

South African CRIME QUARTERLY

No. 45 | Sept 2013



- > SA criminology in denial
- > Political killings in South Africa
- > Shebeens and crime
- > Case note: Illegal sales of alcohol and asset forfeiture
- > Interview with Savera Kalideen, Senior Advocacy Manager, Soul City



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Drinkertainment in Ivory Park, Gauteng: venues with pool tables, live TV games and cold beer are popular.

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EDITORIAL

Few editions of SACQ over the past few years have been introduced without reference to the crisis in policing. It is precisely this focus on policing and crime control that has, arguably, distracted South African criminologists from digging deeper to answer the difficult questions about why crime and violence remain such persistent problems. In the September 2012 edition of SACQ (41), Bill Dixon set down the challenge to South African criminologists to consider this gap. His conclusion was that it is 'where history and structure meet biography and the human psyche' that the future of South African criminology lies.

In this edition of SACQ Sarah Henkeman answers Dixon, and takes the challenge further. Writing from the margins, Henkeman foregrounds social justice as the central purpose of any legitimate criminological endeavour in South Africa. She challenges criminologists to step away from a comfortable post-apartheid framework for analysing crime and violence, and argues that our short memories and restrictive theories have prevented us from adequately understanding and theorising about violence. Like Dixon, she too argues for an integrative approach that combines an interpretation of structural and individual factors in an effort to understand why we find ourselves mired in violence. Perhaps even more importantly she points to the whiteness of the criminological academy and the marginalisation of black voices and perspectives. This article both challenges South African criminologists and offers some thoughts on where we might take our thinking – I hope it will stimulate reaction and response.

As the 2014 elections loom, David Bruce offers a description and analysis of cases of politically motivated killings since 1994. His article goes some way towards filling the gap in knowledge about the extent of political killings – a gap caused by the absence of any central record keeper, within or outside of the state. He identifies KwaZulu-Natal as the province most deeply affected by political violence, with intra-party rivalry as the primary cause.

Reducing the 'drivers' or risk factors for violence is the preoccupation of a relatively small group of practitioners and academics in South Africa concerned with promoting a public health approach to violence. They have had some success in effecting policy change aimed at reducing the availability of alcohol, particularly in the Western Cape, based on evidence from other countries that restricting the sale of alcohol can reduce violence-related injuries and deaths. Yet, as Herrick and Charman show, enforcing the restrictions on the sale of alcohol has resulted in unintended negative consequences, and in some cases has undermined the already limited ability of shebeen owners to ensure the safety of their customers and businesses.

Karabo Ngidi continues the focus on the state's response to the illegal sale of alcohol with a case note about a Constitutional Court case that confirmed a court order for a house from which alcohol had been sold illegally, to be forfeited by the owners under the Prevention of Organised Crime Act. Ngidi argues that the ruling is indicative of a hardened stance towards shebeens and the illegal sale of alcohol.

Finally, in the on-the-record feature, Savera Kalideen, advocacy manager for Soul City, speaks about the Phuza Wize campaign and the enormous difficulties facing proponents of a holistic, public health approach to violence reduction. Perhaps the most significant obstacle is the apparent absence of an appetite to adequately fund and support the testing and application of interventions aimed at preventing violence.

Chandré Gould (Editor)

'PALE FACE' / 'POINTY FACE'

SA criminology in denial

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This paper responds to key aspects of Bill Dixon's article, Understanding 'Pointy Face': What is criminology for? It suggests that criminology should unambiguously be 'for' social justice in South Africa's trans-historically unequal context. South African prison statistics are used as a conceptual shortcut to briefly highlight racialised constructions of crime, the criminal and the criminologist. A trans-disciplinary conceptual approach, as a more socially just way to understand violent crime in South Africa, is proposed. A methodological framework,² which draws on the notion of cultural-structural-direct violence³ and intersectional theory,⁴ is presented. These extend Bill Dixon's call for criminology to include history, structure, human psyche and biography⁵ and resonates with Biko Agozino's call for a 'counter-colonial' criminology.⁶ The paper ends by returning the Eurocentric gaze of most South African criminologists, calling them out on their denial about trans-historical violence that implicates 'Pale Face' in the violence of 'Pointy Face'.

Bill Dixon's article *Understanding 'Pointy Face': What is criminology for?*, which critiques Antony Albekker's book *A Country at War with Itself*, draws attention to harmful blindspots that contribute to the 'explanatory crisis' experienced by South African (SA) criminology. These are: (i) an 'overriding concern with controlling crime', (ii) an 'unwillingness to add fuel to the fires of afropessimism', and (iii) its 'almost painful whiteness'.⁷ He raises a key question triggered by Albekker's response to 'Pointy Face': 'what does this urgent acquisitiveness, and this readiness to use extreme violence, say about the South African condition, the structures and mores of post-apartheid society?'⁸ The question suggests that, like Albekker and most other SA criminologists,

Dixon limits his view of violent crime to post-apartheid society. This conflates political and knowledge boundaries, which marginalises a 'deeper and longer'⁹ understanding of violent crime.

Neoliberal narratives and demarcations of the 'miracle/rainbow nation' obscure the fact that South Africa is *not* a 'post-conflict' society. By removing the term 'post-apartheid' from Dixon's question, the focus of analysis shifts to the *interaction* of trans-historic cultural, structural, psychological and physical violence generated during colonialism-apartheid-market democracy. This shift of focus has the potential to deal with the 'crisis of understanding' and the obsession with control ascribed to SA criminologists. As Dixon points out, despite Shearing and Marks' reference to Cuneen's call for a postcolonial perspective, their emphasis remains overwhelmingly control oriented.¹⁰

By contrast, the conceptual approach and methodological framework proposed in this article offers a 360° view of violent crime, to

* Sarah Henkeman is the mother of two 'black young men'. She also has firsthand experience of the sustained criminalisation of blackness. This article draws on her PhD thesis, which found, amongst others, that a culture of denial co-exists with the culture of violence in South Africa. She has a D.Phil in Conflict Resolution and Peace Studies, is an independent conflict analyst/peacebuilding practitioner, and a research associate of the Social Law Project, University of the Western Cape (UWC).

maximise understanding and to increase the range of remedies beyond control. This resonates with the research agendas of conflict and peace researchers, who follow violence to its roots, without the artificial constraints of disciplinary, academic, temporal and political boundaries.

The emphasis of this paper is on social justice. To this end, three broad approaches to crime are briefly summarised to justify the proposed approach.

INDIVIDUAL FOCUS

Criminology is based on a legal definition of crime that holds the individual responsible. In South Africa this focus masks state-approved violent crime against black (diverse) people by white people during colonial and apartheid rule. It also obscures the implicit conflation of blackness¹¹ and violent crime during market democracy. For example:

In South Africa, from as early as the 1890s through until the 1960s, psycho-dynamic approaches (with strong ‘racialised’ overtones) dominated understandings of violence ...violence was viewed as the conscious manifestation of unconscious wishes drives and fantasies due to poor defence mechanisms within the personality structure and an inability to repress these unconscious impulses...¹²

An exclusive focus on individual level factors leaves structural factors out of the frame of analysis.

STRUCTURAL FOCUS

Structural definitions of crime place causes in the social structure. In 1985 SA lawyers and sociologists stated that ‘social structures in South Africa create conditions that encourage criminality among those exposed to the demands of the capitalist economy ... [who are] simultaneously denied access to its benefits’¹³ While this was an attempt to move away from individual level, racialised explanations, an exclusive focus on structural factors leaves

individual factors outside of the frame of analysis. This approach does not explain why some individuals manifest criminal behaviour and others do not.

INTEGRATIVE APPROACH

An integrative approach allows the *interaction* of individual *and* structural factors that produce violent crime to be brought into the frame of analysis. Intersectional theory, as critical social theory, allows ‘multiple and simultaneous’¹⁴ linkages to be made. Conceptually it enables a trans-disciplinary examination of the intersection (and interaction) of horizontal, vertical and cross-cutting phenomena that produce violent crime. It makes room for excluded knowledge to serve as counterpoint to the dominant knowledge of mainly white criminologists. Counterpoint, as popularised by Edward Said, allows for reading, thinking and writing that ‘realise suppressed voices, invisible facts and other hidden elements’.¹⁵

Rationale for a trans-disciplinary approach to violence in South Africa

Due to space constraints, South Africa’s 2011 prison statistics are used to provide a conceptual shortcut that exemplifies the disproportionate representation of black (diverse) people, and underrepresentation of white people in the criminal justice system. At first glance, these statistics reflect the view implicitly held by many South Africans and SA criminologists, as the majority of prisoners are indeed black (diverse) males. Beneath the surface, however, a more complex picture emerges when a ‘deeper and longer’ view is taken. Table 1 is a simplified version of 2011 prison statistics on males only.

Table 1: Combined 2011 Census and Correctional Services statistics

	Total population		Prison population	
	Number	%	Number	%
Asian	626 690	2,6	727	0,5
Coloured	2 188 782	8,9	27 689	17,5
Black	19 472 083	79,4	127 543	80,5
White	2 227 526	9,1	2 441	1,5
Total	24 515 081	100,0	158 400	100,0

In more stark form, Table 2 shows that the number of white males is consistently lower than the aggregated and disaggregated black group (black, Asian and coloured males).

Table 2: Percentage and number of people per 5 000 males in prison per group

	% of total race group in prison	No. per 5 000 males in prison
Asian	0,12	3
Black	0,66	16
Coloured	1,27	31
White	0,11	3

From this breakdown, for every 5 000 males per race group, three Asian, 16 black, 31 coloured and three white males are in prison. These statistics cast light on the role that the criminal justice system and SA criminologists play in rendering the transtemporal effects of South Africa's violent past invisible.

SOME MANIFESTATIONS OF DENIAL AMONG SA CRIMINOLOGISTS

Following Stanley Cohen, it has been suggested that a *culture of denial* exists about how South Africa's past cultural-structural-direct and counter violence informs the present culture of violence.¹⁶ Certain manifestations and patterns of denial are evident among SA criminologists and these contribute to the societal culture of denial about the links between various forms of violence. For example:

- In common with many other South Africans, most SA criminologists avert their gaze with regard to the continuity of colonialism-apartheid-market democracy violence by conflating knowledge and political boundaries (of the 'new' South Africa). This leads to a complicit silence about the trans-historical links between cultural, structural, psychological and physical violence that contribute to the 'explanatory crisis'.
- Black scholarship, which presents a direct counterpoint to white-centred criminology, is largely ignored in South Africa. For example, Shearing and Marks approved of Cuneen's 2011

call for a post-colonial criminology; however, they maintain a silence about Agozino's call, as early as 2003, for a counter-colonial criminology, despite the fact that Cuneen cites his work.

- Successive white regimes drove criminal violence against black (diverse) people in South Africa since 1652. Yet white people are underrepresented, coloured people overrepresented and black people disproportionately represented in the criminal justice system – and SA criminologists still construct criminals as 'the other'.
- Black (diverse) individuals are presently held solely responsible for their maladaptive responses to intergenerational and lifespan trauma, expressed as violent crime. Yet SA criminologists do not advocate for change to the criminal law definition of crime that takes account of cultural, structural, psychological and physical violence.
- The large number of black (diverse) people who are detected, detained and/or imprisoned on a daily basis, reinforces the enduring fiction that violent crime equals black (diverse) in a brand new South Africa without history. Yet SA criminologists find it completely acceptable to carve out careers on more 'progressive' and 'humane' methods of control that reinforce the de facto criminalisation of blackness.
- In addition, the constructed invisibility of continued and nested inequality (structural violence) contributes to the de facto criminalisation of blackness in 'the new South Africa' without history. Yet SA criminologists do not engage with the link between inequality and violent crime in a way that affects their almost exclusive focus on control.

In sum, the act of delinking present manifest violence of historically oppressed people from the different forms of violence perpetrated by historically privileged people (by erasing the past) exemplifies Stanley Cohen's argument about denial as 'the need to be innocent of a troubling recognition'.¹⁷ In this view, the 'almost painful whiteness' of SA criminology is no accident, and the 'overriding concern with controlling crime' makes the stated 'unwillingness to add fuel to the

fires of afropessimism' sound as hollow as it is provocative.

