation focuses on several questions relating to the decision. These questions are: (i) should there have been a decision to carry out a police operation against the miners? (ii) if so, what kind of decision should have been made? (iii) what were the key elements of the Marikana decision? (iv) what was wrong with the decision? (v) what was the motive for the decision? (vi) who took the decision? (vii) was the decision a lawful decision? Before discussing these questions the presentation will briefly outline the situation as it stood on the night of 15 August 2012 when the decision was tabled at a meeting of the South African Police Service National Management Forum.

Gendering police accountability structures: the case of South Africa's Domestic Violence Act

Lisa Vetten, Honorary Research Associate of the Wits Institute for Social and Economic Research, South Africa

South Africa's Domestic Violence Act (DVA) of 1998 is unusual both locally and internationally for the oversight structure it legislated to monitor the South African Police Service's (SAPS) implementation of the Act. Drawing on notions of accountability and its gendered practice, this presentation evaluates the workings of this structure between 2000 and 2015. It shows that while legislating accountability is the minimum condition for its practice, this is not a sufficient condition for its exercise. Nor do institutions, by the mere fact of their existence, compel accountability either. This presentation points to some of the other external conditions needed to strengthen accountability and also shows how, in the case of the DVA, the intervention of women's organisations was catalytic in promoting more effective oversight. Building on this insight, the presentation concludes with some recommendations around strengthening SAPS accountability for the implementation of the DVA, as well as strengthening oversight generally.

Out of the wilderness: firearms and police frontierism in South Africa

Guy Lamb, Director of the Safety and Violence Initiative at the University of Cape Town, South Africa

This presentation will seek to advocate for a new concept, namely 'police frontierism', which is a policing ethos that is persistently framed by a boundary (real or abstract), which delineates perceived safe or 'civilised' spaces from dangerous or 'uncivilised' ones. The police concentrate their resources in the frontier zone immediately adjacent to the boundary in order to preserve or extend the boundary of safety and 'civilisation', and restrict, subdue or eliminate those individuals, groups or circumstances from the 'uncivilised' space that a government authority

or elites have deemed to be a threat to order and peace. An essential dynamic of this policing ethos is that the boundary and the adjoining frontier zone strongly influence police practices and behaviour in this context. In particular, territorial delineations amplify and distort existing police prejudices against those communities on the outer side of the boundary. The police often engage in 'othering', where the communities of interest are dehumanised in the eyes of police personnel. This presentation will argue that contemporary police frontierism in South Africa is a persistent and dynamic thread interwoven in the fabric of policing that can be traced back more than three centuries to the forging of European colonies in southern Africa. In particular, police frontierism arose and was sustained as a result of the police being continually duty-bound to aggressively defend and extend various external and internal boundaries against hostile 'others'.

Comparative perspectives on crime and justice?

How do South African households view the courts and police? Findings from a victimisation survey

Joseph Lukhwareni, Manager of Crime and Safety Components within Statistics South Africa

Building safer communities is a key national priority in South Africa. An important element of that is the extent to which 'all people in South Africa are and feel safe', as outlined in the justice, crime prevention and security cluster mandate. This presentation therefore evaluates public perceptions about the criminal justice system (CJS) in an effort to inform government on areas that need improvement. Households' feelings of safety are used as a proxy to evaluate trust in law enforcement agencies. Indicators on public perceptions about police, courts and correctional services were used to assess the likelihood of satisfaction. Victims of Crime Survey data (1998–2013/14) was used to investigate the relationship between various role players within the CJS and its influence on public perceptions. Correlation Matrix, Principal Component Analysis and Multinomial Logistic Regression techniques were used to test the hypotheses that contact with police, courts and correctional service, the victimisation experience and police visibility influence households' feelings of safety and level of satisfaction. The majority of households in the country rated courts (64,3%) and police (59,2%) positively, despite a noticeable decrease in the level of satisfaction with police services between 2011 and 2013/14. Factors such as decreasing crime trends and police visibility evoked satisfaction with police services, while satisfaction with courts was associated with high levels of sentencing.

