In Issue 65 David Bruce analyses statements from the injured and arrested strikers taken by the Independent Police Investigative Directorate in the five days immediately after the Scene 2 massacre at Marikana. Robert Doya Nanima looks at whether the latest version of the proposed Traditional Courts Bill provides a satisfactory mechanism to evaluate evidence in criminal cases before it is admitted. Mahlongonolo Thobane and Johan Prinsloo discuss ‘bank associated robberies’ — robberies (or attempted robberies) of cash that are committed against a bank client while en route to or from a bank or ATM. Nicole van Zyl considers whether evidence of sexual grooming influences the decisions of South African courts when passing sentence on offenders who have been found guilty of sexual assault or rape of children. Erena van der Spuy reviews Anneliese Burgess’s book, Heist! South Africa’s cash-in-transit epidemic uncovered, published in 2018 by Penguin Random House. ‘On the Record’ presents a conversation between Nicolette Naylor (Director, Ford Foundation for Southern Africa) and Sibongile Ndashi (Executive Director: The Initiative for Strategic Litigation in Africa) on sexual harassment and the law.
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Editorial policy

South African Crime Quarterly (SACQ) 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.

Policy on the use of racial classifications in articles published in South African Crime Quarterly

Racial classifications have continued to be widely used in South Africa post-apartheid. Justifications for the use of racial descriptors usually relate to the need to ensure and monitor societal transformation. However, in the research and policy community racial descriptors are often used because they are believed to enable readers and peers to understand the phenomenon they are considering. We seem unable to make sense of our society, and discussions about our society, without reference to race.

South African Crime Quarterly seeks to challenge the use of race to make meaning, because this reinforces a racialised understanding of our society. We also seek to resist the lazy use of racial categories and descriptors that lock us into categories of identity that we have rejected and yet continue to use without critical engagement post-apartheid.

Through adopting this policy SACQ seeks to signal its commitment to challenging the racialisation of our society, and racism in all its forms.

We are aware that in some instances using racial categories is necessary, appropriate and relevant; for example, in an article that assesses and addresses racial transformation policies, such as affirmative action. In this case, the subject of the article is directly related to race. However, when race or racial inequality or injustice is not the subject of the article, SACQ will not allow the use of racial categories. We are aware that some readers might find this confusing at first and may request information about the race of research subjects or participants. However, we deliberately seek to foster such a response in order to disrupt racialised thinking and meaning-making.
Promises and lies?

Elections, commissions of inquiry and the state of criminal justice in 2019

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The start of 2019 has seen a number of revelations made before the Zondo Commission of Inquiry into state capture. Criminal justice agencies have been at the forefront of many shocking disclosures which have included — as if coming off the pages of a crime novel — Russian assassination squads, rogue police units, prostitution rings operating inside prisons, break-ins at non-governmental organisations, and slush funds. Robert McBride, the former Director of the Independent Police Investigative Directorate (IPID), has given testimony that paints the South African Police Services (SAPS) as a corrupt organisation where members of the rank and file are forced to carry out unlawful orders at the behest of senior, powerful officers. There are virtually no corners of the criminal justice machinery that have been left untouched by the allegations. The Hawks (the Directorate of Priority Crimes), SAPS, the National Prosecuting Authority, the Department of Correctional Services and the Department of Justice have been implicated in astonishing depth in the corruption and scandals that have regaled the Commission.

Although the testimony before the Commission has felt, perhaps, like a torturously slow vindication of the disquiet that had built up in the public discourse during the last years of Jacob Zuma’s presidency, the allegations that have emerged should be enormously worrying for those of us concerned with crime and justice in South Africa. If our law enforcement and justice agencies across the board have been compromised and crippled to the point of dysfunction, how do we protect the rule of law promised as a cornerstone of democracy in 1994? Of course, these are not new problems, and it would be foolish to overlook the wide similarities to the systems of patronage, corruption and illegal activities perpetrated by public servants under apartheid. Yet, in our up-to-the-minute news cycles through which we (prefer to) consume news in smartphone-friendly portions, the arc of the similarity between the ‘then’ and ‘now’ of corruption in the criminal justice system seems less present. I think this is a significant oversight. We are more focused on the ‘whodunnit’ of officials who classify documents or rig statistics to keep them out of the oversight of organisations like IPID, or who collude to ensure that potential whistleblowers are silenced. Being caught up in the scandal and the detail in this way makes it much easier to gloss over the larger questions we should be tackling about how to demand the accountability and legitimacy of state agencies, particularly those we entrust with the critical task of maintaining law and order. In essence, to borrow a phrase used by John van Maanen1 to describe his ethnographic work with police, we should be asking ourselves who is ‘watching the watchers?’
With the national elections set for 8 May almost upon us, questions of crime, safety and security have been prominent among the talking points of parties and politicians. Parties have promised to improve police-community relations, deploy anti-crime volunteers to high-crime areas, better use technology in policing, increase support for neighbourhood watch initiatives, increase police resources, create modern professional provincial police forces and deploy specialised task teams focused on (variously) gangsterism, drugs, farming areas, sexual offences and violence against women and children. Most of the parties have promised a version of getting tough on crime, imposing stricter penalties for offences, and improving the quality of policing and the detection of crime. These strategies make sense given their electioneering context and may provide a sense of promise to potential voters who feel the immediacy and threat of South Africa’s crime problem. But they overlook the crisis of dysfunction that runs much deeper in our criminal justice system and that undermines the work of committed street-level practitioners who do good work under difficult conditions across the system. We will have to see what else will emerge as the Zondo Commission continues to unfold, and whether the victors in the elections stand by their promises.

This issue

Social media-savvy readers of South African Crime Quarterly may recall a video that did the rounds on Facebook and Twitter earlier in the month that showed a traffic official spectacularly failing a breathalyser test after eating a hot cross bun. Entertainment value aside, the video appears to raise questions about the rigour of breath alcohol tests. Jade Liebenberg, Lorraine du Toit-Prinsloo, Gert Saayman and Vanessa Steenkamp address the admissibility of these kinds of tests in their article entitled Drugged driving in South Africa: An urgent need for review and reform. The authors highlight that, while it is common practice in South Africa to test drivers for alcohol levels, testing for additional substances (like drugs of abuse) is rarely performed. Current legislation only prohibits driving under the influence of alcohol and a ‘drug having a “narcotic” effect’, but excludes several impairing psychoactive drugs that are not classified as narcotic substances. The authors discuss issues and/or limitations that affect the detection of drugged driving and propose revisions of the National Road Traffic Act to include a comprehensive statutory definition and detailed provisions for drug testing to deter impaired driving.

The policing of protest has been a regular feature on the pages of South African Crime Quarterly since our December 2017 special edition. Heidi Brooks adds to this conversation by providing an account of an often-silent constituency: the police who are tasked with the dual obligation of ensuring the safety and security of communities on the one hand, and protecting democratic rights and freedoms on the other. Brooks examines protest from the perspective of rank and file officers in the South African Police Service (SAPS) and shows not only the importance of recognising bottom-up perspectives in constructing appropriate responses to protest, but the complexity of SAPS members’ own identities as both officers and citizens. She shows how, for many officers, protest seems to straddle their police and private lives, conferring on them a duty to enforce law and order, while experiencing the shortcomings of democracy themselves.

The Zondo Commission, which I referenced earlier in this editorial, has heard evidence of corruption on a grand scale committed by the now-infamous Gupta brothers. Despite this evidence, bringing the Guptas to book through the criminal justice system has been complicated by the fact that they have relocated to another country to evade prosecution. The intricacies
of extradition are therefore pertinent. Untalimile Crystal Mokoena and Emma Charlene Lubaale discuss extradition where states do not have extradition treaties with one another. State sovereignty dictates that states exercise authority over all persons and things within their territories, including people who are suspected of committing or charged with crimes in foreign states. International law generally imposes no obligation to surrender individuals suspected of or charged with committing crimes in foreign states and as such, states are increasingly ratifying international treaties mandating cooperation to ensure that individuals responsible for certain categories of crimes are brought to justice. Mokoena and Lubaale discuss whether, in cases where there are no treaties to provide for extradition, states can rely on the United Nations Convention Against Corruption (UNCAC) to extradite individuals for corruption-related crimes.

Irvin Kinnes reviews Marie Rosenkrantz Lindegaard’s book *Surviving gangs, violence and racism in Cape Town: Ghetto Chameleons* published by Abingdon: Routledge Advances in Ethnography in 2017. Kinnes concludes that *Ghetto Chameleons* provides its reader with a new way of seeing and understanding the current gang discourse by showing what young men in gangs on the Cape Flats do, how they associate, and how they use mobility to move and change their cultural repertoires in gang and suburban spaces. A deep dive longitudinal ethnography undertaken with 47 young men, the book shows us that gangsters are much more than just gangsters: not homogeneous, mobile, and with perspectives about themselves that they use flexibly, depending on their environment. Kinnes concludes that the book is required reading for any scholar of crime and mobility, and for those interested in exploring the links between gangs, cultural repertoires and mobility.