SOCIAL JUSTICE ORIENTED CRIMINOLOGY

Many criminologists elsewhere have broken with the orthodox view of crime that exclusively holds certain individuals or groups responsible. SA criminologists have unfettered access to these literatures that are based on a social justice agenda. For example:

- David Friedrichs states that the shift to 'unorthodox' criminology 'highlights the need to understand crime and criminal justice within the context of the existing political economy'.¹⁸
- Gregg Barak suggests that a social justice standpoint does not accommodate or ignore what he terms 'the production of inequalities in society and the role of law in that construction'.¹⁹
- Carolyn Boyes-Watson avers that in the 'real world of relationships, the fundamental connectedness between the realm of individual wrongdoing and the realm of structural harms is crystal clear'.²⁰
- Based on his famous Stanford prison experiment, Philip Zimbardo casts doubt on the notion of criminogenic traits in only 'some' people, when he suggests that all 'good people' can be broken down over time and can commit the most atrocious deeds if prompted by social forces.²¹

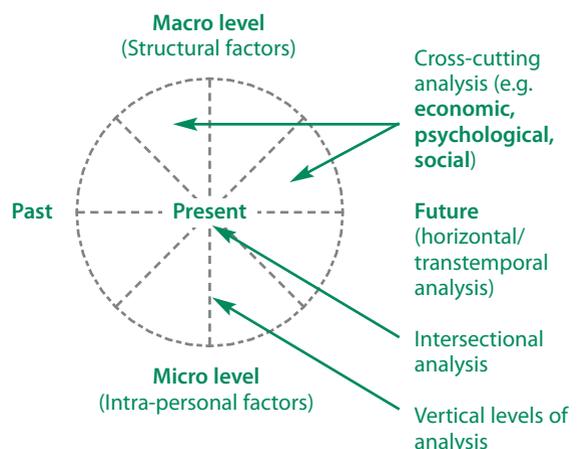
In addition, the work of economists Amartya Sen, Richard Wilkinson and Kate Pickett, Sampie Terreblanche, Francis Wilson and others casts light on the link between inequality, crime and other social ills.²² Psychologists like Maria Yellow Horse Brave Heart, Vamik Volkan, Ramsay Liem and others focus attention on the inter-generational transmission of trauma, the 'soul wound' of colonised and oppressed people, and the individual and social harms that flow from it.²³

Space does not allow a broader discussion, but Bill Dixon's paper opens the door to a frank dialogue between black margin and white centre. The dominant social location that produces the power SA criminologists wield to produce partial perspectives can also cause them to ignore this challenge from the margins. However, it will not remove the facticity of the transhistorical nature of violence. Nor will racialised individual level remedies remove the growing structural violence (that black people suffer from), which is linked to manifestations of violent crime. This suggests that a trans-disciplinary approach to violence, which is not confined to the academy and specific disciplines, is necessary to overcome the crisis of understanding, which ultimately preserves the status quo ante.

TRANS-DISCIPLINARY FRAMEWORK FOR A SOCIALLY JUST APPROACH TO VIOLENT CRIME

A trans-disciplinary theoretical/methodological framework that is aligned with South Africa's constitutional goals of social justice, fundamental human rights and equality, is proposed in Figure 1. The display reflects that intergenerational (psychological) and (transtemporal) structural factors intersect and interact to produce violence in the present.

Figure 1: A trans-disciplinary, intersectional framework



APPLICATION OF THE TRANSDISCIPLINARY, INTERSECTIONAL APPROACH

The approach takes account of the work of unorthodox criminologists like Richard Wortley,²⁴ who states that if someone has criminogenic traits, it puts them 'at an increased risk of committing crime, but that risk may not be realised until that individual encounters conducive situational conditions'. The approach can be applied to collect and analyse data on context and to aggregate violence perpetrated by individuals to provide a clearer understanding of manifestations of violent crime in transhistorical context. The display depicts:

- *Horizontal analysis*: A horizontal analysis enables the analyst to trace cultural, structural and direct violence from South Africa's unequal past to the present in which the inequality gap has increased. This needs only to be done once as data can be used to inform multiple analyses, or researchers can draw on existing research. It consists of secondary research on South Africa's history of cultural, structural, physical and psychological violence against colonised and oppressed groups from 1652, and counter-violence by oppressed groups.
- *Vertical analysis*: A vertical analysis helps to capture factors that are implicated in the manifestation of violence through crime, at different levels of analysis. Researchers can draw on existing research and/or conduct their own life history research with offenders and others in the sphere of influence. This analysis helps to locate individual offenders in their family, peer, community, society and global spheres of influence. It can generate evidence of possible lifespan trauma or other criminogenic influences.
- *Cross-cutting analysis*: A cross-cutting analysis helps to generate data on economic, political, psychological, social and other phenomena that are relevant to the individual story. Researchers can draw on existing research and overlapping information from the horizontal and vertical analyses. It can potentially generate (i) data that resonates with how historical trauma manifests;

(ii) data on criminogenic influences that offenders are subjected to during their lifespan; (iii) data on how offenders process their class status in an unequal society; and (iv) other salient themes embedded in individual and group stories.

- *Intersectional analysis*: An intersectional analysis lies at the heart of the approach. It combines data on structural factors with data on individual factors generated by the overall analysis. This enables the researcher to map as complete a picture as is possible of the patterns of interaction that produce violent crime, which helps researchers to make meaning of multiple and simultaneous intersections. Over time, the information can be aggregated to provide a reading of the manifestations and patterns of violent crime that keep the culture of violence in place. The knowledge produced can inform a wider range of remedies than the current emphasis on control. This constitutes a more socially just approach than an exclusive focus on violence manifested by individual black (diverse) perpetrators.

While this approach constitutes an entire research agenda, it can also simply serve as a way of thinking about violent crime. As violence crosses artificial boundaries, so must scholarship. The researcher can simultaneously collect data on risk and protective factors, as more nuanced, aggregated information provides data to inform complex solutions to the complex problem of violence in South Africa. The approach leads the researcher into uncharted territory from pervasive colonial thinking to a social justice orientation.

WHY THE NEED FOR A SOCIAL JUSTICE APPROACH TO VIOLENT CRIME IN SOUTH AFRICA?

A social justice approach to violent crime will respond to the deep and wide culture of denial about the origins of the culture of violence in South Africa, and temper the 'warmaking' approach to crime. By seeking to understand interacting patterns and manifestations of denial

that operate to obscure the origins of violence at different levels in society, scholars can potentially:

- (i) Confront the blindspots of SA criminologists and how uninterrupted white privilege operates to render the links between transhistorical (white) and present (black) violent crime invisible
- (ii) Engage with racialised constructions of the criminal and disproportionate representation of black (diverse) people in the criminal justice system
- (iii) Find evidence of the relationship between nested and growing inequality and violent crime suggested by Amartya Sen and others
- (iv) Find evidence of the existence and consequences of intergenerationally transmitted trauma (and resilience) of colonised and oppressed people suggested by Brave Heart and others
- (v) Raise awareness, increase consciousness, provide information and educate society about the multiple interacting sources of violent crime
- (vi) Contribute to the development of more just responses to violence

The escalating violence in South Africa places criminologists and peacebuilders (as researchers and analysts of violence) squarely at the centre of the storm, where history, structure, biography and psyche of poor and privileged intersect. This moment can be seized to help craft a socially just present and future for all South Africans.

CONCLUSION

This paper drew on recent peace research, to show that a trans-disciplinary approach and methodology are more socially just ways to comprehend and formulate a response to violent crime in South Africa. The suggested methodology is consistent with *bricolage*, which is regarded as 'the nuts and bolts of multidisciplinary research' that also 'highlights the relationship between a researcher's ways of seeing and the social location of his or her personal history.'²⁵ The paper resonates with Biko Agazino's call for a counter-colonial criminology,

which he characterises as 'a trans-disciplinary theoretico-methodological intervention'. The trans-disciplinary approach is not only scholarly in nature, it potentially enables researchers to cross artificial boundaries, deal with built-in blind spots, and contribute to social justice.

Routine criminalisation of blackness: On 18 August 2013, during the finalisation of this paper, SABC 3 news reported on the Oscar Pistorius case. At the point where the voiceover person mentioned Oscar's 'fear of criminals', the camera panned to and lingered on three black young men (all dressed in hoodies), as they passed by a court building.



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NOTES

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A PROVINCIAL CONCERN?

Political killings in South Africa

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Politically motivated killings have occupied a relatively marginal position as an issue of public concern in South Africa since 1994. This may reflect the provincial nature of the problem, since such killings have mainly occurred in KwaZulu-Natal, with a much smaller number occurring in Mpumalanga and even fewer recorded elsewhere. Based on a scan of documentary information, this article estimates that there have been approximately 450 political killings in KwaZulu-Natal since 1994, with most having taken place in the mid and late 1990s and just under 25% (107) since 2003. The root of the problem in KwaZulu-Natal may be the militarisation of the province during the apartheid period. Some political killings in the province continue to be linked to inter-party conflict that has roots in that time. However, political killings since the end of apartheid are mostly linked to local political rivalries and connections to criminal networks, notably in the taxi industry. Though the problem is concentrated in specific provinces it is likely to impact on political life in South Africa more broadly.

The period since the transition to democracy has been associated with a major decline in the role played by violence in South African politics. Violence nevertheless continues to be a feature of political contestation. This is evident from the large number of community protests that have involved forms of violence, such as the burning of local council buildings or the homes of councillors. Collective violence of this kind generally does not involve fatalities, though there are exceptions to this. Action by the police in response to protests has also in some cases resulted in fatalities, such as the killing of Andries Tatane in April 2011 and that of 34 people during a strike by miners in Marikana in August 2012. Political killings are another way in which violence continues to play a role in political contestation. As will be discussed, these killings have been a sustained feature of

political life in South Africa, particularly in KwaZulu-Natal, but also in Mpumalanga, through most of the post-1994 period. This article provides an overview of this phenomenon.

CATEGORISING KILLINGS AS POLITICAL

In this article 'political killings' refer to killings related to contestation over political power. The killings that are the focus of the article, including most of those from the late 1990s onwards, are generally what appear to be deliberate killings of specific individuals, sometimes referred to as 'assassinations'. However, political killings may also occur, for instance, in clashes between groups of members of rival political parties or in other incidents such as massacres. In this article the focus is mainly on the killings of people who are affiliated to political parties. For a killing to be 'political' it must be motivated by or connected to contestation or rivalry, either regarding access to

* David Bruce is an independent researcher. This article was funded by the Institute for Security Studies.

political power, or conflict over the way in which the individual targeted (or a group aligned with that individual), is exercising his or her political power.

Defined in this way, a killing cannot be classified as political unless one knows the motive behind it. Until this point is reached (for instance through information revealed at a trial) it would be more accurate to refer to killings of political office bearers or party members as 'suspected' or 'possible' political killings. The killing may be a random criminal attack on a person who happened to be a political office bearer. However, it is not only the political office or affiliation of an individual that may suggest that the killing is not a random crime. The timing or circumstances of the killing (for instance if the killing is not linked to a robbery) may reinforce this possibility. In this article it is assumed that where political office bearers or members are killed these are 'political killings.' However, in some of the relatively small number of cases of this kind that have resulted in a court verdict, the evidence presented has raised doubts about whether the killing was political in nature. This highlights the risks of making assumptions of this kind.

For instance, the killing of Inkatha Freedom Party (IFP) councillor Mfanafuthu Elliot Maphumulo in February 2009 happened shortly before elections and it was assumed by some people to have been political in nature. However, following the sentencing of three men to terms of life imprisonment at the end of August 2012, Maphumulo's wife indicated that the evidence presented in court did not support this idea. 'From the trial it seems as if it was a retaliation murder. The suspects were paid hit-men. The man who was paying them thought my husband had something to do with another murder,'¹ she said. The process of a trial and conviction may also not finally resolve the question of whether the killing is political or not. Following the conviction of a 19-year-old man for the August 2011 murder of National Freedom Party (NFP) aligned Induna² Titus Mthembu, the IFP welcomed the verdict, asserting that the evidence presented showed that the killing was not political. The NFP, on the other

hand, raised questions about whether the judgment was correct, pointing out that Mthembu had been receiving threats at the time when he was killed.³

ESTABLISHING THE FACTS ABOUT POLITICAL KILLINGS

There is no established system for collecting data on political killings in South Africa and any attempt to detail the number of political killings in the post-apartheid period must of necessity rely on a number of different information sources. Such an exercise faces challenges in assessing the accuracy of much of the information that is available. There are apparent inaccuracies in some sources of information. As reflected below, there are also inconsistencies between information from different sources. In addition, an exercise of this kind must also acknowledge the uncertainty related to questions of definition already mentioned.

KwaZulu-Natal

In the period of roughly two years from May 1994 extending into 1996, about 220 people were killed in acts of political violence in South Africa.⁴ More than three-quarters of these deaths (170) were in KwaZulu-Natal. There was a steady decline in the monthly rate of killings over this period in the province, with the Human Rights Committee estimating roughly 71 deaths in the last eight months of 1994, 67 deaths in 1995 and 42 deaths in 1996.⁵ A similar trend is reflected in a list of IFP leaders killed. This records 82 deaths from May 1994 to August 1996, with 16 of these deaths occurring in 1996.⁶

A formal political agreement between the African National Congress (ANC) and the IFP in May 1996 seems to have led to a decisive rupture in ANC-IFP violence. For just short of 20 months from August 1996 onwards, the IFP, for instance, did not record any leaders killed. However, though there may have been a cessation in ANC-IFP violence, there was a dramatic escalation in violent conflict in the Richmond area, particularly following the April 1997 expulsion of Richmond

warlord Sifiso Nkabinde from the ANC. Nkabinde's expulsion 'marked the beginning of a two-year reign of terror in the Richmond area in which orchestrated hit squad activity was to claim more than 120 deaths.'⁷ This culminated on 23 January 1999 in a bloody day in which first Nkabinde, and, later the same day, 11 ANC supporters were killed, the latter in an apparent revenge attack.⁸

These killings in Richmond were a product of conflicts within ANC-aligned structures, but killings related to ANC-IFP conflict did not take long to re-emerge. Attempts by the ANC to establish a political foothold in the IFP stronghold Nongoma led to an escalation of conflict in the area. According to one report this led to the death of more than 20 people,⁹ with at least seven IFP leaders and six ANC leaders assassinated in the 1999-2000 period.¹⁰ However, the IFP's list of leaders killed only records two killings in this period. Other violence of a seemingly political nature that is reported from this period appears to have included 'intra-IFP conflict in Lindelani (north of Durban)' that 'led to over 30 murders' from 1998 onwards. The IFP list records one death of a leader in Lindelani in 1998 and none in subsequent years.