Drug enforcement and incarceration of minorities: a comparison between France, South Africa and the United States

Lucile Pouthier, PhD Candidate in Area Studies at the Université Paris-Est Marne-la-Vallée, France

Over-incarceration of ethnic minorities is a shared feature of modern democratic societies. In the United States, as in France, the over representation of certain population groups in the

criminal justice system has been identified as a consequence of repressive drug laws combined with increased pressure on police forces to 'act tough' on crime and produce tangible results. In effect, the implementation of these laws is specifically targeted at already marginalised communities. In South Africa, people from the coloured minority are over represented in prisons, especially in the Western Cape. Thus, do similar patterns as in France and the United States exist in South Africa and can they be identified? 'Drug-related' crime – a relatively vague category – has increased drastically over the past ten years, from 84 000 reported cases in 2004 to 260 732 in 2014. However, according to Department of Correctional Services statistics, on the national level, 'narcotics' represented less than 3% of total incarcerations in 2011/12 – including sentenced inmates and those detained in remand. What does this discrepancy tell us about the relationship between public discourse on drugs (that could account for the increasing number of registered drug-related offences) and the actual charging and sentencing of 'drug-related' crime? At this stage, repression of drug use and trafficking alone doesn't seem to account for the over representation of coloured people in South African prisons. Could we say, however, that 'drug-related' crime as a category is used to over criminalise (if not to sentence) certain segments of South African society?

Appointing the National Director of Public Prosecutions: a rethink required

Adv. Johan Kruger, Director, Centre for Constitutional Rights, South Africa

The National Prosecuting Authority (NPA), comprising the National Director of Public Prosecutions (NDPP) and such Directors of Public Prosecutions and prosecutors as determined by an act of parliament, is the sole prosecuting authority in South Africa. It must be structured in terms of an act of parliament and must exercise its functions without fear, favour or prejudice. In terms of section 179(1)(a) of the Constitution, the NDPP is the head of the prosecuting authority and is appointed by the President as head of the national executive. Given the fact that not a single NDPP has served his full term of office, that every NDPP appointed post-1994 was relieved of his position in one way or another, and that almost every NDPP has been embroiled in one or the other allegation involving the politicisation of the NPA, it begs the question: should the President be making this appointment at his sole discretion?

The Constitution is silent about the process to be followed by the President when he appoints the NDPP. Section 179(1) merely states that the President, in his capacity as head of the national executive (as opposed to head of state), appoints the NDPP. The latter provision does assume, in principle, that the President must, in terms of section 85 of the Constitution read with sections 84(2)(e), excercise this power '*together with the other members of the Cabinet*', requiring some form of consultation with other members of Cabinet. Nevertheless, section 179(7) determines that all matters related to the NPA not prescribed by section 179 of the Constitution must be determined by an Act of Parliament. As such but without providing much clarity, section 10 of the National Prosecuting Authority Act, 1998 (the Act), provides that '*The President must, in*

accordance with section 179 of the Constitution, appoint the National Director.' In addition, section 9 of the Act provides for a criteria to be appointed as NDPP and in the Simelane case the Constitutional Court did reflect on the President's duty to apply his mind when appointing a NDPP. More importantly, the Court held that the purpose of the conferral of the power on the President to appoint the NDPP was to ensure that the appointee was sufficiently conscientious and had the integrity required to be entrusted with the responsibilities of the office.

Given the current state of affairs regarding the NDPP, this presentation will argue that the President should be appointing the NDPP on the advice of either the Judicial Services Commission (JSC), or that of parliament. Either one of these processes can be implemented by way of a simple amendment to the Act, as opposed to a constitutional amendment.

In the first instance, section 178(5) of the Constitution provides that the JSC may advise the national executive on any matter regarding the judiciary or the administration of justice elaborated under Chapter 8 of the Constitution. This would include the appointment of the NDPP.

Alternatively, section 193 of the Constitution prescribes the manner in which position as provided for under Chapter 9 of the Constitution must be appointed. This process can serve as a model for the appointment of the NDPP. In both instances, the proposed process can be incorporated in the Act by way of an amendment of section 10 of the Act, as opposed to a constitutional amendment. As such, the President's power to appoint the NDPP in terms of the section 179(1) of the Constitution remains unscathed, but are, in terms of section 179(7), made subject to the advice of either the JSC or the national executive. This, I will argue, will allow the process of appointing the NDPP to be more transparent and less susceptible to 'insider trading'. It will also make the process subject to proper public and media scrutiny.