**Note**

Driving under the influence of drugs (DUID), also referred to as drugged driving or drug impaired driving, may be defined as the operation of a motor vehicle whilst under the influence of one or more psychoactive drugs.¹ The latter includes both illicit and licit substances (e.g. central nervous system depressants, stimulants or hallucinogens), which have the potential to impair driving performance and pose a danger to public road users.²

Road traffic injuries are a leading cause of preventable death in South Africa.³ In 2015, it was reported that road traffic injuries resulted in 12 944 deaths (23.5 per 100 000 population) at a cost of approximately R143 billion to the state, communities and individuals.⁴ In addition, South Africa is faced with a continuing challenge regarding drug and alcohol abuse,
having the largest illegal drug market in sub-Saharan Africa. The social and economic cost of illicit drug and alcohol abuse in the country has been estimated at 6.4% of the annual gross domestic product.

Driving under the influence (DUI) is a major threat to road safety in South Africa, with the limited available statistics indicating that approximately 58% of road traffic fatalities involve alcohol (based on National Injury Mortality Surveillance System data from 2010). However, the prevalence of road users in South Africa who use and/or abuse non-alcoholic impairing substances, which may impair driving ability, remains mostly unknown. This is primarily due to the little to no routine drug screening performed on drivers during random stops, and drivers who have been involved in accidents are seldom tested. This lack of screening and testing is exacerbated by the lack of regulated drug testing available in South Africa.

Driving under the influence of alcohol and/or drugs in South Africa is regulated by the National Road Traffic Act 93 of 1996 (NRTA/The Act) which states that:

- No person shall on a public road –
  - (a) drive a vehicle; or
  - (b) occupy the driver’s seat of a motor vehicle the engine of which is running, while under the influence of intoxicating liquor or a drug having a narcotic effect.

The Act also defines the legal limits for alcohol (ethanol) in the blood and breath of drivers and thereby sets the standard by which drivers can be charged or prosecuted for DUI of intoxicating substances. The wording of this law however raises substantial concern, as only ‘narcotic’ drugs are mentioned, despite the fact that a vast number of impairing drugs (both medicinal and non-medicinal) do not fall within this classification. Examples of such non-narcotic drugs are illicit stimulants (crystal methamphetamine) or cannabis (delta-9-tetrahydrocannabinol).

There is evidence to suggest that the prevalence of drugged driving may be as much of a concern as drunk driving. Results from the 2013–2014 National Roadside Survey in the United States found that the prevalence of impairing illegal drugs among weekend nighttime drivers was 15.2%, compared to 8.3% who tested positive for alcohol. Legal (over the counter and/or prescription) medications with impairing effects were detected (separately) in a further 7.3% of weekend nighttime drivers.

In a study carried out in South Africa in 2008, drugs of abuse (excluding alcohol) were detected in 14% of drivers stopped at routine roadblock operations. This study concluded that only 76% of drivers under the influence were being detected under current enforcement procedures through breath alcohol roadside testing alone. This figure may well have changed substantially in the past decade as a result of altered patterns and prevalence of substance use.

The aim of this article is to highlight critical issues and limitations in the detection of drugged driving in South Africa and to propose appropriate revisions to the NRTA to more effectively detect and prevent drugged driving.

Driving under the influence of alcohol

Alcohol is known to impair driving-related abilities, such as concentration, hand-eye coordination and reaction time. In South Africa, the NRTA states that it is illegal to drive while under the influence of an intoxicating liquor or when the blood alcohol concentration (BAC) or breath alcohol concentration (BrAC) is in excess of a specified level. Under current legislation, a non-professional driver is considered impaired if found to have a BAC $\geq 0.05$ g/100 mL of blood or a BrAC $\geq 0.24$ mg/1000 mL of expired air. The
relationship between BAC and impairment has been well studied internationally. Research has shown that the risk of being involved in an accident increases significantly when the driver’s BAC is ≥ 0.05 g/100 mL, in comparison to drivers who have not been drinking.\textsuperscript{15} Levels in the same range are considered illegal in Australia, Belgium, France and Switzerland, among others.\textsuperscript{16}

The NRTA also states that no person may refuse that a blood or breath specimen be taken for purposes of law enforcement. Traffic officers may stop any vehicle and request the driver to perform a preliminary breath test (PBT) for alcohol (an initial screening test). If the driver is found to be over the breath ethanol limit based on the screening test, officers may request that a blood sample be collected for confirmation. A laboratory confirmation of the BAC is required as evidence by the courts in order to prosecute an individual for DUI. Evidential breath testing (EBT) may also be conducted by law enforcement, using appropriate apparatus which requires strict maintenance and calibration to ensure reliable accuracy, precision and measurement uncertainty (in compliance with the requirements of the South African National Standard SANS 1793:2013).\textsuperscript{17} In the past, the results obtained from EBT devices were permitted as evidence in court subject to compliance with all the relevant regulations, preconditions and further requirements relating to the EBT device. However, the reliability of results obtained from such a device was successfully disputed in\textit{ S v Clifford Joseph Hendricks}, where the Cape High Court ruled that results from certain types of breath alcohol testing apparatus (the Dräeger Alco test) were inadmissible for evidentiary purposes.\textsuperscript{18} At present, the use of these types of apparatus remain controversial in South Africa, and very few cases have been brought before the courts based on results generated using this equipment.

Results obtained from tests conducted on patients who have been admitted to emergency rooms after sustaining injuries in road traffic accidents are seldom used in subsequent legal proceedings. This results from various factors, including breaks in the chain of custody, problems with the sample used for analysis and method of screening used. Hospital laboratories typically use serum samples with an enzymatic-based alcohol testing.\textsuperscript{19} In the clinical setting, priority is given to attending to victims’ injuries, which means that the accuracy of the results obtained from the analyses performed in hospital or in clinical pathology laboratories may not hold up in court.\textsuperscript{20} It is routine practice at most South African medico-legal mortuaries to collect a blood sample at autopsy from fatally injured drivers for BAC analysis.\textsuperscript{21} Blood samples are, however, not routinely collected at autopsy and analysed for substances other than alcohol. Such additional screening is only done at the discretion and specific request of the attending forensic medical practitioner, and is used based on incidental information provided by law enforcement officials to suggest that such investigations are warranted. This additional incident information is frequently not available.

**Driving under the influence of drugs**

Assessing and interpreting the impairing effects of various drugs on driving is more complicated than with alcohol intoxication. Studies have reported that use of various psychoactive drugs, and/or a combination of two or more drugs, has the potential to adversely affect driving performance and increase the risk of a road traffic accident.\textsuperscript{22} These trends have been derived mostly from epidemiological research, relative risk studies and the prevalence of drug use in arrested and/or accident-involved (fatal and non-fatal) drivers.\textsuperscript{23} Results from the Driving Under the Influence of Drugs, Alcohol and Medicines (DRUID)
Drug-related impairment

Despite growing evidence that many drugs impair critical driving skills, it is still challenging to accurately demonstrate the correlation between the presence of a drug in the body and an associated level of impairment. This means that drugged driving is seldom successfully identified or prosecuted. DuPont et al identify three general classifications of drugs that can impair driving (according to the scheduling status of the South African Medicine and Related Substances Act 101 of 1965):

i) Controlled or illegal substances (Schedule 7 and 8) that are commonly abused. These include heroin, methylenedioxymethamphetamine (MDMA), cannabis, methaqualone or gamma-hydroxybutyrate (GHB). Access to these highly addictive drugs is tightly controlled, and it is an offence to be in possession of these drugs without an appropriate permit.

ii) Prescription medications typically include Schedule 3, 4, 5 and 6 substances, which include opioids such as oxycodone, methadone and buprenorphine as well as benzodiazepines such as alprazolam, clonazepam and diazepam. These medications have approved medical uses and may only be prescribed by a physician, but are frequently misused and/or abused and taken without a prescription or for ulterior purposes.

iii) Certain medicines can be sold over the counter (OTC), without a prescription and include Schedule 0, 1 and 2 drugs. These drugs, although not commonly abused, may have the ability to cause sedation, such as with most antihistamines.

