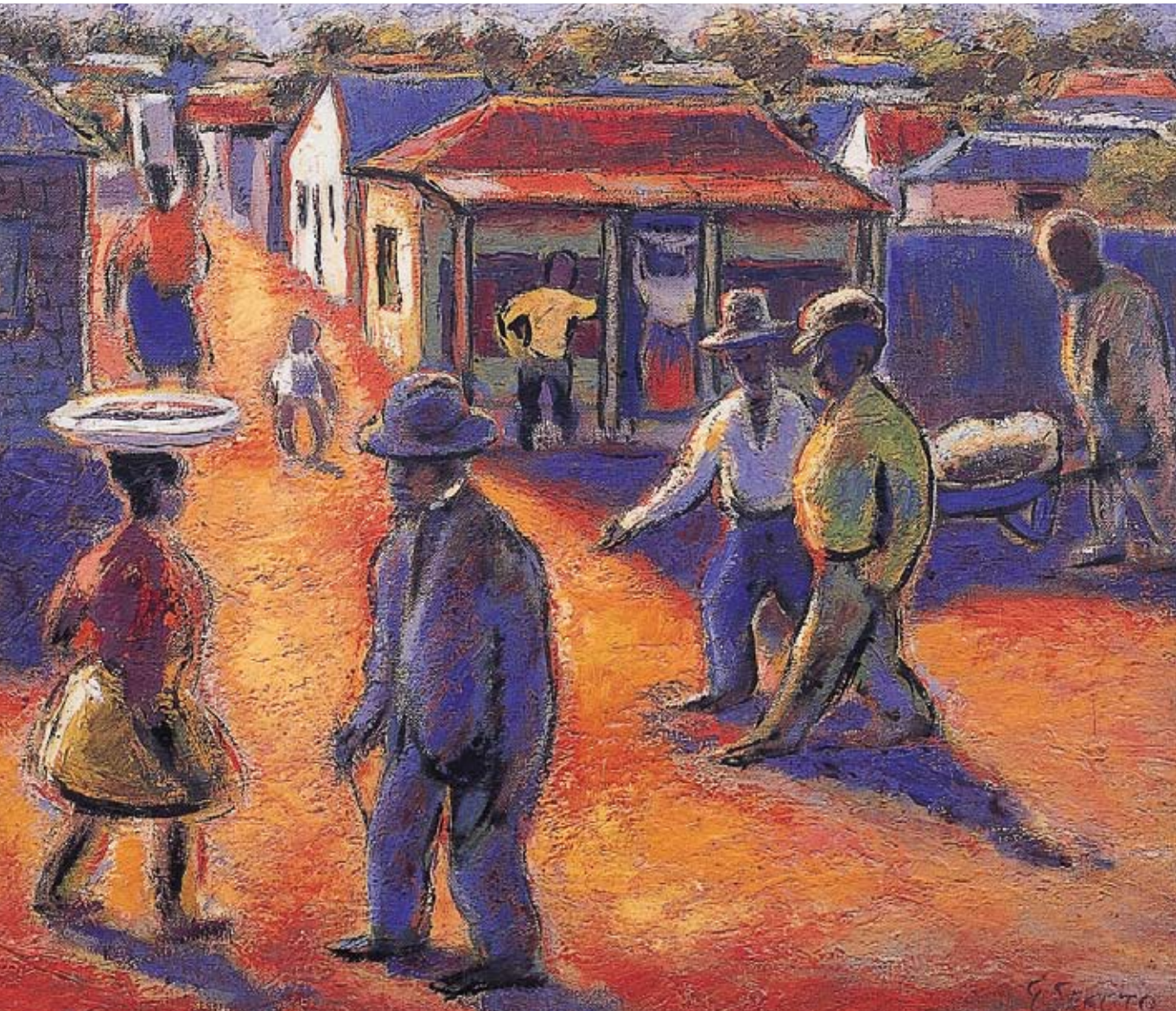


South African CRIME QUARTERLY

No. 52 | June 2015



- > Databases for stolen art
- > A survey of car guards in Tshwane
- > The impact of the Community Work Programme
- > Challenging DNA evidence in court
- > Intelligence-led policing

The Institute for Security Studies is an African organisation which aims to enhance human security on the continent. It does independent and authoritative research, provides expert policy analysis and advice, and delivers practical training and technical assistance.

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This image of the painting 'Street Scene' by Gerard Sekoto was made available by the Pretoria Art Museum. Copyright is courtesy of The Gerard Sekoto Foundation.

This painting was stolen in 2012 and has not yet been recovered.

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Editorial policy

South African Crime Quarterly is an inter-disciplinary peer-reviewed journal that promotes professional discourse and the publication of research on the subjects of crime, criminal justice, crime prevention and related matters, including state and non-state responses to crime and violence. South Africa is the primary focus of the journal but articles on the above-mentioned subjects that reflect research and analysis from other African countries are considered for publication, if they are of relevance to South Africa.

SACQ is an applied policy journal. Its audience includes policymakers, criminal justice practitioners and civil society researchers and analysts, including academics. The purpose of the journal is to inform and influence policymaking on violence prevention, crime reduction and criminal justice. All articles submitted to SACQ are double-blind peer-reviewed before publication.

Editorial

Resolution delayed

By the time you read this edition of *South African Crime Quarterly* the report from the Farlam Commission of Inquiry into the police massacre of mineworkers at Marikana will finally have been made public.

The Commission's report was handed to President Jacob Zuma on 31 March but he refused to make it public until 30 June, claiming that he needed time to consider the findings and recommendations before tabling it in Parliament. Injured mineworkers and the families of those who died were deeply frustrated but the slow pace of progress. They were concerned that the delay would affect their ability to lay civil claims against those in the police who were to be found responsible for the shootings. They were supported by civil society organisations, such as the Right To Know Campaign, which shared their concerns.

There was much suspicion that the president was delaying the report to give himself enough time to make deals with those who are found responsible, and to protect them from justice. He laid the basis for such suspicion by paying out National Prosecuting Authority (NPA) head Mxolisi Nxasana an amount of R17.5 million to leave office after Zuma abandoned an inquiry into his fitness to hold office.¹ There were also deep concerns about who Zuma would appoint as the new head of the NPA, given his weak choices to date and the 783 corruption charges that may one day be reinstituted against him. His appointment of Adv Shaun Abrahams have allayed those concerns for the time being. But increasingly the ability of citizens in South Africa to hold political leaders to account is being called into question, as is trust in parliament and political leaders. Despite the Farlam Commission having concluded with damning findings against the Commissioner of Police we are far from the end or from final resolution.

Given the crises of leadership affecting the SAPS, it seems ironic that this edition of *South African Crime Quarterly* focuses on regular policing matters – but despite the growing uncertainty in South Africa about whether citizens, or even the courts, are able to hold elected politicians to account, the daily grind of criminal justice must go on.

In this edition, Christa Roodt and Bernadine Benson write about the challenges faced in tracking down art thieves. The image on the front cover of this edition of the journal, Gerard Sekoto's painting 'Street Scene', was stolen from the Pretoria Art Gallery in 2012. It joins the host of other works of art and heritage items stolen in South Africa that are likely making their way into the hands of unscrupulous collectors. The authors make the case for an accessible, searchable database of stolen items that can be used by dealers in art and antiquities as well as by the criminal justice system, to enable the identification of stolen art when it surfaces.

Dr Francois Steyn, Annika Coetzee & Harriët Klopper contribute to the small but growing South African literature about the working conditions of the men and women who guard your car when you park at a shopping centre or in the street in any urban area in South Africa. Their research shows that car guards are often exploited by shopping centre managers while trying to earn a living performing what can be a dangerous job.

David Bruce's article looks at the possible contribution of the Community Work Programme to crime prevention. He is careful to note that the purpose of the programme is not primarily to prevent crime, and nor should it be, but rather to provide an income to people who would otherwise be unemployed. Nevertheless, his analysis helps us to think through how such programmes could, or may not, help prevent crime and violence, and what can be done to enhance that without changing the programme's objective.

In the Case Note in this edition Emma Lubaale addresses the issue of how courts consider DNA evidence, and what needs to be done to ensure that such evidence is assessed properly to avoid miscarriages of justice. Finally, Trevor Budhram proposes a model for intelligence-led policing that he argues would aid the investigation of organised crime and corruption.

The September edition of *Crime Quarterly*, guest edited by Elna van der Spuy, will be a special edition dedicated to the state of policing in South Africa, and the contribution that commissions of inquiry can make to improving policing.

Chandré Gould (Editor)

Notes

- 1 Kwanele Sosibo, Zuma strikes deal with NPA head Nxasana, *Mail & Guardian*, 31 May 2015, <http://mg.co.za/article/2015-05-31-zuma-reaches-settlement-with-npa-head-nxasana> (accessed 8 June 2015).

Databases for stolen art

Progress, prospects and limitations

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Addressing the illicit trade in stolen works of art and other heritage items is notoriously difficult. Before thefts of heritage items can be recorded, the object in question must be identified as having special significance. The investigation of the circumstances in which such an object was acquired and the enforcement of legal and ethical standards of acquisition become unduly complicated in the absence of a comprehensive national inventory of museum holdings and of a database of stolen art and cultural objects. This article considers the development of inventories and databases in South Africa and elsewhere. We argue that cross-sectoral co-operation in sharing databases needs to improve significantly in order to boost compliance with due diligence standards. To help restore the credibility of the trade in art and cultural objects, the South African Heritage Resources Information System site must be endorsed as the centralised database for heritage crime. This would provide ready access to databases, helping art market participants, law enforcement officers and customs officials in the investigation of stolen art works.

There are many factors that sustain the illicit trafficking of cultural objects and art.¹ Primary among them is the demand for rare and fragile pieces on the part of collectors, and the risky activities that suppliers are willing to engage in to make a sale. Stoneware, porcelain, jewellery, war medals, paintings and prints are frequently stolen and sold privately or at public auction, either locally or abroad.² In the case of paintings, works that are readily identifiable may be disguised by cutting them up, and in so doing improving the marketability of the fragments.³

Repositories of South African art and heritage objects must contend with additional challenges such as continual cost increases, politically motivated operational decision-making, and decreased numbers of visitors.⁴ These repositories also pose soft targets for thieves. Poverty, unemployment and rising living costs mean that items of historical and cultural significance, as well as metal objects, are desirable purely for their perceived monetary value.⁵ In the process, priceless works are frequently destroyed.⁶

But it is not just about the monetary losses resulting from thefts from museums and public collections. Crucially, these thefts also pose a threat to the collective memory of a society, its knowledge of history, historical records, and ultimately to social cohesion. They diminish the potential for mutual enrichment and for dialogue about art and culture.⁷ They also sustain illicit trafficking in cultural objects.⁸

* Christa Roodt is a lecturer at the University of Glasgow, Scotland, and Professor Extraordinaria and Research Fellow, University of South Africa (UNISA). Bernadine Benson is a senior lecturer at UNISA. The authors acknowledge the assistance of the two anonymous referees and the journal editor, and wish to thank them for their constructive comments. All remaining errors remain our responsibility.

Important anniversaries can create opportunities for this type of crime. For instance, the 100th anniversary of the start of World War I in 2014 saw a spate of thefts of war memorabilia across South Africa during 2013. Inadequate or non-existent border checks and improved transportation systems have also added to the challenges faced by regulators, customs authorities and law enforcement officials.

Generally speaking, the state has afforded 'poor overall support' in respect of the financial and other challenges museums face in post-apartheid South Africa.⁹ Solutions must be considered from an integrated, global perspective, because while international art crime has to be detected at the national or local level, local initiatives alone cannot prevent theft and curb international demand.

The 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property calls for the establishment of a national inventory of protected heritage items.¹⁰ Moreover, the link that was established between due diligence and databases as far back as 1985 remains current.¹¹

Databases of stolen art enable people and institutions that have experienced losses to notify users of these losses. This enables dealers to run checks on items they receive to sell on; buyers to ensure they do not buy stolen items or items with a defective provenance; and everyone with an interest in a particular item to check if there is any registered concern regarding that item. In 1993, the United Nations encouraged states to adopt or strengthen legislation to protect their own heritage and that of other peoples.¹² Museum inventories were to include a photographic record of items held in storage, and states were encouraged to require photographic documentation of each object discovered during authorised excavations.

In response to thefts of antiquities and from remote or rural churches, governments began to inventory heritage items. In the process, dealers in ancient or religious art were made aware that many such items could have been illegally acquired and thus be tainted. A system of catalogues and inventories exists, and various government offices in Mexico are

involved in law enforcement in respect of items on these lists. The National Institute of Anthropology and History in Mexico is one of the institutions that has set up a stolen art database website with full state endorsement.¹³

Law enforcement becomes unduly complicated in the absence of a comprehensive national inventory of museum holdings and of a database of stolen art and cultural objects. Not every country has managed to set up a functional national stolen art database. In South Africa, attempts to pool information on stolen works, or establish a comprehensive database to enable independent searches, have failed.

However, a portal for reporting heritage crime has been established, and it is possible to track the progress of a case.¹⁴ In addition, the South African Heritage Resources Agency (SAHRA) is in the process of populating the national inventory of heritage items (and sites) on the South African Heritage Resources Information System (SAHRIS). The SAHRIS database is freely available to all members of the public, with some reserved access for museum or SAHRA staff. While this is encouraging, it is imperative that the Department of Arts and Culture endorses the SAHRIS site as the centralised database for heritage crime.¹⁵ It would also be beneficial if the new facilities could fully interact with other art and heritage crime databases.

The next section provides a brief overview of the scope of heritage crime from a South African perspective. It focuses on the importance of ensuring that a buyer has opportunities to run checks on the provenance of an object, with reference to developments in South Africa and elsewhere. Provenance is defined at the outset. Since due diligence depends on the availability of national databases that are accessible internationally, such as the Interpol Works of Art database, the article also considers these, and investigates the potential contribution of existing international commercial databases. Higher levels of cooperation between the public and private sectors can help fortify South African cultural heritage against art crime. The factors that hinder this cooperation are identified, with a view to improving the system and thus protecting our heritage.

Scoping the problem

It is difficult to quantify thefts from cultural institutions and public collections in South Africa. The annual crime statistics of the South African Police Service (SAPS) do not reflect art and heritage crime. Such thefts are reported as thefts of household items.¹⁶ Also, there are few tools to assess the authenticity of items offered for sale. Collectors and museums seldom adequately check the status of the objects they are about to acquire or sell, and legitimate businesses sometimes facilitate the re-introduction of stolen items into the legal market.¹⁷

A comparatively small number of thefts registered with the Art Loss Register and Interpol are thefts from museums.¹⁸ Interpol has a facility for text-based searches on its Works of Art database¹⁹ and traders and dealers can apply for access to this database to run checks on items they have acquired or wish to sell. While access to the database is managed, complete independent searches can be done after registration on the site.

Incidents of theft from museums and galleries were quantified for the period 2006 to 2010 for Gauteng only. Results show that objects on open display are most often stolen during the day, and in open hours.²⁰ In November 2012, five paintings worth approximately R17.3 million were stolen from the Pretoria Art Museum.²¹ While four were recovered, 'Street Scene' by Gerard Sekoto remains missing. Such incidents are not confined to Gauteng. In August 2013, 'Sorcières au Balais' by Salvador Dali disappeared from the municipal art gallery in Mbombela, Mpumalanga. Its disappearance coincided with the theft of other works.²² A spate of museum thefts in the Eastern Cape was reported in the media in 2014.²³ Unfortunately this kind of crime does not capture public attention and tends to fade into the background in the face of the high rate of violent crime.²⁴

In addition, museums often under-report theft, as they are hesitant to publicly highlight their lack of proper security. Moreover, they are careful not to place relationships with their donors and potential donors at risk.²⁵ This forms part of a wider, global trend. Often thefts are reported for insurance purposes rather than to aid recovery. Research shows that investigations

are readily closed when the stolen item is insured. The assumption is that the insurance will pay out and the loss will be recovered.²⁶ Unfortunately, these losses involve unique and irreplaceable items.

Provenance and auction house practice

Provenance speaks to the genealogy of the item concerned. Checking provenance prior to purchasing a piece of art or a heritage object, and running searches through national or international stolen art databases, raise the ethical bar in the art market and in the museum world. Private firms and provenance researchers do valuable work, but their research findings are not always open to searches.