Understanding and responding to crime and violence

Managing crime and political violence through post-conflict peacebuilding in South Sudan

Joel Obengo, Administrator at Kenyatta University and Independent Researcher, Kenya

Many of the African states have experienced violent conflict in the past decades and it is today widely accepted that armed and violent conflicts require sustained efforts that address not only their military, but also their political, humanitarian, economic and social dimensions. There has been a growing international concern towards conflict resolution and peacekeeping, with an emphasis on peacebuilding programming.

South Sudan – which became independent in 2011 – has been engulfed in a brutal civil war for close to two years. Previously, the Republic of Sudan had seen intermittent civil wars in

different parts of the country since independence in 1956. Its protracted conflicts were largely a result of the political, economic, religious and cultural marginalisation of the peripheries by the government in Khartoum. An apparent breakthrough, marked by the Comprehensive Peace Agreement in 2005, led to the independence of South Sudan in 2011 and hard-won peace – peace that wouldn't have been possible without the presence and active post-conflict assistance of the United Nations (UN). However, it remains in a precarious state, being one of the poorest countries in the world, and needs the commitment of national leaders and the international community in ongoing post-conflict peacebuilding to sustain its delicate peace. This presentation seeks to examine the challenges, extent and achievements of peacebuilding programming through the fresh perspective of crime and violence prevention practices.

The militarisation of crime and violence prevention in Nigeria: causes and consequences

Dr Chris MA Kwaja, Lecturer and Researcher at the Centre for Conflict Management and Peace Studies, University of Jos, Nigeria

What factors account for the emergence and dominance of the military in the prevention of crime and violence in Nigeria? For over a decade now, state response to crime and violence has been militarised, so much so that there is now an increased reluctance, even refusal by the police and other law enforcement agencies to operate in areas where the military is active in the prevention of crime and violence. This presentation examines the factors that gave rise to the militarisation of crime and violence prevention by the Nigeria state, as well as its consequences. The presentation argues that the militarisation of the state response has led to a major transformation in the public psyche of the citizens in such a way that they view the militarisation of public space as not just normal but indispensable for the restoration of law and order.

Risky localities: exploring a methodology for comparing socio-economic characteristics of high murder areas

Lizette Lancaster, Manager, Crime and Justice Information Hub, Institute for Security Studies; and Ellen Kamman, Independent Consultant and Data Analyst, South Africa

On average, more than 47 people are murdered in South Africa every day. Over the past two years the murder rate has increased by 6.3% from 30,3 murders per 100 000 to 32,2. A better understanding of the demographics of high murder-rate locations could assist in the development of effective initiatives to reduce our murder rate.

The South African Police Service (SAPS) annually release precinct-level crime statistics that include murder. These statistics provide an indication of the policing precincts with the highest incidents of murder in the country. As a result we know that half of all murders take place in only 12,3% of South Africa's policing precincts, containing 33% of the country's population.

Using murder rates per 100 000 population allows for comparisons of where the highest risk of murder occurs between different precincts. Murder rates can be inferred using Statistics South Africa's population data. The ISS has undertaken further analysis by developing socio-economic profiles for policing precincts using the 2011 census small area layer data.

The analysis explores the hypothesis that the risk for murder is associated with certain demographic characteristics of particular locations. The presentation proposes a method to analyse the demographic characteristics of police precincts in relation to the murder rate for that police precinct. It provides an explanation of the method used, and a summary of the initial results. The presentation concludes with a discussion on the benefits of this research approach and considerations for future research.

Alternative approaches to conventional justice

African customary values in the context of South African criminal justice values: can culture serve as a defence?

Dr Jacques Matthee, Advocate of the High Court of South Africa and attached to North-West University, South Africa

Cultural practices are instrumental in preserving the identity of cultural groups in South Africa. Although this provides a reason not to interfere, some of these practices are clouded by a contentious legal debate. To illustrate, the indigenous belief in witchcraft, (including witch-killings), the *tokoloshe* and the use of *muti*-medicine (including *muti*-murders), as well as the phenomenon of 'necklacing' and the custom of *ukuthwala* can result in the commission of various common law and/or statutory crimes.