Although attempts have been made to assess the relationships between drug and/
or drug metabolite concentrations in biological samples and levels of impairment, this evidence remains unclear.\textsuperscript{34} Establishing drug impairment thresholds (similar to BAC limits), is complicated by the wide range of drugs available, the infinite number of drug-drug and drug-alcohol combinations, as well as their complex physicochemical, pharmacokinetic and pharmacodynamic properties.\textsuperscript{35} Analytical factors that influence the determination of drug levels may include the detection limit of the particular analytical technique used, the chemical properties of the drug and the type of sample used.\textsuperscript{36} A detectable concentration of a drug in testing does not necessarily imply impairment at the time of driving, as detection times vary for different substances and between biological matrices.\textsuperscript{37} The duration of detection depends on the dosage, the route of administration, acute versus chronic use and individual variation in metabolism. Individual tolerance plays a significant role in the level of impairment as chronic drug users require increased dosages to produce the desired effect.\textsuperscript{38} Other individual variances that play a role include, among others, the rate of drug metabolism (slow, rapid/ultra-rapid metaboliser), age, gender and state of health. The degree of impairment also depends on whether the individual is experiencing acute intoxication or withdrawal.\textsuperscript{39} Additional variables that may affect driving performance specifically are, among others, the level of fatigue, the driver’s age and driving experience, time of day, and/or environmental distractions.\textsuperscript{40}

**International legislation pertaining to driving under the influence of drugs**

Per se standards, which make it a DUI offence to drive with a measured quantity of certain drugs in one’s system, are often used in legislation to address drug impaired driving.\textsuperscript{41} There are generally two types of per se standards: zero-tolerance drugged driving laws (which are defined according to the limits of detection using valid and reliable laboratory methods)\textsuperscript{42} and per se laws that stipulate non-zero thresholds for drugs or their metabolites, which constitute evidence of drugged driving.\textsuperscript{43} The application of these per se laws, therefore, make it illegal to drive a vehicle with a specified level of a drug present in a certain specimen obtained from the body, or in fact the mere detection of the drug itself, with no further evidence of impairment (or lack thereof) required.\textsuperscript{44} Per se laws pertaining to driving under the influence of drugs other than alcohol, are practiced in many countries including the US, Canada, Australia, New Zealand, United Kingdom (UK) and certain Western European nations, such as Belgium, Finland, Sweden and France.\textsuperscript{45} As of April 2017, 22 states in the US had adopted per se laws for DUID other than alcohol, seven of which specify non-zero thresholds for certain drugs.\textsuperscript{46} Sixteen states have zero tolerance laws, where any (reliably) measured presence of a controlled substance in the body while driving is an offence. There is some variation regarding the marijuana impairment driving laws in certain states, due to their different legalisation status.\textsuperscript{47} All Australian states have laws prohibiting the operation of a vehicle while under the influence of methamphetamine, MDMA or ecstasy and THC.\textsuperscript{48} In the UK, new drugged driving legislation was promulgated as of March 2015 in England and Wales, which stipulates drug thresholds in blood for eight commonly abused drugs, as well as certain prescription medications.\textsuperscript{49} How legislation is enforced, and the penalties associated with an offence differ across countries. The World Health Organisation (WHO) sets out a framework for the management of DUID,\textsuperscript{50} which requires establishing the
legal framework for DUID laws, testing for the presence of drug use (such as roadside testing), enforcement of the laws, raising awareness to the effects of DUID, as well as counselling and/or support for offenders.51

The management of DUID in South Africa should address all areas contained in the WHO policy brief.52 Arrive Alive is a well-known on-line road safety awareness programme in South Africa, which could be used as a forum to create awareness of DUID and promote the proposed legislation and enforcement strategies.53

Testing for drugged driving in South Africa

The laboratory analysis of biological samples for drugs of abuse (especially for law enforcement purposes) is costly and may involve a considerable delay in obtaining results. Drug testing procedures need to be as efficient and cost effective as possible and results must be accurate and able to withstand scrutiny in an adversarial legal system. Blood and urine are the most commonly used specimens in toxicological investigations.54 A blood specimen is considered the best specimen for confirmatory analysis in DUI investigations due to the short detection period.55 There are also distinct advantages of utilising blood specimens in terms of the wide variety of analytical methodologies available, numerous published reference data for both ante mortem and post mortem drug concentrations, short detection periods and the quantitative or interpretive value.56 There are, however, drawbacks for these biological matrices. For example, collection of blood is invasive and typically requires transporting a suspect to a clinic to collect a sample, whilst urine has limited quantitative value as the detection times for drugs or metabolites are very variable (from a few hours up to a month). The positive identification of a substance in urine therefore only indicates exposure to the particular substance, and is not necessarily related to impairment.57

Oral fluid (saliva) sampling offers certain advantages over blood and urine for DUI investigations. It is minimally invasive and can indicate recent use proximate to the time of driving.58 Oral fluid screening technology is advancing and testing devices are becoming more robust and reliable.59 Several countries now use these testing devices to screen for drugs of abuse.60 Although these devices can provide a preliminary result, oral fluid screening is not evidential in nature and may still frequently yield false negative or false positive results. Confirmatory analysis is therefore mandatory in forensic investigations. Oral fluid screening devices have previously been tested in South Africa during standard roadblocks.61 Drugs were detected in 14% of the 269 drivers who were tested, and both alcohol and drugs in 5% of cases. Based on the ease of use and accuracy, roadside oral fluid testing devices have the potential to assist law enforcement to reduce drug-impaired driving in South Africa.62

There is much debate on whether the mere presence of a drug(s) is substantial enough to suggest impairment, or whether it is necessary to quantitate the levels of a drug. Per se laws, or more specifically zero-tolerance laws, could be rationalised for illicit drugs – since if possession is illegal, it is reasonable to prohibit driving under the influence thereof.63 The same does not apply to impairing licit drugs (prescription and/or over the counter medications). Implementing per se limits for licit drugs is not as straightforward as legitimate medical use (with a valid prescription) of certain medications, which can also result in impairment.64 Appropriate precautions and/or penalties should therefore be considered for drivers under the influence of certain medications based on whether they are in
possession of a valid prescription; whether the medication is being used as prescribed by the physician or pharmacist (conforming with warnings or guidelines pertaining to driving), and not used in combination with other impairing substances (e.g. alcohol or illicit drugs). 

According to the WHO, 159 countries have legislation regarding DUID but the majority of these laws lack a proper definition for what is classified as a drug. It may thus be appropriate, in the South African setting, to establish a working committee in order to define which drugs to prohibit while driving and to decide if per se or zero-tolerance limits should be adapted. The suggested penalties if a driver is found guilty should also be set.

Forensic testing of biological samples for DUID cases is the responsibility of the National Department of Health Forensic Chemistry Laboratories (FCL). Unfortunately, these laboratories are already beyond capacity with a much-publicised backlog and may lack the capability to render additional adequate forensic toxicology/analytical services. Additionally, not all FCLs are accredited by the South African National Accreditation System, which aims to ensure formal recognition and competence in line with international standards based on the relevant ISO 17025 requirements. Suboptimal storage conditions and delays in analyses of samples may also compromise the validity of test results and their use in courts of law.

**Recommendations for reform in South Africa**

Very few cases of drugged driving, outside of that of alcohol intoxication, are identified or pursued under current legislation and law enforcement strategies. There is no specific legislation that prescribes limitations pertaining to driving whilst under the influence of a drug other than a narcotic substance, but which may nonetheless impair driving ability. The NRTA also makes no provision for determining the presence of drugs, nor the medical evidence required to prove positive detection and impairment. In order to prevent drugged driving, as well as successfully identify and prosecute individuals who do so in South Africa, important revisions to existing legislation and detection strategies are required. Although it will be the responsibility of the state law advisers to draft this legislation, input and guidance should be sought from appropriate medical and/or scientific experts, particularly from forensic toxicologists, which is currently a growing discipline in South Africa.

Currently, the NRTA does not provide a definition for the term ‘narcotic’ in the list of definitions of the Act. No specific provision is made to define or to prevent driving whilst under the influence of other substances (medicinal or non-medicinal, licit or illicit) which may predispose the driver to dangerous situations or have a detrimental effect on the overall ability to safely operate a vehicle on the roads. Included here would be a variety of non-narcotic substances that may compromise the cognitive functioning (including, for example, by inducing recklessness and/or risk taking) or impair the sensory and motor capacity required to negotiate traffic situations. The Act also needs to include comprehensive and inclusive statutory restrictions and limitations applicable to driving while using impairing non-alcohol substances, based on medical, pharmacological and legal guidance. The Act should also include an adequate legal definition for the term ‘drug.’

Cases of drugged driving must be more successfully identified and processed by law enforcement, as the failure to do so can have devastating effects. The case of *S v Katlego M Maarohanye* and co-accused Themba Tshabalala provides an example of this impact. The accused were found guilty of driving under the influence of cocaine, causing an accident that killed four school children.
Although per se legislation makes prosecuting drugged drivers more efficient and effective, the vast number of potentially impairing drugs and the numerous combinations and interactions between them makes it difficult to set limits (like the 0.05 g/100 mL BAC limit for alcohol) for all drugs of abuse. Implementing non-zero thresholds may also lead to a public perception that driving under the influence of illegal drugs is acceptable to a certain degree. To enable the proper implementation of per se standards, the public must be made aware of the risks and consequences of impairment, especially when driving while under the influence of prescription drugs. This public awareness campaign must also include adequate information and precautions, for example, through appropriate drug labelling, and physician and/or pharmacist counselling.