Auction houses tend to draw a 'shroud of secrecy' over the sale of highly priced works of art. While important to protect the identities of both buyer and seller and prevent price manipulation, secrecy promotes superficial due diligence and masks the ownership history of the item being traded.²⁷

The top-tiered auction houses in South Africa employ various categories of specialists who review the provenance of items received for auction. In all probability this practice has shielded them from exposure to stolen items. The second-tiered auction houses are less fortunate. In-depth provenance inquiries are only done if the item or the seller raises suspicion.²⁸ The police do confiscate items from auction house premises, but reporting on this tends to be sporadic.²⁹

The South African legal position

South Africa became party to the 1970 UNESCO Convention in December 2003. The country is in the process of ratifying the complementary 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property,³⁰ but progress is slow.

SAHRA is mandated by the National Heritage Resources Act 25 of 1999 (NHRA)³¹ to identify, manage, conserve, protect and promote heritage resources that form part of the National Estate. The NHRA has responded to the 1970 UNESCO Convention's call for the establishment of a national inventory of protected heritage items. SAHRIS is the mechanism designed to capture this inventory in the

form of an online database. Since October 2014, the system has also made provision for the reporting of the theft of heritage objects and all other forms of heritage crime.³²

The Department of Arts and Culture, SAPS, Interpol and its National Central Bureau in Pretoria, and SAHRA collaborate with one another to counter the illicit trade in cultural objects. Positive developments include direct access, since 17 August 2009, to the Interpol Works of Art Database. The database was opened up to promote and support due diligence. The site contains photographs of 34 000 stolen works. Access is free of charge. Searches are done using key words and terms. The database is updated in real time, which represents an important step forward from the dated and costly DVD system that was previously used. More than 2 200 users from over 80 different countries have registered to make use of this service.³³

The National Forum for Law Enforcement of Heritage Related Matters (NALEH) provides a platform for cooperation between law enforcement and heritage officials. Both public and private sector organisations with an interest in fighting cultural crime are represented on this forum. The Directorate for Priority Crime Investigations (DPCI) of the SAPS, the South African Customs Administration, the Department of Arts and Culture, Interpol, SAHRA, the South African Museums Association (SAMA) and the South African National Committee of the International Council of Museums (ICOM-SA) are represented. Regrettably, however, NALEH has failed to make a significant impact because the SAPS, the Department of Arts and Culture and SAHRA have not offered any dedicated support. As an autonomous body, NALEH was never formally and structurally assigned to any body or organisation in particular. Attempts to place NALEH with the Department of Arts and Culture as an affiliate have been unsuccessful. As a potential vehicle for inter-government agency cooperation, NALEH faces seemingly insurmountable obstacles at this stage and it will be difficult to overcome them without support from official organs of state. The current ICOM-SA president is exploring the possibility of an affiliation between NALEH and ICOM-SA,³⁴ since there is a synergy between the counter-trafficking objectives of ICOM and the mission of

NALEH. Affiliation with a reputable organisation will be significant in structural terms, and it may offer NALEH opportunities to gain legitimacy and recognition from state departments.

The structural gap between South African role players and the fledgling status of SAHRIS make it all the more urgent for South Africa to utilise its link with the Interpol database and to facilitate access to a global platform. Progress cannot depend indefinitely on ad hoc appeals for public help.³⁵

One specific insurance company is providing a service that registers the loss of art, antiquities and collectibles. This register, administered by Artinsure,³⁶ intends to provide a comprehensive archive of stolen art in South Africa, given the absence of a central and comprehensive South African database. The service started in 2007 and has replaced the earlier services provided by arts consultants.³⁷ Presently, art theft claims constitute a significant 31% of all claims processed by Artinsure.³⁸

SAHRIS and Artinsure have entered into an agreement to share information between the two databases. Importantly, the integration of the Artinsure information into the SAHRIS database of heritage crime is on the agenda. This integration is as vital as the endorsement of SAHRIS by the Department of Arts and Culture as the centralised South African database.³⁹

The fact that South African case law has not developed to impose a legal duty on sellers, purchasers and their agents to exercise due diligence or due care in the acquisition of art and cultural objects, underscores that any progress remains rooted solely in a normative ideal in the cultural sphere.

Progress achieved elsewhere

Work on databases is frequently bogged down by a lack of funding, policy, political will and administrative difficulty. Nonetheless, the 'databasing' of stolen cultural objects⁴⁰ and the steps that will ensure access to these databases deserve to be prioritised and fast-tracked.

Since opportunistic dealers and thieves are rarely deterred by the law, it is important to clarify

practice standards for acquisition and collection in a transnational market subject to inter-jurisdictional differences. Commentators have argued that the consultation of databases is a binding legal duty when buying art and antiquities in the United Kingdom (UK).⁴¹ This argument is supported in *De Préval v Adrian Alan Ltd*,⁴² where the notion of good faith was extended, and the principle that a dealer cannot claim to be in good faith unless databases had been searched was established.⁴³ In *Marcq v Christie Manson and Woods Ltd, t/a Christie's*,⁴⁴ the auction house was found not to be liable in conversion when it returned the stolen painting to the ostensible seller after having innocently offered it for sale; however, an auctioneer can incur criminal liability for failing to report suspicious circumstances.⁴⁵

In the European Union (EU), Directive 93/7/EEC⁴⁶ established administrative cooperation between member states as regards their national treasures, closely linked to their cooperation with Interpol and other competent bodies in the field of stolen works of art. A new instrument, Directive 2014/60/EU of 15 May 2014,⁴⁷ was adopted in order to improve the level of administrative cooperation between member states. The new directive now imposes a duty on possessors to consult databases of stolen art. When claims for return are instituted before the courts of the member states of the EU, adjudicators may check if this has been done. Recital 17 and Article 10 require that the competent court, in determining whether the possessor exercised due care, consider all circumstances of the acquisition. In particular, it must consider whether the possessor consulted any accessible register of stolen cultural objects, or any relevant information that could have been reasonably obtained.

Italy is the model EU member state in this regard. The Carabinieri manage the largest databank on stolen art in the world (the Leonardo Database carries details on some 5.7 million objects).⁴⁸ The Carabinieri accord high priority to art theft, making a careful distinction between stolen art and other stolen goods.⁴⁹ Italy also leads Project PSYCHE (Protection System for Cultural Heritage), which is key to modernising Interpol's stolen works database in co-operation with the Carabinieri Special Unit for the Protection of Cultural Heritage.⁵⁰ Started in

2013 with EU funding support, PSYCHE is aiming to connect police databases by creating a platform for automatic data transfer from national databases to Interpol, and by enabling direct data insertion, modification and deletion at national or state level. Increased interconnectivity also makes existing databases easier to use.

The UK has experienced challenges in setting up databases. The Ministerial Advisory Panel on the Illicit Trade in Cultural Objects⁵¹ mentioned the necessity of this work, but the government considered it too complex and expensive. Today the UK has virtually no national stolen property database, and the prospects of getting one updated are slim.⁵² The most recent thefts listed in Metropolitan Police Art and Antiques London refer to objects stolen in February 2008, and the unit specialising in art crime is very small. The *Heritage and cultural property crime national policing strategic assessment*, compiled by the Association of Chief Police Officers in 2013, highlights the need to establish a 'single UK stolen property database', i.e. a national database that could be used to tackle art crime.⁵³ According to the assessment, efforts to recover stolen cultural property rely on descriptive searches by local force intelligence systems interacting with the London Stolen Art Database and the Interpol Works of Art database, both of which presently rely on text-based searches.⁵⁴

Police databases have limited potential for interoperability, and a truly integrated response can only be achieved with cross-sectoral cooperation. Both the public and private sectors possess vital knowledge for national law enforcement purposes, and this should be harnessed to create and manage the data that can build and strengthen international law enforcement and global solidarity.

An example of such cooperation is evident in Sweden. Larmtjänst,⁵⁵ a non-profit organisation owned by Insurance Sweden, works for insurance companies to reduce insurance-related crime, support their investigations, and assist in the recovery of stolen property in cooperation with international law enforcement.⁵⁶ Its commitment to promoting cooperation across all levels of the public and private sectors is shared by the

insurance companies. It is tasked to establish and maintain liaison with the government, national and international organisations, and international investigators. It also offers training and information on the modus operandi of insurance-related crimes.

While national and international initiatives work in tandem, the public/private sector interface presents challenges for South Africa. Open access to national police databases cannot be granted, and commercial databases do not permit open access. Technology enabling the comparison of images of archived stolen art and antiquities has not yet been optimised. Profit-based systems are the least desirable since they are costly and limit access. But even in a system that manages to remain funded, such as in Sweden, specialised coordination is required to sustain cooperation between art experts and law enforcement.

If we accept that commercial for-profit databases are a vital part of a viable and integrated response to the problem of art and heritage crime, what do they offer?

Commercial (for-profit) databases

There are only two commercially operated (for profit) databases of stolen and missing works of art, antiques and valuables; namely the Art Loss Register (ALR) and Art Recovery International (ARI). The locally based Artinsure database does not fall into this category, as it does not charge a user fee. There is no need to register or be a client. Data on stolen items may be added free of charge.

The ALR is founded on a joint partnership of leading international auction houses, art trade associations and the insurance industry. The ALR database has a significantly sized register of stolen art and antiquities. Its scope ensures that it has a competitive edge in the tracking of stolen art.⁵⁷ ALR staff perform the searches. For due diligence requirements the ALR issues certificates stating that a particular object is not listed on its database. It goes without saying that trafficked objects will continue to circulate on the black market if the relevant data is not incorporated into the register. Art historians are able to match stolen objects with objects registered on the database.

The ALR is tightly controlled and every search is fully recorded for audit purposes. This makes it difficult for thieves to get information about the status of a work they have stolen. The owner pays to register the stolen item/s, and auctioneers and dealers contribute to the cost of the search. An additional recovery fee (as much as 30% of a work's value) may be payable if the ALR undertakes to recover the art.⁵⁸ Due to its commercial nature, the potential of the ALR database to interact with other private sector initiatives and with police databases is relatively low.⁵⁹

The ARI, which provides due diligence services and provenance research, is a much more recent initiative.⁶⁰ It was set up in London in 2013 in order to bring 'transparency to the rather murky world of art recovery' through 'ethical and strategic negotiation'.⁶¹ Its primary focus is art recovery and the resolution of complex title disputes, but it also intends to get involved in education on art crime and cultural heritage preservation, and to offer pro bono services for artists, eligible claimants and non-profit institutions.⁶² Registering an item on Art Claim, its database, is free of charge, and it utilises image recognition software.⁶³

Overall, available stolen art databases are uneven and database organisation differs. Existing systems do not speak the same electronic language and are not at the same stage of development.

The ALR database represents a repository of data, and searches have been undertaken into the ownership history of individual stolen items since its inception in 1991. All searches on the database are performed by staff who are qualified art historians. Image comparison technology, while available, is not widely used as yet. It is likely to be more commonly used in future by art detectives using mobile phone technology. The UK's *Heritage and cultural property crime national policing strategic assessment* not only emphasises the importance of linking a national database with the Interpol Works of Art database, but also highlights the need for image comparison capability.⁶⁴ Synchronisation of databases will facilitate an automatic transfer of records to Interpol, and direct data insertion, modification and deletion on the PSYCHE via remote national databases. Image comparison will simplify recovery procedures.⁶⁵

Moving towards database due diligence

A database of stolen art facilitates due diligence and independent checks prior to the purchase, auction or sale of a work of art or a cultural object.⁶⁶ Database searches can assist with items reported as stolen property, as well as with items that, by their very nature, may have been illegally obtained. Checks can prevent the unintended purchase of stolen items, and provide proof of due diligence on the part of the purchaser.

The ability of legitimate market participants to undertake independent checks and to behave ethically can raise the standard of acquisition and trade. A database listing might prevent a questionable sale, influence pricing⁶⁷ and indirectly deter theft and illicit trafficking of art and cultural objects.

Because the purchaser always has the option, prior to buying, to consult publicly accessible commercial, international or state-run databases,⁶⁸ improving and facilitating access to such databases supports ethical conduct. There is an ethical obligation to behave diligently, regardless of whether there is a legal duty.

The activation of the International Observatory on Illicit Traffic in Cultural Goods may hint at a global move in respect of database due diligence. In 2013 an International Observatory on Illicit Traffic in Cultural Goods was set up within ICOM to counter the lack of centralised information on illicit traffic in cultural goods. Unfortunately the observatory is only funded for three years. While the difficulties associated with setting up a comprehensive global non-profit database are not going to be resolved any time soon, a collaborative platform that enables information and resources to be shared across jurisdictions and at all levels represents a step in the right direction. The Advanced Search section on the observatory's website⁶⁹ already provides links to NALEH and the Carabinieri. Partners include Interpol, the Carabinieri, the Federal Bureau of Investigation, and prominent research initiatives such as Trafficking Culture at the University of Glasgow. Its website can function as a common portal or interface at the front end, making available a list of existing databases and the conditions of their access. The safeguarding and

expansion of data can be included in the objectives of the observatory.

The development of different databases by segments of the art market has met with some opposition, because the more databases there are, the harder it is for the law to impose an obligation of due diligence on buyers and sellers.⁷⁰ However, we would argue that solidarity can be built and strengthened by a network of databases that share a common interface. Such a commonly agreed portal would be well placed to promote the updating of inventories of public collections and national digitised inventories, based on the international object identification (ID) system.⁷¹

Considering that funding for the continuation of this endeavour is not guaranteed beyond the current three-year period, a replacement front end needs to be identified. The website for the International Centre for the Study of the Preservation and Restoration of Cultural Property (known as 'ICCROM'), which is linked to UNESCO, is one possibility.⁷²

If databases are to become interoperable, and if the efficacy of local and international due diligence database checks is to be improved in the longer term, the issue of compatibility needs to be factored in at the early stages of design and implementation. The common portal could offer basic guidance on database design so that future national databases of stolen art are searchable and compatible. This would promote the establishment of national police databases of stolen art with a view to achieving stable and expandable lists.

Conclusion

A decent, workable platform for promoting the legal circulation and transfer of art and cultural objects depends on a number of crucial factors. Among these are (a) the active and sustained detection of international art crime wherever it occurs; (b) the facility to register and record art and objects locally; and (c) greater interoperability of existing systems to enable international searches to pick up on stolen pieces at any point after their first transfer.

While the ICOM website may not win universal endorsement as a common portal for searches of stolen art and heritage, the identification of a commonly agreed portal could be a vital first step to

strengthen compliance with due diligence. It would facilitate searches by individuals and business of commercial databases, which could assist to prove due diligence in court. In the absence of local or nationally driven initiatives, this suggestion offers a fortification for the cultural and artistic heritage of South Africa against thieves, looters, middlemen, unscrupulous dealers and collectors.



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<http://www.issafrica.org/sacq.php>

Notes

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A survey of car guards in Tshwane

Implications for private security policy and practice

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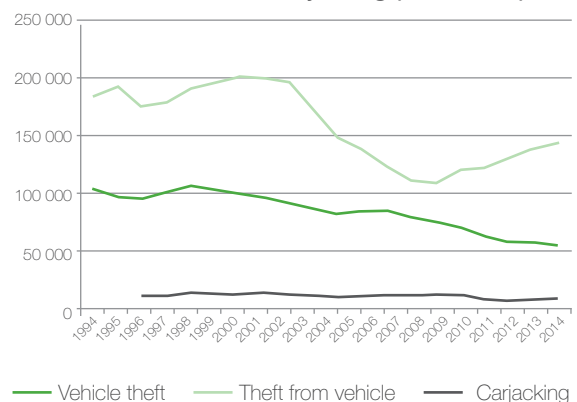
Car guards form an integral part of South Africa's urban landscape. This article reports on a survey of 144 car guards in Tshwane to identify the implications of their work for private security policy and practice. The profile of respondents reflects their low socio-economic status and marginalisation from the formal economy. The study found that some car guards struggle to survive financially because of the daily levies payable to car guard agencies and the managers of shopping centres. The results of the study suggest that, despite positive sentiments and advancements in policy and legislation, regulation of the formal car guarding industry remains constrained due to inadequate implementation and monitoring. The article offers insights into the factors affecting car guarding as a form of private security in South Africa.

South Africa carries a high burden of vehicle-related crime, even though there have been reductions in some categories, especially vehicle theft, which has decreased since 1998 (Figure 1). In the 2013/14 financial year, 56 870 cases of motor vehicle/motorcycle theft, 143 812 incidences of theft from motor vehicles, and 11 221 cases of carjacking were recorded by the South African Police Service (SAPS).¹

Vehicle-related crime occurs in a variety of places, although theft of and from vehicles, as well as vandalism of vehicles, occur more frequently in residential settings than outside offices and shopping centres (Table 1).