Notwithstanding inconsistencies in the information on that period, it therefore appears that the late 1990s was a period of sustained political violence and killings in KwaZulu-Natal. In the period since then, KwaZulu-Natal has retained its status as the epicentre of political killings in post-apartheid South Africa. Indications are, however, that until quite recently there had been a substantial reduction in political killings in the province. During research for this article, for instance, an attempt was made to find details of political killings in South Africa from various publicly accessible documentary sources. One of these was a list of killings, virtually all of them dating back to 2009 or later, that was presented in the KwaZulu-Natal legislature in August 2012. From a process of scrutinising and verifying the data in this list by comparing it to press reports and other documentary sources, it has been possible to identify 47 incidents of political killings

(some involve two fatalities) in the period from January 2009 to the present (May 2013). In the period from 2006 to 2008 another seven killings were identified, bringing the total to 54 fatal incidents involving a total of 61 fatalities. The killings are widely distributed in KwaZulu-Natal, though there are specific localities such as Wembezi near Estcourt in the northern Midlands and Umlazi in eThekweni that are associated with a relatively large number of the killings.

However, the figure of 61 fatalities is unlikely to be comprehensive. For instance, in July 2012 the NFP reported that 22 NFP members had been killed since the launch of the party in February 2011.¹¹ Comparison to the list of 61 appears to indicate that this may exclude the deaths of up to ten NFP members in the period up to July 2012, and probably more in the subsequent period. Likewise, it was reported in October 2012 that an internal ANC investigation in KwaZulu-Natal had found that 38 members had been killed since 2011.¹² If killings of ANC-aligned persons in the relevant period from the list of 61 are excluded, this suggests that 27 other ANC members were killed in the province between 2011 and September 2012. The IFP list of leaders killed also includes nine deaths, six of them between 2003 and 2005, and three over 2008 and 2009. However, the IFP list does not include 'non-leaders' and it is likely that IFP members and supporters have also died in political killings in the period since 2000.

Combining these figures results in an estimated total of 107 deaths in political killings in the period from 2003 to 2013. It may be noted that the NFP figure of 22 killings between early 2011 and July 2012 and the ANC figure of 38 killings over 2011 and 2012 (to September) appear to imply that over 50% of this figure is accounted for by the period of 21 months from January 2011 to September 2012, suggesting that in this period political killings once again reached a rate of intensity comparable to that experienced in KwaZulu-Natal in the late 1990s. One of the factors that sparked this increase in killings was clearly the launch of the NFP, as a breakaway from the IFP, in February 2011. However, the period also seems to have involved an increase in killings of ANC members and many

of these killings are believed to have been connected to internal ANC rivalries. Interestingly, the intensification of killings related to internal rivalry within the ANC coincides with the period following the Polokwane conference in December 2008, at which leadership of the ANC shifted to Jacob Zuma, a politician from KwaZulu-Natal. Other than in the 2011-2012 period, the highest number of political killings in KwaZulu-Natal since 2003 was in 2009, with at least 12 apparent killings, seven of those being ANC members.

More generally, though, it would appear that the figure of 107 is possibly also an underestimate. It may be assumed that senior political officials such as councillors are more likely to have their deaths reported in the press and that we therefore have more comprehensive information on these killings than those of more junior members. A number of rank-and-file ANC members, or other supporters, are also likely to have been killed prior to 2011. Likewise with the IFP, whose list of political killings deals only with leaders killed.

Overall this then suggests that there have been possibly 450, and perhaps more, political killings in KwaZulu-Natal since April 1994. Close to 75% of this number appear to have died in the period culminating in 2000. Killings have not been occurring at a consistent rate. There are, for instance, periods such as the years 2001-2002 where there seem to have been few, if any, killings.

Mpumalanga and the killing of whistleblowers

The other province that has been most strongly associated with political killings has been Mpumalanga. Although the problem has in some respects been fairly persistent, the total number of deaths recorded appear to represent a small fraction of those recorded in KwaZulu-Natal. It seems that in the region of 14 people have died in political killings in the province, but again there is not consistency between all sources of information. A list of 14 killings that was published in the political report presented at the September 2012 COSATU national conference includes at least one killing that is attributed by

some sources to suicide,¹³ though it also omits another apparent political killing. There are other documents that suggest that there are names that should be added to the COSATU list.¹⁴ In a press report published in February 2010, a former ANC regional leader raised suspicions that at least five additional deaths in the province might have been the result of poisoning and that 'an influential ANC leader' in the province was behind several assassinations.¹⁵

Of the 14 confirmed killings identified, two were recorded per year in 1998, 2002, 2003 and 2009, and three in 2010, but none were recorded from 1999-2001, in 2006, 2008, 2012 or (as yet) 2013. The relative prominence of a number of those killed may have fed into the belief that political killings were more of a problem in Mpumalanga than in KwaZulu-Natal. However, there is no clear indication that there have been more deaths from political killings in Mpumalanga than in KwaZulu-Natal in any single year.

Another apparent distinction between the two provinces is that killings in Mpumalanga are generally believed to include a significant number of 'whistleblowers' and other people involved in attempts to prevent corruption. It is possible to identify at least 14 killings in South Africa since 1998 that some believe fall into this category. Of these, ten, including six politicians and three senior government officials, were in Mpumalanga.¹⁶ The October 2010 death of former ANC Youth League leader and member of the Congress of the People (COPE), James Nkambule, was allegedly a response to him blowing the whistle on alleged assassinations and corruption linked to the building of the Mbombela World Cup stadium. Evidence suggested that Nkambule may have been poisoned.¹⁷ Though there are exceptions, relatively few of the killings in KwaZulu-Natal are believed to have been a response to whistle blowing or opposition to corruption.

Other political killings

Political killings have also become a prominent issue in North West in recent years. Killings in

North West have included that of anti-corruption whistleblower and Rustenburg ANC councillor Moss Phakoe in March 2009, and that of an ANC regional secretary, Obuti Chika, in December 2012. Shortly before Chika's assassination there was also an attempt on the life of the ANC provincial secretary, Kabelo Mataboge. Violence in North West has also involved numerous fatalities from killings and confrontations involving union members in the platinum fields. These can be understood as having political dimensions, but are not directly about political parties or contestation over the use of government power. The latter killings are therefore not understood as political killings in terms of the framework used in this article.

Other than in North West there have been isolated incidents in other provinces. In the Eastern Cape there were two killings, one in 2009 and one in 2010, that were believed to be political in nature. Two men who were arrested in 2011 for conspiring to kill several prominent ANC politicians were convicted of attempted murder and sentenced to extended jail terms in July 2013.¹⁸ In March 2005 a senior Free State public servant, Noby Ngobane, was killed in an incident believed by some to have been politically directed. During 2012 there was what may have been an attempted assassination in Limpopo. The violent dimension of KwaZulu-Natal politics might have been at work in the killing of an NFP member in Vosloorus in Gauteng in September 2011.¹⁹

PROFILING THE VICTIMS OF POLITICAL KILLINGS

Focused on the period from 2003 onwards, the available information suggests that in the region of 120 political killings have taken place nationally. Close to 90% of these have been in KwaZulu-Natal, with more than 50% of the KwaZulu-Natal killings having taken place since the beginning of 2011. This number includes:

- At least 22 persons who were killed while serving as councillors, as well as one deputy mayor killed in Mpumalanga in 2007 and one mayor killed in KwaZulu-Natal in 2005. Of the

councillors 18 were in KwaZulu-Natal, three were in Mpumalanga and one was in North West.

- A slightly greater number would be people holding positions such as regional secretary, leader, organiser, branch or ward or youth formation chairperson, or who were members of political parties such as the ANC, IFP and NFP.
- Possibly 60 people who were members or supporters of political parties but who did not hold formal party positions. All but one of the deaths identified in this category were in KwaZulu-Natal. If they are assumed to be political killings these deaths appear more likely to be related to rivalry between political parties than intra-party contestation.
- A few other individuals might be included in this number, including at least one South African Communist Party (SACP) office bearer in Mpumalanga (in 2010), and two former SACP members in KwaZulu-Natal (in 2006). The deputy president of the People's United Democratic Movement (PUDEMO), an opposition group in Swaziland, was also killed in Mpumalanga in 2009. Political killings in Mpumalanga also include people whose relationship to a political or party office is prospective or retrospective. Thus one of those killed in Mpumalanga was a former ANCYL provincial leader, while another was killed ostensibly to protect him from contesting an ANC regional position. Another victim in Mpumalanga was an alleged hitman. He was believed to have been killed for threatening to expose the individuals behind one of the killings.²⁰
- At least four politically aligned traditional leaders.
- Three individuals killed while holding senior government (non-party) positions.
- Though he was not a political party member, a recent (June 2013) killing that should arguably be added to this list is that of a community housing activist linked to the shack dwellers movement Abahlali baseMjondolo. The circumstances of the killing suggest the possibility that those who authorised it were people in positions of political power who saw him as a political threat.²¹ It has also been

suggested that other killings in KwaZulu-Natal, targeted at activists involved in grass roots mobilisation, were authorised by locally powerful politicians. These killings apparently fit within a pattern, in terms of which activists or organisations who have attempted to mobilise poorer communities have been the targets of officially endorsed violence.²² In these cases violence is apparently used by local power holders to neutralise individuals or groups who threaten their domination over poorer communities.

It may be noted that the above number does not include apparent attempted assassinations, of which roughly a dozen involving political or party office bearers, supporters or members were identified during research for this article. It also excludes a couple of other whistleblowers in government departments. Killings in conflict related to industrial strife, and killings by the police or private security guards of protesters or striking workers, are also excluded.

COMPARISON WITH THE APARTHEID ERA

For purposes of understanding changes in political violence in South Africa it is important to understand differences in the occurrence and meaning of political killings in the apartheid period, compared to post-apartheid South Africa. During the apartheid period political violence and killings took multiple forms. The circumstances in which deaths happened included numerous open clashes between armed groups, massacres in which large numbers of people were killed, as well as demonstrations, disappearances, incidents of ‘necklacing’ and others. Violence reached its greatest levels of intensity during the period from 1990 to the final days before the April 1994 election, with 14 000 deaths in political violence during this period.²³

In post-apartheid South Africa, and particularly from the late 1990s onwards, fatal political violence generally takes the form of what appears to be more targeted killings of specific individuals, often referred to as ‘assassinations’. Targeted

killings were also a significant dimension of political violence during the apartheid era, particularly during its later years. A report by the Human Rights Committee indicates that there was a steady increase in the number of such killings with a relatively limited number (5) recorded in the years 1974-1979 and the greatest number (368) being recorded in the 1990-1993 period. Initially the majority of these killings were carried out outside South Africa. From the mid-1980s onwards there was a shift, involving not only a far greater number of these killings but also a steep increase in the number inside South Africa.

Table 1: Assassinations in South Africa and of South Africans in exile²⁴

	South Africa	External	Total
1974-1979	1	4	5
1980-1984	6	12	18
1985-1989	89	38	127
1990 -1993 ²⁵	213	5	218
Total	309	59	368

The killings reflected in Table 1 include some that have subsequently been linked to covert ‘hit squads’, such as the Civil Cooperation Bureau (CCB) that fell under the South African Defence Force, and the C10 unit of the South African Police that was based at the farm Vlakplaas. They also include a large number that might be attributed to other government and homeland security forces. However, it would appear that the list covering the 1974 to 1989 period on which some of the figures in Table 1 are based, omits targeted killing carried out by groups or individuals aligned with organisations such as the ANC and Pan Africanist Congress, and by other formations involved in violent opposition to the apartheid system.²⁶ The figures may therefore be regarded as not comprehensive and largely covering apparent ‘extra-judicial execution’ of opponents of the apartheid system.

Though there were different agencies involved and it has proved difficult to conclusively demonstrate centralised authorisation for these killings, there is a sense that many of the apartheid-era assassinations were aligned with a centrally defined common agenda. Thus, even though

senior apartheid-era government leaders have claimed that they did not authorise the CCB or C10 units to act as 'death squads' it is nevertheless clear that the activities of these units were aimed at promoting the government's agenda of suppressing resistance. However, most current-day political killings appear to emanate from local conflicts and rivalries. As far as is known they do not fit in with any more widely shared common purpose.

POLITICAL KILLINGS AS CRIME

During the apartheid era, political killings and other political violence were often understood as distinct from 'crime'. This view tended to be of a partisan political nature, so that those on one side of the conflict tended to excuse some political violence, while others tended to excuse the actions of the state security forces and condemn political violence that was targeted at the state or its political allies. Though many of the killings and other acts of violence by people on both sides of the conflict amounted to crimes in terms of South Africa law, the idea that they were not criminal was eventually given formal endorsement by the Truth and Reconciliation Commission (TRC) process. The TRC could give individuals amnesty against prosecution if they confessed to their actions and the actions could be shown to have conformed to certain conditions, including that the acts for which they sought amnesty had a political objective.²⁷

Questions about the labelling of acts of political violence continue to have pertinence in South Africa. For instance, there is evidence that many violent protests take place after community members have repeatedly attempted to have grievances addressed through non-violent means.²⁸ This may be associated with the argument that it is only when protestors resort to violence that government pays attention to their grievances. This in turn may be seen to justify the use of violence in protests.²⁹ On the other hand, President Zuma and other representatives of the South African government have in recent years increasingly condemned violence during strikes and other protests.³⁰ More recently it has been announced that priority will be given to

prosecuting those who engage in violence during protests, implying that, in the eyes of the state, it is appropriate to impose criminal sanctions on violent protestors.³¹

But although there continues to be some ambivalence in attitudes towards violent protest (particularly where property is damaged but people are not attacked) this does not seem to be an issue in relation to political killings. In South African public life, political killings tend to be seen as a form of crime that should be dealt with by the criminal justice system, rather than acts of resistance that may be excused or justified. However, though the validity of this perspective is not disputed, this should not be taken to mean that structural or other social features of South African society are not relevant to understanding political killings.