More efficient and accurate drug testing could also lead to improvements in the detection, prosecution and conviction of drugged drivers. To enable this, standards should be set for the biological matrices authorised for drug analysis, specification of the substances that should be tested for during analysis, cut off concentrations should be established for different substances, and the circumstances under which drug testing should be conducted should be clarified. Standard operating procedures need to be defined for the acquisition, storage, quality control and analysis of specimens. To ensure successful prosecution of drugged drivers, it is vital that these analyses be conducted at an accredited facility, by fully trained forensic analysts.

Clear protocols – similar to those already in place for alcohol – must be established for police to follow when testing and obtaining specimens from drivers who are under the influence of drugs. Drugged driving detection and enforcement should be aligned with procedures developed for alcohol impaired driving. This could be accompanied by roadside clinical assessment programmes or providing officers with training on identifying drug impairment symptoms in drivers, as is practiced by Drug Recognition Experts (DREs) in certain parts of the US.

Forensic mortuaries should also implement a prescriptive protocol for the routine testing of biological samples obtained at autopsy from fatally injured drivers for the presence of substances other than just alcohol. This protocol should use a ‘targeted’ approach to identify those substances which may commonly be abused in a particular society. Along with regular random roadside testing, this could provide valuable insight into the prevalence and demographics of drug use by drivers in the general population. This information could foundation prevention strategies, as well as align with resolutions addressed in the 2013–2017 National Drug Master Plan (NDMP). The additional costs incurred by such extended testing programmes may be justified by the benefits that may accrue from an improved understanding of the scope and nature of the problem of drug abuse in South Africa, as well as the improved administration of justice.

Expert medical evidence is very seldom led by prosecutors in cases of alleged drugged driving in South Africa: physicians at emergency medical facilities rarely do formal assessments of injured patients with respect to possible drug and/or alcohol induced impaired driving ability – and even less frequently formally and properly document these findings contemporaneously in patient records. Physicians and nurses should be trained and mandated to do the clinical (and laboratory) assessments required to recognise, identify and chart the effects of drugs and alcohol. Additional training should be done to ensure that medical staff are aware of their ethical and legal obligations in these cases, and are familiar with the provisions of the Criminal Procedure Act 51 of 1977.
Conclusion

At present, our knowledge of the extent of drugged driving in South Africa is very limited. More studies should be conducted in South Africa to adequately define the problem and to provide accurate data to underpin policy initiatives and resource allocation. Additionally, operational protocols to identify drugged drivers need to be defined, encompassing aspects that extend from the roadside to the clinical or mortuary setting and the analytical environment. These protocols should be based on principles of cost effectiveness (in a resource constrained society) as well as scientifically robust methodologies, in order to withstand inevitable intense scrutiny in our adversarial legal system. Field sobriety testing and oral fluid screening, using state of the art devices, should be considered for routine (screen) detecting of drugged driving at the roadside and in emergency rooms. Specific and appropriate clinical assessments by trained medical and nursing professionals should be routinely performed on injured drivers – and the results should be competently and contemporaneously recorded. Provisions also need to be made to include standardised protocols for obtaining blood samples for confirmatory analyses and associated laboratory methodologies that would serve admissible in court. It is then vital to enhance laboratory capacities for toxicological testing and designate appropriate facilities to efficiently render these analytical services.

Existing legislation must be revised, guided by appropriate scientific expertise. The adoption of per se laws pertaining to drugged driving may be in the best interest of public safety. Legislation that requires routine drug testing for certain drugs (other than alcohol) and defines the analytical parameters and required evidence for prosecution may deter drugged driving and enhance the successful prosecution of drug impaired drivers. These efforts should target known, problematic and/or commonly abused substances in South Africa as a starting point.

Interventions such as regular random roadside testing and mandatory testing of drivers involved in accidents are necessary to establish the extent and profile of drug and alcohol impaired driving in South Africa. An integrated approach of support and collaboration is necessary between relevant participating role players (law enforcement agencies, health care workers and medical professionals, forensic scientists as well as prosecutorial authorities) in order to revise existing legislation and develop a standardised and realistic protocol-driven approach to reduce drug impaired driving in South Africa.

These proposed measures would undoubtedly have substantial additional cost implications. However, these costs (of setting up working committees, revised training of law enforcement officers, health care workers and prosecuting authorities, as well as increased analytical costs), must be weighed against the benefits to society, and the economic and social burden of drugged driving-related road traffic injuries in South Africa. Perhaps the right question is not whether the country can afford such an increased fiscal burden, but whether we can afford not to?

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7 World Health Organization, Global status report on road safety.


9 National Road Traffic Act (Act 93 of 1996), chapter 11, section 65.


11 Matzopoulos et al, A field test of substance use screening devices as part of routine drunk-driving spot detection operating procedures in South Africa.


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61 Matzopoulos et al, A field test of substance use screening devices as part of routine drunk-driving spot detection operating procedures in South Africa.

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68 James, The state of forensic chemistry laboratories in SA; ISO/IEC 17025 is the standard (issued by the International Organisation for Standardisation) against which laboratories are assessed to test their technical competency.


71 Indeed, it may be argued that specimens should be routinely analysed for the presence of such drugs/substances in decedents examined at medico-legal mortuaries, according to predefined protocols – which has become the international norm in modern forensic medical practice and medico-legal investigation of death.


73 Von Willich, The doctor and the drunk driver – shifting the paradigm.
Democracy and its discontents

Protest from a police perspective

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In South Africa, media and scholarly research has increasingly drawn into question the correctness of police responses to post-1994 popular protest. Assessments of democratic policing, moreover, emphasise the critical role of the police in democratic political development. Existing accounts of protest, however, seldom draw upon the assessments of individual police members, and the dual obligation of the police to both ensure the safety and security of communities and protect democratic rights and freedoms. In an attempt to understand some of the challenges to democratic policing, this article examines protest from the perspective of rank and file officers in the South African Police Service (SAPS). It shows, not only the importance of recognising bottom-up perspectives in constructing appropriate responses to protest, but the complexity of SAPS members’ own identities as both officers and citizens. For many officers, protest seems to straddle their police and private lives, conferring on them a duty to enforce law and order, while experiencing the shortcomings of democracy themselves.

The reform of policing and the criminal justice system has been a crucial component of post-1994 democratic consolidation.1 Indeed, global literature on policing in democratic societies has placed emphasis on the crucial role of the police in democratic political development.2 As such, the South African Police Service (SAPS) has an important role to play, not only in the management and prevention of crime, but in protecting and supporting democratic political life.3

Since the mid-2000s, and particularly from the early 2010s, police management of popular protest in South Africa has come under considerable scrutiny. Research undertaken by the Centre for Social Change (CSC) at the University of Johannesburg suggests that an estimated 14 200 community protests took place between 2005 and 2017.4 The rise in protest, located from approximately 2004 onwards, is a phenomena Peter Alexander has labelled a ‘rebellion of the poor’.5 Yet, while findings from the CSC emphasise the importance of distinguishing ‘violent’ from both peaceful and ‘disruptive’ protest (the latter of which involves actions such as blocking a road),6 they also indicate a decline in peaceful protest.

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between 2008 and 2014, and a corresponding increase in violent and disruptive protest.\textsuperscript{7}

Clashes between police and communities, the killing of striking mineworkers by police at Marikana in 2012, and the collision of police and students in the #FeesMustFall protests on South African university campuses in 2015–16,\textsuperscript{8} have shed light, not only on the use of force and repressive action in maintaining public order, but on the continued lack of police legitimacy in the eyes of many South Africans.\textsuperscript{9} It has also brought into sharp relief the complex entanglement of violence and democracy,\textsuperscript{10} and the use of violent protest to challenge democracy’s failures.\textsuperscript{11}

Research into the policing of post-1994 protest has stimulated important dialogue, not only among social scientists and the academic community, but between the SAPS and civilian oversight structures seeking ways to improve democratic policing. These interactions provide important opportunities for holding the SAPS to account and for establishing measures to assess police conduct.\textsuperscript{12} However, beyond the statements of senior officials and SAPS spokespeople, we know a very limited amount about protest from a police perspective. This concerns not so much the official line and statements of the SAPS as an organisation, but the perspectives and experiences of ordinary officers dispatched to manage protest situations.

Through individual interviews with SAPS officers, this article examines protest from a police perspective, interrogating how individual officers charged with protecting communities and preserving law and order perceive the exercise of popular protest. Media reports and scholarly research continue to suggest as problematic the issuing of unjustified instructions of force by commanding officers and inadequate training of SAPS members. At the same time, interviews with officers show that many of them bridge complex dual identities: as law enforcers and preservers of safety and security, on the one hand, and as South African citizens on the other, often subject to the same structural inequalities and social challenges as the communities in which they work. While officers view protest as a democratic right, many are torn between their sympathy for the plight of fellow citizens and their own ascribed duties to enforce law and order and ensure community safety.

