

South African CRIME QUARTERLY

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- > Policing in context in Brixton and Khayelitsha
- > SAPS human resource allocation
- > The complexities of everyday policing in a high crime area
- > Avoiding another Marikana massacre
- > Assessing review mechanisms of SAPS performance
- > On the record ... with Judge Kate O'Regan

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Cover

A striking mineworker holds an umbrella as he awaits a 'report back' meeting near Lonmin's Marikana mine in South Africa's North West Province, 6 September 2012.

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Elrena van der Spuy

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.

Inquiries into commissions of inquiry into police

Commissions of inquiry into police have a long and chequered history – both internationally and locally. In this special edition, our focus falls on the two most recent commissions of inquiry into police in South Africa – parochially known as the Marikana and Khayelitsha commissions. The deliberations of the two commissions have attracted much attention. Media coverage has at times opted for the sensational. However, a steady stream of more thoughtful commentaries, crafted by investigative journalists and policing experts, has also seen the light. The archival footprints of both commissions have been enormous. Thousands of pages of information on a wide range of administrative, operational and policy matters of relevance to police and policing have been produced. The online storage of expert testimonies, witness statements, and transcriptions of cross-examinations has further enhanced access to both primary and secondary material. Amid this abundance of data it would seem that those interested in the trials and tribulations of policing the post-colony can do no better than to capitalise on the opportunity for critical reflection and substantive analysis. In this special edition of the *South African Crime Quarterly* we take up the challenge for reflection.

Commissions of inquiry in their own right constitute suitable objects for inquiry. For example, commissions constitute rich topics for *historical inquiry*. Turning to South Africa, the historical record reveals a number of major inquiries that have been established in response to a wide range of concerns ever since the establishment of the modern South African state in 1910. With the benefit of hindsight it is evident that the Marikana and Khayelitsha commissions constitute contemporary variations on a much larger theme of public inquiries into police.

Commissions of inquiry yield themselves to *comparative analysis*; applied to commissions across time and space, a comparison allows us to identify commonalities and differences between public inquiries. Commissions share some generic features: they are first and foremost mechanisms of investigation; they are endowed with legal capacity and project an image of impartiality. All commissions collect material, call witnesses to testify, and make use of expert evidence. They exhibit considerable diversity, with terms of reference that can vary from the bold and ambitious to the narrow and restrained. Commissions may be backward looking or future orientated. They can conduct their business in both investigatory and inquisitorial manners. The recommendations they formulate may aim at larger systemic changes or focus on mere technical adjustments.

Commissions are suitable objects for *sociological* and *political* inquiry. Being constitutive of social and political interests, commissions can become sites for contestations between interest groups. Commissions fulfil a host of symbolic functions; they provide signals that a government is acting in response to issues of concern, thus offering opportunities for legitimating state power. Conversely, they may defy simplistic attempts to depict them as mere instruments to be manipulated at will by the executive. Commissions provide opportunities for learning (retrospectively) and for innovation (proactively). Do commissions make a difference? It depends. The research record suggests that impact is shaped by a wide variety of factors and that there is no guarantee that the findings and recommendations will change the course of organisational life.

Finally, public inquiries can be read as forms of political dramatisations where actors convene in a theatrical space to engage on issues of public importance. The casts consist of judges, legal teams, experts, witnesses and audiences. The scripts follow a particular logic. *Dramaturgical analysis*, in the good tradition of Erving Goffman, allows us to look beyond the surface of who said what, and to whom. It provides us with a 'backstage pass' to the rules of engagement around which roles and relationships are structured, narratives develop and 'truth claims' are made.

Making sense of the deliberations to which commissions give rise is a challenging undertaking. As objects of study, commissions can be 'read' in many different ways, as the articles included in this edition illustrate.

In the first article, Bill Dixon brings a comparative angle to bear. He chooses two commissions from very different jurisdictions (Brixton, United Kingdom, and Khayelitsha, South Africa) to explore how and to what extent these commissions have engaged the social context within which police invariably operate. He raises interesting questions relating to the imperative for situating police in context and the constraints on commissions to engage the structural context in their recommendations for change.

The next two articles are situated squarely within the deliberations of the Khayelitsha Commission of Inquiry. Capitalising on the administrative data relating to resource allocation, revealed in minute detail by this commission, Jean Redpath and Fairouz Nagia-Luddy recap the flaws in the theoretical model and go on to offer an alternative for the allocation of resources, one based on the 'burden' that policing confronts in any particular locality. Failure to engage resource allocation, rationally and ethnically, will simply mean the perpetuation of structural inequities undermining access to resources in precincts that are inhabited by the urban poor.

The Khayelitsha Commission has been criticised for its singular focus on the police. Laura Freeman and Claire McDonald zoom outwards from the police organisation in Khayelitsha. Here, they map the intricate web of linkages, associations and interactions that characterise the field of policing. What needs to be appreciated is that the SAPS occupies a place within a wider and complex network of associations and structures. There is considerable variation in the nature of those relationships, whether cooperative, competitive, subservient or conflictual. Policing, we are reminded, is a complex relational endeavour. Efficiency in the police organisation thus remains dependent, at least in part, on efficiency elsewhere in the web.

Gareth Newham undertakes a critical reading of the public inquiry into the fateful Marikana events. His gaze is focused – squarely and uncompromisingly – on the senior leadership of the organisation, rather than those police who were deployed at the platinum mine in August 2012. He finds the upper echelons of the organisation deeply compromised and starkly politicised. They have reneged on the democratic principles of professional, non-partisan and ethical leadership. Deliberate attempts to obfuscate the commission's work provide tangible proof of a senior leadership that no longer abides by the principles of ethical professionalism. On the available evidence, it would thus appear that the project of democratic policing is effectively being sabotaged from the top.

Commissions are external, independent and public forms of inquiry. Extensive and often dramatised media coverage puts their deliberations at the centre of public debate. But in the life of organisations, other forms of investigation of a more internal nature are part of routine stocktaking. Johan Burger reminds us that there has been no shortage of reviews of the organisational aspects of policing in recent years. Such reviews expose a considerable convergence in the findings related to administrative and operational failures, all constituents in the gamut of systemic challenges confronting the police organisation. The vexing question is not what is wrong – but rather why, in the face of agreement about key systemic failures, there is such a glaring lack of concerted effort to address them.

We conclude this special edition with a conversation with Judge Kate O'Regan, who together with Advocate Vusi Pikoli headed the Khayelitsha inquiry. In this conversation she speaks to the principles and processes that guided the work of the commission, the testimonies received, the huge challenges confronting police in a high crime and resource hungry locality, and the responsibility on the state to engage shortcomings in the system.

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Making further inquiries

Policing in context in Brixton and Khayelitsha

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Only rarely do inquiries into policing investigate the social context within which it takes place. This article looks at two inquiries that chose to take on this task: Lord Scarman's into the Brixton disorders in London in April 1981; and Justice Kate O'Regan and Advocate Vusi Pikoli's into the current state of policing in Khayelitsha in the Western Cape. It argues that they should be applauded for doing so, but draws attention to how difficult it can be to persuade governments to address the deep-rooted social and economic problems associated with crises in policing rather than focus on reforming the police institution, its policies, procedures and practices.

In his book *The politics of the police*, the British police scholar, Robert Reiner, makes the point that 'the police are marginal to the control of crime and disorder' while 'public peace and security are primarily a function of deeper processes in political economy and culture'.¹ He argues that indulging in what he calls 'police fetishism' – the assumption that the police are the 'thin blue line' that preserves society from dissolving into a state of violent chaos – is implicit in most if not all public discussion of policing, and a good deal of academic writing on the subject too.²

It is also widely recognised that their relationship with the public – the people who are policed as well as those on whose behalf policing is done – is critical to everything that the police do. This view is shared by observers whose perspectives on policing differ sharply in other respects. Thus the 'broken windows' theorists George L Kelling and James Q Wilson

emphasised that scarce police resources need to be deployed to support citizens in neighbourhoods at 'the tipping point' where public order is 'deteriorating but not unreclaimable'.³ Herman Goldstein, the founding father of problem-oriented policing, insisted that the police should focus on problems identified by the communities they serve, and seek to mobilise the public in resolving them.⁴ Writing in 1979 as an Assistant Commissioner of London's Metropolitan Police, John Alderson argued that providing 'leadership and participation in dispelling criminogenic social conditions through co-operative social action' was one of 10 objectives for police in a free society.⁵

Similar considerations are relevant at a societal level. Looking forward to the post-apartheid era in South Africa in 1994, John Brewer argued that the legacy of oppressive colonial policing could not be overcome in the absence of a wider process of social change. 'No amount of police reform' would, he wrote, 'alter the nature of police-public relations' unless the 'structural inequalities and problems of South African society' were addressed.⁶

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There is then a large measure of agreement over the need to recognise three things: the limitations of the police (and, to be more specific, the public police) as guarantors of order in the face of social forces well beyond their control; the centrality of the relationship between the police and the public to effective policing; and the urgency of social and economic change if meaningful police reform is to be achieved. So it is surprising how rarely inquiries into policing take account of the social context within which policing is done, and attend to the social conditions that gave rise to the issues the police have been charged with investigating.

Case studies

The purpose of this article is to look at the work of the Commission of Inquiry into Allegations of Policing Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha ('O'Regan/Pikoli'), which attempted to do this,⁷ and to compare its efforts to set policing in its social context with those of the inquiry into the Brixton disorders conducted by Lord Scarman in 1981 ('Scarman').⁸ These two inquiries have been chosen as case studies because, though they took place over 30 years apart and focused on policing in cities (Cape Town and London) on different continents in countries (South Africa and the United Kingdom) with contrasting, if overlapping, histories, they have much in common. Both were set up in response to what seemed to be a chronic breakdown in trust between police and policed (albeit with more or less acute symptoms); and both were led by senior members of the judiciary (one a recently retired judge of South Africa's Constitutional Court, the other a serving member of what was until 2009 his country's highest court, the House of Lords).

Scarman was asked to inquire into three days of public disorder on the streets of inner city London in which 279 police officers and at least 45 members of the public were injured; O'Regan/Pikoli into complaints of inefficiency and a breakdown in relations between the community and the police in what apartheid-era administrators liked to call a 'high density township'. Both inquiries decided to set the policing issues they had been asked to consider in their social context. O'Regan/Pikoli devote one

of their report's 15 chapters to 'understanding the context of Khayelitsha'; parts II and VI of Scarman's nine-part equivalent are concerned with 'social conditions' and 'the disorders and social policy' respectively.

The approach adopted by O'Regan/Pikoli, and by Scarman, can be contrasted with the narrower scope of inquiries into the fatal consequences of events at the Marikana platinum mine in South Africa's North West province in August 2012 and the death of the black teenager Stephen Lawrence on the streets of Eltham in south London on 22 April 1993.⁹ The Marikana Commission of Inquiry, chaired by a retired judge of the Supreme Court of Appeal, Ian Farlam, noted the 'squalid' conditions prevailing in Nkaneng and other informal settlements around the mine, but was more concerned with a forensic dissection of the mine owner's obligations to provide housing to its workers under the terms of a legally binding 'social and labour plan' than with detailed analysis of the workers' circumstances and what might be done to improve them.¹⁰ Though it identified 'institutionalised racism' (of which more below) as an important factor in the Metropolitan Police Service's mishandling of the investigation of his death, the Stephen Lawrence Inquiry (also led by a retired judge) has been criticised by one well-placed observer for failing 'to place [the murder] in the broader historical context of black/police relations' and disconnecting it from 'the local contexts of racial violence'.¹¹

Commissions of inquiry

Part of the explanation for this unwillingness to explore the social context of policing may lie in the nature of commissions of inquiry, defined by Raanan Sulitzeanu-Kenan as time-limited institutions external to the executive but set up by a government or a minister at her/his/its discretion and charged with the principal task of investigating past events.¹² At times of crises, he suggests, inquiries are seen as 'possessing the unique capacity to provide an impartial assessment, and bring certainty and closure in situations of doubt and conflict'.¹³ They serve as 'instruments of accountability and policy learning'.¹⁴ But, in doing so, they represent a threat to politicians playing a 'high-stake game of political survival' in which avoiding blame for the event or crisis under

investigation may be as urgent a priority as finding out what happened, or making sure that it does not happen again.¹⁵

For the pragmatic politician establishing an inquiry into an aspect of policing, the advantage of limiting its scope to the police – a bureaucratic organisation staffed by a disciplined body of public servants – may appear obvious. Deftly conducted by someone with a suitably safe pair of hands, an inquiry may serve to shift the focus of government policy from issues of social structure to what at least appears to be a less intractable set of problems to do with the direction and operations of the police. In this ideal world, the police can be both blamed for what went wrong and made responsible for putting things right. Without being too cynical about the motivations of those behind the O'Regan/Pikoli and Scarman inquiries, it is tempting to see this kind of thinking behind the terms of reference they were given, the way those mandates were interpreted and, more obviously in the case of Scarman, government's response to their findings. The appointment, terms of reference, findings, recommendations and impact of these two inquiries are the subject matter of the next three sections of this article.

Appointment and terms of reference

The background to the appointment of the O'Regan/Pikoli and Scarman inquiries has been referred to briefly above. A little more needs to be said at this point if their appointment and the task with which they were entrusted are to be understood.

The O'Regan/Pikoli inquiry was appointed by Helen Zille, the Premier of the Western Cape, on 24 August 2012 to investigate allegations of:

- Inefficiency on the part of the South African Police Service (SAPS) operating from the three police stations in Khayelitsha and in the area more generally
- A breakdown in relations between the Khayelitsha community and members of the SAPS¹⁶

These allegations had been made by non-governmental organisations (NGOs) working in Khayelitsha. The NGOs referred to eight cases that illustrated the problems with policing in the area.

They ranged from inadequacies in visible policing to shortcomings in the investigation of crime (particularly crime committed against foreign nationals, lesbian, gay, transgender and inter-sex [LGBTI] people and members of other vulnerable groups) and the response to specific policing challenges such as illegal liquor outlets, youth gangs, vigilantism and domestic and sexual violence.

The commission was appointed under section 1 of the Western Cape Provincial Commission Act 1988 (10 of 1988) and was intended to give effect to powers contained in section 206(3) of the Constitution, permitting provinces to, among other things, 'oversee the effectiveness and efficiency of the police service' (section (3)(b)) and 'promote good relations between the police and the community' (section (3)(c)). The somewhat fractious relationship between the African National Congress (ANC) administration at national level and the opposition-led government of the Western Cape, combined with the fact that, under the terms of section 206(1) of the Constitution, policing is primarily but not exclusively a national competence, meant that the commission's appointment soon became mired in political and legal wrangling. The dispute between the two levels of government was only resolved when the Constitutional Court ruled that:

[W]hilst a province has no control over the policing function, it has a legitimate interest that its residents are shielded from crime and that they enjoy the protection of effective, efficient and visible policing.¹⁸

It was common ground between the parties to the case that, under section 206(5), establishing a commission of inquiry was a constitutionally proper way of pursuing that interest and O'Regan and Pikoli were eventually permitted to complete their investigation.¹⁹

What is important to note from this is that O'Regan/Pikoli's mandate was derived from constitutional provisions that relate specifically and exclusively to the police. They were not asked to conduct a more broadly based inquiry into whether residents of Khayelitsha were being afforded the socio-economic rights set out in Chapter 2 of the Constitution (the Bill of Rights) relating to housing (section 26), health

care, food, water and social security (section 27) and education (section 29).

Equally significant is the question of political responsibility for the police, and where the blame for any shortcomings in their performance would lie. The effect of sections 205–207 of the Constitution, confirmed by the Constitutional Court in *Minister of Police and Others v Premier Western Cape and Others*, is that national government in the shape of the minister of police ‘must determine national policing policy’ (section 206(1)). The national commissioner appointed by the president must then exercise control over, and manage the police service in accordance with that policy (section 207(1) and (2)). From the point of view of the premier of the Western Cape, most, if not all, of the blame for any crisis in policing in Khayelitsha that O’Regan/Pikoli might find would lie with her opponents in the ANC, and the national minister of police in particular. A wider ranging investigation into social conditions for which the provincial government could also be held responsible might prove more awkward, but for the premier, establishing an inquiry into policing must have seemed a relatively safe political bet.

The constitutional and political background to the appointment of Scarman’s inquiry into the Brixton disorders of 10 and 12 April 1981 could hardly be more different. The disorders took place almost two years after the election in May 1979, with a majority of 43 seats in the House of Commons, of the first Conservative government led by Margaret Thatcher. As Scarman himself acknowledged in his report, 1981 was a time of ‘general economic recession’ and the polling company, Ipsos MORI, records that, in March of that year, the month preceding the Brixton disorders, public satisfaction with Thatcher’s government was at its lowest ebb.²⁰ Britain’s famously unwritten constitution and highly centralised system of government made it almost inevitable that her government would sustain some political damage resulting from an inquiry into the disorders, particularly insofar as the social effects of its radical economic policies were implicated in the origins of the disturbances. It may well have been that, by indulging in what Sulitzeanu-Kenan calls a ‘venue alteration exercise’, replacing a more volatile critical audience (the media, opposition politicians and the

public) with the more predictable one of a judge-led inquiry, the government was merely choosing the lesser of two evils.²¹

The constitutional position was also relatively clear. Under arrangements unique to the Metropolitan Police, the Home Secretary, William Whitelaw, was responsible for policing in London not just as the government minister responsible for the police nationally, but also as the local police authority for the Metropolitan Police District. These arrangements were to be hotly debated throughout much of the next decade but, as things stood in 1981, political responsibility for policing in Brixton lay squarely with the home secretary. His response to events in Brixton was to establish an inquiry under section 32 of the Police Act 1964, which provided that the home secretary ‘may cause a local inquiry to be held by a person to be appointed by him into any matter connected with the policing of any area’.²² Scarman’s terms of reference were straightforward: ‘to inquire into the serious disorder in Brixton on 10 to 12 April 1981 and to report, with the power to make recommendations’.²³ Though his inquiry was established under legislation providing for the governance of the police, he was invited, at least by implication, to range more widely in investigating the origins of the disorders. Unlike O’Regan/Pikoli, Scarman’s terms of reference made no explicit, and possibly constraining, references to the police institution. While the SAPS looms large in the mandate of the former, the Metropolitan Police is not mentioned in the appointment of the latter.

Findings

Scarman’s response to this brief was bold. He made the case for understanding policing in its social context in the introduction to his report in a passage that deserves to be quoted in full:

Policing policy and methods, it is obvious, reflect in part a reaction by lawfully constituted authority to the society which is being policed. A ‘Section 32 inquiry’ is primarily concerned with policing but, because policing methods operate in and are influenced by the social situation, it cannot stop at policing. In this Inquiry, therefore, I have sought to identify not only the policing problem specific to the disorders but the social problem

of which it is necessarily part. The one cannot be understood or resolved save in the context of the other.²⁴

Although they were no more responsible for the social and economic problems besetting the ethnically diverse communities that live in inner city areas such as Brixton than other citizens, the police had to 'adjust their policies and operations ... with imagination as well as firmness'.²⁵ If they did not, Scarman feared that 'disorder [would] become a disease endemic in our society'.²⁶

The profound and wide-ranging nature of Scarman's concerns about social conditions in Brixton was evident throughout Part II of his report.²⁷ As he described it, Brixton in 1981 was a once prosperous, now decaying, commercial and residential centre with very serious housing problems and a lack of recreational facilities appropriate to the needs of young people forced into the idleness that goes with unemployment.²⁸ The people of Brixton were more likely to be young, working class and transient than in either the rest of London or in the London Borough of Lambeth, the local authority area of which Brixton formed (and still forms) part.²⁹ They were more likely to be members of a one-parent family and to suffer from mental illness or have a mental or physical disability.³⁰ Finally, and perhaps most significantly for the debate that swirled around the disorders and Scarman's response to them, Brixton was one of the most ethnically diverse parts of London: 36% of the population of its five council wards was 'non-white', rising to 49% in two of them.³¹ Moreover, in the two wards at the centre of the disturbances, black people of West Indian or African origin formed 30% of the total population, but as many as 40% of 0–18 year olds and 50% of those between the ages of 19 and 21.³²

Scarman offered a stark analysis of the state of the black community in Brixton, leading one critical commentator to accuse him of adopting a 'pathological approach' and downplaying the impact of both police and societal racism.³³ In summary, he found that British social conditions had fractured the extended matriarchal structure of the West Indian family, leading to high proportions of children finding themselves either in local authority care or in

households headed by a lone parent.³⁴ Young black people had been failed by the education system and lacked the language and other basic skills needed to find work in a technological age.³⁵ Combined with the effects of the 'general economic recession' and a 'contraction in the economic and industrial base of the inner city', this meant that young people generally, and black youth in particular, faced unemployment, often for long periods.³⁶

With the benefit of hindsight, Scarman's most controversial finding was that, though young black people experienced (mainly indirect) discrimination by employers in the workplace and elsewhere, Britain was not 'an institutionally racist society' – at least if that phrase was taken to mean that it was one that 'knowingly, as a matter of policy, discriminates against black people'.³⁷ Summing up, Scarman found that the black community in Brixton faced similar problems to those of their white neighbours.³⁸ But they were more severe and were exacerbated by racial discrimination.³⁹

As a result, young black people may feel a particular sense of frustration and deprivation. Spending much of their lives on the street, they are there bound to come into contact with criminals and with the police.⁴⁰

The police appeared to many young black people 'as the visible symbols of the authority of a society which has failed to bring them its benefits or do them justice'.⁴¹ His conclusions on the nature of the disorders flowed from this:

The disorders were communal disturbances arising from a complex political, social and economic situation ... There was a strong racial element in the disorders, but they were not a race riot. The riots were essentially an outburst of anger and resentment by young people against the police.⁴²

O'Regan/Pikoli made much less of their efforts to contextualise policing in Khayelitsha. Instead of explicitly asserting that problems in policing can only be seen as part of a much more extensive set of social problems, they assumed that an understanding of context is essential to the successful completion of their inquiry. The sub-headings in the chapter of their

report on 'understanding the context of Khayelitsha' give an indication of the issues they considered: geography, history, demographics, social and economic conditions and, finally, crime.⁴³