According to the 2013/14 National Victims of Crime Survey, theft of vehicles occurs at roughly the same frequency at night (47.7%) as during the day (52.3%). Theft from a car, however, occurs more often at

Figure 1: Trends in vehicle theft, theft from vehicles and carjacking (1994–2012)²



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**Table 1: Vehicle-related crime in South Africa
(April 2012 – February 2014)³**

	Vehicle theft (%)	Theft from vehicle (%)	Vandalism of vehicle (%)
At private residence	67.1	71.9	55.0
On street in residential area	13.9	5.7	18.9
On street in town	9.8	10.2	2.8
In parking lot	5.3	6.2	12.9
Other	2.0	1.9	4.4
Outside office/shops	1.9	4.1	6.0

(Source: National Victims of Crime Survey. Note that vandalism of vehicles adds up to 94% and not 100%; this appears to be an error in the report of the National Victims of Crime Survey)

night (60.1%), compared to during the day (38.8%).⁴ Strategies to prevent vehicle-related crime include installing alarms, immobilisers and tracking systems. This is known as target hardening, which makes it more difficult to commit vehicle-related crime, and thus less attractive to perpetrators. The presence of others, especially safety and security officers, also helps to deter theft of and from vehicles.⁵

Sporting their yellow bibs and eagerly pointing drivers to open parking bays, car guards have over the past two decades become an integral part of South Africa's urban landscape. A car guard is a person who provides a service, in expectation of remuneration, to guard and protect vehicles in a demarcated parking area. They guide and assist vehicles entering or exiting the parking area, and help drivers load their vehicles. Their services are rendered with the permission of the vehicle owner.⁶ Even though a driver can decline the service, s/he still benefits to some extent, as the mere presence of car guards could deter potential theft, break-in or damage to the vehicle.

A distinction is generally made between formal and informal car guards. Formal car guards are coordinated by agencies working on behalf of shopping centres, and provide their services at shopping centre parking lots. Informal car guards

operate mainly in city centres, where they guard cars parked on the street.⁷ In terms of the National Road Traffic Act 2000 and the Business Act 1991 (Act 71 of 1991), informal car guarding is an illegal but tolerated activity.⁸

Private security has multiple dimensions. It is important to understand the motivations for, and outcomes of, private security services, as well as to understand the supply side of private security and those who provide such services.⁹ By reporting on a 2012 study conducted in Tshwane, this article adds to the limited body of knowledge regarding the car guard phenomenon. A detailed description of formal car guards is provided: who they are, why they engage in car guarding, and how they deliver security services. The results are used to identify strengths and shortfalls in policies directed at the formal car guarding industry.

Aim and methods

The aim of the study was to describe the car guard phenomenon in Tshwane, Gauteng, with specific reference to the background characteristics of formal car guards, their perceived role in curbing and dealing with vehicle-related crime, the temporary nature of car guarding, their access to training and equipment, and matters related to legislating or regulating the industry. A survey was conducted by means of interviews with formal car guards, using a questionnaire that was developed following a study of the literature available on car guarding. The instrument consisted predominantly of closed-ended questions and Likert scales. To enhance the validity of the instrument, a pilot study was conducted with 12 formal car guards in Johannesburg, after which minor changes were made to the questionnaire.

In the absence of a sampling framework from which to randomly select respondents, availability sampling was used. Data were gathered from formal car guards working at shopping centres with a no-fee parking area (i.e., excluding malls where parking fees apply, buildings devoted to parking, office parks and streets). Three teams of data gatherers (12 in total) interviewed 144 formal car guards: 36 in northern, 60 in eastern and 48 in southern Tshwane. The number of interviews

results from the non-probability approach followed in the research, where each data gatherer had to interview 12 formal car guards. Therefore, the results of the present survey are not representative of all car guards in Tshwane. The data were coded and captured in Microsoft Excel and exported to the Statistical Package for the Social Sciences (20.0)¹⁰ for analysis. Participation in the research was voluntary and respondents provided written consent to be interviewed. The standard ethical principles of confidentiality and no harm were adhered to throughout the research.

The results have been interpreted with existing literature and evidence on car guarding, in particular studies conducted in Cape Town,¹¹ Bloemfontein¹² and Empangeni,¹³ in order to highlight similarities and trends in car guarding in different geographical contexts. It is important to note that the present research focuses only on formal car guarding as a type of private security response to vehicle-related crime at shopping centres in Tshwane.

The results of the study should be read bearing in mind the limitations of non-probability sampling strategies (in particular availability sampling). Therefore, interpreting and generalising the findings to other settings should be done with caution. In addition, the survey relied on self-reporting measures, which introduce self-reporting bias. Further research is needed to explore potential differences in the experiences of male and female car guards, as well as immigrants' motivations for engaging in car guarding. Matters related to the responsibilities of role players in the car guarding industry and the unionisation of car guarding should also be explored. Future research should focus on the preventative value of car guarding and the nature and extent of the criminal activities car guards have to confront.

A theoretical understanding of car guarding

In the context of vehicle-related crime, rational choice theory¹⁴ assumes that offenders make a rational decision to steal, break into, damage or hijack vehicles. The criminal act occurs after the offender has weighed the potential benefits of the crime against the negative consequences, such as apprehension and punishment. Factors hindering

vehicle-related crime include precipitating factors (the opportunity), attracting factors (choices available in selecting a method to commit crime) and predisposing factors (financial and/or material need).¹⁵ Rational choice theory further proposes that offenders have sufficient economic motivation and skills to execute vehicle-related crime, having paid due attention to the type of offence, the time and place, and the nature of the target, for example the model, make and value of a vehicle or the content of the vehicle (e.g. handbags, electronic equipment and car radios). Similarly, routine activities theory¹⁶ explains the environmental, place-based behavioural patterns of offenders and victims as they intersect in time and space.¹⁷ According to this theory, three elements are necessary for the successful execution of a crime; that is, a motivated offender, a suitable target and the absence of a capable guardian. Against this backdrop, car guards can be seen as visible safeguards or obstacles that contribute to the deterrence of vehicle-related crime by acting as guardians to protect the crime target, namely the vehicle.

How car guarding has evolved

Over the last two decades, car guarding at shopping centres in South Africa has evolved from an informal service to an organised labour activity. It provides an opportunity for unemployed people to earn some form of income in the informal economy. The informal economy is estimated to provide work to 2.4 million people (excluding those who work in the agriculture sector).¹⁸ Car guarding started as a survival strategy in a context of high levels of poverty and unemployment in South Africa.

Car guarding is believed to have originated in 1996, when Corrie van Zyl was asked to guard a driver's car in exchange for a fee at the Durban beachfront.¹⁹ Soon afterwards, car guarding burgeoned across the country, in particular in the commercial centres of urban areas. However, the uncoordinated presence of car guards created a dilemma for shopping centre management, as some of these guards displayed aggressive and threatening behaviour towards shoppers. In reaction, the shopping centre managers and business owners intervened by restricting car

guarding to selected individuals and providing them with name tags and proper identification, usually in the form of recognisable, brightly-coloured bibs.²⁰ Consequently, car guarding developed from being an uncontrolled informal activity to an organised and visually recognisable response to vehicle-related crime at shopping centres in South Africa. However, car guarding in general remains informal and unregulated, and takes place in public streets and city centres.²¹

Reasons for private security and car guarding

It is important to position car guarding within the different types of security systems in South Africa. The first, state security, involves national and international security systems that aim to assure the safety of the state from an external threat. Secondly, public safety relates to the services of the police, which are governed by legislation. Thirdly, private security provides services to private clients and, in South Africa, receives its mandate from Section 42 of the Criminal Procedure Act 1997.²² The private security industry in South Africa employs more than 500 000 security officers.²³ Minnaar has argued that the burgeoning private security industry is, in part, a response to the high levels and serious nature of crime, coupled with pessimistic views about the ability of the police to protect society.²⁴ For example, in the Victims of Crime Survey 2013/14, 35.4% of respondents explained that not reporting theft from a car was because the ‘police could not do anything’, while 29.7% said that the ‘police won’t do anything about it’.²⁵

Car guarding, in the form of omnipresent car guards in parking lots, can primarily be seen as a perceived deterrent to vehicle-related crime. Therefore some researchers believe that car guards capitalise on the public’s fear of crime and victimisation.²⁶ However, the reasons to opt for private security go beyond a two-sided understanding of risks or notions of the fear of crime. The concept of ‘private security regimes’²⁷ points to the complexities and multi-dimensionality of factors that influence why public and business communities decide on private security. In the context of car guarding, dimensions of private security extend to protective measures (e.g.,

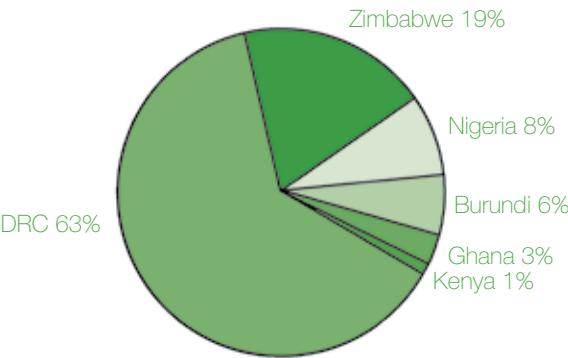
minimising theft and vandalism to vehicles, buildings and other infrastructure at shopping centres); the provision of a safe environment for customers and workers; regulating misconduct and disorder (e.g., vagrants, loitering and the selling of illegal substances at shopping centres); and ensuring the reputation of retailers and franchise holders.

In the following sections we present the results of the Tshwane study with specific reference to the background characteristics of formal car guards, the temporary nature of formal car guarding, the perceived role of car guards in crime reduction, access to training and equipment, and matters pertaining to the legislating of the car guard industry.

Background characteristics of car guards

Car guards represent various types of people, although the disproportionate presence of immigrants is an important characteristic of the industry in highly urbanised areas. Evidence from Cape Town shows that a large number of car guards are refugees and migrants from the Democratic Republic of the Congo (DRC), Nigeria, Mozambique, Rwanda, Gabon and Malawi.²⁸ A similar picture emerged from the Tshwane survey, where nearly two-thirds of respondents (63%) were from outside South Africa, compared to the 37% who were South African citizens. The majority of immigrant car guards (63%) originated from the DRC (Figure 2). The families of immigrants who work as car guards rarely join them in South Africa and remittances are often sent home.²⁹

Figure 2: Origin of immigrants working as car guards in Tshwane



In a Cape Town study, car guards were mainly African, male and between the ages of 20 and 30 years.³⁰ Results from the Tshwane study show that the majority of respondents (90%) were African and only 10% were white. Furthermore, most of the respondents were fairly young: 4% were below the age of 20; nearly half (47%) were between 20 and 29 years of age; 40% were between 30 and 39 years of age; and 9% were older than 40. The results thus confirm a similar profile in terms of the age and population group of car guards in urban areas, which is hardly surprising given the fact that African males between the ages of 20 and 30 represent the largest proportion of unemployed in South Africa.³¹

The level of education among car guards varies, with notable differences between locals and immigrants. South African car guards have generally not continued their education beyond secondary school, while those from other countries often hold tertiary qualifications in the form of a diploma or degree.³² In the Tshwane study, it was found that the majority of respondents had obtained an education level of grade 8 to 10 (24%) and 11 to 12 (38%), with nearly one in three respondents (28%) holding a post-school qualification. Immigrants working as formal car guards were significantly more likely to have completed tertiary education compared to their South African counterparts (Pearson chi-square, $p < 0.001$). Notwithstanding their significantly better qualifications, and the fact that they are more likely to possess professional skills, non-South African car guards face numerous obstacles – notably in obtaining work visas – when attempting to enter the formal South African job market.³³ These results also highlight the low levels of education of local car guards and the difficulties they have in entering formal employment.

The majority of car guards have wide-ranging previous work experience, with some having held formal positions in the service sector.³⁴ Research in Cape Town found that the previous occupations of car guards ranged from professional careers such as teachers to blue-collar work such as garbage collectors.³⁵ In the Tshwane study, two-thirds (67%) of respondents had been employed prior to working as car guards. Interestingly, 45% previously worked in the security industry while the remainder worked

in construction, retail, mining, the public sector, catering, agriculture and as artisans.

The bulk of respondents in the Tshwane study were male (99%). Only one female car guard was interviewed, which could be ascribed to the availability sampling method used in the study. Roughly half of respondents (49%) were single, while 47% were married and three each (2%) divorced or living together. Half the respondents (51%) lived with their families, while 38% lived alone and 11% lived with people they know. Of the respondents who lived with their families, two-thirds (68%) were the sole breadwinners, while 32% lived with at least one other person who was also working for an income.

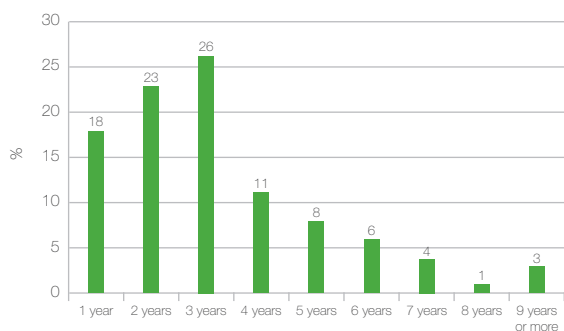
The Cape Town study found that there are various ways in which car guards enter the industry. The majority of car guards in Cape Town became car guards with the help of friends and family, while others got car guard jobs via social networks.³⁶ Results from the Tshwane study are similar: the majority (76%) of respondents became involved in car guarding through the help of family and friends, while the remaining 24% did so on their own.

The temporary and despondent nature of car guarding

The majority of respondents (87%) in the Tshwane survey said that they work as car guards because they cannot find other employment. Not surprisingly, most respondents (85%) considered car guarding as temporary employment, with 89% of respondents indicating that they would leave the industry immediately if they could find alternative employment. The results underscore the stark reality of unemployment in South Africa, and the limited opportunities in and access to the formal job market. Furthermore, the transitory nature of formal car guarding is reflected in the finding that only one in three respondents (33%) worked as a car guard for more than three years (Figure 3).

Despite working under harsh conditions, being on their feet on hot summer and cold winter days, the vast majority of respondents (94%) in the Tshwane study felt that they made a meaningful contribution to society. However, more than half (56.9%) stated that they merely survive from day to day. A total of 60% of

Figure 3: Number of years working as a car guard



respondents sometimes felt depressed, and one in ten (11%) always felt depressed. About 40% said that their main reason for feeling depressed was because they were working for a small income.

Crime reduction and responding to crime

The Empangeni study showed that the public generally values the crime prevention services provided by car guards.³⁷ Nevertheless, the benefits and drawbacks of being a car guard have been a subject of public debate for quite some time. Some people consider the guards as a beneficial security service, while others regard them as a nuisance and a form of harassment and begging.³⁸ In the Tshwane study, formal car guards were asked what they perceive as their main responsibilities, to which the majority replied preventing vehicle theft (75%), vehicle break-ins (61%) and damage to vehicles (60%). Nearly half of respondents (48%) had faced someone trying to steal a vehicle, while 19% had experienced vehicle theft while on duty. Similarly, 43% of car guards had faced someone trying to break into a vehicle, while 20% had experienced a vehicle break-in while on duty.

The majority (79%) of respondents felt that car guarding is an important way to prevent vehicle-related crime in parking areas. In fact, car guarding is considered a more effective preventative measure than closed-circuit television and patrol cars.³⁹ However, research into car guarding has also picked up incidents of car guards engaging in intimidation tactics and other criminal activities, such as selling drugs and colluding with organised syndicates in vehicle-related crime. These

incidents mostly take place in unregulated settings (the street).⁴⁰

Questions can rightfully be raised regarding the ability of car guards to manage criminal incidents. In the event of a criminal act, car guards have been advised to not physically challenge or engage the suspect but rather to raise alarm and call for help from other car guards, the police or members of the public.⁴¹ In the Tshwane study, the majority (73%) of respondents indicated that they mostly contact the centre manager in the event of a criminal act, while some (32%) simply chase the person away. Although not recorded in the questionnaire, some respondents related incidents where they were beaten and even fired upon by perpetrators during a gun-related incident. Car guarding can thus be dangerous and life-threatening work. In one incident, two car guards were shot when trying to apprehend a group of armed robbers. In this incident a car guard died and the other, his daughter, was hospitalised following the shooting.⁴² It is thus necessary for car guards to acquire some skills and equipment to effectively perform their car guarding tasks while minimising the danger to themselves.

Training and equipment of car guards

The Private Security Industry Regulations Act 2001 (Act 56 of 2001)⁴³ states that car guards have to complete a one-week training course on security and security-related matters prior to registration with the Private Security Industry Regulatory Authority (PSIRA) in order to formally work as car guards. Car guards must pay for the training, which includes the registration fee, uniform costs and name tags, themselves.⁴⁴ In the Tshwane study, less than half (47%) of the respondents had received the required training, which, according to them, primarily entailed vehicle security (35%) and public relations (28%). Two in five respondents (42%) expressed the need for (further) training. Of this number 75% indicated a desire to improve their performance as car guards, and 20% said that they required training on how to handle weapons.