**Methodology**

The research draws on semi-structured, open-ended interviews with a total of 56 members of the SAPS: 36 station-based officers, predominantly in visible policing and spread across four stations in the Johannesburg area, and 20 public order police (POP) officers, based at two of Gauteng province’s designated POP units. The combination of station-based and public order officers was chosen due to the latter’s primary responsibility for the policing of public gatherings, and the former’s involvement as the initial and ongoing contact with the communities in which protest occurs. POP are trained specifically to manage protests and gatherings, and are called out to either support visible policing or take over responsibility for the restoration of order in protest-affected areas. Officers from the local station, however, are often first on the scene and remain involved in the monitoring of protest incidents as part of ongoing relationships with the communities they serve.

The majority of SAPS members interviewed (24 out of 56) joined the police service after 1994. Even the longest serving officers of those interviewed had spent at least 70% of their police career as an officer of the post-1994 service. The vast majority (48 of the 56) were non-commissioned officers (in the ranks of Constable, Sergeant and Warrant Officer) and are those who undertake the public-facing
police work on the ground. Of the interviewees, 18 officers were female. The SAPS stations at which interviews were undertaken included two of the stations called upon to assist in policing the #FeesMustFall protests; and two stations where community protests, concerning issues including service provision, housing, and electricity, had taken place in the precinct area in the preceding 24 months.

Following on from existing ethnographic research by Andrew Faull into the critical intersections of policing and personal identity, and by Antony Altbeker into the impact of both local and historical context and human fallibility on the conduct of police work, the article seeks to provide some insight into perspectives on protest among the individual men and women charged with democracy’s protection. It also adds to the critical work undertaken by Monique Marks into the post-apartheid transformation of public order policing in the late 1990s, and by Julia Hornberger into the complex interaction of policing and human rights. It highlights the important social and human dynamics of policing, particularly in a context where high levels of crime, vast structural inequality and popular disillusionment with the fruits of democracy intersect with police-community relations.

**A feature of democracy: protest and rights**

When assessing the management of protest, one of the areas of democratic policing that comes into play is the protection of democratic political life. Drawing on the work of policing scholar David Bayley, David Bruce and Rachel Neild state that: ‘The first area of concern in evaluating democratic policing is whether the police act in a manner which supports democratic political life itself’. As such, they argue that ‘democratic policing requires that police simultaneously stand outside of politics and protect democratic political processes and activities’. Accordingly, policing is not only about safety, security and the task of fighting crime, but about the protection of citizens’ democratic rights and thus the broader system of democracy itself.

Among the officers interviewed for this research, when asked about their understanding of ‘democracy’, there was a predominant association of democracy with ‘rights’. While democracy was seen as positive for South Africa in general – particularly in the pursuit of equality – there was a common discourse among officers that the freedoms granted since 1994 have engendered an abuse, or misuse, of rights. Although longer-term data trends indicate that violent crime, and murder in particular, reached its peak in the 1980s, the comparatively high levels of criminality that continue to plague South Africa were perceived by many officers as a consequence of the abuse of post-1994 freedoms and lack of respect for the law. All of the officers interviewed believed that people had a right to protest and to have their voices heard. Indeed, several officers conveyed that, for South Africans, protest was the only means of getting government to listen. In light of political leadership only addressing communities when they need votes, one officer remarked that protest, ‘is the right thing to do’.

Overall, the vast majority of officers objected not to the right (even the need) for people to protest, but to the frequency with which protest transgressed into violence or breaking the law. Although research into the frequency and nature of protest has urged caution in labelling as ‘violent’ those protests that cause merely disruption, the SAPS may be inclined to conflate transgression of the law with violence. For some, there was a sentiment that the culture of post-1994 freedom had led some people to take ‘democracy’ too far; to
claim their rights without responsibilities. For others, although blocking roads is illegal, as one POP officer remarked, ‘the public are forced to do something extreme. It’s the only way they’ll get noticed’. One officer in the POP described protest as ‘a tool to exercise democracy’. Another referred to protest as ‘part and parcel of the fruits of democracy’.

Of the officers interviewed, 16 referred to community protest that had taken place in the areas in which they live. From this perspective, many officers are not removed from the challenges in the communities they police, a factor we return to below. Whether or not they agreed with protestors’ actions or the means used to get the attention of authorities, many officers were sympathetic to their cause. Interviewees’ association of the quality of democracy with not only political but socio-economic freedom resonates with the trend in protest action toward economic grievances – particularly in contexts of inequality – and their origination in South Africa’s disadvantaged communities. One POP officer, who had joined the police in 1989 after completing national service, and had always been in public order policing, remarked:

If you look at people living in the squatter camps, ah, those people are poor. And I understand why they get unruly and upset and burn down stuff – not that it’s the right thing to do, definitely not. But they see their leaders – whether it’s community leaders, whether it’s the councillors that they vote for, or the Mayor – they see these people stinking rich, driving nice cars, living in nice houses, eating the best food. And that’s why they get upset. And so much corruption is day to day. They see it everywhere and they see that these people are stealing millions and millions of rand, and these people were put into positions by them, as the community. And that money was supposed to go to them for education, for houses, for job creation, and it’s not happening. So, I understand their frustration.

Another POP officer, who joined the SAPS in 2002, also saw protest as emerging from broken promises – from a gap between leadership and people, and a breakdown of trust.

Notably, none of the interviewees reflected on the longer history of protest in South Africa – possibly a reflection of all interviewees having undertaken either all or the vast majority of their policing career since 1994. They were also asked to respond to questions about their perceptions of South Africa’s democracy, and the role of protest in that context. One officer in operational command reflected that democracy was not benefitting the communities in which he works. He recounted that, during the week prior to our interview, the SAPS attended a protest where a memorandum of demands regarding electricity provision was handed over by the community to the council. As he explained it, the protest resulted from unfulfilled promises from the last election. At the same station, another officer reasoned: ‘you put people in power and they don’t listen to you … [They] put people’s hopes up. So, I’m going to hold you accountable and now you change your story!’ For him, openness and transparency were lacking in the relationship between communities and government.

Alongside officers’ positions of sympathy, however, was a firm stance that protest outside the bounds of law was inexcusable. One officer explained: ‘Some of the things, we understand why they protest. But we can’t say to them that it’s okay. When it is violent, the SAPS must act’. In the experience of the majority of interviewees, protest which began as legitimate, almost always ended in criminality and lost its connection with the original cause. An officer based at a station
where protests over housing have become common, explained that, due to unemployment in the area, protests were sometimes used to loot, burn property and damage things. While he understood that people need houses and water and must demand their rights, he felt that some participants came with their own agenda, making it difficult for police to separate out genuine protestors from more opportunistic or criminal elements.\(^33\)

For a few officers, the exercise of protest was combined with the belief that people have ‘too much rope’\(^34\) – an echoing of the view that rights were taken as license for unlimited freedoms. One interviewee who had joined the SAPS as a reservist in 1996, while angry about corruption and with inequality between leadership and people, also believed that the rights granted to South Africans had generated the claiming of rights without responsibility\(^35\) – a sentiment present among other interviewees.

The sense that democracy was taken as license was common among SAPS officers, and in the interviews there was a dominant theme of democracy understood as ‘rights’. One officer who saw protest as a right and driven by legitimate grievances also remarked that when people loot and steal, he saw this as undermining its legitimacy: as people ‘taking advantage’ of the rights granted to them.\(^36\) The perspective that rights were abused in South Africa, however, was not particular to protest, but rather to the perception of a post-1994 culture in which people feel they can do as they wish. That the criminal justice system offers too much protection to those who break the law, was a common sentiment among officers interviewed.\(^37\)

Yet, for the vast majority of interviewees, it was clear that their disagreement was not with the reasons for protest, but the methods employed by protestors, which often involved damaging or burning property. A common view was that, although people have a right to protest, this often infringes on the rights of others. As police, their duty is to ensure that no-one’s rights are infringed. It was clear, in this respect, that the mandate to keep the rights of all intact, informs officers’ responses. In a sense, the views shared by officers seemed a-historical. There was no reflection on the apartheid past in which protest was not only a response to an illegitimate state, but also a political statement and an instrument of struggle. Yet, at the same time, it also reflected an understanding among officers that democracy is a multi-faceted and collective endeavour.