The picture of Khayelitsha that emerges is of a place that has varying levels of disadvantage. It is home to almost half a million people, over half of whom live in informal dwellings.⁴⁴ Ethnically and linguistically homogenous – 98.7% of residents surveyed for the 2011 census described themselves as black/African; 89.8% spoke isiXhosa at home – over two-thirds of adults had been born in the Eastern Cape.⁴⁵ In some of the newer settlements this proportion rose to over four in five.⁴⁶ Well over a quarter of the population was under the age of 15.⁴⁷ On average, Khayelitsha residents had completed no more than nine years of schooling and less than 5% had a tertiary educational qualification.⁴⁸ Over 50% of young men up to the age of 23 were unemployed and three-quarters of all households had incomes that meant they were unable to meet the cost of food and sustain the necessities of life.⁴⁹ The number of households in Khayelitsha with on-site access to electricity, water and a toilet doubled between 1996 and 2011, but sanitation and street lighting remained especially contentious issues.⁵⁰ In spite of a small drop in crime rates per capita since 2003/4, the commission concluded that levels of crime made it unsurprising that 'a very high proportion of residents in Khayelitsha feel unsafe.'⁵¹

In short, '[deep] levels of poverty, poor levels of infrastructure and very high crime rates' made policing Khayelitsha 'profoundly challenging'; it was, the commission found, 'a particularly difficult place for [the] SAPS to operate [in]'.⁵² If social and economic conditions provided the background to the many inefficiencies in policing identified in their report, O'Regan/Pikoli traced the roots of the breakdown in relations between the SAPS and members of the community of Khayelitsha back to its fiercely contested development in the final days of apartheid.⁵³ The SAPS's predecessor, the South African Police, had been deeply implicated in pursuing the goals of apartheid, including controlling the 'influx' of people from the rural Eastern Cape, and fostering the violence that surrounded the creation of their 'new home' outside Cape Town.⁵⁴

This history imposes a particular burden on SAPS to demonstrate its fairness, even-handedness and respect for the residents of Khayelitsha in order to win the trust of the community. Unlike in other parts of the world, SAPS cannot draw on a reservoir of good will that historical acceptance of the legitimacy of police work creates.⁵⁵

Recommendations and impact

The extent to which the reports of the two inquiries made recommendations in relation to the context of policing reflected the different approaches to presenting their findings. Scarman devoted Part VI of his report to 'the disorders and social policy'. He began it by rehearsing why 'recommendations about policing ... must embrace the wider social context in which [it] is carried out' before going on to call for a more coordinated approach to tackling the problems of Britain's inner cities, as well as measures to meet the housing, education and employment needs of ethnic minorities.⁵⁶ He also recommended that 'positive action' (defined as 'special programmes in areas of acute deprivation') be taken to address the problem of racial disadvantage.⁵⁷

Far-reaching though his proposals were in some respects, he was careful to avoid saying anything about the 'scale of resources which should be devoted to inner city or ethnic minority needs'.⁵⁸ This, he said, was a matter for government and Parliament.⁵⁹ Reflecting on the response to his report at a conference held a year after the riots in April 1982, Scarman offered an upbeat, not to say bullish, assessment. His conclusion about the disturbances, having complicated political, social and economic roots quoted earlier had been accepted as 'beyond challenge' and had 'become one of the unspoken assumptions upon which social and police reforms are discussed and promoted'.⁶⁰ He was pleased with the government's response to the needs of ethnic minorities, but disappointed by the continued lack of coordinated action on inner city problems and uncertain about the fate of his recommendation on positive action.⁶¹

Four years later, in 1986, at another conference held after more rioting in British cities the previous year, much of Scarman's optimism had evaporated

and he was moved to agree with another speaker, Usha Prashar, that his social and economic recommendations had not been implemented.⁶² As Stuart Hall commented over a decade later, Scarman's findings were notable for breaking the 'prevailing law-and-order consensus' over the origins of disorder, but the social and economic reforms he had proposed were 'seriously out of key with the times and [had] triggered no significant political or policy response'.⁶³ Worse still, though his advocacy of a community-oriented approach to policing had become the dominant philosophy of police leaders in England and Wales by the end of the 1980s, his findings on racism failed to stand the test of time and were flatly contradicted in the report of the Stephen Lawrence Inquiry published in 1999.⁶⁴ This stated that institutional racism (defined as 'the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin') existed not just in the Metropolitan Police Service and other police services, but in other institutions across Britain.⁶⁵

There is no equivalent to Part VI of Scarman's response to the Brixton disorders in the report of the Khayelitsha Commission. The recommendations set out in Chapter 15 of O'Regan/Pikoli touch on some of the problems – vengeance killings and attacks, youth gangs, unlicensed liquor outlets and domestic violence – that make policing in the area so challenging. But their emphasis is very much on the style, organisation and delivery of police services by the SAPS: on committing to community policing, reviewing the deployment of human resources and adopting a model of policing based on procedural justice.

Reaction to the O'Regan/Pikoli report after it was published on 25 August 2014 had been muted until shortly before the anniversary of its publication. Then, on 7 August 2015, Zille issued a statement giving vent to her frustration at what she evidently saw as the failure of the national Minister of Police, Nkosinathi Nhleko, to respond to it, and of the SAPS to sign a memorandum of understanding with the provincial Department of Community Safety (DoCS), clarifying their respective roles and responsibilities in relation to policing in Khayelitsha.⁶⁶ Such a memorandum was, she said, essential to taking action on the majority of

O'Regan/Pikoli's recommendations, although progress had already been made on community policing forum (CPF) elections, providing training to their members, bringing civil society groups together to prevent vengeance attacks and creating awareness about crimes against women and children.⁶⁷

In her statement, Zille also announced that, having received no response to inquiries about the status of a 'strictly confidential' response to the Khayelitsha Commission's work handed over by the National Commissioner of the SAPS, General Riah Phiyega at a meeting on 8 June, she would make the document available to the media and the public at large.⁶⁸ This document, signed by Phiyega and dated 5 June 2015, but issued 'by direction of the Minister of Police', contains an uncompromising defence of the SAPS.⁶⁹ It criticises the commission for adding to negative public perceptions of the SAPS and dismisses its work as an unnecessary distraction: 'The commission highlighted what was already known and buttress [sic] what the SAPS has been talking about all along and dealing with.'⁷⁰ There is little evidence in the SAPS's response thus far to suggest that either the bitterness surrounding the commission's establishment has diminished with the passage of time, or that the ANC and national government are prepared to take sole responsibility for the social and economic conditions prevailing in Khayelitsha. On the contrary, Phiyega notes that,

[W]hile its mandate was only to investigate policing, the Commission also found that a lack of proper investment by the [opposition-run] City of Cape Town and the Provincial Government in infrastructure such as toilets, street lights and roads had made policing more difficult and increased residents [sic] vulnerability to violent crime.⁷¹

With the premier of the Western Cape and the national commissioner (with the minister, apparently, behind her) drawing their rhetorical daggers, the prospects for political consensus over the future of policing in Khayelitsha, and how the circumstances under which it takes place might be improved, appear bleak. Yet, if the response to Phiyega's document drafted by the provincial DoCS is to be believed, relationships on the ground may be rather more productive than the

political war of words would imply, as progress is already being made by DoCS, the SAPS and other role-players in turning policing in Khayelitsha around.⁷²

Conclusion

The central argument of this article is that, as Scarman had done over 30 years before, O'Regan/Pikoli acknowledged that problems in policing (whether they present as acute in the case of Brixton or chronic as in Khayelitsha) are only fathomable if they are set in their wider social context. The approaches adopted in the reports of the two inquiries differ: where Scarman emphasised the connection between social and economic conditions and policing as a, if not the, guiding principle of his work, O'Regan/Pikoli were more understated in their commitment to understanding the context of policing. This may well reflect differences in the salience of policing and the police institution in their respective terms of references, but it can also be surmised that these approaches owed something to the political conditions under which the inquiries were appointed. In the light of the reticence shown by other inquiries, set up under not dissimilar circumstances, the fact that both Scarman and O'Regan/Pikoli chose to address these issues at all is a testament to their willingness to seek explanations for poor policing beyond the actions of those responsible for delivering it, and to interpret their respective terms of reference in such a way as to permit them to do so.

What emerged from both inquiries was that people who lack a significant stake in society and feel that they get little or nothing from the state are likely to lack the trust and confidence in its agents on which public policing in a democratic society depends. And, at times of crisis, when people's only point of contact with the state may well be with the police – police that are seen as routinely acting against rather than for them – protests against the police and their actions become freighted with anger stemming from a much wider set of frustrations and resentments.

Although he did not say so in quite so many words, Scarman implied that genuine and sustainable police reform was impossible if the conditions under which policing was done remained unchanged. Reading the conclusions reached by O'Regan/Pikoli on the long

shadow cast by the history of Khayelitsha, and the extremely testing environment in which the SAPS currently operates, it is hard to see them disagreeing. Yet, if Scarman's experience is anything to go by, persuading governments to rethink their economic and social policies is some way beyond the compass of any ad hoc body with a mandate limited to policing. The complexities of the constitutional and political situation in South Africa, with the opposition-led City of Cape Town and Western Cape provincial government having appointed the O'Regan/Pikoli Commission against the wishes of the ANC, the SAPS and the national minister for police, make it unlikely that either side in an increasingly bitter war of words over its findings and recommendations will be anxious to tackle the contextual issues identified in their report. With political survival at stake, and the diktats of neo-liberalism so firmly implanted in the minds of early Thatcherite true-believers and more recent South African converts among the ANC and its political rivals in the Western Cape alike, the temptation to tinker with the police institution and scratch at the surface of the social problems to which it alone cannot offer a remotely adequate response becomes hard to resist.



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Notes

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‘Unconscionable and irrational’

SAPS human resource allocation

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The Khayelitsha Commission revealed that areas that are predominantly populated by people who are poor and black are systematically allocated only a small fraction of the average per capita allocation of police personnel in the Western Cape. These areas also suffer among the highest rates of murder and serious violent crime in the province. The allocation of human resources to policing impinges on various constitutional rights. Given the inequity and irrationality apparent in the allocation of police personnel, the Khayelitsha Commission recommended that this method be urgently revised. This article reviews the evidence heard on the allocations and the method currently used to allocate police personnel, suggests an alternative method, and calls on the government to heed the recommendation of the Khayelitsha Commission that the state urgently revise its method of allocation of policing resources.

Inequities in the distribution of police human resources were highlighted¹ by the Khayelitsha Commission of Inquiry,² which called for an immediate ‘review of the South African Police Service [SAPS] mechanism for determining human resource allocation’.³ Appointed in August 2012, the commission arose from complaints by a group of non-governmental organisations operating or based in Khayelitsha.⁴

Prior to the commission, many assumed that the SAPS allocated its available policing resources in a rational fashion, based on the relative burden of policing faced by different areas. This assumption came under question at the commission, when it emerged that on a per capita basis, areas such as

Khayelitsha receive approximately one-third of the average per capita allocation. The issue of allocation by the state of human resources to policing is one that impinges on various constitutional rights, such as the right to safety and security of the person, dignity, life, and equality before the law, together with the right not to be unfairly discriminated against. Where the distribution of human resources in policing per capita is not only unequal from area to area, but areas comprising predominantly poor and black people are particularly under-resourced, indirect discrimination on protected constitutional grounds exists. Such unequal resourcing is automatically unfair unless the state can show that the allocations are fair.

At the commission, one of the authors gave evidence that reviewed the relative resourcing of police stations in the Western Cape as well as the method employed by the SAPS to determine relative resourcing. A rational method for determining relative resourcing was also proposed. This article recalls the evidence

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presented, with an adjusted proposed formula, and also analyses the evidence provided by various SAPS members pertinent to the allocation of resources. We conclude that an urgent review of the allocations is required.

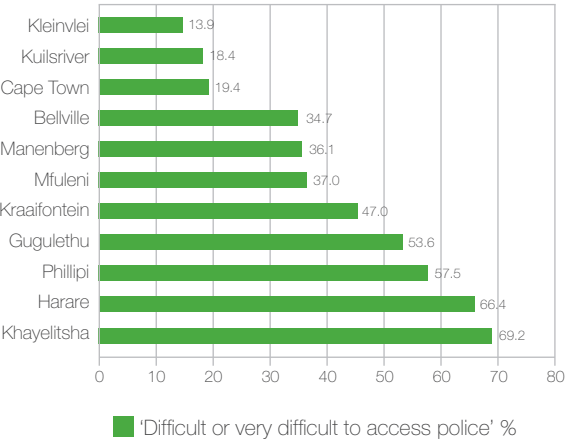
How unequal allocations affect poor black areas

Khayelitsha, a Cape Flats township, is located approximately 30 km outside of Cape Town, covering three SAPS police stations: Khayelitsha (known as Site B), Lingeletu-West, and Harare. Khayelitsha the township was established in 1983 when certain black residents of KTC, Crossroads, Nyanga and Guguletu were forcibly relocated under apartheid legislation.⁵ Designed to accommodate 30 000 people,⁶ Khayelitsha has grown into a set of neighbourhoods with a population of about 400 000 people, approximately one-half of whom live in formal houses and one-half in shacks, mostly in informal settlements rather than backyards.⁷ The average yearly income of households in Khayelitsha is estimated at R20 000, compared to the Cape Town average of R40 000, with expert evidence suggesting that between 32% and 46% of all households in Khayelitsha are living in ‘severe poverty’.⁸ Crime and violence is endemic to the area; murder and contact crime such as assault, aggravated robbery and rape are rife.⁹

The commission heard a range of evidence on the breakdown in relationships, and found that members of the community have indeed lost faith in the police’s ability to protect them.¹⁰ Figure 1 compares residents’ rating of the difficulty accessing police in various areas, with Khayelitsha and Harare scoring the worst of the areas surveyed. The commission heard evidence that a lack of human resources was at least partly to blame for inadequate service delivery by the police. Indeed, senior SAPS members testified before the commission that there are not enough operational police persons to provide an efficient and effective service in Khayelitsha.¹¹

The commission wished to understand the extent to which this insufficiency occurred throughout the SAPS, or whether it was specific to the Khayelitsha

Figure 1: Western Cape Department of Community Police Satisfaction Safety Surveys, 2011, percentage indicating it was difficult or very difficult to access the police



Source: Western Cape Department of Community Safety, Community Safety Barometer Reports, April 2011, Bundle 2, File 3, Khayelitsha Commission of Inquiry.

areas. The actual allocation of operational human resources to the three Khayelitsha stations as well as all the other police stations in the Western Cape was therefore obtained from the SAPS by the commission.¹² The commission requested one of the authors to analyse the figures. The numbers were simply compared to the respective populations of these policing areas to determine differences in allocation per capita (per 100 000 people), using population data from Census 2011 (see Table 1).

The calculations showed that Harare, which is among the poorest areas of the Western Cape and whose population is overwhelmingly black, had the lowest number of police personnel per 100 000 people of all police stations in the Western Cape (111 per 100 000 or 901 people for every police person). Indeed, Harare had almost 10 times fewer police per 100 000 than Camps Bay (959 per 100 000 or 104 persons for every police person). Besides Harare, similar areas such as Nyanga and Lwandle also had among the lowest per capita allocations of policing human resources in the Western Cape. Clearly, the evidence suggests that a lack of resources is particularly pronounced in these areas. How does such a situation come about?

Table 1: Number of police personnel per 100 000 people in the Western Cape ranked from least resourced (green) to most resourced (grey)

	Place	Police personnel per 100 000	Actual number of personnel		Place	Police personnel per 100 000	Actual number of personnel		Place	Police personnel per 100 000	Actual number of personnel
149	Harare	111.32	192	97	Wolseley	264.12	44	45	Genadendal	421.73	45
148	Lwandle	128.94	84	96	Montagu	269.14	63	44	Vredendal	427.35	110
147	Belhar	131.96	75	95	Lutzville	269.42	39	43	Langebaan	427.72	35
146	Nyanga	143.82	291	94	Moorreesburg	270.1	63	42	Kleinmond	428.08	39
145	Ocean View	146.07	59	93	Athlone	270.11	171	41	Riviersonderend	432.61	34
144	Delft	149.58	230	92	Pacaltsdorp	270.35	69	40	Plettenberg Bay	438.26	118
143	Cloetesville	152.37	78	91	Lingeletu-West	274.97	177	39	Bellville	450.07	297
142	Kraaifontein	160.05	265	90	Klapmuts	278.01	38	38	George	456.94	282
141	Mfuleni	160.63	186	89	Citrusdal	279.01	54	37	Uniondale	466.28	65
140	Strandfontein	162.79	46	88	Convillie	285.99	135	36	Da Gamaskop	466.64	121
139	Kleinrivi	171.86	166	87	Mbekweni	286.05	115	35	Caledon	467.99	128
138	Gugulethu	172.55	214	86	Philippi	287.56	155	34	Vanrhynsdorp	469.58	36
137	De Doorns	173.78	61	85	Somerset West	288.98	165	33	Rawsonville	474.29	62
136	Grassy Park	178.27	158	84	Parow	290.03	175	32	Lambertsbaai	480.36	34
135	Table View	190.21	140	83	Langa	290.64	138	31	Murraysburg	484.69	36
134	Khayelitsha	190.46	294	82	Riebeeck West	291.45	47	30	Barrydale	496.45	37
133	Muizenberg	193.25	114	81	Elsies River	292.72	204	29	Napier	501.58	34
132	Paarl East	194.77	163	80	Dysselsdorp	294.34	44	28	Philadelphia	506.09	37
131	Macassar	196.97	69	79	Fish Hoek	295.75	60	27	Ladismith	517.43	90
130	Prince Alfred Hamlet	197.43	75	78	Strand	300.39	155	26	Rondebosch	521.71	77
129	Durbanville	201.8	146	77	Riversdale	311.22	63	25	Stanford	525.93	32
128	Franschhoek	204.13	46	76	Hermanus	311.42	149	24	Paarl	526.71	271
127	Hout Bay	204.29	68	75	Klawer	317.16	35	23	Prince Albert	528.94	53
126	Malmesbury	205.56	123	74	Worcester	319.61	365	22	Calitzdorp	564.02	43
125	Saldanha	210.58	61	73	Ashton	326.99	61	21	Woodstock	569.85	157
124	Groot Brakrivier	211	45	72	Melkbosstrand	331.08	41	20	Claremont	592.22	183
123	Darling	214.13	33	71	Goodwood	332.41	146	19	Sea Point	592.56	147
122	Dieprivier	214.47	83	70	Simon's Town	337.35	44	18	Mcgregor	604.96	35
121	Steenberg	215.47	133	69	Bellville South	337.94	99	17	Eendekuil	617.32	35
120	Manenberg	228.65	195	68	Pinelands	338.77	70	16	De Rust	625.98	37
119	Kensington	234.31	60	67	Vredenburg	339.8	140	15	Nuwerus	650.88	33
118	Grabouw	237.11	100	66	Mitchells Plain	344.97	674	14	Laingsburg	655.17	53
117	Groot-Drakenstein	238.12	41	65	Clanwilliam	346.5	55	13	Graafwater	688.2	34
116	Brackenfell	240.83	122	64	Bonnievale	351.01	49	12	Mowbray	693.92	69
115	Bishop Lavis	241.39	256	63	St Helena Bay	362.23	41	11	Struisbaai	731.35	33
114	Kwanonqaba	242.1	83	62	Ceres	363.34	153	10	Leeu Gamka	797.83	43
113	Milnerton	242.77	209	61	Saron	368.81	37	9	Mossel Bay	836.85	88
112	Lansdowne	245.43	119	60	Robertson	372.41	133	8	Doring Bay	847.11	28
111	Philippi East	246.02	138	59	Swellendam	372.53	90	7	Wynberg	852.57	215
110	Piketberg	248.58	59	58	Bredasdorp	380.17	86	6	Camps Bay	959.51	53
109	Villiersdorp	250.92	58	57	Heidelberg(C)	385.13	60	5	Elands Bay	1011.35	26
108	Thembalethu	252.89	111	56	Gans Bay	387.95	59	4	Suurbraak	1086.63	32
107	Ravensmead	254	156	55	Porterville	388.21	61	3	Redelinghuys	1156.31	28
106	Kuilsrivier	254.33	183	54	Oudtshoorn	392.59	293	2	Cape Town Central	1544.88	541
105	Bothasig	254.86	68	53	Albertinia	396.27	33	1	Table Bay Harbour	2636.38	63
104	Wellington	257.39	138	52	Touws River	399.43	35				
103	Kirstenhof	257.7	78	51	Still Bay	402.98	33				
102	Gordons Bay	259.48	43	50	Stellenbosch	408.65	218				
101	Atlantis	259.95	207	49	Tulbagh	410.48	77				
100	Knysna	261.26	179	48	Maitland	414.76	81				
99	Laaipek	261.53	36	47	Hopefield	416.02	37				
98	Kwanokuthula	262.65	55	46	Beaufort West	416.7	167				

Source: Author's own calculations based on figures in letter from Provincial Commissioner Lamoer to the Khayelitsha Commission dated 22 October 2013, combined with Census 2011 figures (average = 283 police per 100 000).