The Basic Conditions of Employment Act 1997 (Act 75 of 1997)⁴⁵ states that an employer must provide an employee, free of charge, with any equipment s/

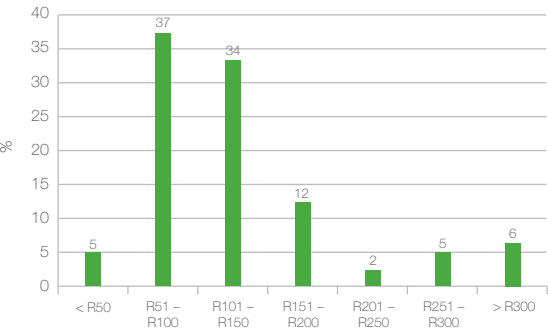
he might need. The equipment car guards receive usually amounts to no more than name tags and a bib or uniform. The Empangeni study raised the question whether car guards should be armed, with male car guards favouring the idea of carrying weapons in the execution of their duties.⁴⁶ In terms of equipment, respondents in the Tshwane study indicated that they used their mobile phones in the execution of their duties (27%), while 10% stated that they had a whistle and note book respectively. Ten respondents (7%) carried pepper spray. None of the respondents had a Taser or police club. The results concur with findings from the Cape Town study that car guards use minimal equipment in performing their duties.⁴⁷

Legislation and policy frameworks

PSIRA controls private security and, in line with the Private Security Industry Regulations Act, all individuals who offer security services must be registered with the authority before they can offer their services.⁴⁸ Registration entails a monthly fee and identification documentation.⁴⁹ In 2009, the Employment Conditions Committee investigated the car guarding industry in the context of Sectoral Determination 6: Private Security Sector.⁵⁰ The report acknowledged the presence of various forms of car guarding in South Africa and concerns were raised regarding the compliance requirements with PSIRA if car guards were to be included in the Sectoral Determination. More specifically, the registration of car guards could prove challenging as some car guards have criminal records, and others do not have the necessary educational requirements and/or are undocumented immigrants.⁵¹

On 25 August 2009, the Basic Conditions of Employment Act was amended to include car guards under the Sectoral Determination for private security. According to the amended act, car guards fall within the category 'employees not elsewhere specified', and for the Pretoria and Johannesburg area the minimum wage was set at R2 519 per month.⁵² The Tshwane study found that on weekdays, 37% of car guards earn between R51 and R100, and 34% between R101 and R150 per day (Figure 4), which means that

Figure 4: Daily income of car guards in the Tshwane area

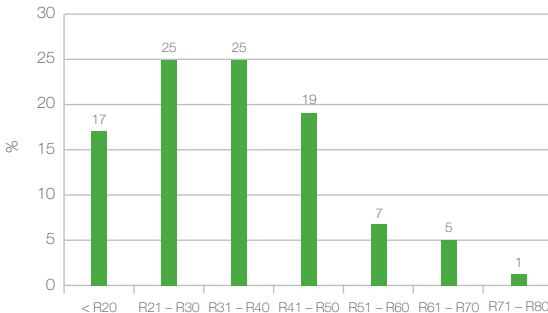


most manage to earn the minimum monthly wage – but this is not guaranteed by their employers.

Some car guards might not reach the minimum monthly wage because they are required to pay a daily 'bay fee' to either car guarding agencies (78%) or directly to the managers of shopping centres (22%). Roughly a third of respondents (32%) paid more than R40 per day to work as a formal car guard (Figure 5). The 'bay fee' varies according to where a car guard is situated in the parking lot – those closer to the shops or the entrance of the shopping centre pay a higher fee compared to those who work further away. In addition to the daily 'bay fee', one in three respondents (36%) had to pay supplementary fees (mostly to hire clothing), ranging between R10 and R30 per day. Not surprisingly, the Employment Conditions Committee expressed concern about the financial exploitation of car guards.⁵³

Apart from the regulations provided by PSIRA and the Sectoral Determination for private security in South Africa, some municipalities have taken

Figure 5: Amounts car guards pay per day to work at shopping centres



additional steps to regulate the car guard industry. In Bloemfontein, a bylaw has been introduced that requires car guards to register with the Mangaung metropolitan municipality in order to obtain a valid car-guarding permit. The bylaw includes restrictions on the activities of car guards, and penalties for improper behaviour towards the public.⁵⁴ Similarly, the City of Cape Town introduced a bylaw for the promotion of safety and the prevention of nuisance following a series of complaints from the public regarding informal car guards. An addendum to the bylaw intends to formalise the car guarding industry in the city.⁵⁵

No information could be found regarding the regulation of car guards in the City of Tshwane municipal bylaws. As such, it comes as no surprise that very few respondents (7%) knew about legislation governing the car guard industry, or labour laws that guide and protect the rights of workers (16%). Three-quarters of respondents (75%) felt that car guarding should be regulated to protect their rights, while others (15%) wanted legislation to secure their income. The majority of respondents (75%) would like to have a say when laws affecting car guarding are formulated. Additionally, most respondents (72%) said they would like to form a workers' union to safeguard their interests and conditions of employment.

Conclusion

Vehicle-related crime in South Africa remains a cause of concern for drivers and law enforcement. Theoretically, car guarding has the potential to deter theft of and from vehicles because of the presence of a (capable) guardian to prevent criminal behaviour. The literature further suggests that the benefits of formal car guarding extend beyond vehicle safety to include advantages to business owners, workers and the infrastructure of shopping centres.

Car guarding is not only a response to vehicle-related crime, but also a response to poverty. Car guards represent the disenfranchised and marginalised in South African society: they are mostly African, male and relatively young, a profile that is characteristic of the unemployed in the country. Given their socio-economic realities, the prospects of car guards to gain employment in the formal economy

remain constrained. The transitory nature and low income associated with car guarding may provide a temporary, albeit survivalist, reprieve for those who engage in it. Partnerships ought to be galvanised between the public sector (e.g. housing, social development and labour) and the private security industry to promote the social welfare, well-being and safety of formal car guards.

Legislation and policy has led to steps being taken to address the disjointed and unregulated nature of formal car guarding. Directives are provided on training, registration and the minimum income of car guards, among others. Nevertheless, it appears as if these advances are rendered largely ineffective by inadequate implementation and stewardship. For example, car guards are exploited financially, they lack labour protection, and their poor knowledge of matters pertaining to labour legislation and the rights of workers remains a concern. Moreover, it is evident that not all car guards obtained the necessary qualification from PSIRA, which calls into question the monitoring practices of private security authorities.

There are various role players in the formal car guarding industry. Policies are needed regarding the responsibilities of car guard agencies and the managers of shopping centres alike, specifically to address the exploitative levies that car guards are expected to pay. Considerations for policy and practice include:

- Recruiting and screening of aspirant car guards
- Strategies to invest in the human economy of car guards
- Providing an enabling environment for car guards to render security services
- Addressing criminal incidents and ensuring the safety of car guards
- Coordinating crime intelligence among stakeholders (including the police)
- Adhering to and applying relevant policies, labour legislation and municipal bylaws
- Monitoring car guard activities in relation to performance, needs and feedback from clients

Lastly, policies are needed to clarify matters related to (undocumented) immigrants who work as formal car guards, vis-à-vis the legal requirements of work permits, residency status and registration with PSIRA. To this end, a partnership between the private security sector and the Department of Home Affairs is imperative.



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Preventing crime and violence through work and wages

The impact of the Community Work Programme

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The article offers an analysis of the potential impact of the Community Work Programme (CWP) on crime and violence. The CPW is a public employment programme that was formally established within the government in 2010. The CWP may have an impact on crime and violence through a number of different 'pathways'. One of these, the focus of this article, is through wages provided to the participants, 75% of whom are women. Notable here is the likely impact of these wages on the households of participants, including on their children and intimate partner relations. Whereas the CWP may have a beneficial impact on children in a household, there appears to be the potential that the CWP may aggravate the risk of violence, particularly for female participants who have unemployed partners. The article argues that if the crime prevention potential of the CWP is to be optimised, this motivates for providing 'gender training' to participants who may be at risk of intimate partner violence. In addition, limited male participation may reinforce a pattern of male exclusion, motivating for increasing the participation of men within the CWP.

Public employment programmes (PEPs) have been established in many countries. Often called public works programmes, they are typically established as a response to high levels of poverty and unemployment. Historically the PEPs that are most well-known are the programmes that were established in the United States as part of the

Roosevelt administration's New Deal during the years of the Great Depression of the 1930s.¹ Current examples of PEPs internationally include the National Rural Employment Guarantee Scheme in India and the Productive Safety Net Programme in Ethiopia.²

PEPs are established as a state response to poverty and unemployment. Their primary purpose is not to address crime or violence. Nevertheless, it is widely believed that job creation does reduce crime,³ and for this reason there may be a tendency to assume that PEPs may also do so. However, it is important to keep in mind that assessing or discussing the impact of PEPs on crime and violence⁴ should be approached with caution, since addressing crime and violence is not inherently more important than

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the primary social goals of PEPs, namely to reduce poverty and unemployment.⁵ Thus, assessments of PEPs should primarily focus on their impact on poverty and unemployment, with other effects, for instance on crime, health or education,⁶ regarded as possible secondary outcomes. Nevertheless, since PEPs affect many thousands, or even millions, of participants, their 'secondary outcomes' may be of considerable significance. It is therefore worthwhile to deepen our understanding of how to assess these outcomes as well.

This article focuses on a specific South African PEP, the Community Work Programme (CWP). The possible impact of the CWP, on intimate partner violence, collective violence and crime more generally, has been raised by other authors.⁷ The CWP is of particular interest in terms of its potential impact on crime prevention, partly because, unlike some other PEPs in South Africa, it involves people from poor communities working within their own communities. The article explores the possible impact of the CWP on crime and violence as a consequence of the wages paid to participants. It argues that the mechanism by which CWP wages have an impact on crime and violence is likely to be shaped by the gender and age profile of the participants in the CWP. The article emphasises that the provision of work and wages should only be considered as one of the set of possible pathways through which the CWP may affect crime and violence.

This article draws on material from research on the CWP undertaken by the Centre for the Study of Violence and Reconciliation. The research, carried out between August 2013 and March 2015, involved in-depth interviews with participants and community members at six CWP sites in Gauteng, the Western Cape and North West, as well as with other CWP role players, including representatives of national, provincial and local government, non-governmental organisations (NGOs) that have been appointed as CWP implementing agents, and policy experts with knowledge of the CWP.

The Community Work Programme

PEPs were first established by the post-apartheid government in the late 1990s. However, the

most significant PEP, the Expanded Public Works Programme (EPWP), was officially launched in May 2004.⁸ The CWP is an off-shoot of the EPWP and was established partly on the basis of an assessment of the impact of the first phase of the EPWP.

This assessment noted in particular that EPWP programmes were 'mainly designed to offer a short-term episode of full-time work' that was 'expected to facilitate entry into the wider labour market' but that 'many participants exited back into poverty instead'.⁹

The CWP was established in recognition of the fact that unemployment in South Africa is structural.¹⁰

This means that, even if there are consistent improvements in the South African economy, unemployment is likely to remain a major ongoing problem in the medium to long term. It also means that, as a result of the nature of the labour market, government programmes that provide people with work experience and skills will not automatically enable them to establish their own businesses or find employment.

Unlike the EPWP, the work opportunities in the CWP are not short-term. The idea that CWP participants may exit the CWP to take up work opportunities or establish their own businesses is regarded favourably, and the CWP does indeed enhance the ability of some participants to do this.¹¹ But it cannot be assumed that participants will be able to do this is, nor is it a primary objective of the programme. Due to the fact that it provides long-term stable work opportunities, the support that is provided by the CWP differs from that provided by the EPWP.¹² The CWP also has a number of other features that distinguish it from the EPWP, and from many other PEPs internationally.¹³

The CWP was initiated as a pilot programme in 2007. Since 2010 it has been located in the Department of Cooperative Governance and Traditional Affairs (COGTA).¹⁴ According to COGTA data, the CWP provided 202 599 jobs in the April 2014 to March 2015 year and was operating at 186 sites around the country in April 2015.¹⁵ Government has also announced that it intends extending the CWP to all local municipalities in the country.¹⁶

The CWP and crime and violence prevention

Questions relating to the impact of the CWP on violence were previously raised in a paper about one of the pilot sites that was established in North West province. This paper concluded that the CWP had played a decisive role in preventing conflict and violence in that community.¹⁷ It has also been argued that the CWP is likely to prevent violence and crime where CWP activities are specifically targeted at this, in other words, where the participants are doing work that is intended to prevent crime and violence, such as patrolling neighbourhoods.¹⁸

We can think about the potential impact of the CWP on crime and violence at each site in terms of the 'nett' or cumulative effect of a number of different 'pathways'. These include:

- The impact of the 'useful work' activities that CWP participants perform. A core part of the CWP framework is that it should do 'useful work', which is defined as that which contributes 'to the public good, community goods or social services'.¹⁹ At some sites participants are involved in activities that are directly aimed at enhancing safety, such as community patrols.²⁰ Other activities, such as support for Early Childhood Development (ECD) programmes, may enhance primary prevention (activities that aim to 'address potentially criminogenic factors before the onset of the problem').²¹ (See also SACQ 51, a special edition on primary violence prevention.)
- Impact at the level of 'community' (sometimes also called 'neighbourhood effects').²² The CWP is 'community focused' in a manner which the EPWP is not. Participants work alongside other community members, doing work that is intended to benefit their own community. The types of work undertaken are also supposed to be identified in consultation with that community. The CWP is regarded as a vehicle for 'unlocking community agency'²³ and strengthening social capital.²⁴ Thus the CWP may enhance the disposition or willingness of community members to take collective or individual action to advance community interests, including order and control within the community. Known as collective efficacy, this has been identified as significant in

explaining differences in levels of crime between communities that share similar socio-economic characteristics and might otherwise be expected to have similar levels of crime.²⁵

- The CPW is a government programme in which major public resources are invested. In this respect therefore, the CWP increases the risk of crime and the abuse of public resources, whether this is in the form of the theft of CWP equipment, corruption by employees, or the manipulation of the CWP by politicians in the service of systems of patronage. The 'nett' impact of the CWP on crime will therefore also be influenced by the degree to which the CWP has effective integrity systems, such as systems of financial management, as well as by the willingness and ability of CWP personnel to withstand inappropriate political interference.

This article focuses on a fourth 'pathway': the impact of the CWP as a mass employment programme that offers large numbers of people work and wages. Once established at a site, the CWP can be regarded as a local institution that forms part of the mix of institutions – hospitals, schools, formal or informal businesses, etc. – in that area. In common with many of these institutions, the CWP provides regular and ongoing work and income to people within the area. Due to the fact that it employs in the region of 1 000, and sometimes more, people at a site, the number of people employed by the CWP is often much greater than the number employed by other institutions in the area.

If it is true that providing people with employment and an income contributes to reducing crime and violence, it might be assumed that the CWP, as a programme that provides these opportunities 'at scale' in the areas in which it is established, will contribute to reducing crime and violence in a significant way. However, in assessing whether this is the case it is necessary to recognise that these job opportunities are largely accessed by women rather than by young men, who tend to be the main participants in crime and violence.²⁶

In examining questions about the impact of the CWP on violence, the article does not assume that crime and violence are uniform phenomena. The main forms of crime or violence referred to in this article

are property crime and intimate partner (domestic) violence against women.

The income ‘safety net’ provided by the CWP

Though the CWP also has broader ‘community development’ objectives, its core objective is to provide an income ‘safety net’ to the ‘poorest of the poor’.²⁷ At CWP sites, participants may do two days of work per week, up to a total of 100 days per year, and are paid a wage of R76 per day (the current rate as of March 2015). This amounts to around R608 per month, which by some standards is quite low,²⁸ but is consistent with the objective to target those who are most in need, and for whom the small income provided by the CWP will be of appreciable benefit. Furthermore, the work provided by the CWP is explicitly intended to be part time.

The CWP enables participants to depend on a small but stable income and use the additional time they have to engage in other income-earning activity, or to look for other work. Incomes from the CWP may be used to supplement social grants, which, subject to a means test, are available inter alia to mothers or other primary caregivers of children under the age of 18, people with disabilities, and elderly people. In addition, the intention behind the CWP is to extend state support beyond the ranks of those who are eligible for social grants, and in so doing to compensate for the ‘lack of social protection interventions that target the working age poor’.²⁹

The profile of participants in the CWP

The areas in which the CWP has been established are characterised by high levels of unemployment.³⁰ However, not all unemployed people want to work in the CWP. A consistent pattern across CWP sites in different regions is that women of 35 and over constitute the largest group of participants. As reflected in row A of Table 1, in January 2015 women in this age group accounted for 42% of all participants nationally. Women between the ages of 18–34 constitute the second biggest group of participants, accounting for 33% of participants. After these two groups men of 35 and over typically account for the third biggest group, with young men being the least likely to participate.