Certain indigenous beliefs and customs, such as those already mentioned, can also give rise to the infringement of various fundamental human rights in the Constitution of the Republic of South Africa (1996). For example, witch-killings result in the infringement of the constitutional right to life and the right to freedom and security of the person. Furthermore, witches and wizards who are persecuted for practising witchcraft are also denied their right to a fair trial entrenched in the Constitution. In cases such as these, unfortunate and inevitable harm is being caused to members and non-members of a cultural group.

However, strong arguments are advanced for the implementation of measures to ensure that minority cultures are not encroached on by more dominant cultures. One such argument is that culture should serve as a defence in South African criminal law. What is interesting about this argument is that it weighs up claims of concern for the 'victims' of cultural practices against claims for the defence of a practice based on culture, the so-called 'cultural defence'. Because both claims are contentious in their own right it is difficult to calculate the weight to be afforded to each.

Against this background this presentation aims to assess the 'possible' influence of a cultural defence, a defence currently not formally recognised in South African criminal law, on the general requirements for criminal liability. This presentation's scope, however, is limited to the requirements of unlawfulness and culpability in South African criminal law.

Minimum sentencing: a failed experiment?

Adv. Michael Miller, Advocate, High Court of South Africa

Minimum sentencing legislation came into operation on 1 May 1998. It has thus now been in operation for over 17 years. The time has come to look at it again. The purpose of minimum sentencing was to 'send a strong message to the rampant criminal community that crime will no longer pay'. It is questionable whether this objective has been achieved as the crime rate remains unacceptably high. The effects of minimum sentencing can also be seen in other respects:

- It results in lengthier prison sentences which increase prison overcrowding
- There is no proof that it has resulted in bringing the crime rate down
- It gives courts far less discretion in imposing sentences
- It results in unequal treatment of offenders when imposing sentence
- It leads to an increase in the number of criminal appeals and thus increases the courts' workload and leads to an unacceptable backlog in criminal appeals

Many countries worldwide have introduced sentencing guidelines. These contrast with minimum sentencing in that sentencing guidelines have a presumptive sentence which can move either up or down. This is what minimum sentencing misses. Finally, our minimum sentencing regime is heavily dependent on the existence or absence of substantial and compelling factors which can reduce the minimum sentence. This concept is nowhere defined. The absence of definition may result in the deprivation of freedom in violation of section 12 of the Constitution.

Non-custodial measures to incarceration: its desirability in Nigeria

Dr Odoh Ben Uruchi, Barrister of the Supreme Court of Nigeria and Director, Legal Clinic/Lecturer, Public Law Department, Faculty of Law, Nigeria Police Academy, Wudil, Kano, Nigeria

There are 400 prison facilities in Nigeria, including regular prisons, special penal institutions and lock ups. Policy makers and administrators may therefore simply come to regard them as a given and not try actively to find alternatives to them. Yet incarceration should not be taken for granted as the natural form of punishment. In many countries the use of incarceration as a form of punishment is relatively recent. It may be alien to local cultural traditions that for millennia have relied on non-custodial measures of dealing with crimes. Further, incarceration has been shown to be counter-productive in the rehabilitation and reintegration of those

charged with minor crimes, as well as for certain vulnerable populations. Yet, in practice, the overall use of incarceration is rising throughout Nigeria, while there is little or no evidence that its increasing use is improving public safety. There are now more than 56 785, prisoners in Nigeria and that number is growing, with 38 734 of them awaiting trial. The reality is that the growing number of prisoners is leading to often severe overcrowding in Nigerian prisons, leading to riots and jail breaks. This results in prison conditions that breach United Nations standards requiring all prisoners be treated with the respect due to their inherent dignity and value as human beings. This presentation seeks to explore the extent to which non-custodial approaches and measures have become the modern trend in the offender reform agenda of the new millennium and how it can contribute to the current efforts at criminal justice reforms in Nigeria, and other jurisdictions with similar legal history. In doing this, the presentation will highlight and consider a suitable, appropriate legal and institutional framework for mainstreaming non-custodial measures in criminal justice in Nigeria.