As officer and citizen

Although we can condemn the proportionality of SAPS responses to protest, especially the use of force, it was clear from the interviews conducted for this research that rank and file officers feel very much caught in the middle – balancing their sympathy with community struggles, with the obligation to ensure safety and security. For some, this also required balancing their defence of democracy with a feeling that democracy, understood as unlimited freedom, was being taken too far. Some officers thus seemed to associate democracy with the emergence of a more disorderly (and less punitive) society. Yet, for others, it echoed the position that everyone’s rights must be protected – both protestors and the wider public. A female officer who had worked first in visible policing at a station before joining the POP in 2009, remarked on the complexity of policing protest as both an officer \textit{and} a citizen: ‘As a human being you feel for these people,
because you are a human being also. Whether they’re angry about service delivery, housing or their job … you feel for these people. But at the same time, you have to protect, you have to balance”. 39

Another officer, who had always been based at a station where community protests were not infrequent, commented that protest was the only way to get government to listen: ‘If you don’t protest, they never hear what you’re saying’. 40 She also indicated, however, that she had found the management of protest extremely challenging when children were involved. Three interviewees referred to attending scenes where adults had involved children in protest. 41 This fed into a concern that democracy, itself, was breeding new generational problems in which, not only were freedoms fuelling new social ills such as drugs, but were leading children to believe that violence is the answer. 42 While young people have been at the heart of protest in South Africa’s history – most notably in the student uprisings of 1976 – for some interviewees, there seemed to be a hope for a different future in the current context. One officer, who joined the SAPS in 2009 upon finishing high school, explained:

There was once a protest here where they were looting shops and everything, and people who were doing that, it was your minor kids, you understand? And now having to shoot [rubber bullets] on those kids, it’s minor kids! But eventually it’s your work, you have to do it. Because they were looting the shops, they were robbing people. It was now not a strike whereby they striking for houses. They were damaging properties, schools, taking things from other churches … In the middle of those children there’s always adults. You don’t find it where it’s only kids. Mostly, they see it from adults and then they also gonna do it.43

There was a notable conflation in her statement of strikes and protests – possibly a suggestion that they are both a means of voicing grievances, or alternatively a reflection that protests (as opposed to strikes) are seen by police to veer into illegality. Yet the pull between the need for protest and its social ramifications is also visible in her reflection. This view was also present in officers’ reflections on the #FeesMustFall protests. A sense that certain methods of protest were self-defeating – ‘damaging things that are the future’ 44 – was most notable among the more recent SAPS recruits – perhaps reflective of a younger generation who have not lived through the use of protest for social change, but who also have a different set of expectations about a democratic society.

In bridging the gap between protestors and police, several officers, in both visible and public order policing, explained the level of negotiation that took place when officers arrived at a protest scene, so as to understand the causes and to persuade participants to remain peaceful. An officer in the POP unit explained:

Protestors just see the police, and especially public order police, as a threat – that we’re there to just shoot and chase them away, which is not the case. We have a specific job according to the Constitution … We need to maintain that law and order when it comes to crowds. I suppose most of the times with violent situations or where there’s not peaceful protest, they will obviously see the police as against them. And we’re not against them, we have a job to do.45

It is likely that protest tensions build on existing poor relations between police and communities, and that it may be fuelled by instances in which police respond to protest activity with force. Many officers interviewed felt there was no respect for police from the public, and some
reported receiving derogatory or racist remarks in the communities they serve. Nonetheless, while there was a notable presence of sympathy for protestors’ grievances among front line officers, it does not erase the disproportionate use of force sometimes used on peaceful and violent protestors. Incidents such as the death by police fire of activist, Andries Tatane in 2011, and the use of live ammunition by police at the Tshwane University of Technology in August 2018, which led to the death of student, Katlego Monareng, are indictments on democratic policing. One POP officer explained that the police need to attain a balance between defending democracy and civil freedoms while maintaining law and order. It is possible that some SAPS officers struggle to attain that equilibrium.

The application of the label of ‘violence’ was also used uncritically by officers interviewed. It was evident that there is a presence of opinion that the methods sometimes employed in protest are a misuse, even abuse, of freedoms. Yet it was also clear that many rank and file officers themselves feel let down by government and disillusioned with democracy. This was expressed, first, in their own experience of democracy as citizens of South Africa and, secondly, as officers in which they find themselves the scapegoats of failed delivery.

In the first respect, as citizens, many officers conveyed that democracy had not realised the benefits they’d expected, and that more needed to be done to improve government delivery and accountability. One officer who lives in a neighbouring area of the township in which she works, remarked: ‘Where I stay, things take long to be done. The only time they’re going to do something is maybe when it’s towards the elections … But besides you need to protest and protest and protest, without the protest, ahh, everything is fine. So, I wouldn’t say the government is doing much’. Another officer explained that police themselves are affected by service delivery issues, recounting a case of a colleague who had no water in his area and had been unable to wash. His SAPS colleagues fetched him from home so that he could wash somewhere before going to work: as he explained it, ‘we are all affected’.

Many officers referred to the presence of government corruption and unfulfilled promises as indicative of democratic deficiencies. Reflecting on the recent revelations of ‘state capture’ in South Africa, an officer at the POP unit expressed: ‘We expected more, I expected more … [Democracy] is not what I expected it to be’. His unmet expectations were linked not only to the view that government was falling short, but to a reflection on the quality of democracy.

An important reflection in the experiences of SAPS members is their proximity to the many social and economic challenges facing South Africa. Andrew Faull, in his study of the SAPS, points to challenging socio-economic circumstances from which many officers themselves are recruited and in which they continue to live. Two of the officers I interviewed, both based at stations, said that they had participated in a lawful protest when off-duty over municipal delivery in their own neighbourhood. Another officer stated that he would do so, provided that it followed the legal process, while another expressed that the risk of a protest turning violent, and thus compromising his job as an officer, would prevent him from ever participating.

One POP officer advised that he had been part of meetings in his own community about a planned protest over electricity cut-offs, but had withdrawn when residents wanted to take immediate action without following the required steps. Nevertheless, he believed that protest was a democratic right that he would exercise if he needed to. He explained to me that he
viewed their protest over electricity cut-offs as legitimate, despite the fact that some people had been connecting to the electricity supply illegally, because the community wanted to find a resolution with Eskom to establish legal connections going forward.57

For many SAPS officers, popular protest and its reflection of the deficiencies of democracy spoke to their own experience as citizens of post-1994 South Africa. As members of the SAPS, they are not simply men and women in blue, but also members of communities who face similar social challenges. They also confront the structural inequalities, and scars on the fabric of poorer communities, in their day-to-day work. The same officer who had expressed her internal struggle when facing children in community protests remarked: ‘Eventually, with our government, if you don’t protest they never hear what you’re saying’. Reflecting on struggles that they have as police officers, she laughed quietly, ‘Even for us, I wish we could protest! But we can’t … we can’t basically say anything. You just need to comply. That’s why they say, you comply and complain later’.58

Policing protest: picking up the pieces?

As officers, a sentiment which emerged in the course of these interviews was a sense that the police had become scapegoats of failed delivery. Officers were clear that their role was to protect rights, prevent criminality, ensure safety, and restore order and it was a duty that was not shunned. However, there was also a sense, perhaps taken for granted by those of us outside the SAPS, that the police pick up the pieces of problems which originate elsewhere. Officers in POP and in visible policing described the SAPS as being stuck ‘in the middle’.59

When municipalities and councillors fail to do their jobs, it falls to the SAPS to deal with the consequences.60 Reflecting on protest in his station precinct, one officer explained: ‘the root cause of a community problem is housing. Because of lack of housing, people get angry and turn to violence, and then it becomes a SAPS problem’. For him, political leaders were making empty promises to communities simply to get votes.61 Another officer in POP expressed: ‘As police officers, we are put between a rock and a hard place. You will find that politicians promised them something and then they don’t deliver. But people will come to the police to deal with it’.62 As such, the police would often end up mediating between government and communities.63

The 2016 White Paper on Safety and Security, with its focus on cooperation and collaboration within government in order to delivery safety,64 indeed indicates an important role for the SAPS in facilitating community development. The police, as Marks explains, are the most public face of the state,65 and the building of safer communities by the SAPS would contribute to the White Paper’s objectives. Yet there is also a perception among the SAPS that the government doesn’t support its own officers. As such, they are sent into the fire to fight government battles without the support of the relevant departments. One POP officer, after explaining that, once the reason for a protest was established, the police would contact the municipality or councillor to address the community, added wryly: ‘They’re waiting for somebody to come and lie to them’.66

When protests emerge around identifiable issues such as housing, some officers were aggrieved that the relevant provincial or municipal department didn’t always come to the party, but left the aftermath to police to resolve. At the POP unit, an officer explained that the councillor or mayor is the key bridge in such instances. Yet, as he explained it, there were occasions when these officials refused to meet with the community because they couldn’t meet their demands.67 A visible policing officer recalled a
situation where the councillor and mayor were afraid to address the community and went to the SAPS for protection. In this instance, the officer explained to me, the local councillor wanted to open a case against individuals in the community without sufficient grounds. When refused, the councillor argued with the police, when, as this officer exclaimed, ‘We are supposed to work together!’

The ongoing monitoring of the SAPS’ response to protest is critical for the oversight of human rights commitments. It also assists to ensure the proportionality of police responses and their adherence to standards of democratic policing. The joint efforts of civil society organisations and institutions such as the South African Human Rights Commission, with the cooperation of the SAPS, are examples of positive work on human rights and policing. Scholarly research has also been conducted, which urges a distinction between ‘disruptive’ and ‘violent’ protests in a way that captures their specific dynamics and thus improves our understanding of appropriate responses.