THE CRIMINAL JUSTICE RESPONSE

Table 2 (overleaf) shows that there have been at least nine convictions for apparent political killings, six for cases in KwaZulu-Natal, two for cases in Mpumalanga and one for a case in North West. Six (two in Mpumalanga, one in North West and three in KwaZulu-Natal) have involved the killings of ANC members. Two of the KwaZulu-Natal cases involve the killing of IFP members and one involves an NFP-aligned Induna. Though not included in this table, the list of successful prosecutions for political killings may also include the case mentioned above of two men, convicted in July 2013, for plotting to kill ANC leaders in the Eastern Cape.

All convictions listed in Table 2 are of elected politicians or people in other relatively prominent positions. This raises questions about whether the apparent absence of evidence in convictions of rank-and-file party members is a reflection that criminal justice agencies take less interest in these cases. It may also reflect that these cases are regarded by the media as of less interest and are therefore less likely to be reported on.

Though the list of convictions is not therefore necessarily comprehensive, it raises serious

Table 2: Convictions for political killings³²

Date of killing	Province	Name of deceased	Position	Conviction
27 June 2007	Mpumalanga	Thandi Mtshweni (ANC)	Deputy Mayor Municipality	One accused received 20-year sentence. Fate of 3 others unclear
July 2007	KwaZulu-Natal	Reuben Magutshwa (ANC)	Councillor	Four men were convicted and sentenced (July 2012)
25 Feb 2009	KwaZulu-Natal	Mfanafuthu Elliot Maphumulo (IFP)	Councillor	Three accused each received life sentences (August 2012)
14 March 2009	North West	Moss Phakoe (ANC)	Councillor	Former Rustenburg mayor and his bodyguard have been released on bail after being granted leave to appeal. In July 2012 they received sentences of 20 years and life respectively
5 January 2011	Mpumalanga	Johan Ndlovu (ANC)	Regional Chief Whip	Three accused sentenced in October 2011 and June 2013. First accused sentenced to 20 and 15 years for murder and armed robbery. Two others sentenced to life imprisonment
3 February 2011	KwaZulu-Natal	Simon Dingindawo Shange (IFP)	Councillor	One accused received life sentence (July 2011)
1 March 2011	KwaZulu-Natal	Wiseman Mshibe (ANC)	Councillor	One accused received life sentence (March 2013)
14 August 2011	KwaZulu-Natal	Induna Titus Mthembu (NFP aligned)	Induna	A 19-year-old man sentenced to 25 years (March 2012)
9 September 2012	KwaZulu-Natal	Bheki Chiliza and Dumisani Malunga (ANC)	Branch Secretary and Chairperson	One accused received 22-year sentence (Sept 2012), two others still on trial

questions about the effectiveness of the criminal justice system in responding to these killings. If, as indicated, there have been roughly 120 political killings in South Africa since 2003, this suggests that less than 10% of these killings may have resulted in a conviction. This may indicate that the South African criminal justice system does not consistently give high priority to these cases. One feature of a number of the cases listed here has been the allegation that a senior person who had not been charged, had instigated and perhaps paid for the killing.

- In the case of Govan Mbeki municipality deputy mayor Thandi Mtshweni, the mayor himself was arrested after it was alleged that he had financed the hiring of the killers. The principal accused told the court that the mayor had contributed R30 000 towards the murder.³³ The chief investigator was also accused by the lawyer for one of the accused of taking a bribe for the case from the mayor.³⁴ Ultimately the court held that the initiative behind the killing

came from the principal accused after her tenders had been suspended, and charges against the mayor were not pursued.³⁵

- In the case of Johan Ndlovu, who was said to have been a contender for the position of mayor of the Ehlanzeni District Municipality,³⁶ one of the accused also alleged that a rival for the position of mayor was behind the killing,³⁷ though he subsequently contradicted this, saying that the allegations had been made as a result of assaults and coercion by the police.
- In the case of IFP councillor Simon Shange, the convicted man implicated a rival of Shange's in the ANC as being behind the killing.³⁸ As in the other cases listed here, no charges were pursued against Shange's rival.

In the Eastern Cape case, the two men who were convicted had been the driver and bodyguard for an Eastern Cape mayor. They were found to have withdrawn money from the mayor's account in order to hire a hitman. Charges were not instituted against the mayor.

In the case of Rustenburg councillor Moss Phakoe, the alleged mastermind and paymaster, the mayor of Rustenburg, was convicted for the killings along with the bodyguard alleged to have carried out the killing (the case is currently on appeal). But in the other cases listed there are questions about whether justice has indeed been served. Without fuller information about them it is not possible to assess whether the prosecutions indeed let the 'masterminds' behind the killings off the hook while focusing on the prosecution of the 'hitmen' or other conspirators. If this were so it would imply an unwillingness or inability within the criminal justice system to pursue the presumably more complex cases against those behind the killings.

ACCOUNTING FOR THE KILLINGS

In accounting for the phenomenon of political killings in South Africa, particularly those of councillors and political party office bearers, a key factor is the high value that is attached to political office in South Africa. In established democracies many of those who enter politics already have financial security, whether in the form of a professional career that they can return to, or in the form of accumulated assets. However, where politicians do not already have financial security of this kind, political office may have an entirely different meaning. Political office may come to be seen as the primary vehicle for acquiring financial assets and security. In a context of generalised poverty and financial insecurity, political office is also a source of broader leverage. One may be able to use one's influence to help members of one's family to secure jobs or houses. Political favours of this kind may be used more generally as a means of establishing relationships of patronage. By granting favours to people one establishes long-term relationships of obligation. This may be useful in helping to secure not only one's political office, but all that it carries with it, including the opportunity to advance one's own economic interests and those of one's associates.³⁹

Related to the legacy of apartheid, political office in South Africa is widely seen in this way.⁴⁰ Racialised inequality remains an entrenched

feature of South Africa. While white South Africans have in general been able to benefit from education of a fairly high standard and have parents with independent means, members of the emergent black political class often do not have significant educational qualifications. They also generally 'do not have historical assets, and they have large nuclear and extended families to support'.⁴¹ There is therefore a very high premium on political office and on acquiring positions within political parties. Since the ANC has a virtual monopoly of power in many parts of South Africa one can expect that positions of power (even relatively low-level positions) will be highly contested and will result in various forms of 'intra-elite conflict' within the ANC and structures of government.⁴²

These dynamics are manifested in the fact that political killings, particularly in the period since 2000, take place within the context of both inter-party and intra-party rivalries. Thus in at least two of the three cases involving the killing of ANC members in KwaZulu-Natal that are reflected in Table 2, those of Wiseman Mshibe in March 2011 and the dual killing of Bheki Chiliza and Dumisani Malunga in September 2012, the information presented in court was that the killings were related to rivalries within the ANC. It was also alleged that Siphon Patrick Bhengu, an IFP mayor killed in 2005 in KwaZulu-Natal, was killed by rivals within his own party. The link between killings and the use, and misuse, of political office for personal financial gain is also reflected in the killing of whistleblowers.

The question that presents itself is why political killings continue to be so heavily concentrated in KwaZulu-Natal. Dynamics related to the high value attached to political office permeates politics in much of poorer South Africa. In more affluent parts of South Africa the politicians who are elected are often drawn from the established middle class. On the other hand, in poorer areas, politicians are often from relatively disadvantaged backgrounds. KwaZulu-Natal is probably the province where questions relating to the political allegiance of poor (black) voters have been most heavily contested, with a range of parties

competing for this. However, as already indicated, political killings are often 'intra-party' rather than 'inter-party'. There has been intense intra-party rivalry within the ANC at various points in recent South African history, most recently in the build-up to the December 2012 ANC national conference in Mangaung. But political killings are not a national phenomenon and have been concentrated above all else in KwaZulu-Natal, and to a lesser degree, Mpumalanga.

Part of the explanation clearly relates to the 'increasing militarisation of the province from the mid-1980s onwards'. A 2002 report argues that 'the clearest common denominator and primary proximate cause of violence ... has been the paramilitary forces spawned by Inkatha and the ANC'.⁴³ It has also been suggested that the manner in which this has played itself out in the period since 2000 has much to do with the role played by 'sanctioned violence in the taxi industry'. Abetted by elements within the police, political role players with interests in the industry have endorsed the use of violence to advance their interests. The networks that have enabled taxi killings to flourish are now being used for political killings.⁴⁴

These arguments appear to be compatible with the view that the official culture of KwaZulu-Natal is permeated by a culture of violence associated with the acceptance of the use of violence as a political, or other instrument.⁴⁵ This culture of violence is also evident in other aspects of official practice. KwaZulu-Natal has consistently been the province that has been characterised by the highest rates of killings by police, notwithstanding higher rates of violent crime, and, for instance, killings of police in other provinces.⁴⁶ KwaZulu-Natal political leaders have also been very prominent in promoting heavy-handed policing methods.⁴⁷ Statements inciting or condoning acts of violence have been a feature of political life in the province, and appear to bear a direct connection to some of the killings and other acts of violence directed against social movement activists.⁴⁸ Though there may be dynamics within the province that distinguish it from other provinces, the key difference may not

be in the nature of political animosities, but that these translate more easily into fatal violence. Furthermore, despite the occasional official condemnations of these killings, the political will to address the problem more vigorously appears to be absent. Political killings in the province continue, despite the fact that the current senior political leadership of the criminal justice system and security establishment include a disproportionately large number of politicians from KwaZulu-Natal.

Within Mpumalanga, corruption appears to have played a prominent role, but this too is not a phenomenon that is unique to one province. There may therefore also have been particular dimensions of elite culture that have sustained the relatively large number of assassinations. Whether the phenomenon will continue to manifest itself in the province is unclear. No political killings have been recorded in the province for more than two years. Though the killings in North West seem to threaten an expansion of the geographical range of political killings, it remains the case that it is above all in KwaZulu-Natal that the problem needs to be understood and addressed.

CONCLUSION

Due to the high value that political office carries in much of poorer South Africa, localised political contestation is likely to continue to be characterised by highly charged political conflicts. This carries with it the implication that many local political environments will be characterised by manipulation and intimidation. However, it appears that these factors in themselves do not necessarily translate into political killings. Access to networks that include people who are willing to carry out such killings may be one condition that enables such violence to flourish. Another may be the belief that pursuing political objectives through violence is legitimate, even within the context of post-apartheid South Africa. Though there appears to be the potential for political killings to expand their geographical range, it is not necessarily the case that this will occur.

One factor that would discourage this possibility is consistent high quality and independent police

investigations into suspected political killings. More generally, it is important that mechanisms for systematic monitoring of the phenomenon are established. As long as political killings continue, even if largely localised to specific provinces, the establishment of democracy in South Africa will continue to be partial in nature. Not only do they impact on individuals and their families, friends and political associates, but also contribute to establishing a climate of fear within political life that extends its reach to many parts, particularly within poorer constituencies. As long as political killings can take place in one province, without any substantial risk of consequences for those behind the killings, they represent a threat to those involved in political life throughout South Africa.



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SHEBEENS AND CRIME

The multiple criminalities of South African liquor and its regulation

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Recent liquor legislation has centred on shebeens as conduits for crime and violence. In contrast to this perspective, we argue that shebeens form part of a complex constellation of relationships influencing alcohol-related violence. Drawing on a survey of shebeen owners in one community in Cape Town, this article explores how their experiences of crime and police raids are reshaping the dynamics of the liquor trade amid conditions of poverty. It argues that inconsistent and often arbitrary policing is driving many shebeens into adopting covert strategies to manage the risks of closure, fines, temporary imprisonment and bribes demanded by the police. In so doing, liquor law enforcement may have inadvertently precipitated new types of violence in township drinking environments. The paper explores the broader implications of these processes for efforts to address alcohol and violence in sustainable and equitable ways that improve quality of life and wellbeing for all.

For the past two decades, questions over how best to regulate alcohol and its harms have been interwoven with broader post-apartheid fears over crime, violence, inequality, unemployment, corruption, the state of policing, and social unrest.¹⁻³ In many respects, therefore, the recent political and public attention to the role played by shebeens in driving South Africa's extremely high rates of alcohol-related harms says as much about these broad fears as it does about the particular risks associated with shebeens as drinking venues. Departing from this line of reasoning, however, we argue here that shebeens are not just conduits or drivers of violence. Instead, we explore their role as sources of grass-roots livelihoods that are also

vulnerable to multiple acts of criminality and violence. In turn, these experiences of criminality may well render their regulation even more problematic.

We do not intend to offer a contentious counter-narrative to the important work exploring the link between shebeens, alcohol, unsafe sex, violence and HIV/AIDS transmission⁴ but rather present a starting point for nuanced attention to the shebeen as a complex space where violence can be perpetrated in multiple ways: by patrons, criminals and, in some cases, the police. To do this, the paper draws on a large-scale survey of shebeen owners' experiences of crime and policing in Philippi, Cape Town. It then reflects on the broader consequences of these findings for the enforcement, legitimacy and sustainability of alcohol control policies in the Western Cape and beyond.