How the SAPS determines the allocation of resources

The detail of the SAPS resource allocation process was described in evidence at the commission by Brigadier Leon Rabie, section head in the Performance Management Section of the SAPS Organisational Development division located in Pretoria. The SAPS allocation is based on a 'theoretical' requirement, calculated on the total time taken for all tasks done at a particular police station, as affected by a myriad factors. These factors, such as the presence of gangs or daily influx of commuters, are recorded on an 'Input Management Sheet'.¹³ The total time is converted into numbers of people and this number is called the Theoretical Human Resource Requirement (THRR). Summing the THRR for every police station gives the national requirement for police stations in terms of numbers and rank levels. This is the SAPS estimate of the ideal number of personnel required for the whole of South Africa. Unfortunately the THRR number is larger than the budget permits. The total fixed establishment that the SAPS budget is able to afford amounts to around 200 000 personnel for the SAPS in 2013/2014,¹⁴ which implies, Rabie testified, that on average only 68% of the calculated THRR is available for each police station.¹⁵

The SAPS's head office divisions (both national and provincial) receive a significant proportion (41%) of the total fixed establishment. The remaining 59%, which is the actual allocation available to be distributed among police stations, amounted to only 117 524 posts at the time of the commission.¹⁶ Thus, once the total budgeted numbers are approved, a distribution per police station is issued, containing the number of posts and the rank of those posts per police station, which, as indicated above, typically allocates around 68% of the calculated THRR to each police station. (This budgeted allocation was previously referred to as the Resource Allocation Guide [RAG].) Thus the 'fixed establishment' or RAG eventually arrived at is not the same as the THRR, as it only reflects the number of posts that could be established in terms of the SAPS budget and medium-term expenditure framework. The legislation does permit SAPS

provincial commissioners to make adjustments within the provincial allocation, but it appears this is seldom done.

By only bringing budget constraints into consideration *after* determining the services to be offered by each police station and the ideal numbers of personnel needed for those services, the SAPS condemns the various services offered at police stations to be perennially understaffed in terms of its own theoretical calculations. The logic is something akin to planning to build many houses with many rooms and calculating the number of bricks needed, then, as a result of budget constraints, proceeding to build all the rooms in the houses with only three out of four walls due to the number of bricks available.

Flaws in the SAPS method

Apart from the problem of budget constraints resulting in the THRR's being unachievable, the SAPS THRR itself has a number of flaws. Some of these will be considered here, to demonstrate how an apparently rigorous method can result in absurdity.

The factors in the Input Management Sheet used to inform the THRR purport to relate to the burden of policing in one of the following ways:

- They affect the burden in terms of difficulty and extent of policing (e.g. number of square kilometres, presence of schools, daily influx of commuters, number of gangs), including the actual incidence of crime
- They affect the burden of police interaction with the courts and with prisons (e.g. proximity of courts and prisons)
- They affect the burden of internal police bureaucracy (e.g. accounting stations, services offered, etc.)

The first problem is that it is impossible to take note of all relevant factors impinging on the burden of policing. Furthermore, different factors may be counted twice, resulting in double-counting. For example, the presence of schools and influx of commuters are to some extent reflected in each other; taking account of both may lead to double-counting. Even assuming one could take account of all relevant factors without double-counting,

the approach is highly dependent on accurate information being supplied. Incorrect estimates can result in large distortions. Indeed, the SAPS itself alluded to misrepresentations apparently designed to influence resource allocation in submitted evidence.

Finally, even assuming one could take into account all relevant factors without double-counting, the issue of the weight that should be ascribed to each factor comes into play. While the total formula was not provided in the evidence, some of the factors and their weightings were described. The hundreds of factors taken into account are combined together in a formula composed of these factors, with particular weights ascribed to them. These weights seem to have been arrived at in an arbitrary manner and without basis in any evidence.

For example, in relation to the factor of 'informal housing percentage', Rabie testified that if between 1% and 2.5% of the population lives in informal dwellings, the police station establishment is increased by 1%.¹⁷ If 10% or more of the population live in informal dwellings, the supplement is increased by 5%.¹⁸ This 5% is the maximum weighting, even if – as in the case of Khayelitsha – the THRR input sheet indicates 75% of the population living in informal dwellings.¹⁹

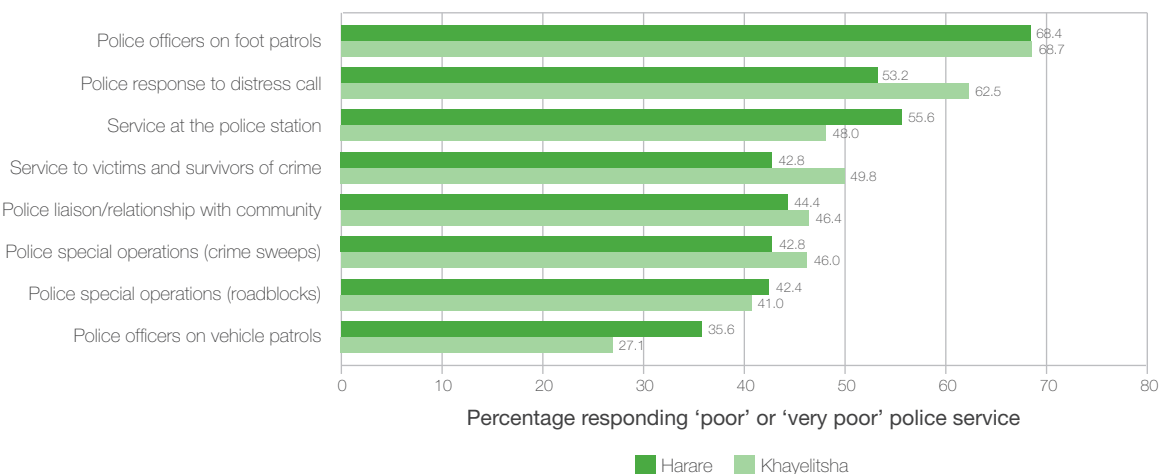
The weighting of 5% does not seem to be based on any empirical evidence. Colonel Nel (former station

commander Harare) and Colonel Ralibola (station commander of Harare at the time) testified that vehicles cannot police informal areas, and foot patrols require between six and 10 members.²⁰ This would suggest that the visible policing allocation for sector patrols would have to be inflated between three and five times (as normally two people would patrol in one vehicle) for the proportion of the population in informal areas – in other words, a 300% to 500% supplement to the visible policing component. Applied to the minimum of 17 police officials per sector, this would imply between 51 and 85 additional members necessary for patrolling, per sector.

Figure 2 shows Harare and Khayelitsha residents' dissatisfaction with various kinds of policing, with foot patrols unsurprisingly scoring very high levels of dissatisfaction.

Detective services also face challenges in informal settlements. Whereas a thorough investigation of a murder scene requires at least three hours, murders that have been committed (a) within a concentrated area of informal houses, and (b) without direct road access to the on-site investigation, pose unique and difficult challenges. The environment directly impacts on the investigation time, with the situation being worse at night, due to inadequate lighting. Management of the crime scene, in relation to basic tasks such as evacuating people from their shacks,

Figure 2: Western Cape Department of Community Safety, Police Satisfaction Safety Surveys, 2011, percentage of respondents rating selected SAPS services as 'poor' or 'very poor'



Source: Collated from Western Cape Department of Community Safety, Community Safety Barometer Reports for Harare and for Khayelitsha, April 2011, Bundle 2, File 3, Khayelitsha Commission of Inquiry.

cordoning off the area and locating forensic evidence such as bullets or spent cartridges is arduous or even impossible without additional personnel.²¹

Indeed, the expectation among SAPS commanders was that the factor 'informal housing percentage' would have more of an impact on human resource allocation: former Harare station commander Colonel Nel testified that he was so concerned about the shortage of personnel allocated to him in terms of the then RAG that he had 'spent many evenings poring over satellite maps of Harare, counting informal dwellings to try to increase the number of members Harare would be allocated'.²² Nel appears not to have been aware that however hard he tried, no more than a 5% weighting would apply.

The above briefly alludes to a few of the ways in which the THRR goes astray. Ultimately, however, the best test of the SAPS's method is common sense. Does the method accurately and fairly distribute resources on the basis of burden of policing?

The reality is that the allocations results in township areas, known for their difficulty of policing, almost all demonstrate massive downward adjustment from what would be suggested by the size of the population only. Indeed, not only is it the case that the adjustment is downward, but it is such that township areas are among the least resourced per capita, despite being among the most difficult to police.

Unless the SAPS wishes to argue that the burden of policing is indeed lowest in Harare, Lwandle, Belhar and Nyanga, and that the lowest resourcing per capita in these areas is therefore fair, these results alone demonstrate the flaw in the SAPS approach and suggest flaws in either one or all the factors considered, their weighting, or the input data.

Proposed method of allocating resources

The question then arises as to what would be a fair method of adjusting per capita figures to take into account the burden of policing. The first key change required with any method of determining a fair method of allocation of resources is to begin with the number of available human resources (in contrast to what is done at present) – in other words, the 117 524 posts available for allocation to police

stations (leaving aside the issue of whether 41% of the close to 200 000 available posts should be allocated to divisions and provincial offices).

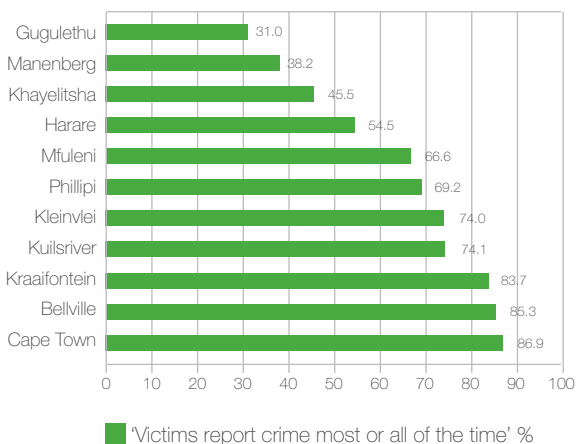
The starting point is the size of the population – areas with larger populations should have proportionally more resources. However, we know that policing burden is not determined only by population size. The question then arises as to what a fair method of adjusting per capita figures would be, taking into account differing burdens of policing for different components of policing.

The annual report of the SAPS typically distinguishes between the number of human resources allocated to Administration, Visible Policing, Detective Services, Crime Intelligence, Protection and Security.²³ The Protection and Security Services component of policing appears not to be relevant to policing at station level, as it apparently serves only dignitaries. For the purposes of national figures and formula calculations, these are presumably then not included in the 117 524 available posts. (A separate issue for consideration is whether the amount spent on this component, and thus on dignitaries, is justified.)

Determining the burden of policing on detective services is relatively straightforward. This can be directly measured by the incidence of crime reported at the police station, as a detective's burden is directly determined by the amount of crime reported. Assuming that the detective services conduct only reactive investigations (and that crime intelligence is thus responsible for pro-active investigations), the incidence of reported crime, in particular serious reported crime, should be the primary determinant of relative resourcing in relation to detective services.

By contrast, the work of crime intelligence should be directly related to the number of crimes, particularly serious violent crime, actually occurring in the area (actual incidence of crime), rather than reported crime. Crime intelligence contributes to the neutralisation of crime by gathering, collating and analysing intelligence information that leads to actionable policing activity. But how do we know what the incidence of serious violent crime is, given that there is a high degree of under-reporting, particularly in places like Khayelitsha? Figure 3 shows the extent of under-reporting believed to occur by respondents in Western Cape Department of Community Safety surveys in selected policing areas.

Figure 3: Western Cape Department of Community Safety, Police Satisfaction Safety Survey 2011, percentage agreeing that 'victims report crime all or most of the time'



Source: Western Cape Department of Community Safety, Community Safety Barometer Reports April 2011, Summative Report, Table 7, p7, Bundle 2, File 3, Khayelitsha Commission of Inquiry.

One reported crime indicator that is not susceptible to reporting trends is murder. This is particularly robust; checked against morgue data it does not appear to be suffering significant under-reporting: over five years the total variance is 1.7% for the Khayelitsha 'drainage area' (comprising all three policing areas). In areas where there are high reporting rates, murder tends to track serious violent crimes such as aggravated robbery, and can be considered to be a proxy for such crimes.²⁴

In the absence of any other indicator, the incidence of serious violent crime, as indicated by proxy through the number of murders, should be the primary determinant of the relative resourcing of the crime intelligence component. Some areas, however, record no murders at all. In these areas, posts allocated to administration or management may need to take over this function.

Visible policing, however, should not only be about responding to crime, but about carrying out policing in a manner that prevents crime. Consequently it may be that visible policing functions carried out in current relatively crime-free areas will cease to be crime-free areas if such resourcing is removed. In other words, 'the incidence of crime' should *not* replace

Table 2: Pathology homicide and SAPS murder reports compared, Khayelitsha area

Source	2008	2009	2010	2011	2012	Total
Forensic pathology homicides (January to December)	308	312	294	356	361	1 631
	2008 /9	2009 /10	2010 /11	2011 /12	2012 /13	Total
SAPS murders (March to February)	283	290	310	360	354	1 597
Forensic pathology homicides (March to February)	306	301	312	350	355	1 624
Not recorded by SAPS as murder	23	11	2	-9	1	27
% not recorded by SAPS as murder	7.5%	3.7%	0.6%	-2.6%	0.3%	1.7%

Source: Author's own calculations using information provided by Forensic Pathology Services, Head Office, Western Cape Government, 6 November 2012, to the Khayelitsha Commission, and SAPS crime data, www.saps.gov.za.

'total population' as the determinant of allocation for visible policing, not least also because varying rates of reporting mean the actual incidence of crime is difficult to determine from area to area. For the same reason 'reported crime' should not determine visible policing allocations.

This is even more so because 'visible policing', in terms of SAPS functions, does not predominantly involve 'visible policing' as per a layperson's understanding. The organisational structure of visible policing at a category C1 or C2 police station is illustrated below (see Annexure A), showing a range of functions, many of which are to some degree office-based. Since demand for these additional functions is likely to be determined by population size, this further supports the argument that the population size of the policing area should be the main determinant of the number of personnel allocated. Within the number allocated to visible policing, however, there should be room for individual police stations to tailor the command structure to meet unique needs. This could mean, for example,

more people allocated to sector teams in Khayelitsha at the expense perhaps of fewer people for ‘general enquires’.

Consequently, in relation to visible policing, it is recommended that the total population (the per capita measure) should remain the primary indicator of relative resourcing. This is particularly important as visible policing is the largest component of the SAPS. There is an argument that this is too conservative and that in fact the incidence of violent crime should be the primary determinant of visible policing. The counter-argument is that much violent crime, in contrast with property crime, takes place in private spaces, which are not affected by visible policing.

The primary indicator of the administrative burden should thus be the population of the area served; alternatively, the total size of the policing allocation already made.

Proposed method for national figures

What does this method imply in practice regarding current figures? According to the SAPS Annual Report of 2013, the personnel available to the SAPS is as follows (noting that 21% of these personnel are Public Service Act employees as opposed to SAPS Act employees). The distribution of the 177 524 operational personnel is calculated using the ratios obtained from the annual reports.

Table 3: SAPS national personnel by function and rate per 100 000 population

SAPS function	Number of personnel (total national)	Personnel per 100 000 people (using 52 982 000 population)	Ratio (%)	Number of operational personnel available for police stations
Administration	36 703	69.27	19.16	22 517
Visible policing	106 527	201.06	55.60	65 343
Detective services	39 425	74.41	20.58	24 186
Crime intelligence	8 928	16.85	4.66	5 476
Subtotal	191 583	361.60	–	117 522
Protection and security	6 363	12.01	–	–
Total	197 946	373.61	–	117 524

Source: Author’s own calculations using SAPS Annual Report 2013 and Census 2011.

As described above, the primary determinant of visible policing and administrative function resources should be population size. Thus, the available administrative and visible policing personnel must be divided equally among the population. To do this the total number of relevant personnel in South Africa is divided by the total population of South Africa, and multiplied by 100 000, to arrive at the number per 100 000.

On current personnel and population figures as indicated in Table 3, this implies that there should be 43 administrative personnel for every 100 000 population and 123 visible police personnel per 100 000 people. To calculate the number of visible policing personnel in a particular area, the population of that area must be divided by 100 000 and multiplied by 123, while for the number of administrative staff the population is divided by 100 000 and multiplied by 43.

The resourcing of the detective service component is by contrast primarily indicated by the number of crimes reported to the SAPS. The available detective resources must be divided equally among all reported serious crimes. The total number of detective personnel in South Africa is divided by total serious crimes in South Africa. To account for yearly anomalies, the average of the last four years’ crime figures should be used. On current national personnel and crime figures this amounts to 2 101 417 crimes. This works out to 0.0115 detectives for every crime recorded, i.e. 115 detectives for every 10 000 crimes (or just over one detective for every 100 crimes).

The primary indicator of the relative resourcing of the crime intelligence component, as discussed above, is the average number of murders over the last four years, which amounts to 16 141. The available crime intelligence resources must be divided equally among all murders recorded. On current figures this would imply on average 0.339 crime intelligence personnel for every murder recorded in an area over the last four years.

Thus, a proposed ‘national primary distribution formula’, based on current available personnel, would look like this: (population * 43 / 100 000) + (population * 123 / 100 000) + (total serious crimes * 115/10 000) + (murders * 0.339).

Unlike the actual resource per capita figures, allocation on this basis does not result in township areas occupying the bottom of the resource list on a per capita basis. Instead, township areas occupy the middle band of resourcing. The reason townships do not occupy the 'most resourced' slot at the top of the list is because of the relatively low rate of reported crime (compared to actual crime). Most over-resourced are those areas with high daytime populations, such as Cape Town and Wynberg. High daytime populations drive up the reporting of crime, and reported crime is a significant factor in this formula. Nevertheless, their allocation would still need to reduce significantly in order to meet the proposed number, while Nyanga, for instance, would need an additional 237 people. (See Table 4 overleaf.)

Adjustments to the primary distribution allocations

Rational adjustments to the primary distribution formula might include those brought about when the formula results in a number of personnel too small to warrant a viable police station. This can be overcome by allocating to each station the minimum number of personnel necessary for a police station of that type (for example, a satellite station with limited opening hours requires at least four personnel).

Wherever the minimum number for the station type concerned is higher than the number suggested by the primary distribution formula as initially applied, the minimum number becomes the number allocated to that area. Whenever that substitution occurs, each such difference between the allocated number and the minimum number must be subtracted from the total number to be used in an amended formula. The primary distribution formula is then applied to the stations that have not had the minimum allocated, using the reduced totals.

For example, for the purposes of illustration assume that 12 is the minimum number of personnel for all police stations of all types. All police stations with primary distribution formula allocations below 12, of which there are say five, are allocated 12 personnel. From the total available personnel, 60 are removed from the total. For the formula calculations, the respective populations, crime numbers and murder numbers emanating from the already allocated areas

must be subtracted from those totals in order to calculate the factors that must be applied to the remaining 144 stations.

Conclusion

In our view the pattern of unequal allocation of police resources between wealthy and poor suburbs in the Western Cape has not been adequately justified for rationality and fairness by the SAPS, and thus violates the equality clause (section 9) of the Constitution.²⁵ In addition, whatever method used to allocate human resources must be open and transparent, and subject to public comment and scrutiny.²⁶ Any anomalous per capita allocations must be *rationaly* explainable. The findings and recommendations of the commission highlight the pressing need to review the resource allocation process. Indeed, data obtained by the *Natal Witness* showed that the same patterns of inequity apply in KwaZulu-Natal.

Special emphasis should be placed on the equitable distribution of experienced personnel with specialist skills in the investigation of serious contact crimes. Subsequent to the commission, a cohort of new, inexperienced recruits was allocated to Khayelitsha.²⁷ This does little to rectify the situation, as new recruits require careful mentoring – thus placing an additional burden on experienced personnel. Furthermore, it does not address the overall situation of inequity – areas such as Nyanga, for example, are also very under-resourced. New recruits should be deployed to stations where experienced officers have the ability to provide mentorship, and parliament must exercise its oversight effectively in ensuring that the SAPS addresses the inequities affecting the most under-resourced stations in each province.