Holding the SAPS to account for their actions when both preventing disorder and policing violence, in this regard, is critical. A separation of institutional challenges and individual perspectives is also important to understanding the deficiencies in democratic policing. Challenges to the proportionality of SAPS responses notwithstanding, it is possible to see how many officers feel they take the fall for the wider state. Here, we are reminded of John Brewer’s warning in 1994 that unless police reform is ‘part of a wider process of social change’, addressing both political and economic problems, then the police would be left to deal with the consequences of structural inequalities. A notable reflection from one officer, who had been part of the ‘old’ police as well as the new, remarked that, under the apartheid regime, they were ‘used as a force’ to control communities. Today, he observed, ‘democracy uses the police to intervene in a situation where promises weren’t delivered’.

Structural conditions should by no means allow the unwarranted use of force by police. They do, however, underline the impact of social, political, and historic contexts on the conduct of democratic policing and the complexities of officers’ roles as guarantors of rights and public safety. The experience of arriving on a scene to manage a problem whose roots lie elsewhere is most certainly compounded by the, often fragile, relations between police and communities and low levels of trust in the SAPS, which continue to be reported in national surveys.

Officers who were part of the pre-1994 police emphasise the changes the SAPS has undergone in terms of organisational culture, personnel and training. For much of this contingent, relations with communities have changed considerably and they see much greater cooperation with, and service to, the public at large. Yet there is also acknowledgement that police relations with communities remain challenging, and are often reflective of South Africa’s vast social and economic disparities. Rank and file officers – dispatched to protest environments to ensure public order and engage with communities – are themselves deployed as instruments to contain popular frustrations. They are individuals who, as members of the SAPS, must have their actions held to account. Yet they are also men and women whose views of protest and policing are seldom heard in discourse on the protest phenomenon.

Conclusion

This article has sought to examine popular protest in South Africa from the perspective of ordinary SAPS officers. It has done so, not to oppose accounts that emphasise the deficiencies of police reform. Indeed, the
development of the SAPS as an organisation whose actions reflect the utmost regard for human rights is critical for a democratic South Africa. Yet the article has also sought to highlight the importance of understanding the views of those officers who populate the SAPS ranks if we are to achieve democratic policing. These men and women witness the incidence of protest and the discontents of democracy in their day-to-day work, and sometimes in their own communities. They constitute a contingent whose views are seldom represented in either SAPS statements or scholarly opinion.

In examining the nature of protest from the perspective of police members, there is evidence of a presence of opinion that South Africa’s culture of protest is part of a wider ‘misuse’ of democracy. For some officers, post-1994 freedoms have been utilised to carry out disruptive and violent action. This perspective was not, however, related to protest alone, but to the broader challenges of preventing crime and establishing a societal culture in which people are respectful of both the police and the rule of law. Much more common, however, was that protest was viewed by officers as an upshot of democracy’s failings and of the very real challenges facing disadvantaged communities. As a result, for those officers called to manage popular unrest, protests often fall on the cusp of illegality and justice.

The article has also shown that, for many officers, there is a dual obligation: to ensure the safety and security of communities and to protect democratic rights and freedoms. On the one hand, they believe that South Africans have been let down – that the democracy established in 1994 has not confronted the very real challenges that plague the communities they police. On the other, they are charged with protecting the rights of all in the context of societal transition, community rupture and social upheaval. The importance of understanding the views of SAPS officers, both sympathetic and critical of protest, are vital if we are to identify the challenges and obstacles to a culture of democratic policing.

Notes
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3 Bayley, Democratising the police abroad; and D Bruce, with G Newham and T Masuku, In the service of the people’s democracy: An assessment of the South African Police Service, Johannesburg: CSVR, 2007.
6 Alexander et al, Frequency and turmoil.
8 The #FeesMustFall movement refers to the protest action that spread across South Africa’s public universities in 2015–2016. Participants engaged in protest action against increases in tuition fees – eventually demanding free tertiary education – as well as solidarity protest with university staff facing job cuts due to outsourcing.
12 Bruce et al, In the service of the people’s democracy.
18 Ibid. Emphasis added.
20 Interview, WO5, 14 August 2018; Interview, WO1, 3 July 2018; Interview, C8, 14 August 2018; and Interview, S6, 17 August 2018; Interview, S12, 20 November 2018.
21 Interview, WO4, 14 August 2018.
22 Alexander et al, Frequency and turmoil.
23 Interview, S12, 20 November 2018.
24 Interview, S8, 4 October 2018.
25 Interview, WO11, 10 October 2018.
27 Interview, Cap2, 4 October 2018.
28 Interview, S8.
29 Interview, Cap5, 23 October 2018. This officer had spent time in both public order and crime prevention.
30 Interview, C12, 16 October 2018.
31 Interview, WO5.
32 Interview, Cap3, 5 October 2018; Interview, WO4; Interview, C8; Interview, Cap2; Interview, WO15, 23 October 2018 – prior to joining the detective branch in 2014, this officer had spent 19 years in visible policing.
33 Interview, WO4.
34 Interview, WO2, 6 July 2018.
35 Interview, S7, 17 August 2018.
36 Interview, WO15.
37 The presence of opinion among the police that criminals have too many rights is also reported elsewhere; see A Faull, Police culture and personal identity in South Africa, *Policing and Society*, 13:3, 2003, https://doi.org/10.1080/10439460308031.
38 Interview, WO4.
39 Interview, C9, 11 October 2018.
40 Interview, C8.
41 Interview, C8; Interview, S6; Interview, WO8, 4 October 2018; Interview, C9.
42 Interview, C9.
43 Interview, C8.
44 Interview, C5, 26 July 2018.
45 Interview, Cap2.
46 Interview, C3, 4 July 2018; Interview, C6, 14 August 2018; Interview, WO4; Interview, WO6, 17 August 2018; Interview, WO8.
47 Interview, Cap3.
48 Interview, C8.
49 Interview, WO4.
50 This is a reference to the current investigation in South Africa into extensive political corruption in the ANC government, in which private interests may have significantly influenced state decision-making for private gain.
51 Interview, WO8.
52 Faull, *Police work and identity*.
53 Interview, WO4; Interview, S4, 27 August 2018.
54 Interview, S8.
55 Interview, WO9, 5 October 2018.
56 Interview, S8.
57 Ibid.
58 Interview, C8.
59 Interview, WO4; Interview, WO11, 10 October 2018; Interview, C19, 20 November 2018.
60 Interview, WO4; Interview, C7, 14 August 2018; Interview, WO12.
61 Interview, C7.
62 Interview, C19.
63 Interview, WO12.
66 Interview, WO11.
67 Interview, WO12.
68 Interview, WO4.
69 The African Police Civilian Oversight Forum and South African Human Rights Commission, for example, host an annual dialogue on human rights and policing in South Africa, bringing together role players, including the SAPS, civil society organisations and the Independent Police Investigative Director.
70 Alexander et al, Frequency and turmoil.
72 Interview, WO5.
By virtue of state sovereignty, states exercise authority over all persons and things within their territories. This includes individuals suspected of committing or charged with crimes in foreign states. International law generally imposes no obligation to surrender individuals suspected of or charged with committing crimes in foreign states. Fugitives may only be returned when an agreement exists between the states concerned. As such, states are increasingly ratifying international treaties mandating cooperation to ensure that individuals responsible for certain categories of crimes are brought to justice. It is worth noting that some of these states lack extradition treaties with each other. For example, South Africa and the United Arab Emirates (UAE) are party to the United Nations Convention Against Corruption (UNCAC) which mandates that they cooperate with each other in ensuring that crimes related to corruption are prosecuted. However, there is no extradition treaty between South Africa and the UAE. In these circumstances, a question arises as to whether they can rely on the UNCAC to extradite individuals for corruption-related crimes. If they can, what is the nature of the international obligation entrenched under the UNCAC? Overall, what is the standing of international treaty clauses on extradition for states without extradition treaties?