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LIQUOR POLICY AND THE PROBLEM OF SHEBEENS

The Global Burden of Disease Study found that South Africa had almost 60 000 deaths from injury (half of which were caused by interpersonal violence) and 55 000 *reported* rapes of women and children,⁵ with many tens of thousands more going unreported. Alcohol is among the primary drivers of these high rates of violence, with multiple studies confirming high levels of blood alcohol among patients presenting to trauma units with injuries,⁶ as well as among women who were murdered.⁷ In spite of the multiple limitations of the South African Police Service's (SAPS) crime data, its ability to identify crime hotspots, undertake last-drink analysis or indeed systemically record blood alcohol levels of those arrested,⁸ the dominant policy, political and media discourse has come to rest on shebeens as conduits for and drivers of crime and violence. At the same time, shebeens remain important sources of livelihoods for many (especially women) in poor communities. They may also 'serve as social spaces that may create a sense of community cohesion and provide opportunities for recreation and socialisation that otherwise do not exist'.⁹ Such a counterpoint to the dominant trope of shebeens as loci of violence is important, because the transposition of such narratives into received wisdom has far-reaching implications for the ways in which shebeens, their owners and patrons become targets of public policy. Moreover, these processes have potentially profound consequences for household livelihoods under conditions of multiple deprivation.

In marked contrast to Seedat et al's 2009 claim that alcohol 'is not yet a prominent policy goal' in South Africa,¹⁰ momentum around liquor regulation has gathered dramatically in the past decade. The Western Cape was the first province to promulgate a liquor policy, with the Western Cape Liquor Act (27 of 2008) brought into effect in April 2012.¹¹ The ascent of the Act has meant new enforcement efforts aimed at upholding licensing requirements. In practice, this means targeted efforts to raid and close shebeens in residential areas as a way of controlling the illegal,

unlicensed trade and its associated harms. These activities have been overseen by Premier Helen Zille in her concern that 'alcohol drives the rate of violence – that is the tragic fact'.¹² In her 2013 State of the Province Address, Zille highlighted that

The Western Cape Liquor Board has been conducting blitzes across the province and imposing heavy fines against owners who aren't complying with liquor regulations. We are also working with municipalities, City of Cape Town Law Enforcement and the SAPS to close down illegal liquor outlets.¹³

In contrast to this celebration of police efforts, the South African Liquor Traders' Association (SALTA) has repeatedly defended its members in their accusations of police corruption and violence associated with these 'blitzes'.¹⁴ The perspectives and experiences of shebeeners have attracted relatively few headlines, except in covering their episodic protest marches.^{15,16} Shebeens provide spaces that can, under circumstances of heavy drinking, provoke multiple risk-taking and violent behaviour, but as cash-led micro-enterprises, they are also vulnerable to South Africa's extremely high rates of robbery. Increased police attention to shebeens in the context of the Liquor Act has not served to reduce their vulnerability to crime, but has rather added another layer of (often) violent confrontation and criminality to the experience of making a living through shebeening. The nature and consequences of these experiences will be explored in more detail below.

SHEBEENS AS MULTIPLE SITES OF CRIMINALITY

We conducted a detailed survey in Browns Farm and Sweet Home Farm, Philippi, Cape Town, a mixed area of formal and informal housing with 17 844 households and about 70 000 residents in 2011/2012. Three hundred and fifteen shebeen owners were asked a series of questions about the nature of their business, their clientele, and experiences of crime and the police. The research also included a participatory action research component whereby eight shebeeners in Sweet Home Farm were trained in digital story-making

and supported to produce digital stories about their livelihoods and experiences, which were made available on YouTube.¹⁷ Throughout this paper we direct attention to their experiences both through direct quotation and by reference to their digital stories. The research sites are representative of many of the major barriers facing urban development in Cape Town: low levels of educational attainment; high rates of unemployment; inadequate transport infrastructure; distance from locations of employment; and poor quality services. Liquor retailing in the sites is also reflective of circumstances in other poor parts of the city and is a direct reflection of historical disparities in licensing criteria: there are only nine licensed liquor outlets within the research site.

The shebeens studied are exceptionally diverse – by size, revenue, aesthetics, clientele and drinking style – challenging the monolithic perception of unlicensed venues within the liquor control paradigm. For example, 38 (12%) of the shebeens sampled operate on a take-away basis, not permitting drinking within the business premises. Of those businesses willing to permit ‘on-site-consumption’, the majority provide only rudimentary seating and the venue’s main entertainment is conversation among patrons. Only a relatively small proportion of the sample provides ‘drinkertainment’: 15% have pool tables; 5% juke-boxes and 6% have satellite sport channels. Over 70% of the shebeens sell relatively low volumes of liquor, meaning that they never have more than 150 litres of alcohol (equivalent to 16,5 crates of beer) in their possession, the benchmark volume for ‘private consumption’ specified in the Liquor Act. New research has begun to show how shebeens typically target specific clientele – such as the elderly, adult men, or youth – through the provision of certain types of entertainment, restrictions on the kinds of alcohol sold, operation hours and door policies. These strategies of selective inclusion/exclusion have emerged as a response to increased police raids of shebeens in general and ‘problem’ shebeens in particular.

In Browns Farm, 66% of premises reported being raided by police in the past year. In Sweet Home

Farm the figure was 64%. Given that the majority of premises surveyed would be considered small businesses and that women are almost 50% more likely to own them, police raids have a disproportionate effect on the smallest, female-run businesses, which mostly operate from private homes. Thus, of the 206 businesses reporting being raided, 131 were low volume sellers. The experience of these raids leads to great volatility, with over 50% of businesses reporting that they had been forced to close temporarily at some point in the past year to deal with the after-effects of police raids. These include loss of stock and, as a result, capital. Raids were far more common where patrons were drinking on-premises, with only 12 off-trade outlets reporting being raided. While police raids may often lead to the shebeener being fined, many respondents also reported being asked for bribes by the police in order to evade court action. While reports of bribery did not necessarily emerge as a straightforward response in the formal survey, subsequent qualitative engagement with interviewees noted that at least half of those questioned had experienced what they termed and understood to be ‘bribery’.

Before turning to these experiences in more depth, it is important to highlight that shebeens and taverns¹⁸ are also subjected to high levels of violent crime. Licensed and larger premises were proportionally the most likely to have reported an incidence of armed robbery in the past year. Thus, 68% of taverns in the Browns Farm sample (n=9) reported being victims of armed robbery. However, when absolute numbers of reported incidents are considered, low volume traders endured the highest frequency of armed robbery (n=29), when compared to medium volume (n=14), showing that violent crime affects liquor outlets, irrespective of size. These figures point to the need to re-frame the ways in which we engage with debates on shebeens, given the pervasiveness of criminality in poor communities. The inter-personal violence that can emerge from shebeen drinking does not exist in a spatial vacuum. Rather, it emanates from a multi-layered environment of violence in which shebeeners’ own experiences of criminality inform their strategies to control (potential and actual) situations of violence within their premises.

As will be explored, the enforcement of liquor laws by the SAPS is all too often interpreted by shebeeners as just another form (among the many that they experience) of criminality and violence. While technically upholding the licensing laws by forcing closure, seizing goods and fining unlicensed venues, a lack of police communication about the mechanics of the Liquor Act, the absence of alternative livelihoods for many shebeeners, and their continued ineligibility for liquor licences, undermines the perceived legitimacy of police actions. In turn, this raises significant questions about how, given their technical illegality, shebeens should be policed. Moreover, the paper considers how such policing can be undertaken in ways that support, rather than undermine, the efficacy of the Liquor Act in reducing alcohol-related harms.

EXPERIENCES OF LIQUOR LAW ENFORCEMENT

Experiences of crime and police action are often entwined in the shebeener accounts we analysed and, more often than not, the distinction between the two is blurred. We concur that raids are technically and legally justified when shebeeners are trading without a licence, but they may blur the edges of corruption when bribes are demanded, due process is not followed, and confiscated liquor is retained or consumed rather than disposed of. We also recognise that the task of policing shebeens presents high risks (especially when raids affect patrons) and, as many authors have pointed out, is a task that police themselves see as unpopular and detracting from broader crime prevention activities.^{19,20} These actions and shebeeners' experiences of them are significant, not just because they are embroiled in the crisis of public confidence in the SAPS²¹⁻²³ but because they also fundamentally undermine the perceived legitimacy of liquor control and enforcement, which, ultimately, could ensure the persistence of the spiral of alcohol-related violence. Certainly, when the barriers to obtaining the liquor licence needed to trade legally (e.g. the costs and complexity of the application, the need to obtain legal services and the requirements for land use rezoning) are combined with an absolute lack of

alternative economic activities, then it becomes clearer why selling liquor illegally is so entrenched and, importantly in the context of legislative enforcement, remarkably resilient to police blitzes.

The digital story by Nosipho, titled 'I will never forget ...' clearly articulates the paradox confronting many shebeeners between the difficult choice of feeding her family through selling alcohol, and the consequences of breaking the law in terms of fines, imprisonment and personal humiliation.²⁴ Nosipho begins her story saying, 'the first day I was arrested was the most painful day of my life'. During her incarceration, she recalls, 'I held on because inside there was a voice telling me I was arrested for putting food on the table for my family'. She was selling alcohol as a 'better option than being a slave to bad things'. In her decision to continue selling liquor, she counterpoises the 'fear' of vulnerability (from no income) against the 'fear' of police detection.

In recounting their experiences of police raids, shebeeners highlighted the frequency at which the events occurred, with respondents raided, closed and arrested up to twelve times in the past year. One reported that the police came at least twice a week, but that she had only been arrested twice. It was far more common for the police to merely seize alcohol, hassle patrons and issue fines rather than arrest and prosecute shebeeners. The fines appear arbitrary, as respondents report the police demanding wildly varying amounts. R1 500 is the standard fine for 'trading without a licence' under the 1977 Criminal Procedures Act as an admission of guilt payment (which results in a criminal record) and many shebeeners reported handing over this amount. Yet many reported being asked for R200, R300, R500 'bail'/admission of guilt fines before the request (or not) of a standard fine.

While such figures are correct procedure in many cases, the lack of respondent understanding about due process and experiences of fluctuating fines/bail amounts for the same crime have undermined the perceived legitimacy of enforcement efforts. For example, in the digital story 'The Bribe', Lewis recalls how the police raided his shebeen under the pretence of searching

for drugs, but, unable to find any, they arrested him for selling liquor after finding beer in his fridge.²⁵ He then admitted to selling liquor, saying 'I don't have a licence. I live in a shack' (in other words, it is impossible to obtain a licence in an informal settlement). The policemen responded: 'Give us a cold drink and we will let you go'. He offered them R100, which they refused, demanding R750 on the basis that his 'bail' was R1 500. They finally accepted R400. A month later, police arrested his wife for selling liquor, offering her release in bargaining their bribe. Lewis again relented and paid R500. In other cases, respondents described the police as 'stealing' money, with one respondent reporting the police taking R6 000 cash.²⁶ Some caution must be applied to the interchangeable use of the terms fine, bail and bribe by respondents, as well as accusations of police 'stealing' money from them. However, reports of being asked for 'bail' before even being arrested and an inconsistency in the conditions under which fines are demanded (and paid) are notable.

Shebeeners also reported episodes of police brutality against themselves and their patrons. There were three incidents of police tear gas on patrons within the premises, resulting in injury. In Noluthando's story, for example, she recalls how, during one of the times she was arrested, the police put her in their van with the confiscated liquor. En route to the police station the police stopped the van and released her, saying that they had decided to 'forgive her'. They drove off without returning her liquor.²⁷

Sustained police action led many respondents to report that they had started to operate 'covertly', employing strategies such as flexible opening hours, closing at night, or making sure they close whenever police are reported as being in the vicinity. These risk management strategies also have implications for the legitimacy of policing. In addition, while the majority of shebeeners reported being arrested at least once, in not one case did this prevent them from re-opening their business just a few days later. The overwhelming tenor of shebeener accounts is of multiple and consistent police attention, as well as the loss of stock and money in various forms: fines, bribes, bail. On the

few occasions where respondents reported being given a court summons, not a single case was heard, due to a lack of evidence or the incorrect paperwork. Such inconsistencies between police actions towards unlicensed shebeens and the criminal justice system is an important element feeding the continued resilience of the shebeen sector. There is evidence to suggest that neither the courts nor some police are in favour of applying the full weight of the law, which would result in lengthy prison sentences (up to five years of imprisonment), on people living in poverty and trading low volumes. As a result, despite police efforts, the status quo seems to remain and shebeens continue to mushroom.

BROADER CONSEQUENCES

Effective and equitable enforcement of alcohol control legislation and prosecution for infringements would enhance the legitimacy of policing. Under the current situation, shebeeners have found covert ways to evade police attention. This points to important broader problems with the accountability and legitimacy of policing, as well as the historical legacies of community-police antagonisms within South Africa's poorer communities.²⁷ The lack of consistency in shebeeners' experiences of regulation and enforcement recounted here suggests very fundamental flaws in the operation of due process and the criminal justice system – no doubt reinforced by the complexity of multi-agency policing involving the SAPS, the Metro Police and local security – without which, alcohol control may never properly function.