Table 1: Profile of CWP participants and duration of participation, April 2014–March 2015

	Female		Male		Total participants
	Non-youth (35 and over)	Youth (34 and under)	Non-youth (35 and over)	Youth (34 and under)	
A: All participants April 2014 – March 2015	85 440	66 987	26 955	23 217	202 599
Percentage	42.2%	33.1%	13.3%	11.5%	100%
B: Long-term participants (received wages in both April 2014 and March 2015)	64 736	42 588	19 232	12 753	139 309
Percentage	46.5%	30.6%	13.8%	9.2%	100%
C: Long-term participants (row B) as a percentage of all participants in this category (row A)	75.8%	63.6%	71.3%	54.9%	68.8%

Source: Analysis by author of data provided by Community Work Programme, Department of Cooperative Governance and Traditional Affairs, April 2015

The demand for positions in the CWP appears to be much higher among women over the age of 35 than among younger women. A similar pattern also applies to older men, who outnumber younger men. This runs contrary to what might be expected, since youth unemployment in South Africa is exceptionally high.³¹ The most striking differences, however, are not those between older and younger people but between women and men. There is a relative absence of men, notably of young men, within the programme. Furthermore, as reflected in row C (Table 1), young men are less likely than any of the other groups to remain in the CWP for extended periods of time. Almost half (45%) of young men who were in the CWP had been in the programme for less than a year. It seems reasonable to assume that the reasons for people leaving include relocating, finding better job opportunities, and that they ‘don’t like the

CWP'.³² There is currently no data to determine which of these factors are most significant in accounting for the relatively short duration of participation by many young men in the programme. As compared to older women and men, young women are also apparently more likely to join the CWP on a relatively short-term basis, with 36% of female participants in the under-35 category having been in the CWP for less than a year.

Could the reason for the differences between levels of female and male participation in the CWP be that more women are unemployed? In the fourth quarter of 2014, 49.2% of men were classified as employed, as opposed to 36.9% of women (Table 2). However, statistics on people looking for work, who are classified as unemployed, and 'discouraged job seekers' who have not recently taken active steps to look for work,³³ indicate little gender difference in the two categories.

As can be seen in Table 2, the number of women in the combined 'unemployed' and 'discouraged' categories (3 690 000) only marginally exceeds the number of men (3 622 000). It is only when both the 'unemployed' and the 'not economically active' categories are added together that the number of women significantly exceeds the number of men. If the 'unemployed' and the 'not economically active' are added together, women make up roughly 56% and men 44% of this population of 20 324 000 people. If levels of participation in the CWP were similar to the gender profile of the latter group of people then the differences within the CWP would presumably reflect this 56% to 44% ratio, rather than the 75% women to 25% men ratio currently reflected in the CWP.

Gender and age-related factors impacting on participation in the CWP

The above statistics suggest that there are other gender and age-related factors that have an impact on the demand for positions in the CWP. Research at CWP sites carried out during 2013 and 2014 indicates that there are an inter-connected set of factors that are relevant to understanding this. A widespread perception among female participants was that women have a greater sense of responsibility to provide for children and other family members than men do. Many women are motivated to take on work in the CWP, despite the low wages, in order to be able to care for children – often using this to supplement the government child support grant (CSG).

When children cry because they want food they cry to their mothers and we feel the pain if we cannot provide for them. As a mother it's even more difficult when you are raising children alone with no help from the father of your children and you are forced to work in order to provide for them. ... I have no support at all from the family of my late husband and rely on the grant I receive from government. It's difficult because the grant is very small so with the CWP money I am able to make ends meet.³⁵

One explanation for the low levels of participation by men was that that they were irresponsible or lazy. Some female interviewees at CWP sites and at least one government official suggested that the lack of interest in the programme could essentially

Table 2: Percentage of men and women of working age (15–64) in South Africa who are working, unemployed and not economically active, 4th quarter 2014 (in thousands)

	Economically active		Not economically active		Total
	Working	Unemployed	Discouraged job seekers	Other not economically active	
Women	6 676	2 414	1 276	7 727	18 093
Percentage	36.9%	13.4%	7.1%	42.7%	100%
Men	8 643	2 495	1 127	5 285	17 550
Percentage	49.2%	14.2%	6.4%	30.1%	100%

Source: Statistics South Africa³⁴

be attributed to laziness.³⁶ Other interviewees also observed that young people, and particularly young men, were often a difficult constituency to recruit to PEPs. Many of them struggle to adapt to work environments, whether in the CWP or elsewhere. As a result, many of the big private sector companies require young people to participate in 'work readiness' programmes in order to be considered for employment.³⁷

Wages are obviously also a factor affecting participation in the CWP. Especially when women receive one or more CSGs, the money that they get from the CWP contributes to a modest, but more satisfactory income. For men, on the other hand, the CWP wages are likely to be their only state-provided income. Paradoxically, some interviewees suggested that it was partly their sense of responsibility to their families that led men to reject CWP opportunities, as the CWP income alone would not enable them to provide for their families.

R540, No! No! Thinking that he is supposed to support children, three children, he also has to maintain himself. That R500 is little for him. But one thing for sure, a woman can do a lot with that R500. I think that is the reason. He says R500 is little, it cannot maintain my children.³⁸

The majority of men moved out because they need other jobs. [This is because] men need more money to feed the family. A woman does not care. As long she supports her children she does not have a problem, she is going to stay there. She [also] gets extra support from the social grants, but a man cannot live on that little money [he only gets from CWP]. He has to go back to the house and buy groceries for the children.³⁹

Nevertheless, the reluctance of unemployed men, and particularly young men, to take up positions in the CWP remains puzzling. Besides the fact that men are generally not eligible for social grants,⁴⁰ they often have few alternative economic opportunities, even if they do have marketable skills. They often appear to reject the CWP not because they have better economic opportunities elsewhere, but despite the fact that these are not available to them. In one study the income-earning opportunities

open to young men in informal settlements are described as 'poorly paid and highly precarious', such as 'temporary formal work (primarily shop work or construction), informal work (such as selling small items at the side of the road or working on public taxis), or a variety of illegal activities (selling drugs or petty crime)' with many of the men also relying 'on their family to support them financially'.⁴¹

It appears that concerns about social status, reflecting the links between gender, work and personal identity, may go some way towards explaining this anomaly. One feature of the CWP at many sites is that a significant proportion of participants do work that involves cleaning streets and other public areas, including places that have been used as dumping grounds. Even though CWP work may be fairly diverse, the aspect of CWP work that is physically most visible to other community members is often cleaning work. Within many households, work of this kind is typically performed by women.⁴² As a result, work in the CWP may be seen as low status 'women's work'. Home-based care or other care work might also tend to be regarded as women's work. Men often seem unwilling to work in the CWP when the type of work being done does not align with their own views on the types of work that men should do and be seen doing.

This is borne out by the the number of men participating in other EPWP programmes. Even though EPWP wage rates are the same as those for the CWP, the proportion of men in the infrastructure sector (49%) and environment sector (47%) is relatively large. These sectors are likely to involve much more work that is considered traditionally masculine. On the other hand, in the 'social sector', which involves more 'care' type activities, men make up only 15% of participants.⁴³ Also, though work in the EPWP is paid at the same daily rates, in the construction sector the work is often offered for more days of the week and month, even if the projects are of relatively short duration. For the short period of time in which they are involved in the EPWP, men are thus likely to receive a higher monthly wage than they would receive in the CWP. While this might account for higher levels of participation by men in the EPWP construction sector, one of the factors discouraging

male participation in the CWP appears to be the gendered nature of the work offered.

In the research at CWP sites, male reluctance to participate in the CWP was often viewed as reflecting a male view that they would be lowering themselves by participating in the CWP; a view referred to as 'pride'.

There are more women than men in this project because women are used to house work and cleaning and they love working. Men are very few in this project because of pride. Men have pride even when they have nothing. Men will be very shy to work the kind of work we do in the CWP like cleaning the streets and cleaning the schools.⁴⁴

I think men have pride as there are lots of men who are unemployed and they say the money is too little. Women have no option because they have kids that they have to support. Unemployed men do not want to join because the money is very little although they too have the same responsibilities to raise their children. Men generally do not want to work for little money, they want more money even when they do not have the qualification or the experience.⁴⁵

Some interviewees expressed a concern that they would be ridiculed by others if they joined the CWP, with participation in the CWP signifying that they have 'given up' on making something more of their lives.

What will my peers say when they see me wearing the orange overall and cleaning the streets of Kagiso? Maybe I can do this type of a job in another township but never in Kagiso where I live. I will be a laughing stock among my peers and my community. This is not the type of work to be done by young people. If I had to do this job it means that I will be surrendering in life that I have failed and reached a dead end. This is not an inspiring job even for us who are unemployed. How do I work the whole day for just R60 per day? It's crazy and I don't think that it is worth my effort, although I am unemployed.⁴⁶

Women were seen as more willing to put their 'pride' to one side, in the interests of supporting their families.

Men do not want to be seen doing that in most cases. They think that if I am going to go to the street and do that thing, I might be seen as being down and out. But he cannot bring any income to the house. What I can tell you is that I have seen that women do not have pride because they want their kids to eat. But men do not care. I can tell you – that is why they say a woman holds a knife at its sharpest point. That is what those women are doing at the ground.⁴⁷

One body of work that may shed light on this phenomenon focuses on young men's apparent need to position themselves 'within gender and age hierarchies' in order to achieve recognition as men.⁴⁸ This dominant (or 'hegemonic') model of masculinity for working class black South Africans is 'underpinned by male economic provision'.⁴⁹ Though young men identify with this expression of masculinity, they are prevented from achieving this status due to the limited economic opportunities available to them, leaving them 'socially positioned as children'. As a reaction to this, and in order to be able to position themselves as men (in their own eyes and the eyes of others) they invest in a 'particular youth masculinity' in which their ability to secure respect is achieved 'through violence against partners, control of partners, seeking multiple sexual partners, and violence against other men'.⁵⁰ The corollary of this is that some of those men, younger and older, who do participate in the CWP may not identify so strongly with these ideas about masculinity, and have personal identities that are 'maintained independently of peer recognition or affirmation'.⁵¹

Implications for the status of women and men in poor communities

Since women are generally recognised as the 'primary caregiver' of their children, 96% of recipients⁵² of the child support grant are women, with 11 655 042 monthly grants distributed in February 2015.⁵³ Research evidence indicates that most recipients of the grant use this income either for the benefit of their overall families or very specifically for their children.⁵⁴ Whether they are recipients of the

CSG or not, it is likely that many female participants in the CWP use their incomes in a similar way. One impact of the CWP may be that it enables women to play the role of 'provider' in their households.

Due to the fact that they are generally not recipients of the CSG, or any other grant, most unemployed men fall outside of the safety net provided by the system of social grants. The irony then is that many men seem to exclude themselves from the CWP, in part because participation in the CWP is seen to adversely impact on their ability to achieve or maintain the status of being men. This in turn reinforces their disempowered and marginal position. Arguably, therefore, a major impact of CWP wages is to further consolidate the dynamic, created by the CSG, in which women are able to play the role of economic providers, while men's position of exclusion remains largely unaffected.

The impact of stable household income on childhood risk factors

As has been established above, participants in the CWP, most of whom are women, receive incomes which, while relatively low, are nevertheless 'regular and predictable'.⁵⁵ CWP wages supplement household incomes and, particularly where combined with the CSG or other social grants, enable women in poor communities to better provide for their children. This suggests that the most significant crime prevention impact of CWP wages may be in reducing childhood risk factors for involvement in crime and violence, through:

- Reducing the economic uncertainty, and thus the emotional stress, that poor families are subjected to. Both poverty and economic instability may contribute to emotional stress.⁵⁶ Though the CWP does not reverse the effects of poverty, it creates a modicum of economic stability. By reducing economic stress, CWP wages may also reduce levels of emotional distress, with positive implications for parental efficacy.⁵⁷
- Enabling mothers or parents to maintain a relatively high level of supervision over their children, since they live and work in the same community. They might not be able to 'keep an eye' on their children while at work, but it means that the time

they spend away from home is not extended by travelling. 'Poor parental supervision is usually the strongest and most replicable predictor of offending',⁵⁸ while parental support has been found to protect against such behaviour.⁵⁹

- Getting CWP participants to work alongside other community members. This increases their range of social ties with people within their communities,⁶⁰ and is likely to increase their access to, and ability to mobilise, social support through their links with people in similar circumstances (social capital). The access that people have to family and other social networks of support may have positive implications for child-rearing, although this will depend on the quality of these relationships.⁶¹

Unemployment 'leads to a lack of structure in people's lives, and to isolation and exclusion from the wider community'.⁶² Thus, whether from the wages earned, participation in work, or a combination of the two, it appears likely that participation in the CWP has economic as well as social and emotional benefits for many participants⁶³ and that these may translate into benefits for their dependants.

The argument that CWP wages, and other benefits of participating in the CWP, will contribute to a reduction in some of the childhood risk factors for crime and violence, therefore makes good sense. However, this argument also needs to take account of the impact of CWP wages on gender power relations in poor households.

Intimate partner violence

There is extensive international literature on the relationship between women's employment (and economic empowerment generally), and the risk of domestic violence. Some authors suggest that increases in women's income (or other resources), particularly where this exceeds the income or resources of their male partners, will increase their risk of victimisation, since they are seen to threaten the status of their male partners.⁶⁴ Others propose that 'increasing women's economic resources empowers her to bargain for a better situation for herself, or to leave, therefore reducing her risk of abuse.'⁶⁵ Studies on how women's access to an independent income affects their risk of intimate

partner violence (IPV) have provided mixed results.⁶⁶ Women's empowerment, or situations where a woman's income exceeds that of her partner, do not necessarily predict an increased risk of violence. However, another study suggests that when a woman's economic situation improves, it might lead to abuse and the dissolution of the relationship, which would then account for the fact that there is no increase in violence in the long term.⁶⁷

Nevertheless, some of the literature does indicate that when women work while their male partners are unemployed, the risk of violence to the female partner increases.⁶⁸ As has been argued above, the CWP reinforces female economic empowerment while unemployed men maintain their disempowered position, and are thus increasingly disadvantaged relative to women. This takes place within a culture in which many men are invested in a 'youth masculinity' that includes the use of violence against women as part of its repertoire for being recognised as men.⁶⁹ The nett effect may be to increase the risk of violence women face from unemployed male partners, and more generally, to leave intact a situation of male dysfunctionality.

The potentially beneficial impact of CWP wages in providing more stable incomes for poor households therefore needs to be juxtaposed against the possibility that the CWP, as it is currently operating, may exacerbate the risk of domestic violence and conflict in the home.⁷⁰ Intimate partner violence (IPV) does not only adversely affect its immediate victims. Children who witness or are otherwise exposed to it have a higher likelihood of various 'behavioural, emotional and social problems', including 'higher levels of aggression', and are likely to show 'increased tolerance for and use of violence in adult relationships' later in life.⁷¹ Some CWP sites have in fact taken on the task of confronting domestic violence through awareness campaigns⁷² and support to victims of domestic violence.⁷³ It may, however, be beneficial to provide additional forms of support to female participants, particularly if they are identified as being at risk of intimate partner violence, to enable the CWP to become more supportive of 'primary level crime prevention'.

One programme that has produced positive results in reducing intimate partner violence in South Africa is the Intervention with Microfinance for AIDS and Gender Equity (IMAGE). In addition to providing microfinance to female participants, the intervention also offers women participants training sessions that cover gender roles, cultural beliefs, relationships, communication, domestic violence, and HIV infection. Qualitative data suggests that the reductions in intimate partner violence achieved by the programme resulted from a range of responses, including 'enabl[ing] women to challenge the acceptability of such violence, expect and receive better treatment from partners, leave violent relationships and give material and moral support to those experiencing abuse'.⁷⁴ This suggests that providing similar training to female participants in the CWP may assist in reducing their vulnerability to intimate partner violence. This may not only assist them personally, but reinforce the impact of CWP wages in helping parents to maintain family environments that are more supportive of primary crime prevention.