August 2015 marks the one-year anniversary of the submission of the commission's report to the premier. To date, no firm commitment has been made by the national offices of the SAPS to ensure that the service deficiencies revealed by the commission will be addressed. Ndifuna Ukwazi and its partners were instrumental in campaigning for the commission. These organisations are now striving to ensure that there is momentum behind the call for the implementation of the commission's recommendations. The commission has already resulted in the largest release of police data to the

Table 4: Proposed resourcing of police stations in the Western Cape, using proposed primary distribution formula only

Place	Proposed number	Proposed no. per 100 000	Proposed no. less actual no.
Table Bay Harbour	22	917	-41
Cape Town Central	273	779	-268
Sea Point	96	389	-51
Woodstock	107	387	-50
Claremont	116	375	-67
Wynberg	93	370	-122
Stellenbosch	193	361	-25
Mitchells Plain	682	349	8
Belville	229	347	-68
Mossel Bay	36	347	-52
Kleinmond	32	346	-7
Camps Bay	19	342	-34
Mowbray	34	339	-35
Philippi	177	328	22
Rondebosch	48	324	-29
Parow	192	318	17
Athlone	200	316	29
Kirstenhof	95	314	17
Maitland	61	314	-20
Strand	160	310	5
Elsies River	214	307	10
Beaufort West	121	302	-46
Paarl	156	302	-115
Gordons Bay	50	302	7
Manenberg	257	302	62
George	186	301	-96
Milnerton	259	301	50
Plettenberg Bay	80	299	-38
Goodwood	131	299	-15
Pinelands	61	295	-9
Hout Bay	97	291	29
Swellendam	70	290	-20
Dieprivier	112	290	29
Worcester	330	289	-35
Conville	135	286	0
Somerset West	163	285	-2
Kuilsrivier	205	285	22
Fish Hoek	58	284	-2
Langebaan	23	283	-12
Bishop Lavis	300	283	44
Ravensmead	174	283	18
Albertinia	24	282	-9
Kleinvele	271	281	105
Da Gamaskop	72	279	-49
Laingsburg	23	279	-30
Knysna	191	279	12
Grassy Park	247	279	89
Gugulethu	344	277	130
Touws River	24	277	-11
Belville South	81	275	-18

Place	Proposed number	Proposed no. per 100 000	Proposed no. less actual no.
Steenberg	169	273	36
Vredenburg	112	272	-28
Rawsonville	35	271	-27
Klapmuts	37	270	-1
Table View	199	270	59
Gans Bay	41	269	-18
Brackenfell	136	269	14
Riviersonderend	21	268	-13
Kwanonqaba	92	268	9
Stanford	16	267	-16
Calitzdorp	20	266	-23
Ceres	112	266	-41
Lansdowne	129	265	10
Elands Bay	7	264	-19
Ladismith	46	263	-44
Muizenberg	155	263	41
Oudtshoorn	196	262	-97
Kensington	67	262	7
Macassar	92	261	23
Riebeeck West	42	261	-5
Nyanga	528	261	237
Kraaifontein	432	261	167
Tulbagh	49	261	-28
Uniondale	36	261	-29
Belhar	148	261	73
Mfuleni	301	260	115
Genadendal	28	260	-17
Langa	123	259	-15
Struisbaai	12	259	-21
Lingeletu-West	167	259	-10
Atlantis	206	258	-1
Wellington	138	258	0
Robertson	92	257	-41
Klawer	28	256	-7
Durbanville	185	256	39
Philippi East	144	256	6
Leeu Gamka	14	256	-29
Caledon	70	255	-58
Delft	391	255	161
Citrusdal	49	255	-5
Khayelitsha	390	253	96
Clanwilliam	40	252	-15
Philadelphia	18	251	-19
Grabouw	106	251	6
Bredasdorp	57	250	-29
Villiersdorp	58	249	0
Porterville	39	249	-22
Suurbraak	7	249	-25
Saron	25	249	-12
Redelinghuys	6	248	-22
Bothasig	66	248	-2

Place	Proposed number	Proposed no. per 100 000	Proposed no. less actual no.
Saldanha	72	247	11
Vredendal	64	247	-46
Lambertsbaai	17	247	-17
Wolseley	41	246	-3
Hermanus	118	246	-31
Strandfontein	70	246	24
Paarl East	206	246	43
Malmesbury	147	245	24
De Rust	14	245	-23
Lutzville	35	245	-4
Barrydale	18	244	-19
St Helena Bay	28	244	-13
Pacaltsdorp	62	244	-7
Prince Albert	24	244	-29
Ashton	45	242	-16
De Doorns	85	241	24
Thembaletu	106	240	-5
Moorreesburg	56	240	-7
Laaiplek	33	239	-3
Mbekweni	95	237	-20
Simon's Town	31	237	-13
Riversdale	48	236	-15
Vanrhynsdorp	18	235	-18
Kwanokuthula	49	235	-6
Napier	16	234	-18
Franschhoek	53	234	7
Heidelberg(C)	36	233	-24
Bonnievale	32	232	-17
Montagu	54	231	-9
Groot-Drakenstein	40	231	-1
Ocean View	93	231	34
Graafwater	11	230	-23
Murraysburg	17	229	-19
Harare	395	229	203
Darling	35	229	2
Melkbosstrand	28	228	-13
Lwandle	147	226	63
Still Bay	18	226	-15
Piketberg	53	225	-6
Mcgregor	13	225	-22
Prince Alfred Hamlet	85	224	10
Cloetessville	113	221	35
Groot Brakrivier	47	218	2
Hopefield	19	216	-18
Dysselsdorp	32	212	-12
Doring Bay	7	205	-21
Eendekuil	11	197	-24
Nuwerus	8	166	-25

Source: Own calculations using Census 2011.

public in South African history.²⁸ This data allows us to understand the systemic problems within the SAPS, which continue to hamper its ability to provide efficient and effective services to communities. The inequitable allocation of police resources, favouring the protection of capital and wealth rather than poor and crime-ridden communities, is a glaring fault.

But the issue revolves around more than just a rectification of a formula for proper resource allocation. Communities such as Khayelitsha, which are plagued by some of the highest crime rates in South Africa, require decision makers within the SAPS, the DoCS and the City of Cape Town, inter alia, to muster the political will to develop a comprehensive plan to ensure that the rights of township inhabitants to safety and security are protected.



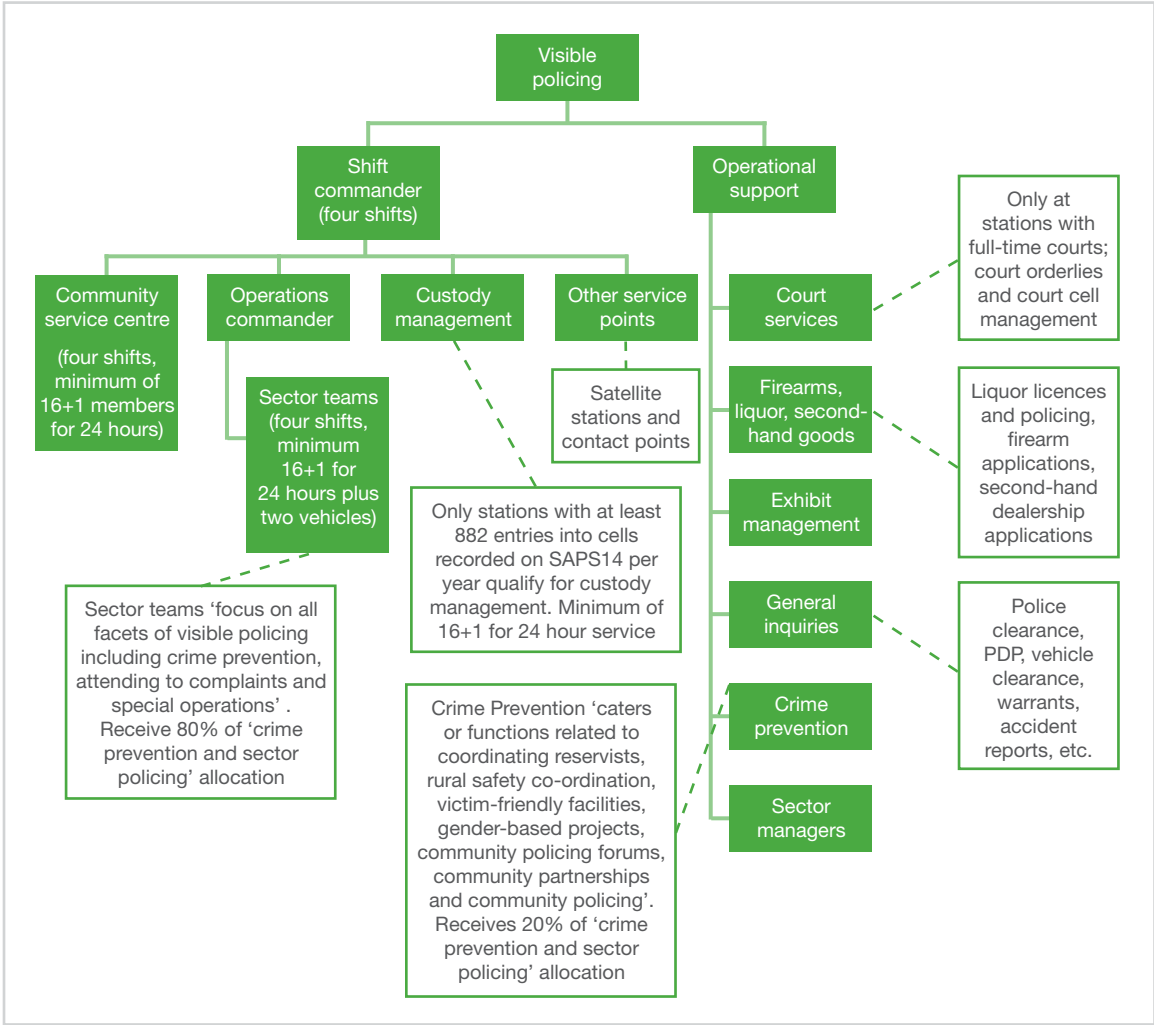
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Notes

- 1 K O'Regan and V Pikoli, Towards a safer Khayelitsha: the report of the Commission of Inquiry into the Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha [KC report], Summary, August 2014, xxiv.
- 2 The Khayelitsha Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha, also referred to as the O'Regan-Pikoli Commission.
- 3 KC report, Summary, xxvi.
- 4 The Social Justice Coalition (SJC), the Treatment Action Campaign (TAC), Equal Education (EE), the Triangle Project and Ndifuna Ukwazi (NU) (referred to jointly as the complainant organisations).
- 5 Ndifuna Ukwazi, Our evidence for the commission: a collection of community affidavits submitted to the O'Regan-Pikoli Commission of Inquiry into policing in Khayelitsha, 2014, 3.
- 6 Ibid.
- 7 J Seekings, Economy, society and municipal services in Khayelitsha: report for the Commission of Inquiry into Allegations of Police Inefficiency in Khayelitsha and a Breakdown in Relations between SAPS and the Community of Khayelitsha, Centre for Social Science Research, University of Cape Town, December 2013, <http://www.khayelitshacommission.org.za/images/witnesses/13.%20Jeremy%20Seekings%20Dec%202013.pdf> (accessed 24 June 2015).
- 8 KC report, 40, para. 37.
- 9 Ibid.
- 10 Ibid., Summary, xxv.
- 11 Ibid., 391, para. 154.
- 12 Letter from Lt. Gen. Arno Lamoer on behalf of the Provincial Commissioner, 22 October 2013. It was of some concern that in the data submitted in this letter, although the column submitted by the SAPS was labelled 'police personnel per population', in fact the column indicated the number of people per police person. The incorrect formulation could give the impression Harare was well-resourced. Population figures were slightly different from those independently calculated, but this did not affect the trends observed.
- 13 Statement by Leon Rabie to the Khayelitsha Commission of Inquiry.
- 14 Ibid., para. 5.5.
- 15 KC report, 245, para. 105. Presidential police stations, such as Khayelitsha Site B, may receive close to 100% of their allocation, with others receiving less than the 68% average as a consequence.
- 16 Statement by Leon Rabie, para. 5.5.
- 17 KC report, 245, para. 103.
- 18 Ibid. This does not match the information provided in his affidavit.
- 19 Annexure A to Rabie's affidavit.
- 20 KC report, 232, para. 50.
- 21 Ndifuna Ukwazi, evidence to the Khayelitsha Commission of Inquiry.
- 22 KC report, 232, para. 51.
- 23 SAPS, *Annual report*, 2014, 250.
- 24 See, inter alia, UN Office on Drugs and Crime, *Global study on homicide 2011: key findings*, https://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Global_study_on_homicide_Key_findings.pdf.
- 25 Constitution of the Republic of South Africa 1996.
- 26 KC report, 274, para. 219.
- 27 Interview with Major General J Brand, Station Commander, Khayelitsha.
- 28 See Khayelitsha Commission, Information, <http://www.khayelitshacommission.org.za/2013-11-10-19-36-33.html>.

Annexure A: The organisational structure of visible policing at a category C1 or C2 police station:



Mapping Khayelitsha

The complexities of everyday policing in a high crime area

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In order for a single South African police station to operate optimally, or indeed at any level of functionality at all, it is required to form cooperative relations with a host of external institutions. This is in addition to ensuring that the internal structural capacity of a police station is maintained. The Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha identified shortcomings in both internal structures and the functioning of external relations. Here, we provide an overview of the stakeholders that make up the policing web in Khayelitsha. This forms the basis for clearer understandings of on-the-ground policing in this unsafe and violent neighbourhood.

The prevention of crime is listed as the first objective of the South African Police Service (SAPS) in section 204(3) of the South African Constitution.¹ The adoption of a community policing model in 1995 directed the emphasis of policing toward establishing ‘partnerships’ with community bodies, thus developing collaborative crime prevention strategies. This required the SAPS to set up structured consultative forums – community policing forums (CPFs) – and cooperative relationships with a host of other community, public and government bodies.²

Given the role the police played in upholding the apartheid regime, especially in neighbourhoods such as Khayelitsha, the post-apartheid service has essentially had to build on a legitimacy deficit. The result has been that police *legitimacy* has come to be linked to police *effectiveness*.³ If effectiveness is measured in the ability of policing bodies to perform

their role as safety and security providers, the SAPS in Khayelitsha has displayed major failures. In all Khayelitsha precincts, residents feel unsafe, especially at night, and feel particularly vulnerable to crimes such as robbery.⁴

The commission of inquiry into policing in Khayelitsha offers a unique window into the challenges of implementing the community policing model, especially in a high crime, violent, unsafe, and relatively poor neighbourhood. As well as revealing significant inefficiencies *within* police stations, the commission’s report offers a detailed investigation and exposition of the external relations of the SAPS in Khayelitsha. Operating from August 2012 to August 2014, the commission examined inefficiencies in the three police stations: Site B, Harare, and Lingeletu West, and the breakdown of relations between the SAPS and the community.

Since the commission, the police in Khayelitsha (in the absence of directives from the national commissioner or minister of police)⁵ have been

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engaging with the commission's recommendations and seeking to 'bridge' certain policing gaps. This has manifested most prominently in the 'Joints' process, composed of SAPS station and cluster representatives, civil society organisations, local community and political leaders, and other police and government stakeholders. Composed of sub-forums on social and policing issues in Khayelitsha, including alcohol abuse, vigilantism, gender-based violence and transport safety, the Joints meets regularly. While these steps indicate responsiveness on the SAPS's part, there have been problems, including poor attendance and participation,⁶ a lack of leadership within some forums, and a still-forming strategic plan.⁷ Nonetheless, these processes are ongoing and it is too early to analyse any potential outcomes.

A further complication arose when, in August 2015, a number of contradictory responses by the SAPS leadership regarding the commission were made public. On 8 August, the National Commissioner, Riah Phiyega, was reported to have dismissed the commission and its findings, arguing that it was an 'expensive and resource-hungry paper exercise'.⁸ In contrast, on 24 August, Police Minister Nathi Nhleko and Western Cape Premier Helen Zille released a joint statement announcing a task team to engage with and implement the recommendations of the commission.⁹ Given these inconsistent messages coming from the 'top', the national police support for the Joints and other implementation initiatives is somewhat opaque. This leaves SAPS Khayelitsha having to engage with multiple layers of politics: from internal SAPS politics to provincial and national political dynamics (because the commission propelled their work onto the national and media stages). This is, of course, in addition to the layers of complex local politics and policing challenges they face on a daily basis.

Though the commission has provided a wealth of information, its narrow remit, as Super has pointed out, meant that it focused on 'police inefficiency' rather than the broader socio-economic context of crime.¹⁰ In this article we provide a concise overview of the policing web¹¹ in Khayelitsha.¹² It is worth noting that we concentrate on just three of South Africa's 1 100 police stations. While some of the problems faced by the SAPS in Khayelitsha may

be widespread, insofar as they are a manifestation of problematic or restrictive national directives or policy, we have limited our focus to the Khayelitsha cases. The inter-web of police and community in every case will be determined by its specific context, history, community, and working relations. Indeed, this article can perhaps be generalised insofar as we show that a mapping or overview of police relations is a necessary first step in understanding the nature, severity and variation of policing challenges at the station level.

The article comprises three sections. Firstly, we briefly outline internal police structures in Khayelitsha. Secondly, we map the external organisations and bodies that have connections to SAPS Khayelitsha. Thirdly, we briefly assess the implications of this web of external and internal inter-workings.

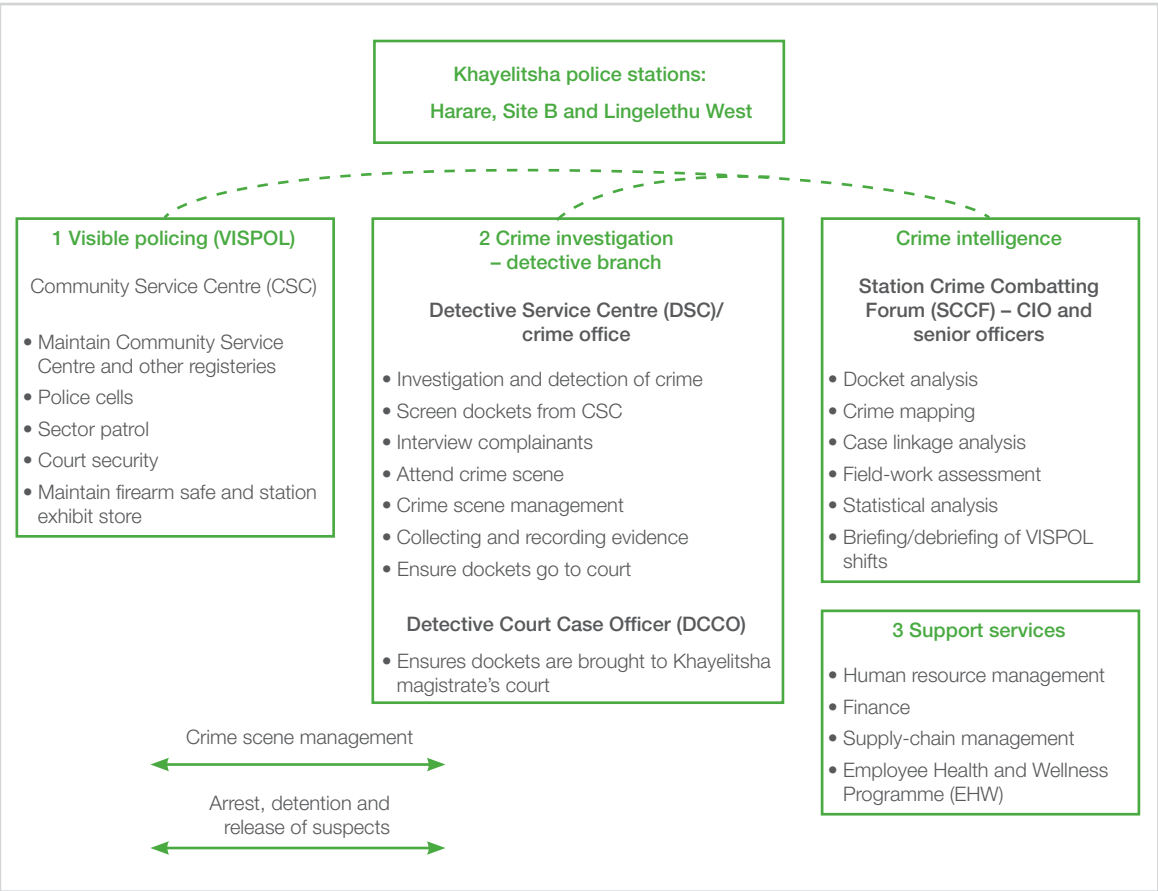
Internal structures

An individual SAPS police station typically has three working divisions: Visible Policing (VISPOL), Crime Investigation (Detective Branch) and the Support Services (see Figure 1). Additionally, Crime Intelligence is a hybrid or overarching body, which manages the horizontal inter-workings between VISPOL and Crime Investigation. Here, we will briefly chart the roles and duties of officers in each division. While there are some variations in performance across Khayelitsha's three police stations, it is possible to combine them insofar as they face common inefficiencies and problems.

Visible policing

Member officers of the VISPOL division are uniformed, and often at the frontline of police–public interactions. VISPOL members are responsible for running the Community Service Centre (CSC); managing police holding cells; conducting sector patrols; court security; firearm, liquor and second hand goods policing; and undertaking crime prevention activities.¹³ The commission found that CSCs – the main location of direct engagement between police and the community – created and extended poor relations. Public access to police services was hindered by the repeated failure to answer telephones. There was evidence of recurring instances where police officials either refused to

Figure 1: Internal SAPS Khayelitsha police station structures



open case dockets for complainants or intentionally created obstacles to laying a charge. Given the function of crime statistics – as a reflection of police performance and police–public relations – there is a direct incentive to under-record crimes reported at CSC offices.¹⁴ A compounding factor preventing police work is that many trained VISPOL members spend much of their time on clerical tasks, such as certifying documents for members of the public.¹⁵ Overall, there were complaints that officers are discourteous and unhelpful.¹⁶

With regard to sector policing, sector profiles were poorly compiled and patrols infrequent. SAPS members rarely conducted patrols of informal neighbourhoods (see Figure 2, where informal neighbourhoods in Khayelitsha are shaded in green). This was a reflection, the police claimed, of the inaccessibility of these areas, and a lack of knowledge about area layouts. Since the inquiry, Crime Intelligence has been updating sector

profiles and pulling in community groups and non-governmental organisations (NGOs) to provide updated information, as well as adopting the map (on the next page) produced by Violence Prevention through Urban Upgrading (VPUU).¹⁷

Crime investigation

The Detective Service Centre (DSC) tasks include screening dockets; interviewing complainants; managing crime scenes; collecting and recording evidence; and updating case dockets. Crucially, the commission revealed that many crimes are not properly investigated, and, in some cases, not at all. This is partially an outcome of consistent understaffing of the detective services in Khayelitsha. As a result, each investigative officer is forced to carry a huge case load. As Brigadier Dladla testified to the commission: ‘You know in the movies ... you see a team descending to a crime scene, attending to a docket, but here you have a team of dockets

Figure 2: Map of Khayelitsha



Source: VPUU, 2015.

descending on a detective.’¹⁸ Furthermore, the detective services failed to provide regular feedback to complainants, witnesses and bereaved family members.