Under Section 74 of the Western Cape Liquor Act, the police are given broad powers to at 'all reasonable times enter ... any premises or vehicle on which he or she on reasonable grounds suspects that liquor is being stored or sold contrary to the provisions of this Act, and make such investigation, enquiries or inspections as he or she may deem necessary'. In reality, and under Section 75 of the Act, this means that police can legitimately enter premises without search warrants if there is an outstanding compliance notice or if 'the designated liquor officer or inspector on reasonable grounds

believes that (i) a warrant will be issued in terms of subsection (3) if he or she applies for it; and (ii) the delay in obtaining the warrant would defeat the objects of the search or inspection.' This situation may have given the police and liquor officers greater powers, but it has also had the unintended and significant effect of weakening shebeeners' authority over their customers. Some shebeeners fear that confronting abusive and drunk customers (both within and on the street outside the business) may result in retribution through informing (or indeed alerting) the police of the presence of the shebeen. In Nobesuthu's story, she tells of the dual challenges of 'people's drunken behaviour towards me' and the police who she sees 'as animals,' having broken down her front door, destroyed her stock and beaten her at gunpoint in the presence of her two young children, who were then left at home alone when she was taken to prison.²⁸ The irony of this situation is best illustrated by a sign written on the door of Sweet Home Farm shebeen, situated deep within the informal settlement. It reads: 'Khona Beer. Ungabaxeleli' (Beer for sale. Please don't tell the police).

The question thus remains of how best to police shebeens to ensure responsible business practices, minimise the negative externalities of alcohol for communities and ensure adherence to municipal and provincial liquor laws. In countries such as South Africa with 'nodal governance regimes'²⁹ 'the state police are but one actor within a hybrid policing field involving the production of security'.³⁰ This hybrid field of state police, municipal actors and provincial agents such as liquor inspectors makes liquor law enforcement all the more challenging in practical terms. That the result is often 'incoherent and ineffective' is perhaps unsurprising, especially when the social and economic centrality of liquor to many communities is considered.

Ultimately, adherence to liquor laws needs community buy-in and, therefore, citizens' active participation in ensuring that regulations and codes of conduct/agreed best practice (e.g. on opening hours, serving intoxicated patrons, pregnant women and children) are met. To do so

will necessitate effective public communication of the rationale of the liquor laws, why enforcement is necessary and what these enforcement procedures are. The absence of genuine community engagements in the formulation of current liquor policy needs to be addressed, while the formulation of the licence criteria will need reconsideration to ensure that small-scale shebeeners are not automatically excluded from opportunities to trade legitimately. Not only should this ensure continuity of police practice, but it should also help communities and shebeeners understand the boundaries between illegitimate and legitimate police actions. Co-working and partnerships with communities may also ensure that the kind of micro-scale informal mechanisms of social control that often exist within shebeens and described in this paper are not compromised. Indeed, as Paula Meth shows in her analysis of the regulation of 24-hour drinking in Cato Crest, a settlement within in Cato Manor, Durban, 'the formalisation of local organisations [Community Policing Fora] and the conferment of legitimacy to enforce change can contribute to the restriction of certain practices, which encourages the management of crime and social unrest as well as improving the liveability of a place'.³¹

Policing shebeens and the informal sector of which they form a part is a delicate undertaking, but it is clear that for enforcement actions to be understood as legitimate and for them to have the positive effects they promise, they must be undertaken in the context of community cooperation.

CONCLUSION

Shebeens have been held up in the public, policy and media imagination as being central to South Africa's endemically violent township society. Our research shows that the reality of unregulated liquor trade is more complex. We have argued that shebeens are also *vulnerable* to crime as well as more contested forms of police 'violence', which has marked consequences for the perceived legitimacy and efficacy of liquor control efforts. While clear *correlations* can be drawn between alcohol use and incidents of violence and injury,³²

it is harder to discern the *causal* links between alcohol retailing, consumption patterns and violence (whether as perpetrator or victim). This article does not aim to defend the actions of those who sell alcohol irresponsibly, but rather to highlight that such 'irresponsibility' may be compounded by a lack of faith in the efficacy and equity of due process and the coping strategies that the threat of constant raids and closures produce.

Shebeens are not simple unidirectional drivers of crime and criminality. They are instead complex social spaces that form part of the constellation of risk factors for violence. However, if law enforcement and criminality blur – as with those few respondents who reported armed robbery by criminals posing as police conducting raids – it is easy to see why suspicions of police corruption over bribes, the seizure of alcohol for personal consumption and harassment run high. If the Liquor Act is to reduce alcohol-related harms (or even the total number of shebeens), we need to ask more questions about due process and continuity in enforcement. Without interrogating the actual experiences of liquor control implementation as opposed to its stated intentions, our research suggests that there will be direct and indirect consequences for the nature of the informal liquor trade. This holds the potential to compound alcohol-related harms amid new forms and situations of violence.



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CASE NOTE

Illegal sales of alcohol and asset forfeiture

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The Constitutional Court recently confirmed an order for the forfeiture of a house from which an unlawful shebeen had been run for years (Van der Burg and Another v National Director of Public Prosecutions).¹ In deciding whether to confirm the order of the full bench of the High Court, Justice van der Westhuizen, writing for a unanimous court, addressed the following questions: whether the house was an instrumentality of an offence; whether the illegal sale of alcohol is an organised crime; the proportionality of the crime to the forfeiture under the Prevention of Organised Crime Act 121 of 1998 (the POCA); as well as the impact of the forfeiture on the rights of the children that lived in the house. This judgment comes at a time where issues such as the proposal for the reduction of the legal limit of alcohol for drivers to 0%² are topical, and seems to point to a tougher stance towards the sale and consumption of alcohol in South Africa. The judgment may therefore be seen as a warning that the illegal sale of alcohol and running of a shebeen will no longer be seen as business as usual in cases where the seller does not heed the call to desist such business.

In the case under review, Mr and Mrs van der Burg (the applicants) appealed against a forfeiture order that the full bench of the High Court had granted in terms of the Prevention of Organised Crime Act (POCA), in relation to their house from which they had been selling alcohol illegally and in contravention of section 154(1)(a) of the Liquor Act 27 of 1989. The judgment sets an important legal precedent in so far as the application of the POCA is concerned, as this is the first judgment where a private house has been forfeited to the state as a result of the illegal sale of alcohol and running of a shebeen. Furthermore, the judgment also reiterates the constitutional principle that the best interests of children are the paramount consideration in any matter that affects them, and sets a precedent in so far as how the National Director of Public Prosecutions (NDPP) should protect these interests where they intend to seize a property where children are resident.

This article starts with a description of the facts of the case, which are important as they not only highlight how the police had, without success, employed different law enforcement strategies to get the applicants to stop running their illegal shebeen and selling alcohol illegally, but also how the applicants continued to trade with impunity. The last-mentioned factor weighed severely against the applicants before the courts. The article then provides a brief description of some of the applicable provisions of the POCA which the NDPP invoked against the applicants. A brief description of the arguments advanced by the parties is provided, as well as the findings of the Constitutional Court and the reasons thereof. In conclusion the article provides remarks on the effect of this judgment.

THE FACTS

The applicants were a married couple with four children, three of whom were still minors at the time of the appeal to the Constitutional Court. They were the registered owners of the property situated in Athlone, a residential area in Cape

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Town. The property consisted of a semi-detached house and a wooden and galvanised structure attached to the right side of the house. The applicants had been illegally running a shebeen from the property for years, with liquor being ordered and served in the main house while the wooden structure was used as service, sale and consumption area.³ The main house, including its bedrooms and passage, was used extensively to store liquor.⁴ The property was close to two schools and a church and there were four licensed liquor outlets within a radius of 400 meters from the property, one being a licensed bottle store while the other three had licences permitting liquor consumption on the premises.⁵

The applicants had unsuccessfully applied for a liquor licence in February 2002, but they nonetheless persisted, operating a shebeen unlawfully from the property as they had done since 2002.⁶ Repeated complaints from neighbours about the illegal shebeen's effects on the community and its children were ignored by the applicants. An immediate neighbour sent 50 letters to various government departments, requesting intervention to close the illegal shebeen.⁷ The complaints were, among others, that minors were buying liquor; the shebeen generated undesirable noise; there were physical fights between patrons; the use of vulgar and abusive language; and that some of the patrons became so drunk that they collapsed on the road.⁸

Besides the complaints from the neighbours, the police had carried out 50 actions on the property, including 18 arrests that resulted in charges being withdrawn in two of the cases and payment of admission of guilt fines in the other 16.⁹ The police had also given warnings and seized vast amounts of liquor from the applicants' premises on various occasions.¹⁰ Despite these police interventions, the applicants continued to run an illegal shebeen. This resulted in the police deciding that 'due to lack of resources, to stop with further search and seizure operations at the property as conventional enforcement strategies had failed to have any effect on the applicants.'¹¹

As a result of this the NDPP brought an application for a preservation order against the applicants' property, which was granted,¹² but despite this order the applicants continued with their illegal shebeen. The NDPP then applied for a forfeiture order against the property in terms of section 50(1)(a) of the POCA, which was granted by the High Court and upheld by the full bench of the same High Court.¹³ The applicants approached the Supreme Court of Appeal, but this application was dismissed by the said court.¹⁴ This resulted in the applicants approaching the Constitutional Court, submitting that the interpretation of the POCA was a constitutional issue. They argued that the Constitutional Court recognised that forfeiture of property affects constitutional rights and that in their case the forfeiture was in violation of their constitutional rights.

THE LAW

The main arguments centred around the application and interpretation of the POCA. The POCA aims, among others, to introduce measures to combat organised crime, money laundering and criminal gang activities; to prohibit certain activities relating to racketeering activities; to provide for the prohibition of money laundering and for an obligation to report certain information; to criminalise certain activities associated with gangs; to provide for the recovery of the proceeds of unlawful activity; and for the civil forfeiture of criminal assets that have been used to commit an offence, or assets that are the proceeds of unlawful activity.¹⁵ Section 38 of the POCA states that a preservation order may be made in relation to a property that is an instrumentality of an offence referred to in Schedule 1, or is the proceeds of unlawful activities.¹⁶ The preservation order is aimed at prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing with the preserved property in any manner.

Once the property is preserved, the National Director of Public Prosecutions may, in terms of section 48(1) of the POCA, make an application that the preserved property be forfeited to the State. Section 50 of the POCA provides that the

High Court shall, subject to section 52, make an order applied for under section 48(1) if it finds on the balance of probabilities that the property concerned is an instrumentality of an offence referred to in Schedule 1 or is the proceeds of unlawful activities.¹⁷

In this instance the Constitutional Court had to consider the aforementioned provisions and measure them against several constitutional rights in order to determine whether the order of the High Court was appropriate.

THE PARTIES' ARGUMENTS

The applicants argued that section 50(1)(a), which permits the forfeiture of a property which is an instrumentality of an offence, only applied to the offences covered by the POCA, therefore only those in Schedule 1; that the forfeiture provisions had been used abusively to punish them for activities which the ordinary criminal law mechanisms were readily capable of curtailing; that the forfeiture of their property was far more serious than the seriousness of the offence and thus inappropriate; and that the forfeiture of their property would leave them and their children homeless, which was in breach of their constitutional right to protection from arbitrary deprivation of property.¹⁸

The NDPP opposed the applicants' leave to appeal for lack of reasonable prospects of success and argued that the appeal be dismissed.

The Centre for Child Law (CCL) was admitted as *amicus curiae* (friend of the court) and argued that the Constitution obliges the court to consider the best interests of the applicants' children before a final determination in relation to the forfeiture of the house can be made.¹⁹ The CCL contended that a *curator ad litem* should be appointed to compile a report on the impact of the forfeiture of the property on the applicants' children. They furthermore argued that in all matters where the POCA is invoked and children's best interests are at stake, there is a constitutional obligation to ensure that those interests are regarded as of paramount importance.