Involvement of young men in crime and violence

Research shows that greater employment does reduce levels of crime, particularly property crime. But it is primarily by increasing the employment of young men, particularly those who are 'low skilled', that levels of property crime are reduced.⁷⁵ This might imply that the CWP's capacity to have an impact on crime is dependent on the participation of young men in the programme. However, it cannot be assumed that increasing the number of young men in the CWP, on its own, would have significant crime reduction benefits. This is because participation in crime is influenced not only by the levels of employment of 'low-skilled' young men, but also by the value of wages.⁷⁶ The wages paid in the CWP are relatively low. As a result, the employment of young men in the CWP may not stop those who are involved in crime from continuing their criminal activity.

It is believed that another benefit of employment is that it builds social bonds and can thereby strengthen informal social control that serves as a deterrent to participation in crime.⁷⁷ However, higher paying jobs not only reduce financial motives to commit (property)

crime, but may also be more likely to strengthen pro-social bonds.⁷⁸ The social bonds formed in employment are not inevitably pro-social in nature, and this may apply to a greater degree to low-wage, low-quality jobs.⁷⁹ In so far as the bonds formed at work are primarily with other low-skilled young men, these bonds may actually facilitate participation in violence and crime.

Thus, attracting more young men into the CWP, on its own, may not be sufficient to discourage participation in crime. It may also be necessary for those in the CWP to address questions about how best to work with the notion of 'masculinity'.⁸⁰ The young men who are already in the CWP may not identify strongly with violent youth masculinities. One way to encourage the participation of young men within the CWP may be to affirm these kinds of male identities. However, this is unlikely to attract young men who are invested in violent youth masculinities into the CWP. It may be necessary to find ways of working with these young men in a manner that is compatible with their underlying sense of what it means to be a man, but without reinforcing the violent aspects of their identities.

Conclusion: strengthening the impact of CWP wages on crime and violence

The CWP was not established to reduce or prevent crime. And although crime and violence prevention is an important social objective, it is not intrinsically more important than providing an income safety net to unemployed people.⁸¹

Nevertheless, since the CWP may contribute to reducing crime and violence, it is important to consider how it might do so. This article argues that one mechanism through which the CWP is likely to contribute to crime prevention is through supporting mothers in creating more stable and nurturing home environments. This needs to be balanced against the possible increased risk of IPV resulting from the impact of CWP wages on gender power relations in the home. One way in which the crime and violence prevention benefits of CWP work and wages may be increased is by combining the programmes with 'gender training', similar to that offered in the IMAGE programme, to help women more effectively

negotiate their status as the main economic providers in their homes.

Still, the low levels of male participation in the CWP will have to be addressed if the CWP is to promote community development in a holistic way. Even though it seems that men have chosen to exclude themselves from the CWP, structural marginalisation of young men, and men more generally, typically translates into adverse behaviour that has disadvantages for women and communities. As a result, the community development objectives of the CWP can probably better be promoted by including men and women, old and young, more equally within the programme.

These conclusions point to the need for organisations involved in crime and violence prevention, including the prevention of gender-based violence, and youth development organisations to partner with and support the CWP in achieving its crime and violence prevention potential.



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Notes

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 - 12 There is substantial variation among different EPWP projects in terms of how the duration and intensity (as defined by number of days per week) of work is defined.
 - 13 Gavin Anderson and Peter Alexander, The Community Work Programme: potential and disappointment, *Transformation*, 2015 (forthcoming).
 - 14 The EPWP is the responsibility of the Department of Public Works, although it has different 'sectors', some of which fall under other departments. The CWP is located under COGTA, due to the fact that it is supposed to work closely with local government.
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The practicality of challenging DNA evidence in court

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The techniques used in DNA profiling are well established and scientifically validated. The scientific validity of DNA evidence can, however, be so persuasive that such evidence risks being reduced to proof of guilt or innocence. Thus, the incorrect use of DNA evidence could lead to a miscarriage of justice where the innocent are convicted and the guilty are acquitted. Drawing from the Supreme Court of Appeal decision in Bokolo v S (Bokolo case), this case note discusses how DNA evidence can be placed in its proper forensic context. The article sets out the ideal role of expert witnesses, the role of opposing or neutral experts, and the active role of judicial officers in evaluating DNA evidence.

DNA evidence plays an important role in the prosecution of criminals if it is used in the appropriate context. The relevance of DNA evidence lies in its potential to place an individual at the scene of the crime. However, evidence that the short tandem repeat (STR) profile of an individual matches that of a sample taken at the crime scene does not directly answer questions of the guilt or innocence of that individual. In addition, the successful use of DNA evidence depends on the size of the sample, the level of degradation and the purity of the sample. DNA lasts for varying periods of time depending on the sample collected, how it is extracted, and how it is stored. If DNA is extracted in time and stored under suitable conditions, it can last for longer periods than if it is collected later and stored under non-optimal conditions.

With the exception of identical twins, everyone has a distinctive DNA signature or 'genetic fingerprint', which cannot change or be altered in one's lifetime, and even after death. Because of the scientific validity of DNA profiling it has been utilised in a number of criminal prosecutions, including cases of homicide and sexual offences. Over the years the science behind the validity of DNA profiling has 'wowed' criminal justice systems to the extent that in some cases, it has been mistakenly reduced to evidence proving guilt or innocence.

In the past, DNA evidence was never challenged by the defence, nor by the presiding judges. In some cases, innocent accused immediately pleaded guilty, doubting their ability to challenge DNA evidence. The Bokolo case, however, stands out as one in which the relevance of DNA evidence was placed in the proper forensic context.¹ This case note therefore draws from the Supreme Court of Appeal judgement in the Bokolo case to underscore the importance of the role of opposing expert witnesses and the active role of judicial officers in placing DNA in its proper forensic context. The case note also briefly discusses

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the basic scientific principles of DNA profiling. The discussion is intended to offer useful insights for legal practitioners, expert witnesses and law enforcement personnel.

Basic scientific principles of DNA profiling²

DNA stands for deoxyribonucleic acid. This is the genetic material that is passed from a parent to a child. DNA is found in every cell of the human body, except in red blood cells. Each cell contains the same configuration of DNA. In terms of structure, DNA is a double stranded molecule, composed of 46 sections referred to as chromosomes. A chromosome is a thread-like structure that carries genetic information arranged in a linear sequence. DNA is packed into 23 pairs of chromosomes. One half of each pair is inherited from the mother and the other half from the father. The 23rd pair determines an individual's sex. An offspring always receives an X chromosome from its mother but may receive either an X or a Y from its father. Individuals with XX in the 23rd chromosome are female, while those with XY are male. Chromosomes consist of linked base pairs that form a ladder-like structure. This ladder is twisted into what is referred to as a 'double helix'. The sequence of base pairs in chromosomes differs from person to person. It is the unique sequence of a person's base pairs that distinguishes him or her. Genes are found at a locus which is a specific physical location on a chromosome. These physical loci are referred to as codes. Two forms of a gene at a particular locus constitute an allele. At each locus there is a pair of alleles, one maternal and one paternal. This pair is called a genotype. A set of genotypes at multiple or numerous loci form a DNA profile.

DNA can be extracted from whole blood and blood cells; semen and sperm cells; tissues and organs; bones and teeth; hair roots and dandruff; saliva, urine, faeces and other bodily secretions; and epithelial cells found on clothes. Scientists have developed methods in which sequences of DNA are analysed at a specific locus on a chromosome. The STR is one of the DNA profiling techniques that is commonly used by scientists. The STR DNA profiling technique makes use of the polymerase chain reaction (PCR) technique. The PCR process

produces millions of exact copies of the DNA at the specific locus to be analysed. This amplification of the initial DNA results in sufficient quantities for analysis. The PCR technique simulates the process that takes place when DNA is copied prior to the division of cells in the body.

The STR technique makes use of specific type of DNA sequences targeted during the PCR process. The STR constitutes a sequence of bases, which is repeated numerous times and is attached to one after another in tandem, hence the term 'tandem repeat'. The number of repetitions is used to name an allele. For example, five repeats of the sequence for base sequence ATCG would be ATCG ATCG ATCG ATCG ATCG and will therefore be called allele 5. There are, however, two alleles at each locus.

The DNA fragments produced by PCR are then subjected to a process called electrophoresis. This process produces a computer-generated graph called an electropherogram. On an electropherogram the alleles at each locus are indicated as peaks on a baseline. If the individual received the same allele from each parent, the electropherogram of his DNA will indicate one peak at a specific locus, otherwise there will be two peaks. More than two peaks at a specific locus can show that the sample is a mixture of DNA. Thus, if there are more than two peaks and multiple markers, it is likely that the sample is a mixture of DNA profiles from more than one individual. The electropherogram assigns allele names to peaks.

An STR profile is therefore a series of numbers that represent all the genotypes detected for each locus in a particular sample. Thus, evidence that the STR profile of an individual matches that of a sample taken at the scene of a crime merely identifies and places that individual on the scene of the crime. Whether that person is the offender or not cannot be directly interpreted from a matching DNA profile.

Having briefly discussed the basics of DNA profiling, I now turn to discuss the case of *Bokolo v S*, which forms the crux of the article.

The facts of the case

Only the facts that relate to the subject of DNA will be discussed in relation to the case. The appellant was

charged with murder, rape and indecent assault of a child (his daughter). The appellant was tried in the High Court and was only convicted on the charge of rape. The appellant appealed against the conviction in the Supreme Court of Appeal and the appeal was heard on 23 August 2013.³ The appellant contended that he was not involved in the rape and alleged that he had not been at home at the relevant time. It was the appellant's contention that, on the day of the offence, he went to work, then visited the shebeen across from his home at 15.00 hours and only retired to his home to sleep at 22.00 hours.

The prosecution's case against the appellant rested entirely on the results of DNA testing. After the alleged rape, DNA samples from the victim's private parts were secured, using two sanitary pads. These sanitary pads were analysed for DNA at the Biology Unit of the Forensic Science Laboratory of the South African Police Service. The two samples were referred to in evidence as pad 1 and pad 2 respectively. The electropherograms showed that both samples contained a mixture of DNA.⁴ Based on the results of the DNA profiling conducted, it was found that the combination of alleles on the electropherograms in respect of both pad 1 and 2 reflected the DNA of at least three males.⁵ The STR profile of the appellant was not in dispute. The alleles at the respective loci coincided with the combination of alleles reflected on the electropherograms of pad 1 and pad 2, except for the appellant's allele 22 at locus FGA.⁶ Although there was an indication at the relevant place on each of the electropherograms, neither reflected a peak labelled allele 22 at locus FGA.⁷ The alleles on the electropherograms at locus FGA were in fact 20, 25 and 26 (in respect of pad 1) and 21, 23, 24 and 25 (in respect of pad 2).⁸

Two experts, one for the prosecution and one for the defence, gave an interpretation of the results of the DNA profiling. The prosecution expert's interpretation of the results was that they indicated allele 22 at locus FGA and that the STR profile of the appellant could therefore be read into the mixture reflected on the electropherogram of pad 1 and 2.⁹ Categorically, the prosecution expert opined as follows:

M'Lord, at that point FGA 22:25, you will see that there is not a clearly marked 22 at FGA. A possible reason for this is that FGA is a huge – is one of the largest ... areas in the DNA molecule, so obviously when you have DNA donated by quite a few people, you can actually lose some of your bigger fragments. So although there is not a labelled 22, we do have indications of DNA being present where we would expect to see a 22, so we can actually interpret it as such.¹⁰

Conversely, the defence expert's interpretation of the results was that because the height of a peak on an electropherogram is proportional to the quantity of DNA, alleles not detected in a less enriched sample of DNA may be indicated as a peak in the more enriched sample thereof.¹¹ Therefore a hint of DNA in a less enriched sample, if it represents DNA, should constitute a peak in the more enriched sample.¹² A more enriched sample in this context simply means that it contains a greater quantity of the DNA than the less enriched sample.¹³ Pad 1, in the case in question, contained a greater quantity of DNA than pad 2. Pad 1 was the sample more enriched with sperm and therefore the electropherogram presented a much clearer picture than that of pad 2. According to the defence expert, there was a little block on the electropherogram of pad 2 that hinted at DNA where one would find allele 22 at locus FGA.¹⁴ However, if that was DNA, it should have been represented as a labelled peak and therefore an allele on the electropherogram of pad 1.¹⁵ In the absence of any other explanation, the defence expert opined that it must be concluded that allele 22 could not be detected at locus FGA on the electropherograms of either pad 1 or pad 2.¹⁶

The Supreme Court of Appeal judgement

The court *in quo* found the opinion of the prosecution expert more convincing than the opinion of the defence expert, and accordingly convicted the appellant. The divergence of opinion between the experts and the subsequent High Court decision formed the crux of the appeal in the Supreme Court of Appeal.

Attention will be devoted to the decision of the Supreme Court of Appeal. The court was presented with relatively divergent scientific opinions, and ultimately had to draw on the opinion that was most logical and valid in deciding if the appellant was guilty of rape. Judge AJA van der Merwe, with the unanimous court concurring, ruled that, properly analysed, the evidence of the prosecution expert meant that it was possible that allele 22 at locus FGA may have been lost in the mixture.¹⁷ As such, the prosecution expert's evidence did not exclude the reasonable possibility that the allele was never there.¹⁸

Van der Merwe was inclined to accept the interpretation offered by the defence expert because the expert took cognisance of the alternative hypothesis.¹⁹ In the court's view, the defence expert gave credit and made concessions where due.²⁰ The court found the opinion of the defence expert more convincing on the basis that since it is scientifically accepted that a sample more enriched with DNA will show a higher peak on an electropherogram than the less enriched sample, it was not disputed that pad 1 was more enriched with male DNA (sperm) than pad 2.²¹ According to the court, the defence expert graphically illustrated this by comparing the electropherogram of pad 2 with that of pad 1.²² This accorded with the evidence of the prosecution expert that semen was targeted when the samples were taken but that despite this there was a bigger component of the victim's female DNA on pad 2 than on pad 1. The court reasoned that this quantitative element of the interpretation of the electropherograms was not taken into account by the prosecution expert.²³ The court therefore held that the defence expert's conclusion that allele 22 at locus FGA was not present on the crime scene samples was convincing and logical.²⁴ In light of the foregoing, the court held that the appellant should not have been convicted of rape by the court *a quo*.

Analysis and observations

This judgement raises a number of issues in respect of the role of judicial officers in evaluating DNA evidence, and the role of opposing or neutral experts in aiding the courts to arrive at informed

decisions when dealing with DNA evidence. The issues raised justify comment and are discussed extensively below.

The role of an expert in the interpretation of DNA results

Since the subject of DNA profiling is often not adequately understood by legal practitioners, the perception that DNA evidence is infallible obscures many potential problems raised by its interpretation. The divergent opinions of the two experts in the Bokolo case on the interpretation of the DNA results helps to unravel some critical problems of interpretation that are often glossed over when courts are confronted with DNA evidence.

Even when the court accepts the DNA results as reliable, as in the Bokolo case, the results have to be interpreted once a DNA test is complete. The results do not interpret themselves; experts interpret them. This is one of the points at which human error or bias may come into play.²⁵ The Bokolo case demonstrates that the manner in which DNA evidence is interpreted in court is paramount. Without prejudice to the opinion of the prosecution expert, the opinion of the defence expert in the Bokolo case underscored the critical need for experts to be mindful of alternative interpretations of DNA results.²⁶ It is possible, as it was in the Bokolo case, that an alternative explanation can be offered with regard to DNA results.

Jamieson, through his analysis of DNA reports, has showed that forensic scientists often fail to take into account other possible explanations that exclude the accused person.²⁷ Jamieson observes that in casework it is common to 'come across DNA reports that all but ignore any other possible interpretation than the one that provides the best probative value against the accused'.²⁸ Naughton and Tan have observed that the foregoing tendencies have been known to cause wrongful convictions in the United States.²⁹

The Bokolo case underscores the fact that it is not enough for experts, when opining on their interpretation of DNA evidence, to merely reiterate the validity of the science behind DNA evidence. This provides limited insight to judicial officers, as they are

conversant with the validity of this technique. Rather, it is important for experts to draw the attention of the courts to alternative interpretations, so that having weighed all the possible interpretations, the court can arrive at an informed decision on the probative value and weight of the DNA evidence in that particular case.