Crime intelligence

Crime Intelligence is primarily responsible for establishing the precinct’s overall crime situation. Working with VISPOL and Detective Services, the unit should direct crime prevention and investigation. The commission revealed serious weaknesses in crime intelligence in Khayelitsha, with insufficient evidence of case linkage analysis, identification of hotspots, crime mapping, or fieldwork.¹⁹ As a result, the three police stations, according to De Kock, are ‘policing by chance and luck and clearly not [by] intelligence-led policing’.²⁰

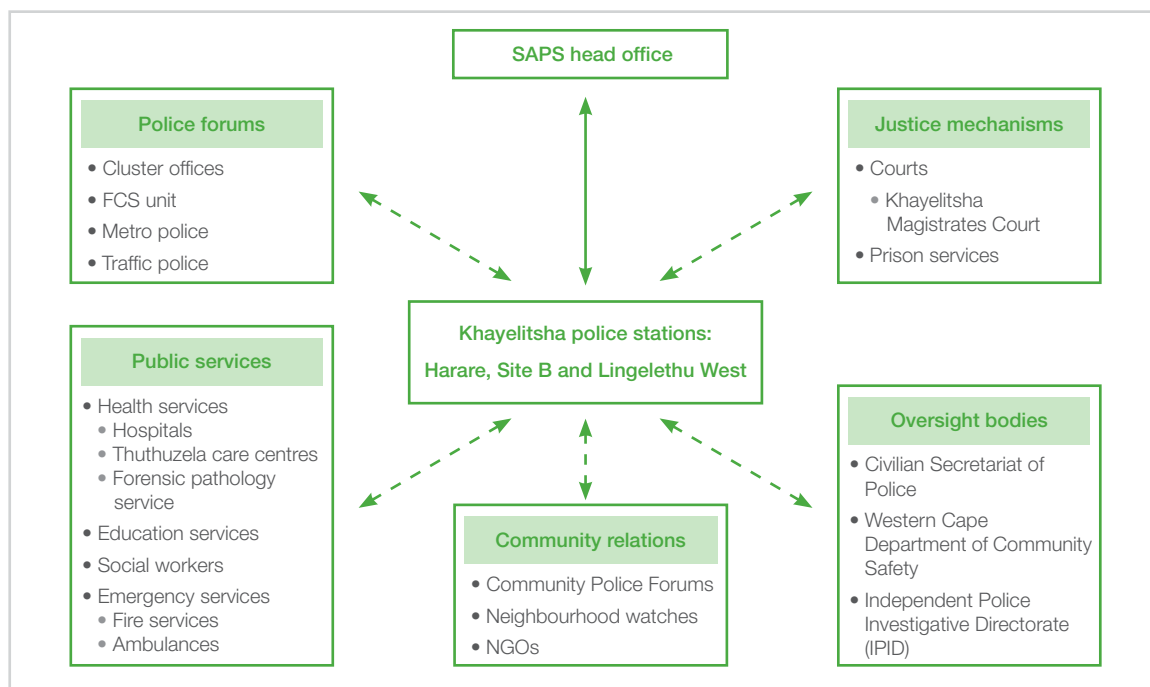
Overall, all three policing divisions of Khayelitsha stations, the commission revealed, have significant inefficiencies, and report high rates of ‘unexplained absenteeism’.²¹ The shortcomings appear to be a

result of a lack of professionalism and poor attitudes and, on the face of it, are easily preventable through improved management and discipline. However, and perhaps relatedly, many of these inefficiencies can similarly be attributed to the lack of resources – both personnel and physical assets such as police vans – available to the police stations in Khayelitsha. SAPS’s resource system, according to then Lieutenant General Lamoer, is ‘fundamentally irrational’, with high crime areas such as Khayelitsha receiving insufficient allocations.²² Similarly, other national level policies, such as the way in which station performance is measured (through crime statistics), creates perverse incentives, which can erode community relations.

External structures

Apart from the intricate internal web of a Khayelitsha police station, its effective functioning is dependent on the relationships it maintains with a host of external bodies – where ‘external’ refers to bodies that do not form part of the immediate structures of an individual station (as shown in Figure 3).

Figure 3: External institutional relations



Police forums

Cluster office

The Khayelitsha cluster contains the three Khayelitsha police stations, Macassar, Lwandle, Somerset West, Gordon's Bay and Strand. As such, the cluster office faces challenges in overseeing police stations in a number of very different neighbourhoods. Importantly, there is great uncertainty about the role of the office within the cluster, because while it has 'co-ordinating and oversight' functions on a day-to-day basis, these do not extend to operational authority. In other words, members of the cluster office, while presiding over members at station level, do not have the authority to provide operational directives, or to manage discipline issues.²³ This reality diverges from national policy, where the cluster office is seen as having both oversight and operational powers.

FCS Unit

The Family Violence, Child Protection and Sexual Offences (FCS) Unit has a mandate to investigate all crimes (other than murder) that involve child victims, inter-familial crimes of assault and attempted murder, and any sexual offences, including cases of rape and

incest.²⁴ When a victim enters a Khayelitsha police station, the procedure is to immediately contact the FCS unit (operating on a 24-hour basis), which sends an investigative officer to conduct an interview in a victim-friendly room.²⁵

The commission highlighted serious operational issues within the Khayelitsha FCS Unit. Shortcomings identified included understaffing; low morale; a large backlog of cases; poor quality of investigations; and a lack of crime intelligence capacity.²⁶ Specifically, the Khayelitsha Thuthuzela Care Centre, which assists victims of rape and assault, indicated that the police were not fulfilling their role satisfactorily. Dr Genine Josias, head of the centre, noted that police members of the FCS Unit were highly disorganised, poorly managed, failed to attend stakeholder meetings, and had a poor response rate to calls. She noted two disturbing cases, the first of which involved the SAPS ignoring her attempts to signal a serial rapist; the second where a number of forensic 'rape kits' were dumped by FCS investigating officers.²⁷ Overall, Khayelitsha had the 'worst performing FCS unit' in the province.²⁸

Metropolitan police and traffic police

Officers of the Cape Town Metropolitan Police have three primary functions: the policing of traffic laws; the enforcement of the city's by-laws; and crime prevention.²⁹ Metro police are responsible for patrolling high-risk crime areas, monitoring the City's CCTV footage, and responding to emergency calls.³⁰ Criminal suspects arrested by Metro officers (who only have search and seizure powers) are handed over to the SAPS for investigation.³¹ In Khayelitsha, the traffic police work with the SAPS to manage traffic, especially around the N2 highway. However, the reach of other Metro police bodies in Khayelitsha is limited; for example, the specialised gang unit focuses its operations elsewhere in the Cape Flats.³²

Overall, 'external' police structures in Khayelitsha have insufficient presence, power and/or capacities. The serious institutional failings at the cluster and FCS levels have negative consequences on police station performance in Khayelitsha.

Oversight bodies

Western Cape Department of Community Safety

There has been a national-level 'divergence of views' between the SAPS and the Department of Community Safety (DoCS) regarding the power of DoCS as an oversight body. In effect, DoCS has been prevented from investigating police activity in Khayelitsha.³³ The commission was important because it firmly established that the Constitution gives DoCS the right to oversight, including unannounced visits to CSCs.³⁴

Civilian Secretariat

The Civilian Secretariat for Police, established in its current form in 2011,³⁵ became fully-fledged only in April 2014.³⁶ In its oversight capacity, the Secretariat is responsible for developing and assessing the policies of the SAPS, their implementation, and at the provincial level, monitoring police–community relations.³⁷

Independent Police Investigative Directorate (IPID)

The IPID allows members of the public to lay a complaint against a member of the SAPS. Types of complaints that require mandatory investigation include any deaths or rapes that occur while the

victim is in police custody; any deaths resulting from police action; complaints about the discharge of a police firearm by an officer; rape by a police officer (on or off duty); any complaints relating to torture or assault by a police officer; and any corruption-related complaints.³⁸ The IPID can, where appropriate, make disciplinary recommendations. The commission revealed that only five out of the 67 complaints made to the IPID from the three police stations in Khayelitsha showed a 'substantiated' outcome, where the rest were classed as 'unsubstantiated', and not pursued. This raises questions about the ability of the IPID as an investigative body. It is also, to some extent, a reflection of solidarity among police officers, and an unwillingness to give evidence against colleagues.³⁹

In summary, while there are a number of oversight bodies that operate across Khayelitsha police stations, all face limitations; from restricted access, to infancy, to ineffective investigation. If we add in the SAPS cluster office, one has to wonder how and if these bodies – all with different yet overlapping oversight mandates – can, and do, 'talk' to one another and/or coordinate recommendations; and how, and who, the police stations must and can take instruction from. The independence of these bodies undoubtedly has merits, but without clear operational guidelines on the SAPS's part, oversight bodies will remain limited in their capacity to affect on-the-ground policing.

Public services

Health services

The SAPS is one of the key role players in the government's policy of 'victim empowerment', led by the Department of Social Development. Rather ambiguously, among a set of other principles, the SAPS is expected to 'refer victims to support services'.⁴⁰ The SAPS Victim Empowerment Service manual outlines that an officer who comes into contact with a victim of crime must ensure the safety of the victim, arrange medical assistance if necessary, and preserve any possible evidence from the medical practitioner/hospital/clinic.⁴¹ As the Khayelitsha Thuthuzela cases have shown, this set of actions is not always followed.

Another important health services actor for SAPS Khayelitsha is the Forensic Pathology Service (FPS). In situations where a victim has died of unnatural causes, the function of the unit is to inspect crime scenes and transport bodies of the deceased to the mortuary for autopsy. It is the responsibility of the SAPS to secure a crime scene, perform blood splatter analysis, and collect fingerprints. However, the commission heard that the FPS often found crime scenes insufficiently protected, allowing for contamination; and that investigating officers were often absent from crime scenes.⁴²

Given the importance of connections between SAPS police stations and health services – for victims in need of medical attention, and to aid investigations – it is vital that relations to these external structures are functional. Evidence from the commission suggests that the poor performances of the FCS Unit and Detective Services limited the SAPS's ability to investigate crime and assist victims.

Schools

Gangsterism, drugs and violence present major disturbances to the learning environment in Khayelitsha schools. Many children are inhibited from accessing education as they fear going to and from school and being in the classrooms. Teachers have expressed similar fears. School principals who testified drew attention to the fact that children bring weapons onto school premises to protect themselves.⁴³

A 'Partnership Protocol' between the Department of Basic Education and the SAPS commits both bodies to support and implement crime prevention programmes in schools.⁴⁴ SAPS Khayelitsha has been involved in a variety of initiatives, including conducting random searches and walkabouts on school campuses, monitoring the movement of children to and from school, and attending strategy meetings. However, learners have found ways to overcome these obstacles, and gangsterism is still rife.⁴⁵ Thus, while the working relationship between SAPS Khayelitsha and schools in the area is established and engaged, the broader problem of gangsterism prevents the police from managing crime in schools. Rather than a matter of internal,

institutional failure, this is a manifestation of policing in an unsafe neighbourhood.

Emergency services

The Emergency Medical Service (EMS) relies heavily on the SAPS in Khayelitsha because, in many circumstances, ambulances may not enter the neighbourhood without police backup. Emergency personnel have been subject to abuse, including stoning of ambulances, theft and aggressive behaviour.⁴⁶ The need for the SAPS to 'shadow' emergency vehicles generates logistical challenges, and, once more, reflects the challenges of policing in an unsafe neighbourhood, where extra demands are placed on SAPS officers.

Justice mechanisms

Courts – Khayelitsha Magistrate's Court

Two Detective Court Case Officers (DCCOs) and four liaison officers are assigned by the SAPS to the Khayelitsha Magistrate's Court (including the six district courts and four regional courts). The DCCOs – whose purpose is to monitor docket flows and communicate between prosecutors and investigating officers⁴⁷ – are possibly the only explicit and full-time SAPS positions where inter-connections to an external body form the primary function of officers' work. In spite of this, the commission revealed, prosecutors found case dockets missing, resulting in cases being struck off the role.⁴⁸ In addition, highlighting the limits of detective work (including insufficient coordination with the Metro Police), the commission found that despite the presence of City CCTV cameras, none had ever been used as part of SAPS investigations.

Community relations

The adoption of a community-centred strategy for policing was pivotal to the SAPS's post-apartheid reform. The underlying assumption is that through a collaborative process, police and community members are better equipped to identify policing needs specific to their area.⁵⁰ However, given the history of formal policing in Khayelitsha (or lack thereof), establishing community relations is particularly challenging and important. The commission identified a number of pre-established and operational alternative, informal forms of policing

in Khayelitsha. These – often enacted through politically affiliated street committees and taxi associations – are, in some ways, in direct opposition to the SAPS.

Community policing forums (CPFs)

CPFs represent the structured forum wherein police officials consult with community members. Each precinct has a corresponding CPF headed by the station commander.⁵¹ The purposes of the CPF are to develop problem-solving strategies for addressing crime, and to improve the transparency and accountability of the police.⁵² However, CPFs in Khayelitsha have not been successful in establishing a strong partnership between the SAPS and the community. A survey of residents found that less than half of the participants were even aware of CPFs, and of those, only around 20% had any involvement in them. Community members who attended CPF meetings expressed frustration that they were unproductive and tended to be politically dominated (as discussed below).⁵³

Neighbourhood watches

Neighbourhood watches in Khayelitsha are funded by DoCS, and managed by the VPUU. Volunteers patrol neighbourhoods, and police officers are meant to provide support, including accompanying patrols. However, the commission found that SAPS members rarely joined patrols, nor did they provide crime- and safety-related information.⁵⁴ In some cases, neighbourhood watches had not been accepted by the street committees working in the area and had faced assault.⁵⁵

Civil society groups

There are numerous civil society bodies and NGOs that operate in Khayelitsha. A list of role players includes the Khayelitsha Development Forum (KDF); taxi associations (CODESA being the most prominent); the South African National Civics Organisation (SANCO); the Congress of South African Trade Unions (COSATU), and faith-based organisations.⁵⁶ The Khayelitsha Commission itself was established after complaints were laid by a group of NGOs comprising the Social Justice Coalition (SJC), Treatment Action Campaign (TAC), Equal Education, Triangle Project and Ndifuna Ukwazi.⁵⁷

The relationships of civic bodies to SAPS Khayelitsha vary greatly, as does their respective power in the community. In Khayelitsha, the ANC-aligned KDF and SANCO are particularly powerful, and often come into opposition with Democratic Alliance (DA) supporters and organisations associated with the DA. Both SANCO and KDF have, for example, dominated CPFs.⁵⁸ Together, they operate as gatekeepers of safety or 'informal justice'. Street committees, for example, are seen as 'belonging' to SANCO, and have operated (from apartheid until today) largely outside the remit of the SAPS. SANCO has also been connected to taxi associations that 'deal' with youth gangs.⁵⁹ The KDF sees itself as the party that 'should address ... violent service delivery protests', rather than CPFs or the SAPS.⁶⁰ Interestingly, and highlighting their political influence, all ward councillors in Khayelitsha serve *ex officio* on the KDF.⁶¹ The SAPS has to continually engage with SANCO and the KDF, and needs their support in order to function. Yet many of SANCO and the KDF's operations deliberately circumvent SAPS–community structures. This creates complex political challenges for the SAPS in Khayelitsha, and the power of these organisations within the community can block police work and broader community engagement. Even in the Joints, post-commission processes, this pattern remains troublesome. While some civil society organisations are heavily engaged in the Joints, others remain absent. Interestingly, Ndifuna Ukwazi and the SJC are particularly active in the Joints, whereas the KDF and SANCO lack representation.⁶² The absence of key civil society stakeholders raises questions about the reach and potential effectiveness of the Joints.

Local businesses

Business crime in Khayelitsha is significant, with foreign (especially Somali) owned spaza shops being particularly targeted, as well as formal businesses in Khayelitsha Mall.⁶³ One of the challenges of preventing and prosecuting business (and general) crime in Khayelitsha is the lack of shop and private CCTV cameras. Policing in richer areas is aided by collaborative partnerships with businesses and individuals who have their own security and/or CCTV technology, which they share with SAPS for crime investigations.

Overall, informal community networks that work to manage crime in Khayelitsha are at odds with formal police structures. These bodies can come to use non-legal, informal means of 'justice', including vigilantism.⁶⁴ Given the SAPS's poor performance in Khayelitsha, these alternative mechanisms for policing dominate, and even inhibit the police from developing positive community relations. The police–public cycle thus becomes self-reinforcing and perpetuated. This presents a vital challenge for SAPS police stations in Khayelitsha, and one that is not easily overcome.

Implications

From the mapping, it becomes clear that policing challenges are a reflection, broadly speaking, of both context and internal SAPS structuring.

Inefficiencies are caused by poor police station performance and by institutional problems at the cluster and national levels. Given the highly centralised nature of the SAPS, universal policies – notably resource allocation – do not always accommodate situations on the ground, or provide equal service. Within the SAPS, problematic institutional policing cultures have developed. For example, the sentiment that 'cowboys don't cry' – the idea that 'strong' police officers do not need to undergo counselling and debriefing measures despite being exposed to a great deal of violence and trauma – is especially troubling in high crime neighbourhoods like Khayelitsha.⁶⁵ In addition, the poor behaviour of some highly ranked police officers has created organisational contradictions. On the one hand, the SAPS prides itself on integrity. On the other hand, there have been multiple reports of corruption in the organisation and a marked lack of strong, respectable leadership.⁶⁶ This may create 'institutional confusion', and compromise the behaviour of lower ranked officers.

Furthermore, within the SAPS there is a lack of provision for establishing external relations. With the exception of DCCOs, there are no station-level positions that focus on creating effective external inter-workings. The problem is, of course, compounded by the highly centralised, militarised and strictly confined organisational processes of the SAPS.⁶⁷ These institutional operating procedures

may differ from external but related bodies.⁶⁸ For example, a medical professional's Hippocratic Oath may, at times, be at odds with a police officer's mandate to investigate and prevent crime. The SAPS's lack of operational ability to 'talk' to and function with external bodies limits the possibilities of community policing.

The station-level mapping also illustrates that in high crime, relatively poor neighbourhoods, extra demands are placed on the police. From patrolling schools, to shadowing ambulances, to providing clerical services to the public, to investigating crime without community resources such as CCTV cameras, SAPS Khayelitsha has multiple additional burdens on top of high crime rates and corresponding high case levels.

Conclusion

While this article is predominantly descriptive, we argue that only by mapping SAPS Khayelitsha's policing web can we come to recognise the complexities of policing. The nature and inter-workings of the police in relation to external bodies, and internally, will vary according to context. While Khayelitsha presents a challenging context, the commission revealed that the degrees and types of under-performance of SAPS police stations in Khayelitsha were unacceptable. Given the distrust of the police, as indicated through the lack of community participation in CPFs and Joints forums, it is vital the police understand and make efforts to address poor community relations. It is similarly important that analysts appreciate the complex socio-political and organisational webs that the SAPS has to interact with. Thus, we contend, creating overviews of station-level police networks is a useful and necessary exercise in understanding on-the-ground policing.



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Notes

- 1 Constitution of the Republic of South Africa, 1996, Section 204(3).
- 2 South African Police Service Act 1995 (Act 68 of 1995), Sections 18–23.
- 3 B Bradford et al., What price fairness when security is at stake?: police legitimacy in South Africa, *Regulations and*

- Governance*, 8:2, 2014, 246–268; M Marks & J Fleming, 'As unremarkable as the air they breathe': reforming police management in South Africa, *Current Sociology*, 52:5, 2004, 784–808.
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 - 5 Western Cape Government, *Premier Helen Zille on Khayelitsha Commission of Inquiry*, 11 August 2015, <http://www.gov.za/speeches/anniversary-we-don%E2%80%99t-want-be-celebrating-11-aug-2015-0000> (accessed 24 August 2015).
 - 6 Minutes from Joints meetings held on 27 January 2015 and 29 May 2015.
 - 7 In one Joints meeting, for example, a representative of the gender-based violence sub-forum called for assistance owing to the lack of strategic planning, direction and leadership within the sub-body. Personal notes, Joints meeting, University of Cape Town, 18 April 2015.
 - 8 J Cronje, Phiyega slams Khayelitsha Commission, *IOL News*, 8 August 2015, <http://www.iol.co.za/news/crime-courts/phiyega-slams-khayelitsha-commission-1.1897373> (accessed 24 August 2015).
 - 9 *News24*, Task team to tackle Khayelitsha Commission recommendations on policing, 24 August 2015, <http://www.news24.com/SouthAfrica/News/Task-team-to-tackle-Khayelitsha-Commission-recommendations-on-policing-20150824> (accessed 26 August 2015).
 - 10 G Super, Violence and democracy in Khayelitsha: governing crime through the 'community', *Stability*, 4:1, 2015, 2.
 - 11 The 'policing web', as a concept and model, was first comprehensively presented by Brodeur. His web goes beyond police themselves to external webs. Importantly, Brodeur argues the policing web will vary by context, policing history and culture. See JP Brodeur, *The policing web*, Oxford: Oxford University Press, 2010.
 - 12 Our application to formally interview SAPS members in Khayelitsha was declined by the SAPS Western Cape Provincial Office, which stated: 'SAPS Management is still addressing the Khayelitsha Commission recommendations to provide to the Minister of Police' (Brigadier HD Heilbron, Provincial Head: OD & Strategic Management, Western Cape, personal communication, 15 June 2015). Instead, we have used the Joints meetings as a more limited access point. We have attended several meetings, and acquired minutes of meetings we have been unable to attend. In addition, the Commission of Inquiry – both the final report and evidence packages – has provided a wealth of information, and we have sought other SAPS and government documentation and policies.
 - 13 Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha ['Commission of Inquiry'], *Towards a safer Khayelitsha: the report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha*, Cape Town: Commission of Inquiry, 2014, 68.
 - 14 *Ibid.*, 359–360.
 - 15 Justice O'Regan, *Why research matters: reflections from the Khayelitsha Commission*, special lecture, University of Cape Town, 13 May 2015.
 - 16 Commission of Inquiry, *Towards a safer Khayelitsha*, 1.
 - 17 Joints meeting minutes, 27 November 2014 and 27 January 2015; Safe Khayelitsha, Sector mapping, <http://safekhayelitsha.org.za/safety-profile/sector-mapping/> (accessed 14 May 2015)
 - 18 Commission of Inquiry, *Towards a safer Khayelitsha*, 226.
 - 19 *Ibid.*, 374–377.
 - 20 *Ibid.*, 375.
 - 21 *Ibid.*, 197.
 - 22 *Ibid.*, 274.
 - 23 *Ibid.*, 65, 396–398.
 - 24 *Ibid.*, 381.
 - 25 *Ibid.*, 250.
 - 26 *Ibid.*, 275.
 - 27 *Ibid.*, 169–172.
 - 28 *Ibid.*, 212.
 - 29 South African Police Service Act, SAPS Amendment Act 1995, section 64E.
 - 30 City of Cape Town, Metro Police, <https://www.capetown.gov.za/en/mayor/SafetySecurity/Pages/MetroPolice.aspx> (accessed 14 May 2015).
 - 31 Cape Town Metropolitan Police Department, Brackenfell Community Police Forum, <http://www.brackenfellcpf.co.za/community-policing/metro-police-coct/?id=20> (accessed 14 May 2015).
 - 32 City of Cape Town, Metro Police.
 - 33 Commission of Inquiry, *Towards a safer Khayelitsha*, 156.
 - 34 *Ibid.*, 463.
 - 35 Civilian Secretariat for Police 2011 (Act 2 of 2011).
 - 36 Commission of Inquiry, *Towards a safer Khayelitsha*, 461.
 - 37 *Ibid.*, 50.
 - 38 *Ibid.*, 158.
 - 39 *Ibid.*, 417–421.
 - 40 Department of Social Development, *National policy guidelines for victim empowerment*, Pretoria: Department of Social Development, United Nations Office on Drugs and Crime and European Union, 20.
 - 41 SAPS, *Victim Empowerment service in the South African Police Service*, http://www.saps.gov.za/resource_centre/women_children/amended_victim_empowerment_service.pdf (accessed 14 May 2015).
 - 42 Commission of Inquiry, *Towards a safer Khayelitsha*, 174–179.
 - 43 Commission of Inquiry, Record Bundle 1(1), File 1.a, Item 27, 40, 52, 72, http://www.khayelitshacommission.org.za/bundles/bundle-one/category/3-commission_of_inquiry_redacted_statements.html (accessed 20 April 2015).
 - 44 Department of Basic Education, *Safety in education: partnership protocol between the DBE and SAPS*, <http://www.education.gov.za/LinkClick.aspx?fileticket=manTnfyGGCs%3D&tabid=625&mid=2180> (accessed 20 April 2015).
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- 46 Ibid., 179.
- 47 Ibid., 237.
- 48 Ibid., 164.
- 49 Ibid., 371–373.
- 50 Ibid., 306.
- 51 Ibid., 51.
- 52 South African Police Service Act 1995.
- 53 Commission of Inquiry, *Towards a safer Khayelitsha*, 407.
- 54 Ibid., 187–188.
- 55 Ibid., 189.
- 56 Ibid., 22.
- 57 Ibid., xxii.
- 58 Ibid., 233, 242; P Sefali, Khayelitsha Development Forum boycotts policing inquiry, GroundUp, November 2013, <http://groundup.org.za/content/khayelitsha-development-forum-boycotts-policing-inquiry> (accessed 1 July 2015).
- 59 Commission of Inquiry, *Towards a safer Khayelitsha*, 97–98, 139–140, 189.
- 60 Ibid., 408.
- 61 Ibid., 119.
- 62 The KDF and SANCO have no chair, deputy chair or secretary roles on any of the eight sub-forums. See Safe Khayelitsha, www.safekhayelitsha.org.za (accessed 23 August 2015).
- 63 Commission of Inquiry, *Towards a safer Khayelitsha*, 428; Colonel Alma Wiese, Business crime sub-forum, presentation, Joints meeting, University of Cape Town, 18 April 2015.
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Avoiding another Marikana massacre