THE FINDINGS

The Constitutional Court found that the applicants had not made a case for the setting aside of the forfeiture order. In particular, the applicants' argument that the POCA was not applicable to the offence of selling liquor without a licence was unconvincing, and the forfeiture was not disproportionate.²⁰ On the question of whether a *curator ad litem* should be appointed to compile a report on what is in the best interests of the applicants' children, the court found that it was not necessary. However, in terms of the Children's Act, an investigation should take place in the Children's Court to determine whether the children were in need of care and protection.²¹ Fortunately, the Constitutional Court did not stop there, but set guidelines as to the obligations of the NDPP when considering the preservation and forfeiture of a property where children are resident.²²

Instrumentality of an offence

The applicants' submission before the Constitutional Court was that, while their property was an instrumentality of an offence under section 154(1)(a) of the Liquor Act, it was not an offence listed in Schedule 1 of the POCA and therefore could not be forfeited.²³ The Constitutional Court approached this issue by raising two questions: firstly whether the POCA applies to an offence not created by the POCA itself, and secondly what the interpretation was of item 33 of the POCA.²⁴

In answering the first question, the Constitutional Court referred to its *Mohunram and Another v Director of Public Prosecutions and Another*²⁵ (*Mohunram v NDPP*) judgment which dealt with the premises of a glass and aluminium business being preserved because an illegal gambling business had been taking place there too.²⁶ In *Mohunram* the court had written three judgments, approaching the question as follows:

- The majority of the court, per DCJ Moseneke, left the question open and stated that the conclusion reached on the issue of

proportionality did not compel a decision on this point; that the issue was not properly before the court; and that the argument amounted to an impermissible collateral challenge to the constitutional validity of section 50(1)(a).²⁷

- J Sachs agreed that the matter was not properly before the court and when dealing with this matter under the proportionality enquiry, stated that there was no obligatory jurisdictional requirement that the instrument of an offence be shown to have a connection with organised crime.²⁸
- According to J van Heerden, the forfeiture provisions apply to offences not created by the POCA as the amendments thereto had made it clear that it applies to offences committed before and after its commencement. Therefore it has wider ambit than that of offences that were created by the POCA, substantiated by *National Director of Public Prosecutions v Cook Properties*,²⁹ where it was held that the POCA is designed to reach far beyond organised crime, money laundering and criminal gang activities. She concluded that the ambit of the POCA was not limited to so-called organised crime offences.³⁰

Having considered the above, the court found that although the POCA does not explicitly identify the unlawful activity or offence at issue in this matter, namely the illegal sale of alcohol and running of a shebeen, at first glance the language of the statute as well as its aims suggest that its forfeiture provisions do apply to the property at which the unlawful selling of liquor occurs.³¹

The second question related to the interpretation of item 33 of Schedule 1 of the POCA. The item provides that a property that is an instrumentality of any offence, the punishment whereof may be a period of imprisonment exceeding one year without the option of a fine, may be preserved and forfeited under the POCA. The applicants contended, firstly, that item 33 was not applicable since the Liquor Act permits the court to impose a fine; secondly, that item 33 only applies where there is a mandatory sentence of imprisonment for a year or more and where the court is

precluded from imposing a fine; and, lastly, that the provisions of the POCA are draconian and should be limited to property used in the commission of extremely serious offences. The Constitutional Court disagreed and stated that:

- The first argument is unpersuasive as the POCA differentiates between penalty clauses that empower the court to impose either a fine or imprisonment with the option of the fine, from those which impose a fine and in default of payment of the fine a period of imprisonment. In the latter cases, only when the fine goes unpaid will a sentence of imprisonment be triggered.³²
- In relation to the second argument, the interpretation the applicants seek to advance would require a reading of the word ‘may’ in item 33 as ‘must’, which is inconsistent with the clear words of the POCA, as a sentence of imprisonment for more than one year without the option of a fine is competent and not mandatory.³³
- Lastly, the provisions of the POCA are not draconian, as they enable the court to consider variations in, on the one hand, the seriousness of the offence committed and, on the other, the manner and circumstances in which it was committed. The seriousness of the offence often depends on the manner and circumstances, but this does not mean that the forfeiture provisions of the POCA may not be applied to offences that are not regarded as extremely serious.³⁴

The Constitutional Court explained that under section 163(1)(a) of the Liquor Act, a person who is convicted of contravening section 154(1)(a) is liable to a fine, or to imprisonment for a period of not more than five years. The sentence that a court may impose is either a fine, or imprisonment for up to five years without the option of a fine. A period of imprisonment exceeding one year without the option of a fine is a penalty a court can impose and fits squarely within the ambit of item 33.³⁵

Proportionality of the forfeiture

In finding that the forfeiture was proportionate in the circumstances, the Constitutional Court reasoned that:

- The provisions of the POCA were not used whimsically or as a ‘top-up’ to punish the applicants for activities that ordinary criminal law mechanisms were readily capable of curtailing. The arrests, admissions of guilt, seizures of liquor and the preservation order did not show a failure to employ ordinary criminal law instruments, but rather that the continuation of the criminal conduct was more profitable, even with the sanctions imposed, than ceasing to engage in criminal conduct.³⁶ Therefore the forfeiture was a last resort that sought to put an end to the criminality by removing the main instrument used in its commission.³⁷ This was not an abuse of the POCA or the criminal justice system and also did not offend against the Constitution.³⁸
- The argument that the seriousness of the forfeiture, when weighed against the seriousness of selling liquor without a licence, did not justify the forfeiture, was not convincing, as ‘ordinary criminal law’, which was the first port of call in this case, had failed to deal with the evil.³⁹ The court relied on Mohunram’s judgment, where the court endorsed the view that where the relationship between the illegal activity and the primary objectives of the POCA is proximate, the court should more readily grant the forfeiture order than in cases where the same is tenuous.⁴⁰
- The possible homelessness of the applicants and their children was a relevant factor that could not be overlooked, but the proportionality enquiry was aimed at balancing the constitutional imperative of law enforcement and combating crime, as well as the seriousness of the offence, against the right not to be arbitrarily deprived of property.⁴¹ The court did not agree that the requirements for eviction under the Prevention of Illegal Eviction from and Unlawful Occupation Act 19 of 1998 (PIE) had to be considered under the proportionality enquiry, as the forfeiture did not necessarily

result in eviction.⁴² An enquiry under the PIE would still have to be undertaken where occupation has become unlawful as a result of a forfeiture order, and would take into account whether the eviction was just and equitable.⁴³

The Constitutional Court remarked that selling liquor without a licence is not necessarily organised crime, or generally regarded as a crime as serious as murder or rape, or the theft of millions. However, the manner in which it was committed, coupled with the patent harm that its commission was causing, had to result in the conclusion that forfeiture was proportionate and appropriate in this case.⁴⁴

Children’s rights

The Constitution provides in section 28(2) that the best interests of the child are of paramount importance in every matter that concerns the child. The Constitutional Court acknowledged its previous decisions on the interpretation of section 28(2)⁴⁵ and the fact that, to the extent that the applicants’ children might be affected by the forfeiture order, the court had to consider their interests.⁴⁶ The questions at hand were, firstly, who should raise the interests of children who may be affected in forfeiture proceedings under the POCA; secondly, should a consideration of the interests of the children form part of the proportionality enquiry, and lastly, did this case require the appointment of a *curator ad litem* to ensure separate representation of the children and an assessment of their situation before a decision on the forfeiture could be reached?

According to the Constitutional Court:

- The parents must invoke the interests of the children in their proceedings, but state institutions bear a responsibility to address this issue even when the parents have not raised it.⁴⁷ Furthermore, the High Court is not only the upper guardian of children, but also obliged to uphold the rights and values of the Constitution in all matters concerning children, including applications for the forfeiture of property which provides a home or shelter to

children. It is the duty of the court to consider the specific interests of the children.⁴⁸ Officers of the court such as the NDPP are expected to assist the court to the best of their ability with all the relevant information at their disposal.⁴⁹

- The children's circumstances play a role in the proportionality enquiry, as this analysis is specifically aimed at ameliorating the harsh effects that forfeiture may have on the right not to be deprived arbitrarily of property, and the possibility of homelessness.⁵⁰ However, the children's interests also require specific and separate consideration in addition to the attention they might get in the proportionality analysis, as they may require an intervention that would be independent of the conclusion reached on forfeiture at the end of the proportionality enquiry.⁵¹
- There was sufficient information before it, and the High Court, to consider the interests of children, and due consideration had been given to this aspect.⁵² The applicants never raised the issue that their children would be rendered homeless if the forfeiture order was granted, and the court had found that the applicants were business-orientated and would be able to find alternative accommodation for themselves and their children with the money that they made from their other business of selling vegetables.⁵³ There was therefore no need for the appointment of a *curator ad litem*.⁵⁴

The Constitutional Court expressed concern that the applicants' children might be in need of care and protection, and ordered the Department of Social Development to open a Children's Court enquiry and investigate this matter in terms of the Children's Act.⁵⁵

Developing existing forfeiture jurisprudence

In deciding the *Van der Burg v NDPP* matter, the Constitutional Court drew from previous judgments relating to forfeiture under the POCA. While the said judgments did not pertain to the forfeiture of a private home on the grounds of illegal sale of alcohol and running of a shebeen, the applicable principles under the POCA remain

the same. In *Prophet v National Director of Public Prosecutions*⁵⁶ (*Prophet v NDPP*) the Constitutional Court found that the forfeiture of a house from which drugs were being manufactured, in contravention of the Drugs and Drug Trafficking Act 140 of 1992, was proportional and that the house was an instrumentality of an offence.⁵⁷ *Prophet* had unconvincingly argued that the POCA was aimed at syndicates and not against individual persons and that there were ulterior motives for the use of the POCA against him as a 'test run' before going after the persons for whom the legislation was intended.⁵⁸ In the *Mohunram v NDPP* matter *Mohunram* ran an illegal gambling business from his legal glass and aluminium business premises, in contravention of various provisions of the KwaZulu-Natal Gambling Act 10 of 1996.⁵⁹ The majority of the Constitutional Court found that *Mohunram's* business premise was an instrumentality of an offence,⁶⁰ but that the forfeiture was not proportional as the ordinary criminal sanctions were adequate and the forfeiture order extended beyond a legitimate reach.⁶¹

In all three cases, the offences committed fell under the ambit of other primary legislation under which the offenders could and were prosecuted. In the *Prophet* case the prosecution was unsuccessful on a technicality; in *Mohunram v NDPP* fines and forfeiture of the gambling machines under that Gambling Act were enforced, whereas in the *Van der Burg v NDPP* matter countless ordinary criminal law mechanisms were unsuccessful. What is clear from the *Prophet*, *Mohunram* and *Van der Burg* judgments is that applicability of the POCA has a wide reach and will be used to curb crimes that ordinarily may not have been thought to fall thereunder, even where other measures have been invoked against the relevant parties. The offences in *Prophet v NDPP* and *Mohunram v NDPP* might not have been as widespread and easily detectable as the one in *Van der Burg v NDPP*. Therefore, *Van der Burg v NDPP* may have left those who sell alcohol illegally and run illegal shebeens with serious concerns.

There is some comfort to find in the Mohunram v NDPP majority judgment. The Constitutional Court made it clear that the aim of using the POCA is to remove the incentives for the crime and to adequately deter the offender and the broader community. In *Van der Burg v NDPP*, the forfeiture was the only way to get the illegal sale of alcohol and running of a shebeen to stop. Arguably, the Van der Burgs could start the same illegal business at their new house, however, the impunity with which they had acted over many years weighed against them and led to the Constitutional Court finding that the forfeiture was appropriate as the house was an instrumentality of the offence, and that it was proportional to forfeit it to the state in order to stop the illegal sale of alcohol and running of the shebeen.

CONCLUSION

The *Van der Burg* judgment has not only confirmed the application of the POCA in relation to combating the crime of illegal sale of alcohol and running of a shebeen, but has also added to the existing child rights jurisprudence in South Africa. The Constitutional Court judgment of *M v S*⁶³ introduced an era where the best interests of children are considered central in the process of determining whether a prison sentence is suitable or not for their offending primary caregivers. *S v M* has been cited in numerous judgments and continues to have a profound impact in protecting children's rights.⁶⁴ The *Van der Burg* judgment is a further addition to the jurisprudence and confirms the Constitutional Court's commitment to protect children's constitutional rights. If more cases such as that of the *Van der Burgs* are to arise, the clear obligation imposed on the courts and the state to ensure that the interests of children are protected when the POCA is applied, is a landmark development.



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NOTES

1. 2012 (2) SACR 331 (CC).
2. The National Road Traffic Amendment Bill of 2012 proposes to, amongst others, amend the legal blood alcohol

concentration limit for private drivers from 0.05g/100 ml to 0.02g/100 ml and from 0.02g/ml to 0.00g/ml for professional drivers.

3. *Van der Burg v NDPP* para[5] – [6], 335.
4. *Van der Burg v NDPP* para[6], 336.
5. *Ibid*, para[8].
6. *Ibid*, para[9].
7. *Van der Burg v NDPP* para[11], 337.
8. *Ibid*.
9. *Ibid*, para[12].
10. *Ibid*.
11. *Van der Burg v NDPP* para[13] 338.
12. *Ibid*, para[14].
13. See above as well as *Van der Burg v NDPP* para[15] – [16], 338.
14. *Van der Burg v NDPP* para[17] 338.
15. The Preamble of the POCA.
16. Section 38(2) (a) and (b).
17. Section 50(1) (a) and (b).
18. *Van der Burg v NDPP* para[26] 341.
19. *Ibid*, para[27].
20. *Van der Burg v NDPP* para[38] p 345 and para [51], 349.
21. *Van der Burg v NDPP* para[71] – [72] 355.
22. *Van der Burg v NDPP* para[68] – [70], 354.
23. *Van der Burg v NDPP* para[31], 343.
24. *Ibid*, para[32].
25. 2007 (2) SACR 145 (CC).
26. *Van der Burg v NDPP* para[33], 344.
27. *Van der Burg v NDPP* para[36], 344-345.
28. *Van der Burg v NDPP* para[37], 345.
29. *Van der Burg v NDPP* para[35], 344.
30. *Ibid*.
31. *Van der Burg v NDPP* para[38], 347.
32. *Ibid*, para[45].
33. *Ibid*, para[46].
34. *Ibid*, para[47].
35. *Van der Burg v NDPP* para[48]- [49], 348.
36. *Van der Burg v NDPP* para[51], 349.
37. *Ibid*.
38. *Ibid*.
39. *Ibid*, para[53].
40. *Ibid*, para[54].
41. *Van der Burg v NDPP* para[58] – [60], 351.
42. *Van der Burg v NDPP* para[60], 352.
43. *Ibid*.
44. *Van der Burg v NDPP* para[56], 350.
45. In particular, the interpretation of section 28(2) read together with section 28(1) in *S v M* (Centre for Child Law as Amicus Curiae) 2008 (3) SA 232 (CC), and the dicta therein that “every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them.”
46. *Van der Burg v NDPP* para[63], 352.
47. *Van der Burg v NDPP* para[68], 354.
48. *Ibid*.
49. *Ibid*. The Constitutional Court also remarked that the failure of the parents to emphasise the interests of their children of the possible manipulation of the children's situation to suite the objectives of parents, may not be held against the children.
50. *Van der Burg v NDPP* para[69], 354.