Responses to crime and violence

An organisational response to the murder of police officials in the Western Cape Province, South Africa (2002–2014)

Gráinne Perkins, University of Cape Town, South Africa

Danger features prominently in international literature and in the collective image of many police services. Danger is understood as a central characteristic in the occupational culture and working personality of the police. However, discussions about the dangers faced by police have been primarily orientated by a descriptive framework. How police denote and construct danger is under examined, partially due to danger being more perception than reality in most developed countries. In developing economies characterised by high rates of crime, however, the police are routinely exposed to much larger volumes of danger and risk. For example, South African police officers are more likely to be murdered both on and off duty than their global peers.

This presentation presents initial findings indicating how members of the South African Police Service construct danger relative to the murders of their colleagues. These findings are drawn from ethnographic research involving participant observation of police in select townships within the Western Cape Province. Initial findings indicate that officers characterise danger as more than that of a potential physical act. Officers denote danger as a degradation of their relationship within communities. This relationship appears to be further impacted by the function of the specific police unit to which members are attached. Understanding how officers construct danger is critical to our understanding of subsequent police reactions to danger at both the individual and organisational level.

In their boots: staff perspectives on violence behind bars in Johannesburg

Sasha Gear, Programme Director at Just Detention International-South Africa

Very little is known about what officers working in South African prisons actually do, including how they relate to the pressing issue of violence. What strategies do officers use in their efforts to address violence happening within prison walls, and what obstacles do they face in their attempts to prevent and manage it? Interest in this question stems from concern about violence in prisons, and the impact of this violence on prisoners and the communities to which most eventually return, together with a growing sense of the complexity of relationships between officials in the Department of Correctional Sevices (DCS) and the inmates whose care and safety they are charged with protecting. While South Africa's mostly progressive legislation and policies delineate the duties of correctional officers, both the context of their work and the skills and tools with which they are (or are not) provided to exercise their duties, contribute to very different officer–inmate relationships to those stipulated and envisaged on paper. The work of correctional officials is messy, complex, demanding of discretion and delicate balances for which officers are unevenly equipped and motivated. The particular ways in which these relationships play out have fundamental implications for the health and safety of inmates – and officers. This presentation will relate key findings of the JDI-SA's recently released research on correctional officers and violence in prison at the DCS's Johannesburg Management Area. Qualitative fieldwork was conducted in 2010 with 33 correctional officers using an innovative methodology (shared at the 2013 conference), and a sample stratified to include officers working with sentenced inmates and remand inmates, and those working day shifts and night shifts.

Challenges of truth telling among male victims in situations of conflict: the case of Mt Elgon, Kenya

Dr CA Mumma-Martinon, Lecturer at the Department of Political Science and Public Administration, University of Nairobi; and Rev. Dr Elias Opongo, Director, Hekima Institute of Peace Studies and International Relations (HIPSIR), Hekima University College, Kenya

Getting the male victims of violence to tell their stories of violation in a truth telling process can be a daunting task that is often clouded by the gendered perceptions of the characterisation of violence, cultural expectations on the male resilience and lack of a clear methodology of accessing and encouraging the male victims of violence (MVV) to participate in the process. This study examines the methodology, strategy and social-cultural implications that played into the truth telling process for the male victims of violence in Mt Elgon, Kenya, following the 2008 post-election violence.

In 2008, the Kenyan government established the Truth, Justice and Reconciliation Commission (TJRC), with the mandate to investigate acts of gross human rights violations and historical injustices in Kenya committed between 12 December 1963 and 28 February 2008. Evidently,

the TJRC was confronted with the major challenge of getting the victims of violence, perpetrators and non-victims to tell their stories. One of the main categories of victim that was not sufficiently investigated were the male victims of violence. This was mainly due to social-cultural requirements, stigma, personal disposition and other factors. This study demonstrates that it is vital to have a clear methodological strategy not only in accessing male victims, but also in getting the society to recognise the social-cultural vulnerability of male victims in post-conflict reconstruction. This study thus, emphasises the importance of helping male victims of violence confront the past while engaging with other victims, non-victims and perpetrators. This common victimhood forms solidarity of justice and understanding geared towards restoration of broken relationships, reparation and healing.