Why police leadership matters

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The Marikana Commission of Inquiry report presented damning findings against the South African Police Service (SAPS) National Commissioner, Riah Phiyega, and the senior commanders involved in the Marikana massacre. Their decision to disarm and disperse striking miners was found to be flawed and to have resulted in police officers unjustifiably shooting 112 striking mineworkers, killing 34 of them. Moreover, their integrity was found wanting on the basis that Phiyega and her senior commanders withheld crucial evidence, constructed misleading evidence, and provided untruthful testimony before the commission. This article argues that a necessary condition for improvements to take place in the SAPS relates to improving the top leadership of the organisation. Fortunately, the National Development Plan provides a starting point as to how this can be achieved. 'Police supervisors at any level need to be aware that their behaviour has a strong impact on the organisational culture, which in turn contributes to police behaviour.'¹

Since 2012, official government policy documents have increasingly focused on police leadership in South Africa. The National Development Plan (NDP)² speaks of a 'serial crisis of top management' and includes recommendations aimed at improving the quality and competencies of senior police managers.³ It identifies good leadership as being at the heart of what is required to address the numerous challenges facing the South African Police Service (SAPS).

The draft White Paper on Police states that South Africa is entitled to a police service 'that exhibits exemplary leadership and management'.⁴ It further refers to the importance of ethical leadership and how 'police leadership and management must ensure a clear normative standard of the highest quality'.⁵

Neither the NDP nor the White Paper, however, explains the reasons for their focus on police leadership. No diagnosis of the failings of past

and current SAPS leadership is presented. No explanations are provided as to how these failings may be the cause of key organisational challenges facing the SAPS, or what the consequences are for public safety.

The Marikana Commission of Inquiry into the killings that took place in the run-up to and on 16 August 2012, provides useful insights into the workings of SAPS senior leadership.⁶ Based on the findings of the commission, there is now objective information on the nature of senior police leadership decision-making in the lead-up to the massacre. Moreover, there are findings relating to the integrity of senior police leadership, based on their engagement with the commission, which was established to unearth the facts of what happened on that day.

This article outlines the key characteristics of good police leaders and the principles that should guide their actions. It then discusses relevant findings of the commission pertaining to senior SAPS commanders. The article argues that the crisis of police leadership

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may be used to explain certain worrying indicators, reflecting the deterioration of police effectiveness and public credibility in recent years. It reflects on what can be done to improve the senior leadership of the SAPS – this being a precondition for the improvement of policing in South Africa.

Police leadership in a democracy

Policing ‘refers to the work of the public, civilian (non-military) institution that is empowered by government to enforce the law and ensure public order through the legitimised use of force’.⁷ It has been argued by international policing experts such as Massachusetts Institute of Technology Professor Gary T Marx that one element that defines a democracy is a police force that:

- Is subject to the rule of law, embodying values respectful of human dignity, rather than the wishes of a powerful leader or party
- Can intervene in the life of citizens only under limited and carefully controlled circumstances
- Is publicly accountable⁸

Indeed, international research on the democratic objectives of police agencies holds that police should, *inter alia*, strive to:

- Promote public trust and confidence (necessary prerequisites for effective policing)
- Stand outside of politics while protecting the democratic rights of the public (for example to exercise free speech, freedom of association and other democratic rights)
- Be guided by the principle that everyone shall be subject to limitations determined by law when intervening in conflicts between groups or individuals⁹

In crafting a new vision and orientation for the police in South Africa, the drafters of the South African Constitution accepted and included references to these principles. For example, the Constitution emphasises that none of the country’s security services, nor any of their members, ‘may in the performance of their functions

(a) prejudice a political party interest that is legitimate in terms of the Constitution; or

(b) further in a partisan manner any interest of a political party.’¹⁰

Moreover, the legislation giving effect to the establishment of the SAPS specifically intends to ensure that the police do not act, and are not seen to act, in a politically partisan manner, by stating that no police member shall in anyway associate themselves with a political party, hold any office in a political party, or ‘... in any manner further or prejudice party political interests’.¹¹ The principle of non-political partisanship is crucial for a police service if it is to secure public trust and legitimacy.

If leaders of a police service in a democracy are to ‘secure public trust and legitimacy’, it is important that they display a high level of integrity. For the purposes of this article, the definition of police leadership integrity refers to the extent to which police commanders act and speak in accordance with a core set of formal organisational values.¹² For a South African police leader to be seen as having integrity, he or she should behave in accordance with the SAPS Code of Conduct, which *inter alia* states that SAPS officers will ‘act impartially, courteously, honestly, respectfully, transparently and in an accountable manner’.¹³

Various studies have identified characteristics synonymous with integrity as particularly important for effective police leadership. For example, the Australian Institute of Police Management undertook a meta-analysis of 57 empirically based articles into the requirements for effective police leadership from Australia, the United Kingdom, Canada, New Zealand and the United States.¹⁴ This study identified seven key characteristics that were considered necessary for a police commander to be effective. Three of these characteristics are commonly associated with integrity, namely that a police leader must be ethical, trustworthy and legitimate. The remaining four characteristics are that police leaders should recognise the need to ‘act as a role model; be good communicators; be critical and creative thinkers; and be able to make good decisions’.¹⁵

The findings of the commission as they relate to senior police leadership in the SAPS can now be assessed against the key principles and characteristics highlighted above. This exercise will

provide some insight into the nature of the challenges implicitly referred to by the NDP and the White Paper as they pertain to the senior police leadership at the time of writing.

The serial crisis and politicisation of top police management

The SA Constitution mandates the president to appoint the SAPS national commissioner.¹⁶ However, it has been argued that, unlike many other senior appointments, there are inadequate minimum objective criteria to guide the president when making this appointment.¹⁷ The consequence has been that appointments to the post of SAPS national commissioner during the post-apartheid era have predominantly been compromised individuals who have not had relevant policing qualifications or experience.

In 2000, then-president Thabo Mbeki appointed Jackie Selebi to the post of SAPS national commissioner. Selebi had a long history in the African National Congress (ANC). He was elected as president of its Youth League and appointed to its most senior decision-making structure, the National Executive Committee (NEC), while in exile in Zambia in 1987.¹⁸ He was also appointed a member of Parliament in 1994, and before being appointed to the post of SAPS commissioner, Selebi had served as the South African ambassador and permanent representative to the United Nations and Director-General of the Ministry of Foreign Affairs, a post he held until 1999.

He was perceived to be personally loyal to Mbeki, who reportedly went to extraordinary lengths to prevent him from being arrested and prosecuted on corruption charges, for which he was ultimately convicted and sentenced to 15 years' imprisonment in 2010.¹⁹ Arguably, this dealt a significant blow to the morale of senior police commanders and the public credibility of the SAPS, given the substantial publicity that the investigation and prosecution of Selebi garnered in the local and international media.

When Jacob Zuma became president, he appointed a powerful provincial ANC politician who was then the KwaZulu-Natal member of the Executive Council (MEC) for Community Safety, Bheki Cele, to the post

of SAPS national commissioner. Cele was seen to be close to Zuma and although he had no formal policing experience, had at least held a post that required him to exercise oversight of the SAPS on behalf of the KwaZulu-Natal Provincial Executive Committee.

During his relatively short term in office, Cele became closely associated with ongoing attempts to militarise the SAPS when he established the controversial and paramilitarised tactical response teams in 2009,²⁰ and reintroduced military ranks to the SAPS in 2011.²¹ Cele was eventually fired by the president on the recommendation of a board of inquiry into his fitness to hold office, following a public outcry over his involvement in tender irregularities involving R1.7 billion.²² As with Selebi before him, the removal of the most senior SAPS commander, following a highly publicised scandal, could not have been positive for police morale or public credibility.

Zuma then appointed Riah Phiyega to the post of SAPS national commissioner on 13 June 2012. At the time of her appointment, much was made of her prior management experience.²³ However, her lack of police experience and any proven ability to address the types of organisational challenges facing the SAPS was publicly raised as a concern at the time.²⁴ A little more than a year after her appointment, the ongoing negative publicity surrounding Phiyega once again raised questions about her suitability for the post of national commissioner.²⁵

It was the findings of the Marikana Commission of Inquiry, headed by retired Judge Ian Farlam and two senior advocates, that first raised official concerns about Phiyega's fitness to hold office. Despite the constitutional and legal imperative that requires Phiyega and her senior officers to act impartially, the commission found that in the days running up to the massacre, 'Gen. Phiyega was complicit in engaging in discussions where political factors were inappropriately considered and discussed in relation to policing the situation at Marikana'.²⁶ Specifically, Phiyega and Lt.-Gen. Zukiswa Mbombo discussed the possibility that Julius Malema, the leader of the then newly launched Economic Freedom Fighters (EFF), might arrive at Marikana during the strike and take credit for diffusing the situation.²⁷

Moreover, transcript evidence before the commission revealed that Mbombo discussed Phiyega's concerns with Lonmin mine management, saying that,

- 'She did not want mining companies to be seen to be supporting AMCU [The Association of Mining and Construction Workers]
- She did not want mining companies to undermine NUM [National Union of Mineworkers]
- She was responding to what she perceived as pressure from Mr Cyril Ramaphosa, whom she considered to be politically influential
- She wanted to end the violence before Mr Julius Malema arrived in Marikana and was given credit for defusing the situation
- She was concerned that Mr Malema supported nationalisation of the mines.'²⁸

The commission found such conduct 'inconsistent with our constitutional and statutory regime which requires that policing be conducted in an impartial and unbiased manner'.²⁹

Decision-making and avoiding bloodshed

If police commanders rely primarily on their legal and policy obligations, they may be less likely to make decisions that would result in the unnecessary loss of life or injury to people. Indeed, Section 12(1)(c) of the Constitution states specifically that, '[e]veryone has the right to freedom and security of the person, which includes the right ... to be free from all forms of violence from either public or private sources'.³⁰

The South African Police Service Act, which governs police conduct, is explicit in stating that where police officers have to use force, it must be 'the minimum force which is reasonable in the circumstances'.³¹ This principle is also presented in the SAPS Code of Conduct, which states that all police officers are expected to exercise their powers in a 'responsible and controlled manner'.³²

The SAPS legal team argued that the decision to remove the striking mineworkers from the hill (referred to as a 'koppie' in South Africa) where they had been gathering each day, was taken by police commanders on the scene at around 13h00

on 16 August, and in response to circumstances that required action from the police. However, the commission found this version of events to be false. Rather, the commission found, the decision to disarm and disperse the striking mineworkers was taken by senior SAPS leaders, who had attended an 'extraordinary session' of the SAPS National Management Forum the evening before (15 August).³³

This finding is significant because the evidence before the commission showed that senior operational commanders 'warned the Provincial Commissioner that proceeding to the tactical option that day would involve bloodshed'.³⁴ Rather than revisit the decision to disperse, disarm and arrest the striking mineworkers, top SAPS commanders, including the SAPS commissioner, accepted that bloodshed might follow.³⁵

The six experienced lawyers who were hired by the commission to act as impartial evidence leaders concluded in their final argument, 'That a bloody confrontation was anticipated by at least some senior members of the SAPS is evidenced by the fact that 4 000 additional rounds of R5 ammunition were ordered for delivery and that attempts were made to procure the attendance of four mortuary vehicles (which would have provided for the removal of sixteen corpses).' The commission accepted this argument by the evidence leaders as an accurate assessment.³⁶ The commission found that any decision by police commanders to use force, when in all probability such force would be unnecessary, could be considered to be an illegal decision.³⁷ Moreover, they had breached the McCann Principle, accepted in South African law, 'which requires the planners of policing operations where force may possibly be used to plan and command the operations in such a way as to minimise the risk that lethal force will be used'.³⁸

Concerns about a lack of integrity and accountability

One of the more damning findings of the commission regarding the SAPS national commissioner and her senior managers was that they had sought to mislead the commission. The commission found that, in an effort to distract from

police failings at Marikana, the scene was set for a 'cover-up' very early on. The day after the police shootings, Phiyega addressed a police parade, stating that, 'what happened represents the best of responsible policing. You did what you did because you were being responsible.'³⁹

The commission found that this statement was

... singularly inappropriate because it set out what was from then on to be the official police line: that no blame at all attach to the police for what happened as they were being responsible in what they did. This was calculated to effect the closing of the ranks encouraging those who had participated in the operation to withhold information from the commission and indeed to deny that mistakes had been made and things had been done that could not be described as 'the best of responsible policing'⁴⁰

Indeed, the commission found that efforts to construct a police version of events took place at a police meeting held from 27 August to 8 September 2012 in Potchefstroom, referred to at the commission as the 'Roots Conference'.⁴¹ The commission agreed with arguments that this conference was used by the SAPS leadership as an 'opportunity to collude' in order to construct 'tailored' evidence, withhold certain damning evidence and provide other evidence that was 'materially false' before the commission so as to support the SAPS's manufactured version of events at Marikana both in the run-up to and during the massacre.⁴²

The commission agreed that both the national and provincial commissioners had seen the (SAPS) presentation prior to being submitted to the Commission and they would have been well aware of some of the omissions and misleading information contained therein.⁴³

The evidence leaders' closing submission in this regard was that Phiyega 'gave false evidence to the commission and her evidence before the commission was generally characterised by a lack of candor'.⁴⁴ The evidence leaders also argued that Phiyega's 'immediate response to the shootings was incompatible with the office of the head of a police service in a constitutional state'.⁴⁵

The commission accepted that the most senior police leaders had been dishonest and therefore recommended that the president establish a board of inquiry under section 8 (1) of the SAPS Act to consider the fitness of Phiyega and Mbombo to hold office in the SAPS. This was due to the finding that senior SAPS leadership at the 'highest level' gave false or misleading evidence before the commission and should therefore be the subject of an inquiry to establish whether they were guilty of misconduct in attempting to mislead the commission.⁴⁶

The impact of compromised police leadership

Arguably, the 'serial crisis of top management' as stated by the NDP and briefly discussed above has started to take its toll on the effectiveness and public credibility of the SAPS. While it is beyond the scope of this article to provide a full assessment of the evidence available, there are indicators that are worth considering.

At the time of writing, the SAPS national spokesperson argued that most of the negative public attitude about the police was a result of poor or unbalanced journalism.⁴⁷ There are certainly many examples of good police work and many dedicated and professional officers in the SAPS at all levels, but while the media does tend to focus on sensational stories that may be considered 'bad news', there are many well-documented police shortcomings that are directly related to SAPS leadership.

A good example of this is the deterioration in the productivity of the SAPS Crime Intelligence Division since 2011/12. The ability to produce reliable crime intelligence would be one of the most important police functions if the police were then able to mobilise their considerable resources towards identifying those involved in repeat violent offending. Policing experts have asserted that crime intelligence 'should underlie all crime combating activities of the police'.⁴⁸

SAPS Crime Intelligence found itself severely destabilised during 2011, following the various criminal charges that were laid against its national commander, Lt.-Gen. Richard Mdluli.⁴⁹ Mdluli was initially appointed in July 2009, following a meeting with four of Zuma's cabinet ministers, without proper

procedures being followed.⁵⁰ Various investigations against him were undertaken, resulting in murder charges being laid against him on 31 March 2011 and his suspension a little over a week later.⁵¹ Later that year, on 21 September, he was charged on separate cases of fraud and corruption.⁵²

Mdluli then wrote a letter to Zuma stating that 'in the event I come back to work I will assist the President to succeed next year' – in reference to the ANC's national elective conference that was to be held in December 2012.⁵³ The fraud and corruption charges were then irregularly withdrawn on 14 December 2011 and the murder charges similarly withdrawn on 2 February.⁵⁴ The following month Mdluli's suspension was lifted and he returned to head the national SAPS Crime Intelligence Division.

The civil society organisation Freedom Under Law (FUL) subsequently launched a successful application to the North Gauteng High Court, resulting in Mdluli's being interdicted from executing his duties as a police officer, given the substantial evidence of criminality against him.⁵⁵ The various criminal charges were re-instated, following a Supreme Court of Appeal on the matter, which also 'directed the Commissioner of Police to reinstate the disciplinary proceedings and to take all steps necessary for the prosecution and finalisation of these proceedings'.⁵⁶

At the time of writing, 15 months after this judgement, the SAPS national commissioner had yet to take disciplinary action against Mdluli, and reportedly allowed his perks and privileges to continue, at great cost to the state.⁵⁷ The Crime Intelligence Division has been managed by different officers in an acting capacity, which has arguably caused uncertainty among its personnel, thereby undermining the ability of crime intelligence to operate at its full capacity. Evidence of this situation can be found in an assessment of the SAPS annual reports that demonstrates overall productivity of this division declining by 19% between 2009/10 and 2011/12.⁵⁸

An additional indicator that all is not well within the SAPS is the substantial increase in the number of people leaving the organisation. In the four years ending in 2012/13, the average number of people leaving the SAPS stood at 2 743.⁵⁹ However, this

has risen dramatically since then, so that in the 2014/15 financial year, over 7 000 people left the SAPS.⁶⁰ It was also revealed that of this number 1 200 were detectives, a division already experiencing severe shortages.⁶¹

The consequence of the deterioration of intelligence and the loss of experienced detectives can be seen in the substantial growth of violent acquisitive crime in South Africa. In 2013/14, a total of 119 351 aggravated robberies were reported to the police.⁶² This is over 18 000 more armed robberies than were reported to the police two years ago, in 2011/12.⁶³ Consequently, there are on average 50 more robberies taking place every single day across South Africa than was the situation two years ago. More and more people are being attacked by armed criminals while walking the streets, with those who use public transport most at risk. However, armed gangs are also increasingly attacking people in their homes and workplaces, or hijacking them while driving.

Aggravated robbery is a type of crime that the SAPS has the resources and operational know-how to reduce. This was evidenced with the success of the implementation of the Gauteng Aggravated Robbery Strategy in 2009.⁶⁴ This police intelligence-led strategy with dedicated detective support contributed to a 21.3% reduction in house robberies, a 19.8% reduction in non-residential (primarily business) robberies and a 32.8% reduction in vehicle hijacking between 2011/12 and 2012/13.⁶⁵ But with no dedicated strategy to address these categories of robbery since 2012/13, incidents of robbery have subsequently increased. Ensuring the development and implementation of effective crime strategies is arguably a core function of police leadership.

Increasing crime rates, along with high levels of police misconduct, appear to be contributing to low levels of public trust in the police. For example, a 2014 survey found that 'three quarters of South Africans believe that a lot of police are criminals themselves' and 33% said that they were 'scared of the police'.⁶⁶ Moreover, the proportion of victims of crime who report their incident to the police had declined substantially across various crime categories. The National Victims of Crime Survey revealed that, between 2011 and 2014, the proportion of victims

of robbery who reported their attack to the police dropped by 8% while that for sexual assault dropped by 19.9%.⁶⁷

Improving SAPS leadership

On 21 August 2015, Zuma stated that he had written to Phiyega to inform her that he would be establishing a board of inquiry into her fitness to hold office, as per the recommendations of the Marikana Commission.⁶⁸ However, even if this board of inquiry were to recommend the dismissal of the SAPS national commissioner, simply replacing her will not enhance overall senior leadership in the SAPS, given the substantial challenges facing the organisation.