51. Ibid, para[70].
52. *Van der Burg v NDPP* para[73], 355.
53. Ibid.
54. Ibid, para[74].
55. *Van der Burg v NDPP* para[75] – [79], 356.
56. 2007 (6) SA 169 (CC). Hereafter *Prophet v NDPP*.
57. *Prophet v NDPP* para[1]-[12], 175.
58. *Prophet v NDPP* para[16], 180.
59. *Mohunram v NDPP* para[5], 228. The illegal gambling business consisted of 57 gaming machines that were unregistered and no permit for their storage had been obtained by Mohunram.
60. *Mohunram v NDPP* para[110], 261.
61. *Mohunram v NDPP* para[129] to [136], 267 to 269.
62. *Mohunram v NDPP* para[134], 268.
63. 2008(3) SA 232 (CC).
64. See D Erasmus, *There is something you are missing: What about the children?: Separating the rights of children from those of their caregivers*, 25 SAPL 24, 2011, and A Skelton and M Courtenay, *Beyond S v M: Children of perpetrators who are primary caregivers*, 25 SACJ 180, 2012.

ON THE RECORD...

Savera Kalideen, senior Advocacy Manager for Soul City

Chandré Gould speaks to Savera Kalideen, senior Advocacy Manager for Soul City, about the Phuza Wize campaign and the challenges of developing and implementing holistic violence prevention campaigns.

Chandré Gould (CG): The Phuza Wize campaign, launched in 2010, has the very ambitious objective of reducing violent behaviour by men aged 15-35 by 10% by 2014. How did you hope to achieve this?

Savera Kalideen (SK): It was very ambitious, deliberately so. We felt that we had a five-year campaign timeframe and we wanted to address the issue of alcohol-related violence in a multi-pronged manner. That would include policy change, social mobilisation, and knowledge and skills building at both individual and community level, as well as reorienting of services. Our plan was to implement the project in ten communities around the country, and if it worked, we would then have tested a model that could be rolled out nationally.

CG: Have you managed to develop a workable model?

SK: In the end we could not implement the project in the provinces because the global recession had an effect on our donor funding. We had to drop the social mobilisation component of the campaign completely – community involvement is crucial to any violence prevention activity – which really affected our ability to show outcomes.

In the light of the funding cuts we had to change our strategy and have focused on media work, through our television dramas, and worked on effecting policy change.

Since we were looking at alcohol through the lens of safety, we felt it was important to map violence hot spots in communities. We did this in Mbekweni in the Western Cape and in Galeshewe in the Northern Cape. In Mbekweni we were able to follow this with community training on understanding legislative processes and engaging with the Integrated Development Plans (IDP) at municipal level. This training also included a component that showed communities how to engage in the formation of policy and law through developing petitions and submissions. Local councillors were invited to the training to answer questions about various issues that community members had raised in the training as they realised that the law creates space for community engagement. One councillor attended the training in Mbekweni and engaged on issues such as how licences had been granted without community knowledge, why roads were not repaired and why they were not consulted in development initiatives when the IDP had funds for community engagement.

Following this training and the establishment of a Phuza Wize learning group in Mbekweni, a community patrol group was set up to monitor violence hot spots and drinking places. They also worked closely with the designated liquor officers (who they previously didn't know existed) in their community police station.

We have also worked with the media, trying to highlight the evidence that links alcohol

consumption and violence, as well as the need for a comprehensive response to the high levels of alcohol-related violence in the country.

We developed safer social spaces criteria that would lead to increased safety in drinking places if implemented. These are:

1. Have good lightning, clean toilets and security
2. Do not sell to children under 18, those already intoxicated or visibly pregnant women
3. Have no more than three people per square metre
4. Sell food and non-alcoholic drinks; and make water available
5. Have clearly defined serving areas inside and outside
6. Display safe sex messages and condoms
7. Encourage customers not to drink and drive
8. Opening and closing times: 14h00 to 20h00 (Sun), 13h00 to 20h00 (Mon - Thur) and 13h00 to 24h00 (Fri - Sat)

The criteria were to be displayed at complying/willing liquor outlets. We also consulted with the South African Liquor Traders Association (SALTA) over 18 months about how these criteria could be implemented. SALTA showed a lot of interest in the idea and had no problem with the criteria, but they failed to make any firm commitment to implement these criteria. They attended events that we invited them to and said the right things, but in the end didn't do the right thing.

Since shebeens and taverns operate in a survivalist way, and we recognise that selling alcohol is one way of making a living, we realised that one of the big issues we need to address is job creation, while also improving safety.

A literature review done for us by the Legal Resources Centre found that there were 220 000 outlets selling alcohol in the country, while only 20 000 of these are licensed. So in our campaign we did not take a position against unlicensed outlets, but rather focused on creating safe social places. Our view was that all alcohol sales outlets, whether licensed or not, should be regulated in terms of health and safety, in the same way as any

other business would be. We were willing to work with liquor traders because jobs are important.

As part of our campaign we came up with a plan to create 500 000 new jobs through implementing the criteria for safer social spaces. At the moment most taverns do not sell food and do not have on-site security guards. Merely employing one or two people at each of the 200 000 outlets to make and sell food, as well as one guard, would already create close to 500 000 jobs, bearing in mind that the law allows outlets to stay open from 10h00 until 02h00. Building toilets and walls for all outlets would also contribute by creating short-term jobs for handymen, plumbers and builders.

SALTA said they would introduce this idea to their members, but we have not seen any outcome.

CG: Who did you envisage would pay for these jobs, given that many taverns operate with very small margins?

SK: We were talking to the Department of Trade and Industry (DTI) at national level and at provincial level to the Department of Economic Development, and others. We wanted to find creative approaches, such as combining small taverns into larger enterprises. It is true that there is not a huge profit margin to be made by small taverns, and the risks are high, so we thought that if we could look at combining and growing the businesses we could achieve the safety outcomes and create jobs. But it's not clear if this idea was ever taken forward to traders by SALTA or the liquor boards, and we were unable to pursue this as we had to curtail our campaign.

CG: It seems to me that because of funding constraints you were not able to implement and test a model for improving community safety – and that the result is a rather slow-going attempt to change policy. It also seems that this is the fate of many violence prevention initiatives. Do you think that donors and the state are sufficiently aware of the importance of these kinds of endeavours and the importance of funding them in such a way that they can be done properly? Is there an appetite for violence prevention work?

SK: It is costly to do social mobilisation, in terms of time, human resources and materials. So it's true that in the end we couldn't do what we had hoped to because of a lack of funding support. But it is important to address alcohol-related violence in a holistic and long-term way, as the drivers of these behaviours are multi-pronged and embedded in our society. The Inter-Ministerial Committee on Substance Abuse has brought the right departments together and we are hopeful that it will lead to both policy and support for programmatic interventions.

CG: How would you have measured the impact of your campaign?

SK: We were going to get the local communities to go to clinics and police stations and collect their own statistics weekly: how many fights there were, how many people got hurt, how many went to the hospital, and so on. In that way we, and the community participants, would have been able to see if the intervention was working.

As far as advocacy is concerned, we have managed to do a lot of advocacy around policy change focusing on reducing access to alcohol. We found that most provinces operated under one of two liquor acts: Liquor Act 59 of 2003 and Liquor Act 27 of 1989. And we found that the provincial, national and local laws contradicted one another. We focused on lobbying for a comprehensive national policy, the inclusion of the safer social spaces criteria into the legislation, for a link to be made between alcohol and violence, and a national conversation about how we consume alcohol. We have also done our own analysis on the cost of alcohol-related harm. Through that we found that we were spending more on alcohol-related harm than we were earning from tax and excise. So we are lobbying for a tax on the sale of alcohol to be used to set up a national health promotion and development foundation.

CG: Who is doing this lobbying? Only Soul City?

SK: Soul City has worked with partners such as the Medical Research Council and others on this

campaign, so they have also done alcohol research and advocacy work. To advocate for a health promotion foundation, a health promotion and development network was established in 2011. This network is made up of research organisations, advocacy groups and academic institutions. We are lobbying for the establishment of a foundation for health promotion that would be funded by taxes from alcohol and cigarettes. There are international examples from comparable countries of how this can work, including Thai Health (Thailand), Vic Health (Victoria, Australia) and a foundation in Korea.

CG: What is the response of the state so far?

SK: We are still talking about why we need such an intervention. We have made the case that it is in our interest as a country to spend more on prevention than on dealing with the harm caused by violence. We have also highlighted the need to look at funding structures that get the alcohol and tobacco industries to carry the cost of harm caused by their products, rather than the taxpayer carrying the burden, as is currently the case.

CG: Turning to provincial policy, through the Phuza Wize campaign you have also tried to contribute to the development of the Gauteng liquor policy through facilitating public consultation – tell me about that.

SK: What happened is that we were asked to facilitate public consultation around the policy. We felt that it was important to have public participation in the development of the policy. But the public consultation process was afforded very little time – 12 or 14 days, with only five or six days' notice. We tried to get the Gauteng government to extend the period of public consultation, but that didn't happen. They had deadlines that they were unable to shift. But it did mean that proper community consultation was not fully realised through this process. Communities need much more time than this to organise and prepare submissions, and they need support to understand the draft policies and their own role in the process.

Under these constraints, we did work with community organisations and provided minimal training and support to prepare submissions. A challenge we found at the community consultation forums was that there were large numbers of SALTA members wearing branded T-shirts. They had a very loud voice in all the public hearings, which meant that it was difficult for ordinary, unorganised members of the community to speak up about their concerns about the sale of alcohol around them.

As a result, we believe that future public consultations should not only be longer, but that there should be separate consultation forums for those earning a living from the industry and the communities in which they trade. People seemed scared of shebeen owners and felt that they couldn't impact on the behaviour of the owners of liquor outlets without government support.

CG: So where does that leave us in terms of policy in Gauteng and nationally?

SK: The DTI released Draft National Norms and Standards for public comment last year, which are currently with the National Liquor Policy Council.

CG: As far as I was able to see, the Gauteng liquor policy of 2011 is still in draft form. Is that where the process stopped?

SK: That's as far as we were involved in the policy process.

CG: In this edition of the SACQ, Clare Herrick and Andrew Charman argue that 'increased police attention to shebeens in the context of the Liquor Act has not served to reduce their vulnerability to crime, but has rather added another layer of (often) violent confrontation and criminality to the experience of making a living through shebeening'. This draws attention to the potentially serious negative consequences of enforcing alcohol legislation that seeks to regulate the operating conditions of shebeens. If we accept that increasing the safety of both those consuming alcohol and others is of primary

importance, what alternatives are there? Might there be a way of incentivising shebeen owners to increase the safety in and around their establishments?

SK: Our campaign has sought to do that – by implementing the ten conditions for safe public places. They were not punitive. But we needed to work with SALTA and to engage with DTI and other departments such as the South African Police Service (SAPS). Change is required, because communities feel helpless to stop the alcohol-related violence on their own. So while we want to support the right of shebeens and taverners to make a living, we need to be careful not to allow them this right at the expense of the well-being of ordinary families who live in the vicinity of these outlets. We know we need to work with traders, and see them as part of the solution. We thought the best way to do this would be through a national body such as SALTA, but we haven't found much reciprocity. We certainly don't want poor, corrupt policing and know that can cause harm.

CG: Are shebeens the problem – or might the problem rather be the normalisation of violence? In other words, do you think that focusing on reducing and restricting alcohol is the most appropriate way to seek to reduce violence and the related harms?

SK: It's obviously not the only way, but from a public health perspective, reducing availability and misuse of alcohol is one of the World Health Organisation's (WHO) recommendations for reducing violence. The WHO also recommends shifting social norms that support or condone violence, improving parent-child relationships, and gender relations among other things. In our campaign we tried to address several of those. Ultimately a multi-faceted approach is necessary and already overdue, given the violence statistics that we see in our country.

PREVIOUS ISSUES



Andrew Faull reflects on his recent experiences following the daily grind of police work in the Eastern and Western Cape. He concludes that the police use violence in an effort to gain respect and stamp their authority in communities, and this is a reflection of deeply entrenched notions of masculinity. Hema Hargovan assesses a diversion programme offered by a non-governmental organisation and identifies the difficulties associated with assessing their impact. Clare Ballard and Ram Subramanian report on efforts to reduce pre-trial detention in South Africa and ask whether the time is right for the implementation of measures that have been shown to work. We introduce a new feature titled 'Case Notes'. The first case note, contributed by Ann Skelton, considers the findings courts in two provinces regarding the right to automatic repeal in cases involving child offenders.

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In this edition of SACQ Anthony Collins argues that violence in South Africa is normalised in every aspect of our lives, from child rearing to intimate relationships. He challenges policy makers to consider deal with violence in ways that will change social norms; and concludes that until we do so we will not be able to reduce violent crime, or police brutality. These views are echoed in the interview with Rachel Jewkes that concludes this edition. Also in this edition, Vanya Gastrow considers the constraints to accessing justice for Somali shop owners who have been the victims of robberies in the Western Cape. David Bruce offers an overview and analysis of the effect of massive recruitment into the SAPS over the past ten years.

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