The Bokolo case demonstrates that the manner in which DNA results are interpreted by experts can undermine its usefulness to the judicial process. If these limitations are not properly addressed, DNA evidence, though highly probative, can result in a miscarriage of justice. For experts to be of appreciable help to the courts in the interpretation of DNA results, it is critical that these experts understand the duty of an expert to the court. The function of the expert is not to decide the matter in issue. As Zeffert and Paizes submit, the opinion of experts is only admissible because 'by reason of their special knowledge and skill, they are better qualified to draw inferences than the judicial officer'.³⁰ This is based on the premise that 'there are some subjects upon which the court is usually quite incapable of forming an opinion unassisted'.³¹

Thus, since the standard position regarding the admission of expert evidence is that the court can derive 'appreciable help' from the expert, the expert witness must possess sufficient skill, training and experience to render the 'appreciable help' sought by the court. Hoffman and Zeffert offer a framework for the admissibility of expert testimony, observing that the expert must:

- Be able to furnish the court with information falling outside the knowledge and expertise of any reasonable court
- Have some qualifications, but not necessarily 'formal' or 'professional' ones (i.e. a course of study coupled with practical experience)
- Must be able to state his or her opinion either as an inference from facts derived from personal knowledge, or provided by others
- Be able to guide the court to a correct decision on questions falling within the expert's field³²

Allan and Meintjes-Van der Walt have submitted that just because a person holds relevant qualifications, it does not make him or her an expert on a specific issue the court has to assess.³³ The person has to equally have knowledge, skill and expertise on the specific issue to be assessed by court, so that s/he can be of appreciable help in guiding the court to arrive at informed decisions. As J Addleson ruled in *Menday v Protea Assurance Co (Pty) Ltd*,³⁴ 'however eminent an expert may be in a general field, he does not constitute an expert in a particular sphere unless by special study or experience he is qualified to express an opinion on that topic'. Thus, with specific regard to DNA evidence, the expert must not only recite their relevant credentials to court, but must also, in accordance with their skill and expertise, identify the basis for their interpretation of DNA results to the court. Rather than promoting the case of the party that called them, experts should strive at guiding the court on the complex subject of DNA so that the court can arrive at an informed decision. This has been elaborated upon in the case of *S v Huma*,³⁵ in which it was underscored that 'the value of an expert is not to espouse and further the cause of a particular party, but to assist the court in coming to a proper decision on technical and scientific matters. It should therefore at all times be remembered that an expert is primarily there to assist the court and not necessarily to further the cause of his particular client to such an extent that he loses objectivity and in fact undermines his client's case.'

The role of defence or neutral experts in advancing DNA evidence

Although cross-examination is supposedly the 'greatest engine ever invented for the discovery of truth',³⁶ arguably, the complexity of the technique of DNA profiling limits the effectiveness of cross-examination. It is notable that there is a significant difference between attacking the opinion of an opponent's expert through cross-examination and attacking that opinion through the testimony of a defence expert. The latter is exactly what happened in the Bokolo case. The opinion of the prosecution expert was implicitly attacked through the alternative interpretation of the defence expert, something that could not be done by the defence attorney through

cross-examination. Cross-examination would have been insufficient, in the Bokolo case, to uncover the alternative interpretation advanced by the defence expert to the effect that 'in the absence of any other explanation, it [was to] be concluded that allele 22 cannot be detected at locus FGA on the electropherograms of either pad 1 or pad 2 and that the little block is in fact an artefact'.³⁷ Thus, defence or neutral experts are essential to the court's assessment of the reliability, relevancy and weight to be attached to DNA evidence. More specifically, it guards against the exaggerated probative value of DNA evidence.

Thompson et al³⁸ offer some useful guidance to defence experts on how to help the court place DNA evidence into proper perspective. The authors suggest that defence experts should have access to the laboratory report, which should, among others, state what samples were tested, what type of DNA testing was performed, and which samples could have a common source. The authors are, however, concerned that although there is a critical need for defence experts to scrutinise the laboratory reports, 'many defence lawyers simply accept lab reports at face value without looking behind them to see whether the actual test results fully support the laboratory's conclusions'.³⁹ Thompson et al. also submit that a number of factors (such as mixtures, degradation, allelic dropout, and spikes, blobs and other false peaks) can introduce ambiguity into STR evidence, leaving the results open to alternative interpretations. Thus, to competently represent the accused, the authors advise defence lawyers to seek expert opinion in this field so that they are able to uncover these ambiguities if they exist, understand their implications, and explain them to the court.

While the role of defence or neutral experts is critical in informing the decision of the court when dealing with DNA evidence, the financial costs involved in marshalling reliable defence opinion on DNA evidence may be high. Indeed, one could argue that some constitutional safeguards, such as the right to counsel, offer the accused sufficient protection. However, the right to counsel may prove meaningless if a lawyer is unable to make an effective defence because s/he has no funds to provide the expert testimony that the case requires.

In these circumstances, basic principles of fairness may require the state to provide an indigent accused with the ability to prepare an effective defence to such evidence. Goodwin and Meintjes-Van der Walt⁴⁰ suggest that this problem can be resolved by providing the defence with adequate resources and with accessibility to an expert. They add that recourse to neutral or court-appointed experts might be a viable option.⁴¹

Further, the equipment and software necessary to examine the data generated by DNA laboratories is highly sophisticated, and accordingly requires such substantial capital investment⁴² that experts in private practice might not be able to afford it, and thus may not be able to conduct independent scientific research and analysis. This may hinder both defence lawyers and experts in private practice, and undermine their ability to challenge DNA evidence, with respect to both methodological legitimacy and reliability. This may advantage the state, because when the government, which has resources at its disposal, adduces DNA evidence, it could be accepted as true without being challenged.

The Bokolo case, however, illustrates a technique that may be relied on to surmount some of these challenges. The prosecution can allow the defence expert access to all the underlying material on DNA evidence, as derived from the state's analysis. In the Bokolo case, in respect of the electropherograms, the defence expert only gave evidence based on his interpretation of the DNA results.⁴³ He did not personally examine the DNA samples.⁴⁴ The defence expert's interpretation reflected on the electropherograms that the prosecution expert made available to the court.⁴⁵ It is these same electropherograms that formed the basis for the prosecution expert's conclusions.⁴⁶ Thus, even though experts in private practice may lack the resources to establish their own DNA labs, they can still offer valuable insights based on their interpretation of the laboratory results, as in the Bokolo case.

Can judicial officers adjudicate over science?

The Bokolo case is one of the cases in which the court conducted an exhaustive evaluation of both the DNA interpretation and the application of the

admissibility rules to DNA evidence. It is notable that on account of the scientific validity of DNA profiling, there has often been a tendency to equate DNA evidence with guilt and innocence. Naude has, for instance, pointed out that 'not only can DNA conclusively establish guilt or innocence (because of its scientific precision), but it remains highly reliable for decades'.⁴⁷ Indeed, in the appropriate context, the high probative value attached to DNA evidence is justified. Meintjes has, however, correctly demonstrated that although the science behind DNA is valid and accepted by the scientific community, problems may arise in the chain of custody of DNA samples, standards and techniques of analysing the DNA samples, and the interpretation of the DNA results by experts.⁴⁸ In these situations, DNA evidence may be less probative than it might initially appear.

Martin⁴⁹ also asserts that while most courts accept the methodology of DNA analysis, the collection, preservation and subsequent handling of the evidence can be challenged in court. Berger⁵⁰ aptly adds that a match only means that the accused is a possible source of the crime scene sample. The match could, in some cases, answer questions about the accused's participation, but it does not prove guilt or innocence. Thus, even with the appropriate interpretation of DNA results, DNA evidence, on its own, may not necessarily be sufficient to establish guilt or innocence. The DNA evidence has to be weighed against all the other evidence on record. The aforementioned limitations therefore demand that judicial officers play a gate-keeping role in ensuring that DNA evidence is used in a proper context. The issue that is not resolved is whether judicial officers can execute the gate-keeping role when presented with scientific subjects such as DNA, which fall outside their areas of expertise.

Over the years, doubt has been cast on the ability of judicial officers to assess scientific validity, especially with respect to complex subjects such as DNA profiling. Rehnquist,⁵¹ for example, was of the view that requiring judges to assess scientific validity was tantamount to requiring judges to become 'amateur scientists'. Despite concerted efforts by judges to become informed about the

technique of DNA profiling, it is an ongoing issue as to whether a scientifically untrained judicial officer is sufficiently competent to assess competing putative scientific claims by competing expert witnesses. Indeed, these suspicions could be justified in light of the fact that scientific data often entails concepts and terminologies beyond the understanding of lawyers and judicial officers. Meintjes has observed that 'experts testifying in court are likely to express their conclusions either in verbal or numerical terms in respect of the probabilities of tests. [In these circumstances], the process of fact finding is a notoriously difficult one.'⁵² Indeed, some judicial officers are deliberately evasive when confronted with scientific evidence. The Bokolo case, however, reflects the fair number of judicial officers who have successfully displaced these notions. The approach of the Bokolo court demonstrates that judges can learn to think like scientists, at least in so far as being able to recognise faulty logic when they hear it.

Van der Merwe pursued an analytical gate-keeping role in assessing the scientific DNA evidence presented by the experts, rather than drawing simplistic conclusions. To avoid placing undeserved weight on unreliable scientific conclusions, Van der Merwe examined the logic behind the interpretation of the DNA results by both the prosecution and defence experts.⁵³ He conducted an independent assessment of the scientific validity and reliability of the opinion of the two opposing experts, as well as the implication of these opinions on the guilt of the appellant. Notably, Van der Merwe recognised that an objective analysis of DNA results did 'not exclude the reasonable possibility that that allele [the appellant's allele 22 at locus FGA] was never there'.⁵⁴ Accordingly, when judging the real issue at stake, which was whether the appellant was guilty of the said rape, Van der Merwe actively, objectively and reasonably scrutinised the interpretations advanced by the two opposing experts. His ultimate preference for the opinion of the defence expert was consequently justified by the fact that this expert's interpretation withstood logical consideration.⁵⁵

It is, however, notable that Van der Merwe could only arrive at such an informed decision because of his understanding of the working of DNA. He categorically observes that, in as far as the science

of DNA is concerned, 'I derived valuable assistance from the work *DNA in the courtroom: principles and practice* by Prof Lirieka Meintjes-Van der Walt'.⁵⁶ Van der Merwe, notably, set out to understand the subject of DNA profiling so as to be able to arrive at an informed decision. Faigman has observed that the 'scientific sea' is very wide and deep and judges should at the very least know how to swim.⁵⁷ Faigman underscores the need for judges to 'have the basic skills necessary to read and understand scientific methods and to integrate scientific knowledge in their legal decisions without actually having to swim across the entire breadth of science'.⁵⁸ In the South African context, Meintjes equally recommends that 'all parties to the criminal justice process should grasp the nature of expert evidence ... [as this makes the scientific] waters more navigable'.⁵⁹

Another insight that can be drawn from the Bokolo case in relation to the gate-keeping role of judicial officers, is the need for more informed judicial rulings on DNA evidence. It is unsafe for judicial officers to stop at taking judicial notice of the fact that the science behind DNA is valid and is generally accepted in the relevant scientific field. The Bokolo case demonstrates the need for judges to make a more elaborate inquiry into the methodological standards and the interpretation of DNA results on a case-by-case basis. Judges cannot conduct this analysis without an understanding of the basics of DNA profiling. What Freckleton has called the 'knowledge gap'⁶⁰ needs to be bridged by continuous education on the manner in which DNA evidence operates. Scheck⁶¹ advises that for judicial officers, lawyers and law enforcement personnel to appropriately evaluate and make use of DNA evidence, they must undertake to learn more about molecular biology, population genetics and laboratory quality assurance. This is an uncomfortable venture, but will ultimately equip justice professionals with the basic knowledge to challenge illogical scientific conclusions, and consequently prevent incompetent evidence from getting into the trial record.

Conclusion

This case note has underscored that if DNA evidence is to remain relevant in the dispensation of justice, it is critical for it to be placed in proper context.

Experts in the field of DNA evidence play a critical role in ensuring that courts receive appreciable help from their expertise. However, to contribute positively towards the justice system, experts need to constantly be aware that their duty is to the court. In advancing DNA evidence and expert evidence generally, experts should desist from acting as 'hired guns' for the parties that instruct them. Moreover, to effectively advance DNA evidence, defence experts will need to play a more active role in evaluating the evidence presented by the prosecution. An even greater obligation rests upon judicial officers. Not only must they ensure that the person presenting the expert evidence is properly qualified to render an opinion on the subject of DNA evidence, but they must also understand the basics of DNA evidence so that when there are contradictions in the interpretation of DNA results by the experts (or a 'battle of experts'), they are able to critically evaluate the opposing experts' views, and consequently to make informed decisions.



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Notes

- 1 There are other cases in which the role of DNA evidence has been underscored and applied in South African courts. For example, see *S v Maqhina* 2001 (1) SACR 241 (T); *S v Nedzamba* 2013 (2) SACR 333 (SCA) at para [35]; *S v Carolus* 2008 (2) SACR 207 (SCA) at para [32]; *Mugwedi v The State* (694/13) [2014] ZASCA 23 at para [2].
- 2 On the basic principles of DNA and DNA profiling, see L Meintjes-Van der Walt, *DNA in the courtroom: principles and practice*, Cape Town: Juta, 2010; L Meintjes-Van der Walt, An overview of the use of DNA evidence in South African criminal courts, *South African Journal of Criminal Justice*, 1, 2008, 22–62; JL Mnookin, Fingerprint evidence in an age of DNA profiling, *Brooklyn Law Review*, 67, 2001, 14–71.
- 3 *Bokolo v S* 2014 (1) SACR 66 (SCA) (Bokolo case).
- 4 *Ibid.*
- 5 *Ibid.*
- 6 *Ibid.*, para [25].
- 7 *Ibid.*
- 8 *Ibid.*
- 9 *Ibid.*, para [26].
- 10 *Ibid.*
- 11 *Ibid.*, para [27].
- 12 *Ibid.*
- 13 *Ibid.*
- 14 *Ibid.*

- 15 Ibid.
- 16 Ibid.
- 17 Ibid., para [30].
- 18 Ibid.
- 19 Ibid., para [31].
- 20 Ibid.
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- 22 Ibid.
- 23 Ibid.
- 24 Ibid.
- 25 B Budowle et al., A perspective on errors, bias, and interpretation in the forensic sciences and direction for continuing advancement, *Journal of Forensic Science*, 54, 2009, 798–809.
- 26 *Bokolo v S* 2014 (1) SACR 66 (SCA) (Bokolo case) para 27. See alternative interpretation advanced by the defence expert.
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- 33 A Allan and L Meintjes-Van der Walt, Expert evidence, in S Kaliski (ed.), *Psycho-legal assessment in South Africa*, Cape Town: Oxford University Press, 2006, 343.
- 34 *Menday v Protea Assurance Co (Pty) Ltd* 1976 (1) SA 565 (E).
- 35 *S v Huma* 1995 1 SACR 409 (W).
- 36 These words were uttered by Wigmore in 1940. See JH Wigmore, *A treatise on the Anglo-American system of evidence in trials at common law*, Boston: Little Brown, 1940, 1367, 29.
- 37 Bokolo case, para [27].
- 38 WC Thompson et al., Evaluation of forensic DNA evidence: essential elements of a competent defence review (part 1), *The Champion*, 2003, 16–25.
- 39 Ibid., 18.
- 40 J Goodwin and L Meintjes-Van Der Walt, Use of DNA evidence in South Africa: powerful tool or prone to pitfalls, *SALJ*, 1997, 170; See also S de Wet, H Oosthuizen and J Visser, DNA profiling and the law in South Africa, *PER/PELJ*, 14, 2011, 185.
- 41 Ibid.
- 42 On this reality, see 'Laboratory technology trends: lab automation and robotics, the brave new world of 24/7 research', *Science*, 2015, <http://www.sciencemag.org/site/products/robotfinal.xhtml> (accessed 23 March 2015).
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- 44 Ibid.
- 45 Ibid.
- 46 Ibid.
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- 53 Bokolo case, paras [30]–[32].
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Intelligence-led policing

A proactive approach to combating corruption

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Corruption causes substantial social and economic harm. The South African government's attempts to combat corruption have relied on strengthening legislation, introducing statutory investigative bodies, initiating public anti-corruption campaigns, and appealing to the integrity of individuals. Yet corruption remains a big problem in South Africa. However, one approach that has yet to be pursued is intelligence-led policing (ILP). ILP is a model built around proactive risk assessment and risk management. This article explains how ILP can be used to investigate corruption in South Africa.

Corruption has wide-ranging corrosive effects, from undermining democracy and the rule of law, to providing the fertile ground in which organised crime and terrorism flourish.¹ It takes many forms, from bribery to extortion, cronyism to nepotism, and patronage to embezzlement.²

In South Africa corruption is defined in the Prevention and Combating of Corrupt Activities Act 2004 (Act 12 of 2004) as 'giving or offering to give, of a benefit that is not legally due to a person vested with the duty by virtue of his or her office, with the intention of influencing him or her to do something, or not to do something in the performance of that duty'.³ But most South Africans interpret corruption more broadly to include abuse of resources, maladministration, theft and fraud.⁴

Because both parties involved in corrupt transactions benefit from them, corruption is always difficult to measure. And as South Africa does not have a single database of corruption reports, it is particularly

difficult to gauge its prevalence here. To do so, we have to draw on a range of disparate sources.