The Marikana Commission report refers extensively to the NDP, which described the SAPS as having become increasingly militarised and re-politicised since 2000.⁶⁹ Arguably, these dynamics have served to influence the organisational culture of the SAPS, a concern recognised by the NDP. It therefore recommends that 'the organisational culture and subcultures of the police should be reviewed to assess the effects of militarisation, demilitarisation and the serial crises of top management'.⁷⁰

Part of the problem has been the ongoing challenge, over the years, of senior appointments that have been made irregularly and for reasons other than the skills and abilities of the appointees. Although there are clear criteria and procedures in the SAPS for making senior appointments, the national commissioner is legally able to override these procedures. Ostensibly, this is to enable the national commissioner to bring new and scarce skills into the organisation. This makes sense, given that new policing challenges for which the SAPS might not be prepared, may emerge over time. For example, with the rise in cyber crime, new and complex skill sets and expertise that are not immediately available within the organisation may become necessary.

Far too often, however, this authority has been misused by SAPS national commissioners to appoint people into senior positions without their having the necessary skills, experience or integrity. This is a problem that has been raised by the Parliamentary Police Portfolio for years, with a former chairperson

stating that such practices in her opinion were, 'wrong, unjust and should not be allowed'.⁷¹

According to the Marikana Commission, finding a solution to changing the culture of the SAPS is 'an urgent priority and has to start at the very top. Other senior officers and rank and file members of the SAPS can hardly be expected to see the need for the SAPS to act in a non-political manner, and to act accordingly, if the example set by their most senior leaders is exactly the opposite'.⁷²

Fortunately for the president and his cabinet, the NDP formally adopted in 2012 provides a number of specific recommendations on how to go about improving the leadership of the SAPS so as to professionalise the organisation.⁷³ These recommendations are summarised and briefly discussed below.

- A National Policing Board (NPB) should be established with multi-sectoral and multi-disciplinary expertise to set objective standards for recruitment, selection, appointment and promotion. *The NDP is silent on the composition of this body, but given its purpose it should include recognised professionals who understand the demands of executive management in large public sector organisations generally, and in the SAPS in particular.*
- The national commissioner and deputies should be appointed by the president after recommendations by a selection panel that would select and interview candidates against objective criteria, following a transparent and competitive recruitment process. *The NDP does not state how the panel should be constituted but the above policing board could play this role so as to ensure that only the best possible men or women are appointed to the top leadership positions of the SAPS.*
- The NDP recommends that a competency assessment of all officers is undertaken. *It is silent on who should undertake this assessment, but arguably it could also be undertaken or overseen by the NPB, and should start by assessing the competency and integrity of those holding the rank of Lieutenant-General, followed by those holding the rank of Major General. Once these two rank*

levels consist only of experienced men and women whose integrity is beyond reproach, the SAPS will have a top management team of approximately 70 people who could then undertake the remaining recommendations to professionalise the SAPS.

- In the next five years a two-stream system should be developed to create high-calibre officers and recruits (non-commissioned officer and officer streams) who will be trained as professionals. *This should ensure that there is an ongoing corps of trained police managers who could take up top positions as they become available and remove the long-standing problem of inappropriate lateral level appointments.*

The commission appears concerned that no concrete action has been taken to implement the various recommendations: 'It is now three years since the National Planning Commission published the National Development Plan, and more than two years since the report was handed to the President.'⁷⁴

The SAPS is a very large and complex organisation, with almost 200 000 personnel facing a range of difficult challenges. However, had these recommendations been implemented once the NDP was adopted by cabinet in September 2012, headway might have been made to improve the SAPS leadership.

Honest and skilled senior leadership will not necessarily guarantee the reduction of crime and the eradication of police misconduct – but such leadership is a prerequisite for the improvement of the organisation. Fortunately the SAPS has highly experienced and honest police managers at all levels. These men and women could provide a solid foundation for professionalising the SAPS, in line with the vision of the NDP. Police appointments need to be depoliticised so that only the best and most honest are able to make it to the top of the organisation.



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Leading a horse to water ...

Assessing review mechanisms of SAPS performance

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There have been no shortage of reviews, evaluations and audits of police performance in South Africa over the past decade. This article provides a detailed description of the key findings of a number of reviews relating to the role and function of the SAPS. A closer reading of these reviews points to considerable agreement about the systemic weaknesses that confront the police organisation today. What is problematised in this article is the apparent inability and/or unwillingness of senior leadership to address the organisational defects through deliberative and concerted interventions. This lack of action has dire consequences for both the police organisation and the communities it is supposed to serve.

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

This article looks at some of these reviews in order to establish to what extent they have led to an accountable implementation of recommendations. More specifically, this discussion will focus on the following reviews:

- SAPS Policy Advisory Council reports
- Report on Parliament's Detective Dialogue
- National Development Plan 2030: Our future – make it work
- SAPS National Inspectorate: Basic policing indaba
- Report of the Khayelitsha Commission of Inquiry

In spite of clear findings and recommendations in all these reports, there is little evidence that the situation has improved. On the contrary, not only do consecutive reviews identify the continued prevalence of much the same weaknesses, but matters appear to be deteriorating. There is an apparent unwillingness or inability within the SAPS to acknowledge and engage with these major problems and to implement measures to address them.

In an article by Frank Hughes and Lisa Andre in *The Police Chief*, they discuss repeat officer misconduct and the value of an early warning system for control and the promotion of accountability within a police department.¹ The link between misconduct and systemic problems within police agencies

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more broadly is obvious, as is the need for timely interventions. In relation to the importance and benefits of an early warning system and the need for remedial action, they conclude that:

... the system must first properly identify the appropriate variables that are causing problems for the agency. These variables may differ for individual police agencies based on their personnel, range of services offered, and community demographics. Fear of liability exposure from having such a system should never be allowed to keep an agency from doing something that it believes reinforces the mission of law enforcement and its obligation of accountability to the public. Once police agencies identify their potential problem officers using an [Early Warning System], they can implement appropriate intervention strategies and monitoring techniques with a higher level of confidence.²

This article will explore the nature of the pervasive systemic inadequacies within the police and the lack of decisive interventions to address those.

The need for police reviews, and their focus

Reviews of the police should not be perceived or approached as a witch-hunt aimed at targeting individual police officers. It is much rather about identifying weaknesses or shortcomings in the structure and functioning of the police as an integrated system, and in rectifying these where necessary. As John Fuller points out:

A staff inspection when done correctly is a favorably proactive practice. The purpose is to uncover potential problems and develop solutions within the agency's scope of operations before the problems reach proportions that negatively affect the department and its personnel and before the problems generate negative media attention and community criticism.³

This does not, of course, imply that wrongdoing on the part of individuals or groups, when uncovered, should be ignored. On the contrary, although this should not be the primary focus of inspections,

undue conduct, whenever it is detected, should result in some form of punitive action, either disciplinary steps or criminal prosecution, depending on the nature of the conduct.

External reviews of the police will always find it more difficult to ensure that in addition to recommendations for corrective measures, disciplinary or criminal action is taken against offending members of the police. Examples of such external reviews can be found in inspections by the Office of the Auditor General, the Civilian Secretariat for Police and even Parliament's Portfolio Committee on Police. To some extent the Independent Police Investigative Directorate (IPID) is another good example. Its constituting legislation, the Independent Police Investigative Directorate (IPID, Act 1 of 2011), does give it more teeth than its predecessor, the Independent Complaints Directorate (ICD), but does not specifically mandate it to inspect or review the police.⁴ IPID personnel can, however, make important contributions towards addressing systemic weaknesses in the police, for example by doing a simple analysis of criminal investigations that might reveal some of the underlying weaknesses that allow for this type of conduct.

The importance and, in particular, the correct focus of inspections are also highlighted in a report by the Organization for Economic Cooperation and Development (OECD), published in 2012.⁵ Although the report deals with inspections in a business environment, it concludes that inspections and their enforcement systems need to be constantly improved in order to 'ensure that inspections and enforcement are more risk-based focused, and aim more at promoting compliance and ensuring positive outcomes than at detecting and punishing violations'.⁶

Internal reviews and the policy advisory council

The SAPS has always had a system of internal inspections, largely conducted by the National Inspectorate, but its effectiveness has long been questioned. According to Bilkis Omar, the 'many challenges' that 'persist' at local police level are probably a result of the declining ability of the Inspectorate to carry out inspections and evaluations

regularly and efficiently.⁷ It must be added that even where inspections are carried out regularly and efficiently, it is hardly useful if little or nothing is done to fix the problem.

The Divisional Commissioner of the National Inspectorate, Lt.-Gen. Sharon Jephta, appointed on 1 February 2015, seemed to agree. Shortly after her appointment, on 19 March 2015, she issued an interim instruction aimed at addressing this specific problem. For example, paragraph 2 of the instruction reads as follows:

The feedback reports regarding the implementation of the inspection and evaluation findings submitted, in particular to the Inspectorate, are *not comprehensive to indicate the rectification of the shortcomings indicated in respective reports* [Own emphasis]⁸

The persisting challenges Omar refers to include 'the manipulation of crime statistics, missing case dockets, under-resourcing, inefficient management, lack of discipline and ineffective crime combating at police stations across the country'.⁹ These 'challenges' amount to systemic weaknesses and 'often lead to poor service delivery, hamper policing to communities, create feelings of insecurity and fail to bring down levels of crime'.¹⁰

In obvious recognition that the Inspectorate and other internal mechanisms were unable, on their own, to sufficiently identify and address the pervasive weaknesses in the police, the then national commissioner of the SAPS, Jackie Selebi, decided in October 2006 to appoint 'an independent body, composed of persons with extensive policing experience' to assist the SAPS, inter alia, by:¹¹

- Identifying and comprehensively reviewing issues that need to be addressed by the SAPS in order to improve its effectiveness in the combating of crime
- Enhancing the capacity of the management of the SAPS to address critical policing issues

This independent body of experienced persons was called the Policy Advisory Council and was made up of retired senior members of the SAPS management team.¹² The council comprised two former deputy national commissioners (one of them acting as chairperson), five former divisional commissioners

and eight former provincial commissioners.¹³ Between them they shared experience and expertise that covered many years of management, investigation and other operational areas of policing, and also of support services.

Over a period of two years the council carried out inspections at 858 police stations, representing 77% of the 1 116 police stations countrywide.¹⁴ Subsequent to these visits the council compiled two reports, the first covering the period November 2006 to October 2007 and the second report November 2007 to October 2008.¹⁵ According to the council's first report, it adopted a 'developmental approach' that included an 'on the ground identification and rectification of shortcomings/issues that require attention and that could be fixed on the spot or in the short term'.¹⁶ They mention a number of problems 'rectified' during their visits, such as arranging, with the assistance of provincial commissioners, the 'movement and replacement' of ineffective and inefficient commanders.¹⁷

The two reports painted a bleak picture of the level of management, efficiency and capability at police stations generally and made pertinent recommendations about what was needed to address these deficiencies. After the council's first interim report to the SAPS Management Forum on 24 April 2007, the forum was sufficiently concerned for the national commissioner to announce the formation of 'management task teams' to attend to the issues raised by the council.¹⁸ The activities of these management task teams, however, were clouded in secrecy. As a consequence it was not clear whether they ever became operational and actually performed any tasks.

Besides the many shortcomings identified by the council, are specific findings in relation to systemic weaknesses that relate to management (command and control), discipline, and detectives and inspections. (The period for each report is indicated alongside each finding.)

- Command, control and discipline:
 - 2006/2007: There is a general lack of command and control within the police service at local level. Resultant poor levels of discipline and high levels

of corruption are of serious concern ... Tasks are allocated with no follow up, case dockets are not inspected or inspected in a haphazard manner. Supervision and inspection are neglected.¹⁹

- 2006/2007: An in-depth investigation was done and it was found that there is indeed a disciplinary problem at station level. The general level of discipline is poor. Absence without leave and neglect of duty are common at many police stations.²⁰
- 2007/2008: Many of the problems of the police are the direct result of a breakdown in command and control and a lack of supervision in certain areas. In most instances, poor service delivery, maladministration, ill discipline and corruption have at their core a lack of supervision and control.²¹
- Detectives:
 - 2006/2007: The Detective Service is being neglected in terms of focus and resources. Many station commissioners simply leave the Detective Service to 'carry on' on their own. There is little or no support given. Detectives generally have the worst accommodation and least resources.²²
 - 2006/2007: At many branches there is no proper command and control. Many branch commanders are incompetent. Group commanders and supervisors lack skills, experience, commitment, dedication and discipline.²³
 - 2006/2007: Docket inspections ... in many instances are not done in accordance with required standards and policies.²⁴
- Inspections:
 - 2006/2007: The system of inspections in the police is totally inadequate. The National Inspectorate was also found wanting and is clearly not focused correctly, nor functioning optimally.²⁵
 - 2007/2008: Visits to stations and units ... revealed that at some stations proper inspections from the area/provincial and national level have not been conducted for long periods (years). At most stations regular inspections are not done.²⁶

- 2007/2008: It is seldom or ever that a full inspection is done. Sufficient appropriate capacity to manage and do inspections properly does not seem to exist at any level.²⁷

The Policy Advisory Council went on to cover a large number of other problems and deficiencies identified at police stations and police units, such as in the implementation of sector policing, operational planning, crime intelligence, the Forensic Science Laboratory and Criminal Record Centre, etc. However, apart from the 'rectifications' they made during their visits, there was little evidence that their findings and recommendations led to any meaningful improvements. After their second report, council members' contracts were not renewed, in spite of their expressed willingness to continue their work.²⁸

Report on Parliament's detective dialogue

On 5 September 2012 Parliament's Portfolio Committee on Police conducted a dialogue to discuss the state of the SAPS detectives and to determine what could be done to make them more efficient and effective.²⁹ According to the committee, the dialogue was motivated by the minister of police's budget vote speech in Parliament on 9 May 2012, where he declared 2012 as the 'year of the detective', and also by 'oversight visits' by the committee over the years to police stations where they identified 'numerous challenges' with respect to detectives.³⁰

A number of institutions and independent experts made oral and written presentations during the dialogue. Other participants included representatives from civil society, academics, training organisations and the police, as well as from provincial executive councils.³¹

After each of the presentations there was a fairly robust debate and towards the end of the dialogue, Lt.-Gen. Godfrey Lebeya, at the time Deputy National Commissioner: Crime Detection, highlighted some of the more pertinent issues that emerged from the discussions:

- Corruption: The SAPS acknowledges various challenges regarding corruption in the service, which must be addressed as a matter of urgency.

- **Retention:** The detective environment within SAPS is not designed to retain staff and the organisation is losing highly skilled detectives due to the lack of a properly developed retention strategy.
- **Case loads:** The heavy case loads of detectives lead to short cuts being taken, to the detriment of investigations.
- **Resources:** The detective environment is not sufficiently resourced in terms of personnel, computers, laptops, cellular phones and vehicles.
- **Quality:** The quality of investigations must be improved.
- **Discipline:** The SAPS acknowledges that the general discipline of detectives needs to be addressed.
- **Training:** The challenges faced regarding the training of detectives, especially in basic courses like the Basic Learning Programme, were acknowledged.³²

The committee, in its recommendations, expressed a deep concern with, among others, the lack of a clear career path for detectives, the demoralising effect of corruption, and the lack of effective management at 'station, unit and branch level'.³³ The lack of effective management was also identified as a key concern by the chairperson of the Portfolio Committee, as she then was, Annelise van Wyk, in her address to Parliament on 8 November 2012.³⁴ Finally, the committee recommended that its report and recommendations:

... be elevated to the level of the Minister [of Police] so that we can ensure that the implementation of these recommendations take place ... [and that the] management within the detective service, together with the Civilian Secretariat for Police ... must develop a comprehensive response to these recommendations and other challenges highlighted during the Detective Dialogue.³⁵

At the time of writing not much was publicly known regarding progress on the 'comprehensive response'. From discussions with staff at the Civilian Secretariat for Police it would appear that a lot of work had been done in this regard and

that the process was ongoing.³⁶ For example, the Secretariat, in consultation with the SAPS, compiled a 'turnaround strategy' for the detectives, which it presented to Parliament on 21 May 2013. This was followed by a draft policy document for the detectives that is still awaiting the approval of the Minister.³⁷

While it was encouraging that the Portfolio Committee's report was taken seriously, it was also worrying that it took more than two and a half years to deliver a draft policy intended to address the urgent and serious deficiencies already identified in September 2012.

The National Development Plan (NDP)

Chapter 12 of the *National Development Plan 2030: Our future – make it work*, also, almost indirectly, refers to major weaknesses in the police, which it ascribes largely to a lack of professionalism, the remilitarisation of the police, and leadership challenges.³⁸ The NDP is a product of the National Planning Commission (NPC), appointed by Zuma in May 2010 to draft a vision and national development plan for South Africa.³⁹ The NPC was appointed as an advisory body consisting of 26 people drawn largely from outside government and chosen for their expertise in key areas. They consulted widely with stakeholders and the public more broadly before submitting their plan (the NDP) to the president in August 2012. In September 2012 cabinet announced its endorsement of the NDP and steps to start the implementation process.⁴⁰

Among the diverse and broad thematic areas covered in the NDP's 15 chapters, chapter 12 focused on 'building safer communities'. Much of this chapter focused on the police service, its inefficiencies, and how these could be addressed. Most of these inefficiencies were not distinctly identified, but could be discerned from a reading of the recommendations. Accordingly, the following are examples of the most pertinent recommendations in the NDP:

- The code of conduct should be included in the disciplinary regulations and performance appraisal system and periodic checks should be conducted on the level of understanding and practice of the code.

- A national policing board should be established with multi-sectoral and multi-disciplinary expertise to set [objective] standards for recruitment, selection, appointment and promotion.
- A competency assessment of all officers should be conducted to rate them accordingly (this should not be linked to ranks).
- In the next five years a two-stream system should be developed to create high-calibre officers and recruits (non-commissioned officer and officer streams) to be trained as professionals.
- The national commissioner and deputy national commissioners should be appointed by the president only on recommendations by a selection panel that would select and interview candidates against objective criteria.
- The police 'force' must demilitarise and the organisational culture and subcultures of the police should be reviewed to assess the effects of militarisation, demilitarisation, remilitarisation and 'the serial crises of top management'.

These were all good recommendations and if implemented could go a long way towards effectively addressing the pervasive problems of the SAPS. But it is already three years since cabinet approved the NDP and there are no concrete signs of implementation. At the time of writing, the only indication that the Department of Police was considering plans for implementation was contained in the draft White Paper on the Police. However, although it included a number of NDP recommendations, the draft White Paper was conspicuously silent on others, such as those relating to the appointment of the national commissioner and deputy national commissioners.⁴¹

It is also a moot question as to what happened to the cabinet committee whose establishment was announced on 7 September 2012 to develop targets and integrated implementation plans,⁴² and to what extent this committee may be involved in the implementation of recommendations affecting the SAPS.

SAPS National Inspectorate Report

The SAPS's Inspectorate Division held a 'Basic Policing Indaba' from 20 to 21 January 2015. Very little is known about the indaba outside of the police and the author was only able to access a copy of a Powerpoint presentation highlighting inspection findings in relation to 'basic policing' and 'service delivery' complaints against the police.⁴³ This apparent secretiveness makes it almost impossible to find publicly accessible police reports addressing issues relating to systemic weaknesses. For example, the SAPS Annual Report for 2013/14, in a section covering the Inspectorate, mentioned only the type and number of inspections done.⁴⁴ Nothing was reported on what was found. Much the same can be said about the section on internal audits, the only difference being that it concluded by identifying 'areas of concern', *inter alia*, the 'slow implementation of internal audit recommendations or agreed corrective actions' and 'delays in consequence management'.⁴⁵

Therefore, rather than assisting the SAPS in hiding these systemic problems and its seeming inability to effectively address them, it is important that every piece of information is exposed to public scrutiny. Only then will we be able to ensure that the pervasive systemic problems that undermine professional policing receive the corrective attention they require.

The mandate of the Inspectorate was, *inter alia*, to 'report to the national commissioner on the effectiveness, efficiency and quality of service delivery by the [SAPS]'.⁴⁶ In the Powerpoint report the inspection findings (from visits to police stations) were categorised as Visible Policing; Detectives; Crime Intelligence; and Support Services. It did not specify the period covered, but it is assumed that these are for inspections over time and countrywide. The findings were consistent with those in the reports already referred to and, as will be shown, with those in the report of the Khayelitsha Commission of Inquiry. Some of the findings for the first three categories are listed below:⁴⁷

- Visible policing:
 - 'Members on reliefs are not managed accordingly [sic]' ['Accordingly' in this sense is a reference to Standing Orders and other instructions].

- 'Handing over between reliefs and station commanders is not correctly done.'
- 'Management and supervision of sector policing by only one sector commander impacts negatively on policing.' [This finding reflects on staff shortages, work load, lack of appropriate training, etc.]
- 'Quality of statements is generally poor ... statements are not completed in accordance with prescribed guidelines, do not contain the elements of the crime, are not signed by deponents, and are not sworn to/affirmed by Commissioner of Oaths.'
- 'Exhibits [are] not properly managed and [as] such lead to evidential value of exhibit[s] being tarnished and the chain of evidence compromised.'
- 'Manipulation of crime information is a means of improving performance or efficiency of a station.'
- Detectives:
 - 'Excessive case loads.'
 - 'Investigation of some cases is substandard.'
 - 'Complainants are not continuously updated about developments in their cases.'
 - 'Investigating officers do not comply with instructions from detective commanders and/or requests from public prosecutors.'
 - 'Investigating officers do not enquire about the linkage of suspects to other cases.'
 - 'Crime scenes are not managed properly.'
 - 'Cases are closed or filed incorrectly.'
- Crime Intelligence:
 - 'Crime intelligence capacity is not optimally utilised at station level to bolster crime prevention, combating and detection.'
 - 'Crime intelligence products such as CTA [crime threat analysis] and CPA [crime pattern analysis] do not have a standardised format and their content differs from station to station,
 - 'CIOs [Crime Intelligence Officers] are unable to explain the purpose of a properly constituted

Station Intelligence Profile (SIP) and its importance [for] policing.'

Command and control was again identified as a 'contributing factor' for these inefficiencies, along with a 'lack of consequence management and implementation of corrective measures' and 'disciplinary interventions [that] are not consistently implemented and finalised speedily'.⁴⁸ However, apart from resolving that the many instructions that exist in this regard needed to again be brought to the attention of all members and commanders, there was no firm indication from this report that action would be taken to ensure 'consequence management' and speedy 'disciplinary interventions'. The only promise of some form of action was from the aforementioned instruction issued by Jephtha in March 2015 that feedback reports regarding the implementation of the inspection and evaluation findings should forthwith include steps in relation to 'the rectification of the shortcomings indicated in respective reports'.⁴⁹

Report by the Khayelitsha Commission of Inquiry

For many years the Institute for Security Studies (ISS) called for the establishment of a judicial commission of inquiry independently and authoritatively to 'assess the functioning of the SAPS and its leadership'.⁵⁰ Since then two commissions of inquiry with a focus on the police were established. The Khayelitsha Commission of Inquiry was established in August 2012 and the Marikana Commission of Inquiry in September 2012. The terms of reference of the Marikana Commission, unlike that of the Khayelitsha Commission, were focused on a specific incident, i.e. the killing by the police of 34 striking mineworkers on 16 August 2012.⁵¹ As this article is concerned with the pervasive systemic problems in the police, and since the Marikana Commission does not contain any specific findings in this regard, the report by the latter commission is not discussed any further in this article.⁵²

When the Khayelitsha Commission of Inquiry was appointed, it also did not fully fit the profile of the commission called for by the ISS, as it was geographically restricted and – mainly because it was appointed by the premier of the Western Cape –

lacked the support of central government. However, the commission was established in terms of section 1 of the Western Cape Provincial Commissions Act 1998 (Act 10 of 1998), allowing it to conduct an independent and authoritative review of the police, in spite of these limitations, and it was focused on systemic problems in the police.⁵³

The commission's terms of reference were, *inter alia*: 'to investigate complaints received by the Premier relating to allegations of inefficiency of the South African Police Service stationed at [Khayelitsha Site B, Lingeletu West and Harare]'.⁵⁴ The commission found a range of systemic and overlapping reasons why the inefficiencies in policing at the three Khayelitsha police stations and the Khayelitsha FCS unit (Family Violence, Child Protection and Sexual Offences Unit), identified by SAPS inspection reports over time, have not been addressed. But according to the commission, the most important reason was poor management at station level, cluster level and provincial level.⁵⁵

Some of the key findings included in the wide range of inefficiencies identified by the commission were:⁵⁶

- There are no established guidelines for patrols of informal neighbourhoods, and by and large, these do not seem to take place in Khayelitsha
- Many crimes reported to the three Khayelitsha police stations and the FCS Unit are not investigated properly or at all, and the commission considers the quality of detective services at the three police stations to be close to a crisis point
- The system of crime intelligence is not functioning according to SAPS national guidelines at any of the three Khayelitsha police stations
- Crime scene management in Khayelitsha is often not in accordance with the prescribed protocol, partly because of environmental difficulties but also because of the lack of basic equipment and training
- Management at the three police stations, the cluster office and the FCS Unit is ineffective
- The SAPS does not comply with the obligations imposed upon it by the Domestic Violence Act

The commission concluded its report with 20 recommendations aimed at addressing these inefficiencies. Six of the recommendations are especially dependent on the involvement of the SAPS at national and provincial level:⁵⁷

- The establishment of an oversight and monitoring team to ensure that the inefficiencies identified at the three Khayelitsha police stations are eradicated
- A change management process for leadership within the Khayelitsha cluster, the Khayelitsha FCS Unit and the three Khayelitsha police stations
- A strategic review of detective services in Khayelitsha by the Provincial Commissioner
- The development of provincial guidelines in relation to the visible policing of informal neighbourhoods
- Review of the procedures by which complaints against members of the SAPS are dealt with both by the SAPS and the IPID
- A memorandum of understanding to be entered into between the Department of Community Safety (DoCS) and the SAPS to facilitate DoCS' carrying out its constitutional mandate to monitor police conduct and oversee police efficiency and effectiveness

According to media reports soon after the release of the report in August 2014, the minister of police indicated that he found the recommendations acceptable and would work with the province towards implementation.⁵⁸ The SAPS apparently also indicated its 'unequivocal' support for implementation,⁵⁹ and according to Dan Plato, MEC for Community Safety in the Western Cape, interviewed two weeks after the release of the report, the provincial government was already working on an implementation plan.⁶⁰

At the time of writing little else was publicly available on progress in implementing the commission's recommendations.

Conclusion

It is astonishing that the pervasive problems undermining the effective and efficient performance of the SAPS have been allowed to continue, in spite of being identified repeatedly by inspections and other

reviews over at least the last decade. That this is the case reflects badly on police management and also, indirectly, on the Civilian Secretariat for Police, which should have had systems in place to ensure that internal processes were monitored and effective steps taken to address systemic weaknesses.

It is to some extent understandable that the police can avoid public scrutiny of and accountability for their internal inspections and evaluations, since they are able to hide behind the excuse of confidentiality. It is, however, less obvious why external reviews appear to be largely ignored or at least not vigorously applied by or in relation to the police. Parliament certainly has the necessary authority, but its wheels appear to be grinding at an embarrassingly slow speed and as a result it seems to be largely ineffective. The Khayelitsha Commission of Inquiry confirmed what we already know. As with all other reviews, the impact of commissions of inquiry is dependent on the willingness and ability of those who appointed them to ensure that their recommendations are properly implemented. The failure to either timeously identify system failures or ensure appropriate interventions have had and will continue to have dire consequences for the police organisation and for the citizenry at large.



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On the record

with Judge Kate O'Regan

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In August 2012 Kate O'Regan, a former judge of the South African Constitutional Court, was appointed by the premier of the Western Cape to head the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha. Two years later, on 25 August 2014, the commission submitted its final report and recommendations.

In this exchange O'Regan reflects from the inside out on some aspects of the public inquiry into policing in Khayelitsha. Here one finds reference to judicial independence and organisational autonomy of commissions of inquiry; the value of comparative lesson drawing for process design; the importance of creating safe spaces for all participants; and honouring the contributions of participants. Policing, O'Regan concludes, is a truly challenging enterprise. Both political and police leadership carry a moral responsibility to engage systemic and other challenges as identified in both of the Marikana and Khayelitsha reports. Not to do so would imply the abdication of responsibility to address the safety and security concerns of South African citizens.

Elrena van der Spuy (EvdS): In April 2012 when you were approached to lead the Khayelitsha Commission of Inquiry, what were your initial thoughts about the prospects of doing so?

Kate O'Regan (KO'R): I felt ambivalent. Ambivalent because of the uses to which commissions of inquiry have been put in South Africa. There have been some outstanding commissions of inquiry but there have also been commissions of inquiry that could be considered to be forms of glorified 'executive kicking for touch'. During my time at the Constitutional Court we heard several cases concerning the role of judges in extra-curial work – the appointment of Judge Heath to head the Special Investigating Unit¹ and the Rugby Commission that President Mandela appointed.² So, in the light of those judgements I knew that as a judge I needed to look very carefully at the nature of the commission and whether it was a fitting task in light of the requirements of judicial independence. As I often do when faced with issues of this sort, I discussed the matter with a range of my colleagues. Some thought it would be difficult

to avoid very high levels of political contestation in relation to the commission. Nobody, however, thought it was improper from the perspective of judicial independence to do it. And then in deciding whether I should accept it or not, I took into account that the commission could potentially play a role in promoting safety and security, which is essential to people's sense of wellbeing and so central to the rights of civilians in a constitutional democracy.

EvdS: Once you made the decision to accept the appointment, how did you envisage the commission would have to function?

KO'R: There was no doubt in my mind that the commission would want to be completely autonomous in the way it approached its tasks, in the way it managed its hearings and processes and in the way it presented its report. I told the premier that we would want to be organisationally completely autonomous and she had no hesitation in accepting (and supporting) that condition. I was not involved in identifying the other members of the team, but I was informed early on by the premier's office of the people they had in mind. I was really encouraged by the prospect of working with a very independent, competent and diverse team.

* Elrena van der Spuy is attached to the Centre of Criminology, Faculty of Law at the University of Cape Town.

EvdS: In preparing for the task at hand, did you draw inspiration from other examples of commissions here or elsewhere in the world?

KO'R: Yes, very much. I was initially approached to consider undertaking the commission in April 2012 but the commission was only appointed in late August 2012. Between April and August I read widely, spoke to a lot of people and thought about the approach the commission should adopt. The first thing I did was to look at the Western Cape Commissions Act, which is slightly different from the national commissions Act, and I also read the case law on commissions. Then I did quite a bit of comparative reading about commissions in different jurisdictions. Commissions are used very widely in a range of Commonwealth countries. There is a rich literature. I read on current thinking about commissions in various jurisdictions and also looked very closely at the more modern practices around commissions. I particularly found some of the models that had been adopted in New Zealand useful. They all had very good websites. New Zealand, interestingly enough, has a standing commissions Secretariat. Every commission that is appointed is serviced by the same secretariat, they have a standing website, and publish all their procedures and reports on the website so that you can follow any particular commission in great detail.

EvdS: All commissions are provided with terms of reference. How much room for manoeuvre is there in interpreting the terms of reference more widely or more narrowly?

KO'R: In the case of the Khayelitsha Commission the terms of reference effectively came straight from the Constitution, but at a point of intersection in the Constitution that distinguishes the role of national and provincial government in relation to policing services. So it was very important to have a clear understanding of the terms of reference. We spent some time thinking about what the terms of reference could mean, given that this was a provincial commission of inquiry exercising provincial powers of oversight over the SAPS, and what that would mean for the way in which we designed our processes. And of course in one sense these were the questions that the High Court judgement and the Constitutional Court judgement explored. Clearly one of the

reasons why the commission's establishment as well as its subpoenas were challenged was because the commission's terms of reference rested on this point of intersection between national and provincial powers.

EvdS: What would you describe as key features of this commission?

KO'R: From the start we worked as a team of effectively six, a pared-down team. Compared to most commissions of inquiry that's a small group of people, but it had the great advantage that we could work as one team.

From the outset we identified our task as clearly as possible. In the very first meeting we decided what our process should look like. We thought it would be ideal to drive the process by issuing notices, outlining the manner in which the commission would work, its timeframes, and what was required of those who wished to appear before the commission. The notices were published on the commission's website, and so would be available to everybody, including the parties. We also decided that we would publish the record of proceedings on the website, as well as all the documents we received. Our approach to using notices to direct the process, and to publish them electronically, has some similarities to the processes followed in the Constitutional Court. A web-based model suited the commission's team because of the fact that Adv. Pikoli was based in Pretoria and Amanda Dissel in Johannesburg. So we were not based in one city, and technology made it easier for us to communicate. We used Skype and Dropbox, which were invaluable. We tried to try to keep the costs of the commission as low as possible and again we realised that electronic communication and electronic publication of the materials of the commission would be the most cost effective.

We were also very committed to holding all our hearings in Khayelitsha and that they would be open to the public. We wanted people to feel welcome in the hearing space. We did not want it to be an intimidating space but a safe one. We wanted the commission to sit on the same level as the community and not higher than it. We wanted participants to have a sense that the commission was facilitating a conversation in which people could genuinely speak and hear one another. When there is social conflict, people get silenced. In

such contexts people are fearful. In situations of conflict people don't listen to one another. So the idea was to create a space in which listening and speaking could take place, that didn't look hierarchical or as if it privileged either side or the commission unduly, but would nevertheless run with a clear set of principles, which would allow people to say what they wanted to say. So we were very committed to finding a suitable space in Khayelitsha, a hall, and spent a lot of time looking for an appropriate place. We wanted to ensure that the way in which the hearings were conducted would not feel too daunting, especially for the witnesses, given that testifying is, for most witnesses, an anxiety-filled experience.

EvdS: In the early period of your engagement, what did you anticipate as challenges?

KO'R: I think right from the start we realised that the commission's work was only going to be a success if we could get buy-in from and participation by the SAPS, as we recognised that at the end of the day policing is the SAPS's area of competence and expertise, and their constitutional mandate. After all, nobody else is going to provide policing services to the community of Khayelitsha. We sought to make plain that our task was to investigate inefficiencies and the breakdown in trust, but in a forward-looking way so as to identify solutions, both small and large, that might facilitate the work of the SAPS. We had to acknowledge the particular difficulty of providing social services, like policing, in a community with such scant resources.

EvdS: What was the underlying role that you envisaged for the commission?

KO'R: It is very important for a commission of inquiry to identify the nature of the inquiry or the exercise it is engaged in. In our case we wanted to identify whether there were systemic failures, or inefficiencies in policing, or a breakdown in trust between the SAPS and the community, and if so, why, and whether there were ways to address the problems. There was a very clear distinction between what we were engaged in and the terms of reference of the Marikana Commission, which were to investigate an incident, or set of incidents that took place at a specific time and place to determine what went wrong in those incidents. That was very different to

what we were doing. We were not engaged in the task of determining civil or criminal liability for any particular incidents. We did not consider it necessary to make findings of fact on particular incidents where conflicts of fact arose. We needed to identify patterns of failures and weakness and find solutions to those. It meant that we saw our role as effectively investigative and not adversarial, although it took some time for that penny to drop both with the SAPS and the complainant organisations.

EvdS: Were there differences of opinion about any particular issues within the commission?

KO'R: Not really. It might seem surprising. I mean, from time to time we would have differences of approach but I really can't remember any major arguments. I personally very much enjoyed working with the team. People brought a wide range of experiences and strengths. It's my usual experience with working with a diverse group of people. Diversity enriches processes where reasonable conditions of equality operate, because everybody can speak. People brought great insight from their different backgrounds. I learnt an enormous amount from my colleagues and from the process generally, despite the fact that we had to work very hard and under tight time schedules, and in spaces that lacked the usual office facilities.

EvdS: Looking in from the outside, the commission produced a wealth of information of relevance to those interested in policing. What did you personally learn about the job of police and policing during this time?

KO'R: An enormous amount. The work of policing was not something I had thought about extensively. We realised that there was a wealth of expertise both in South Africa and beyond in policing, and our decision to divide the work of the commission into two phases was a very constructive move because it enabled us to obtain an invaluable collection of expert reports. We also got a mountain of information from the SAPS. And working through those documents was very informative. We appointed two police experts, very senior retired members of the SAPS in the Western Cape, who were very helpful. We consulted with quite a wide range of people who were either experienced reservists or experienced retired SAPS members. I have to say that we avoided consulting people who

were still in the SAPS, because of the sense that the SAPS was represented and wanted to manage its own evidence and witnesses, so we didn't consult directly with any existing SAPS members. But we learnt an enormous amount about how the SAPS works on a daily basis, what happens in a community service centre, the various registers that have to be kept, what is required. It became clear to us that policing is heavily administrative in nature and we also learnt a lot about police culture. And we realised that a lot of the challenges around policing culture that we face in South Africa are reproduced in police services all over the democratic world.

EvdS: Can you tell us a bit about the thinking that informed your decisions about the structure and content of the report? Why it looks like it does?

KO'R: Initially we planned to do a short report, focusing on our findings and our recommendations. But then it just seemed that we needed to record what witnesses had said. So many witnesses were brave in coming to testify about events that were painful to them. This was true of both SAPS witnesses and community witnesses. We had to find a respectful way of recording that testimony, and so a large section of the report is really a summary of the witness statements. Then there was a feeling that we had to tell the history of the establishment and processes of the commission. In future others may be interested in that history and the kinds of decisions we took. We also felt the report had to have a section on the history of Khayelitsha, embedded as it is in the spatial divides of apartheid. The police's role in enforcing apartheid meant that the police have a particularly difficult challenge in winning the trust of the community. That's a burden members of the SAPS, many of whom were not members of the SAP in the 1980s, face today, and it is something they need to know and recognise as it impacts on how they work today in Khayelitsha.

EvdS: What were your expectations about the possible impact the work of the commission and the report would have?

KO'R: Well, as we say in a couple of places in the report, our hope was that when responding to the report, people in the SAPS, in the community and in government would respond to it by assessing whether our recommendations for improvement would in fact

make the lives of people in Khayelitsha safer, and not on the basis of what you might describe as party political squabbling. And unfortunately at least some of the responses to the report have been the latter. This is unfortunate. What I think is encouraging, is that the SAPS on the ground in Khayelitsha and the community wanted to find a way of working together. What is most distressing is that some of the most harmful findings we made about the failures of policing are not being addressed; they appear to be either defended or denied. So, for example, the fact that the SAPS seems to have no prescripts on how to provide visible policing in densely populated, informal neighbourhoods – in a country with high numbers of people living in dense urban neighbourhoods in cities as we do, and given the very high levels of crime and violence in those neighbourhoods – is a major failure. Almost every community witness said that 'we never see SAPS in informal settlements'.

It is not easy to provide visible policing in densely packed informal neighbourhoods, but it is not impossible – as several witnesses told the commission. It will affect questions of how staffing is allocated to police stations where there are high levels of informal neighbourhoods, and it is something that the SAPS should pay urgent attention to, so as to not continue to overlook the needs of the poorest of our urban communities. So that upsets me. And secondly, I am also dismayed by the fact that an entirely inequitable and arguably racially discriminatory allocation of policing resources and personnel is not being addressed. I cannot understand why senior leadership in the SAPS would not seek to address this issue, given the clarity with which the problem was illustrated before the commission.

EvdS: What, if any, has your engagement with the office of the Commissioner of Police been, during the Inquiry or thereafter?

KO'R: We wrote to the commissioner and offered to meet with her once the report was published, but we have not had a response to that letter. Obviously I have seen the 17-page document that the premier made public, which was followed by a press statement on 11 August. I have not seen any suggestion so far that there has been a careful consideration of how the shortcomings we identified can be addressed.

It is distressing to see that there isn't a serious commitment to thinking about what could be done to make policing work better for local communities like Khayelitsha.

[Editor's note: about a week after the interview was held with Justice O'Regan, the Western Cape Department of Community Safety and the SAPS national leadership announced they had appointed a task team to investigate the recommendations of the commission.]

EvdS: In your view, is there a commitment to engage the challenges that confront the police organisation at the present time?

KO'R: I think there is a commitment from leadership at the SAPS local level who work with communities every day. I am not saying that all members of the SAPS are committed, but certainly on the evidence before us, the tenor of the testimony of many of the SAPS witnesses from the three Khayelitsha police stations and the cluster suggested a real concern about service delivery. The question may be raised as to why there is not sufficient commitment higher up? There are two considerations: one is that policing organisations everywhere find it hard to accept independent mechanisms of accountability. Police are doing a tough job and they tend to think that they are the only people who know how to do the job, and therefore discount analyses by others of their work. I am sympathetic to the difficulties of the work that policing institutions undertake and the tasks that they have to perform. But I do think that the ways in which they operate render them less than receptive to accountability. Secondly, I think that there is a complicating factor here that lies in the separate roles that provincial and national government perform in relation to policing, and the fact that the Western Cape is governed by one party and the country is governed by another. That added a political sensitivity to the work of the commission, which is apparent from the manner in which its report has been received. But section 199 of the Constitution makes it plain that the SAPS must ignore such political sensitivities. Section 199 imposes a duty on the police service not to favour or prejudice any political party but to remain as far as possible even-handed in its dealings with political parties.

EvdS: Looking back, is there anything that the commission should have done differently?

KO'R: There is one thing that I wish we had done, though it might have been difficult to do, and that is to have tried to get some understanding of how the lower ranks of SAPS members who work in the three Khayelitsha police stations felt about the work they do, and about the mandate of the commission. Getting their input was difficult for us because the SAPS was resistant to cooperating with the commission, especially at the outset. As a result we felt that the environment was hostile. We could probably have asked the SAPS for permission to do some kind of a study with ordinary members of the SAPS, and we didn't. Whether junior members of the SAPS would have felt free to speak openly to the commission is another question. Nevertheless, I would have liked the commission to have heard from ordinary SAPS members from the lower ranks who work in Khayelitsha. But beyond that there is nothing that I feel was a material omission, although we may have overlooked something.

EvdS: You spent the best part of two years working for the commission. During that time it must have been an all-consuming engagement. Is there a sense of loss when it all comes to an end?

KO'R: Not really. Somehow a lot of lawyering is like that, even when you are in practice and you are appearing for a client and you have a huge case and you walk away. And you know, writing a judgement is very much like writing a Commission Report – you might be really invested in it and spend months on it, find it terribly difficult and burdensome and then you go to court one morning, you deliver it, and that's it. There is no post mortem for it. You just deliver it and that's it. So I am sort of used to letting go. In some ways it's a relief. Although you never completely let go, in the sense that you continue to be interested in what's happening. I do follow the story when I see it. I have certainly become interested in policing in poor communities, especially.

Notes

- 1 *South African Association of Personal Injury Lawyers v Heath and Others* 2001 (1) SA 883 (CC); 2001 (1) BCLR 77 (CC).
- 2 *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC); 1999 (10) BCLR 1059 (CC).

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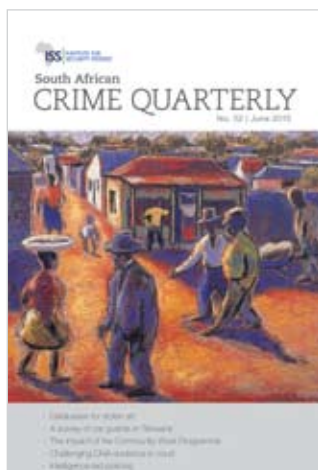
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This edition of SACQ focuses on primary violence prevention programmes – those programmes that aim to address the risk factors that increase the chance of violent victimisation and perpetration. It includes research findings relating to the relationships 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 policymaking.



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