For example, the Transparency International Global Corruption Barometer 2013⁵ showed that 54% of respondents felt that corruption in South African businesses had increased substantially over the preceding year. In addition, in the 2013 Transparency International Corruption Perceptions Index,⁶ South Africa was the 72nd most corrupt of 175 countries measured. The 2013–2014 National Victims of Crime Survey showed that 37.9% of households reported being asked to pay a bribe in return for services from government officials. It also showed that 70% of respondents believed that corruption had increased during the period 2010–2013.⁷

Every year Corruption Watch, a non-profit organisation, receives thousands of allegations of corruption from the public, as does the Public Service Commission's National Anti-Corruption Hotline (NACH). Calls to the latter are routed to a Case Management Centre from where they are referred to relevant government departments. Departments must in turn investigate allegations and report back to the hotline.

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Similarly, between 2004 and 2012, the Special Investigating Unit (SIU), responsible for recovering and preventing state losses caused by corruption, fraud and maladministration, prepared evidence for 26 798 criminal cases. It also initiated 31 216 disciplinary hearings and 568 967 other remedial actions, such as the cancellation of fraudulent drivers' licences and recommendations on the removal of social grants from the social pension system.⁸

The Public Service Commission⁹ (PSC) and the Gauteng Anti-Corruption Strategic Framework¹⁰ offer other examples of how corruption manifests in South Africa. The PSC report cites fraud and bribery as the most common types of corruption allegations received at the NACH since its inception.

Other examples suggested by the PSC are reflected in Table 1.

All of the examples listed in this section provide some, albeit fractured, insight into the state of corruption in South Africa. But is enough being done to address the corruption that is uncovered? This is discussed in the next section.

Intelligence-led policing

It would seem that most of South Africa's anti-corruption efforts are reactive. Both industry and statutory bodies rely on whistle-blowing hotlines and internal audits to expose corruption, but the data collected by these bodies is not synthesised. In other words, it makes little contribution to crime intelligence or to efforts to predict and forestall corrupt acts. Considering the ongoing challenges posed by corrupt activities, it is important that alternative methods be considered. One such method is intelligence-led policing (ILP).

ILP is a conceptual framework for conducting the business of policing. It is built around risk assessment and risk management.¹¹ ILP is an information-organising process that allows policing agencies to better understand their crime problems, thus enabling them to make informed decisions on how best to approach specific crime challenges.¹² Contrary to what its name may suggest, ILP does not imply clandestine and covert activity conducted by shady officers. Rather, it is a business process

Table 1: Fraud and bribery

Risk associated with fraud and bribery	Possible control weaknesses
Officials claiming overtime without rendering any activities	- Supervisory checks not done - Lack of overtime recording system
Officials claiming a subsistence allowance on unauthorised trips, or trips not undertaken	- Lack of systems to verify attendance of trips - Circumvention of delegation of authority
Officials receiving kickbacks from members of the public in order to obtain government tenders	- Lack of declaration of interest procedures - Lack of policy in accepting gifts
Traffic officials receiving bribes from motorists, or public service officials receiving bribes to speed up enquiries in order to prevent delays	- Lack of awareness campaigns to members of the public on anti-bribery measures - Lack of enforcement of internal disciplinary measures against the perpetrators
Officials demanding bribes in order to issue illegal drivers' licences and roadworthy certificates	- No supervisory checks - Sharing of access controls to circumvent segregation of duties
Prison warders accepting bribes in order to help inmates escape from prison	- Lack of detection controls - Lack of access controls
Members of the public offering bribes to officials in return for obtaining tender contracts	Lack of enforcement of internal disciplinary measures against procurement officials
Private individuals resorting to collusive tendering to fix prices and limit competitiveness	Lack of blacklisting mechanisms in the public sector
Adjudication of tenders is often irregular, with correct procedures ignored Tender specifications are ignored or modified to suit a prospective tenderer with a view to facilitating the tenderer's success in the tender process	Lack of visible prosecution of companies involved in corrupt practices in the same manner and to the same degree as the officials involved in corrupt activities

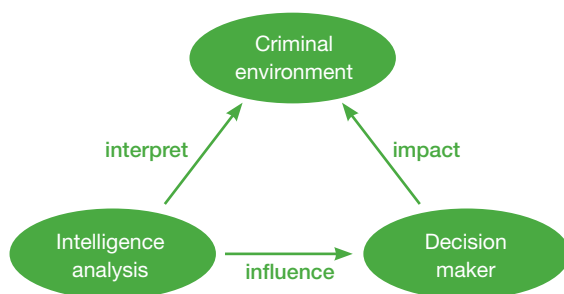
Source: Public Service Commission, *Profiling and analysis of the most common manifestations of corruption and its related risks in the public service, 2010*

model that determines where resources are needed, facilitates the organisation of knowledge, coordinates activity and allows lessons to be learnt from that activity.¹³

The paradigm of ILP is interpreted differently in different jurisdictions, resulting in variations in the ILP model. For example, the UK's National Intelligence Model (NIM) operates at three different levels. Level one deals with crime incidents and neighbourhood priorities occurring at a Basic Command Unit (BCU) level, while level two deals with cross-border issues affecting more than one BCU, neighbouring forces, and regional crime activity. Level three deals with serious and organised crime that operates on a national and international scale.¹⁴ In South Africa, the South African Police Service (SAPS) model comprises 11 steps and is premised on the collection, analysis, coordination and dissemination of crime intelligence for tactical, operational and strategic use.¹⁵ The steps can be utilised at station, provincial or national level. A single analytical division exists in the SAPS model, but it is not entrusted with all of the available information for purposes of analysis.¹⁶

The NIM and the SAPS models allow for the analytical function to be performed at different levels. But would a single analytical division, which disseminates tactical, operational and strategic corruption intelligence to policing agencies, not be better than these approaches? The 3i model proposed by Ratcliffe¹⁷ offers such a framework. As illustrated below, the 3i model compels close cooperation between police chiefs, managers and intelligence analysts in order to facilitate strategies that have an impact on the criminal environment.¹⁸

Figure 1: The 3i model



Source: JH Ratcliffe, *The structure of strategic thinking*, Sydney: Federation Press, 2009

The model requires criminal intelligence analysis to actively interpret the criminal environment. The 3i, a reference to 'interpret', 'influence' and 'impact', is a 'simple description of what can be a much more complex process'.¹⁹ Ratcliffe uses the 3i model as a conceptual sketch of the role of intelligence and decision makers in ILP. The model entails intelligence units actively interpreting the criminal environment and using the intelligence to influence law-enforcement decision makers, who in turn use the intelligence product to design strategies that have an impact on the criminal environment.²⁰ The model is based on three focal points: the criminal environment, intelligence analysis and decision-making. These are discussed in more detail below.

The criminal environment

The criminal environment in corruption cases encompasses a plethora of information, including raw data, knowledge, patterns, instructions and understanding. Analysts target this environment to collect information from public and private sources. Information collection may include entering into memoranda of understanding (MoUs) with business and government departments. Received information is channelled to a monitoring and analysis department responsible for reading, capturing, assessing and analysing the information. In corruption cases, information collected might include bank statements, e-mails, Internet and telephone communications, gambling records, VAT registration documents, insurance policy details and criminal records. Analysts must actively canvass intelligence from different sources in the criminal environment and make every effort to acquire the information required by interviewing investigating officers and, if possible, debriefing handlers of confidential information.²¹

Crime intelligence analysis

Once information is collected, it needs to be interpreted and converted into intelligence by analysts. In corruption cases, analysts use intelligence analysis, investigative analysis, geographic analysis, crime threat analysis, crime pattern analysis and charting techniques.

Examples of charting techniques used by analysts include:²²

- Link charting: to show relationships among entities, for example between the corrupter and corruptee
- Event charting: to show chronological relationships among entities or sequences of events
- Commodity flow charting: to explore the movement of money and stolen goods
- Activity charting: to identify activities involved in a criminal operation
- Financial profiling: to identify concealed income of individuals or business entities and to identify indicators of economic crime
- Frequency charting: to organise, summarise and interpret quantitative information
- Data correlation: to illustrate relationships between different variables

The intelligence analysis of information on corruption is performed in fusion centres. Fusion centres are the ‘heart beat’ of the model, where all information is collated and analysed. Fusion centres are designed to blend information from a variety of sources.²³ Their success depends on agencies changing policies and procedures that obstruct information and intelligence. They work to move beyond a reliance on information from police.²⁴ There is an inherent requirement on the analyst to ‘actively interpret the criminal environment rather than to wait to receive intelligence’.²⁵ The ILP model also offers a techno-savvy response to techno-savvy crime, through its use of fusion centres. Armed with sophisticated information technology software, analysts are able to observe and understand crime threats across jurisdictions, consider how these may relate to one another, and develop means to proactively address them.²⁶ The creation of such centres in South Africa would contribute to understanding and preventing corruption.

Decision-making

In the 3i model, crime intelligence analysis is linked to decision-making. Intelligence must inform decisions. For example, in the case of counterfeit card fraud (skimming), affected private industry can assist in identifying hotspots through an analysis of their own victimisation. This intelligence can be made available to the SAPS by bodies such as the South African

Banking Risk Information Centre (SABRIC). Private analysts could form part of a multi-disciplinary team assisting the police. Such analysts could inform law-enforcement responses by providing relevant and timely information, and presenting professional reports and presentations containing logical arguments and factual intelligence.

By informing decision makers, analysts empower them to use the intelligence to make tactical, operational or strategic decisions to address crime.²⁷ It has, however, been argued that the SAPS does not fully understand the importance and value of creating multi-disciplinary task teams. This is attributed to its bureaucratic nature.²⁸ The SAPS is characterised by formal hierarchical structures with many different departments, operational rules and regulations, all of which are intended to ensure compliance by its staff. But this hinders collaboration between SAPS units and public and private institutions at large.

The need for ILP in combating corruption

One reason for the emergence of ILP has been the inability of traditional policing methods to cope with the globalisation of crime, such as the emergence of transnational organised crime (TOC).²⁹ Corruption is often intertwined with TOC and, in many cases, is the catalyst that breeds and sustains it.³⁰ In an attempt to combat TOC, agencies such as Europol have adopted the ILP approach, resulting in successful transnational policing initiatives such as ‘Operation Godfather’. This involved cooperation between agencies from Belgium, Germany, Italy, the Netherlands, Romania and Sweden, and resulted in the disruption of a criminal gang manufacturing skimming devices in Romania.³¹ The success of the operation relied on coordination from a single Europol centre where information was collected, exchanged, analysed and interpreted, leading to suspects being identified.

In South Africa ILP exists to an extent in both the public and private sectors. The most prominent examples include the Financial Intelligence Centre (FIC) and SABRIC. Based on the 3i model, both institutions are involved in information collection, analysis and the converting of information into

intelligence. The FIC is staffed with 57 analysts³² while the commercial crimes desk at SABRIC has six analysts.³³ Working in fusion centres, analysts operate sophisticated IT software to understand and interpret crime information, map crime, and analyse its patterns. The shortcoming in South Africa is in the 'decision-making' node. In the FIC, the type of intelligence generated determines the nodal point to which information is disseminated. The reports may be forwarded to either the National Intelligence Co-coordinating Committee or the Justice, Crime Prevention and Security Cluster, which is made up of the SAPS, the Asset Forfeiture Unit, the Anti-Corruption Task Team and the South African Revenue Service. But the decision on whether to act on the intelligence and to furnish feedback to the FIC is at the discretion of the respective bodies. The FIC has no impact on their decisions.³⁴

In some instances SABRIC identifies threats and passes its reports directly to the SAPS. A 2004 MoU between the SAPS and SABRIC provides for standard operating procedures relating to threats posed by syndicates and crimes that affect the banking industry. Responses combine members of specialised units within both the SAPS and SABRIC. SABRIC provides skilled analysts, computer hardware and software programmes, and office space, while SAPS investigators investigate, search, seize and arrest perpetrators. The MoU provides for secondments and co-location of personnel, allowing for sharing of skills, experience and specialist knowledge enabling, as envisaged in the 3i model.³⁵

The success of the 3i model has been highlighted in various criminal cases in South Africa. The SAPS Sandton case,³⁶ which saw joint collaboration between the SAPS and SABRIC, resulted in the conviction of seven syndicate members for counterfeit card fraud. This form of collaboration exists through authority derived from statutory and case laws, for example *State v Botha and other*,³⁷ *State v Dube*³⁸ and section 179 of the constitution.³⁹ In *State v Botha and other*,⁴⁰ the court ruled that it was not improper that a corporation's internal investigation unit had conducted an investigation regarding the alleged defrauding of its pension fund. The court referred to the fact that various institutions conduct their own investigations and then hand

over the evidence collected to the police for prosecution. Similarly, in *State v Dube*,⁴¹ a private investigator set a trap for an employee of a vehicle manufacturer who was suspected of being involved in theft. The investigator arranged for meetings so that the suspect could be photographed and audio recorded. The High Court expressed its acceptance that private investigations occur, and that the evidence collected is handed over to the police for prosecution.

Corruption intelligence centre

Chapter 14 in the National Development Plan lists fighting corruption as one of the state's key goals. To this end, efforts to eradicate corruption need to include private and public sector partnerships to sustain anti-corruption initiatives on all fronts. It is against this backdrop that a corruption intelligence centre (CIC) should be established in line with the 3i model. I believe that the centre should comprise a crime/corruption information hub (fusion centre) that receives information from all possible sources. This can then be centrally analysed and disseminated to relevant enforcement agencies.

A single fusion centre such as the CIC will provide the relevant institutional support currently lacking in anti-corruption agencies. The CIC will not amount to a single 'anti-corruption agency' since it will be primarily involved in collecting information rather than investigating or prosecuting offenders, and will provide support to prominent corruption combatting bodies like the SIU and the SAPS. It will be important that analysts are able to influence decision makers to act on the information/intelligence furnished. Intelligence gathering must be performed by adhering to the legislative mandate specific to section 199 of the constitution, the National Strategic Intelligence Act and the Intelligence Oversight Act 1994 (Act 40 of 1994). Secondments of personnel who are legally mandated to collect intelligence will avoid any contraventions to any act, provided the intelligence is collected legally.

Conclusion

Corruption remains a serious challenge to prosperity, governance, law and order in South

Africa. To combat corruption, law enforcement authorities must work 'smarter'. This can be achieved by adopting an ILP approach. Collaboration and the sharing of information and intelligence are critical to the success of ILP and, more importantly, the 3i model. Government should undertake to explore ILP as a means to address corruption and crime in general. The various statutory bodies and organisations tasked with addressing corruption in South Africa remain predominantly reactive. It is against this backdrop that a corruption intelligence centre would be a great asset. The centre would need to be a legally constituted body, similar to the Financial Intelligence Centre, where information related to corruption is collected from different organisations, then processed, analysed and interpreted. Staffed with intelligence analysts and supported by sophisticated IT software, the centre could provide intelligence on corruption to various investigative and enforcement agencies to assist in the identification and prosecution of perpetrators, and in so doing hopefully reduce corruption in South Africa.



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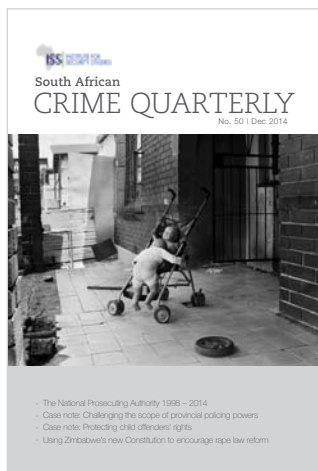
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This edition of SACQ focuses on primary violence prevention programmes – those programmes that aim to address the risk factors that increase the chance of violent victimisation and perpetration. It includes research findings relating to the relationships between parenting and child behaviour; assessments of the evidence for programmes that have been developed and tested in South Africa and a discussion about what constitutes evidence and how it may be used to inform policy making.



In this edition of SACQ Martin Schönteich argues that political interference in the NPA, and the failure to appoint credible, stable leadership, threatens to incapacitate the institution. Phumlani Tyabazayo analyses judgements in the cases brought by the Minister of Police to prevent a Commission of Inquiry into policing in Khayelitsha. Zita Hansungule considers the Constitutional Court judgement that found the Sexual Offences Act unconstitutional in requiring names of child offenders to be automatically placed on the National Register for Sex Offenders upon conviction of a sexual offence. Douglas Coultart draws on South Africa's experience to show how the new constitution of Zimbabwe might be used to amend the laws relating to rape and sexual offences.



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