On 15 February 2018, the Hawks confirmed that a warrant for the arrest of Ajay Gupta had been issued. Reports circulated that Ajay Gupta has fled South Africa... Subsequently it was suggested that if he has fled to Dubai in the United Arab Emirates [UAE], surrendering him in order to extradite him from Dubai to South Africa to stand trial for corruption would not be possible or feasible – because no bilateral extradition treaty is in force between SA and the UAE. However, that is not correct. Extradition between the UAE and SA may
not only be possible but compulsory for corruption-related matters [...]. In the Gupta case, it is necessary to consider that both South Africa and the UAE have signed and ratified the United Nations Convention Against Corruption [...]. Article 44 of the UN Corruption Convention sets out the rules regarding extraditing those persons who are accused of corruption... If the law of a state party, such as the UAE, makes extradition dependent on the existence of a bilateral treaty and receives a request from another state party, such as South Africa, it may consider the UN Corruption Convention as the legal basis for extradition in respect of corruption type crimes.¹

The above quote from the Daily Maverick may contain speculation, for example on the whereabouts of Ajay Gupta. The matter is still unfolding, which makes it difficult to draw conclusions, but it does illustrate the lack of clarity regarding extradition, particularly where states do not have bilateral treaties with each other, but both are parties to international treaties, which contain provisions on extradition. As the quotation suggests, ‘if the law of a state party… makes extradition dependent on the existence of a bilateral treaty and receives a request from another state party, … it may consider the [UNCAC] as the legal basis for extradition in respect of corruption type crimes.’² While this is indisputable, some issues remain far from clear. In this particular instance, the enforcement of the UNCAC may be faced with two obstacles. The first pertains to the status of the UNCAC in South Africa’s municipal law. There continues to be a debate on whether extradition treaties are self-executing.³ Some constitutions, including South Africa’s, contain provisions on the self-executing nature of some international treaties.⁴

What then is the implication of this debate for South Africa, bearing in mind provisions such as section 231 of the Constitution, which make it explicit that international agreements become law in South Africa when they are ‘enacted into law by national legislation?’ Secondly, although some states are party to international treaties, such as the UNCAC, they have made reservations to the section on extradition. With regards to such states, the prospects of South Africa relying on the UNCAC would appear to ring hollow. In light of these issues, the purpose of this article is to critically analyse the status of provisions on extradition as contained in international treaties in South Africa’s municipal law. This discussion will demonstrate that, despite provisions on self-execution of treaties in South Africa’s Constitution, domestic implementation of extradition provisions in treaties is not simple. To appreciate the argument advanced in this paper, it is necessary to undertake an overview of the notion of extradition and state sovereignty.

General rules on extradition in light of the notion of state sovereignty

Extradition may be defined as the delivery of an accused or convicted person to the state where he is accused of, or has been convicted of, a crime by the state in which he is resident at the time.⁵ The extradition process of South Africa is primarily governed by the Extradition Act 67 of 1962. Under this Act, extradition takes place only by way of an agreement between states.⁶ The Constitutional Court, in the case of The President of the Republic of South Africa and Others v Nello Quagliani and others (Quagliani 2),⁷ has described the notion of extradition as follows: ‘[i]t involves… acts of sovereignty on the part of two States; a request by one State to another … and the delivery of the person requested...⁸ International law allows each state liberty to exercise control on matters within its territory and this includes matters pertaining to extradition. This is rooted in the principle of sovereignty of states.
Kelsen defines state sovereignty as a state’s legal independence from other states. As such, no state has a right to dictate or command any state to take any particular action. Being one of the fundamental principles of international law, sovereignty is considered a crucial principle in the shaping of international law. The notion of sovereignty also finds force in article 2(7) of the UN Charter, which protects matters that are within the domestic jurisdiction of a state from any external interference. This notion comes into play when another state is interested in the person of the accused within the territory of another state. Here the rights or interests of two states converge as they both are interested in the accused – one state’s interests emanate from the accused’s presence, whereas the other’s interests originate from the act of crime committed within its jurisdiction or territory. Usually in the absence of an extradition treaty, states are not obliged to surrender an alleged criminal to a foreign state due to the principle of sovereignty. This has been the norm under international law. It is no wonder then that the court, in Factor v Lanbenheimer, emphasised that no right in international law is recognised in extradition, apart from a treaty. Despite the notion of sovereignty, the development of international law has brought some changes to the absolute sovereignty of states. This is attributed largely to globalisation, which fosters interdependence and cooperation between states. Sovereignty is sometimes seen to be undermined where an extradition treaty is in existence when the state to which the request is being made cannot extradite due to the likelihood of death sentence being executed on the wanted person. This was seen in the case of Tsebe and Another v Minister of Home Affairs and Others, Phale v Minister of Home Affairs and Others where Botswana’s sovereign right to make laws applicable and be able to execute them (sentencing the accused to death) was limited by South Africa’s need to respect its own laws within the territory under its sovereignty (i.e. within the borders of South Africa). In this instance, to evade the death penalty in Botswana, the accused had fled to within the borders of South Africa. South Africa is bound by its Constitution to protect every person within its territory, including protecting them from any inhumane and degrading punishment, which is, inter alia, how the Constitutional Court viewed a death sentence in S v Makwanyane and Another. Other legal factors like the universality of human rights also limit state sovereignty. Different scholars underscore the need for reforms to the concept of sovereignty in line with recent developments. For instance, Fassbender contends that since sovereignty may be considered an umbrella term demonstrating rights and duties afforded to a state by international law at a given time, it is essential that it be highly flexible and adaptive. Ferreira-Snyman adds that sovereignty is neither ‘natural’ nor static. Bodley submits that the fact that states are sovereign does not suggest that international law does not bind them. A state that signs an extradition treaty may be viewed as ceding or voluntarily giving up a portion of its sovereignty. Strydom contends that ‘sovereignty is always legally circumscribed, internally by the law of the state, and externally by the legal claims that other states are entitled to as equal members of the international legal order’. Bearing this in mind, the question that arises in relation to extradition in the absence of treaties may be whether or not a state may be compelled to extradite an alleged criminal. In other words, whether there is a duty to extradite. And if such a duty exists, whether it conflicts with the international principle of sovereignty or not. In an effort to address these complexities the ‘duty to extradite’ is explored below.

**The duty to extradite**

Despite the sovereignty of states, states may not harbour criminals in their territories. International
law requires states to either exercise jurisdiction over the alleged suspects of certain categories of crimes or to extradite them to a state able and willing to prosecute or alternatively to surrender the alleged suspect to an international tribunal with jurisdiction over the suspect and the crime. Hence the existence of the phrase aut dedere aut judicare, which, when translated, literally means ‘either surrender (or deliver) or try (or judge)’. The obligation to prosecute or extradite, unlike universal jurisdiction which is permissive, is mandatory. States are obligated to either prosecute or extradite certain alleged suspects, and their failure to do so results in an internationally wrongful act. The case of Belgium v Senegal (Habre case) illustrates how the duty to prosecute is firmly emphasised in international law and the need to initiate a standard to assess compliance with the duty to prosecute by the custodial state. The case involved the former president of Chad (Hissène Habré) who during his time had established a brutal dictatorship which was responsible for the death of thousands of people. When proceedings were commenced against him, Senegal, where Habre was resident at the time raised the defence that Habre enjoyed immunity and as such could not be prosecuted. Belgium thereafter instituted proceedings against Senegal in that it violated its obligation to prosecute or extradite as pronounced by the Convention against Torture.

The aut dedere aut judicare maxim finds expression in multilateral treaties aimed at promoting or securing international cooperation in law enforcement and the suppression of certain criminal acts. Despite the difference in the phrasings of the obligation in different treaties, the obligation generally requires states to either extradite or prosecute alleged suspects of crimes of international concern in their domestic courts. Bassiouni extends the scope of the obligation to cover international crimes. These are crimes understood to be of international concern to the extent that warrants multilateral treaties to require parties to cooperate in their suppression. An example of a multilateral convention including an aut dedere aut judicare clause is the International Convention for the Protection of All Persons from Enforced Disappearance of 2006. The Rome Statute of the International Criminal Court also places a duty on member states to surrender an alleged offender who is to be prosecuted by the ICC when located in their territories. In light of modern phenomena such as organised crime, money laundering, and terrorism, international judicial cooperation and extradition have become more relevant than ever before. The main purpose of the duty to extradite or prosecute is to ensure prosecution of alleged offenders, so that they do not escape with impunity. The scope is designed in a way that ensures that the perpetrators of war crimes, crimes against humanity, genocide, torture, terrorism affecting the whole international community and transnational crimes do not go unpunished. Generally, when states desire to prosecute an accused who is resident in a foreign jurisdiction at the time, they have recourse to bilateral extradition treaties. However, international treaties now exist which, although not devoted to extradition, contain provisions on extradition. The issue then becomes – what is the status of the extradition provisions in these treaties? Are they self-executing? If so, what happens when some states make reservations to these provisions?

Provisions on extradition in international treaties and self-execution

South Africa has ratified a number of extradition treaties that establish extradition relations with the states concerned. Notable examples of bilateral treaties between South Africa and other states include the extradition treaties between South Africa and Lesotho, between South Africa and Egypt and between South
Africa and Argentina. Multilateral treaties to which South Africa is party include the Southern African Development Community Protocol on Extradition. South Africa is also party to a host of international treaties geared towards deterrence and prosecution of criminal activities and human rights violations. Although these treaties are not specifically devoted to extradition, they contain robust provisions on cooperation and extradition for the effective investigation and prosecution of persons engaged in proscribed conduct. Examples of such treaties are the UNCAC, the United Nations Convention Against Torture, the Hague Convention of 1954 for the Protection of Cultural Property in the event of armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography, the International Convention for the Protection of all Persons from Enforced Disappearance and the United Nations Convention Against Transnational Crimes. For states without extradition treaties, the provisions on extradition in these treaties are a fall-back position. For instance, under article 44(5) of the UNCAC, ‘If a State Party… receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition …’ It has been argued that provisions such as these are self-executing. Nevertheless, what is the status of such provisions in South African law?

The debate on the status of international treaties in South Africa’s municipal law has been ongoing and has attracted both scholarly and jurisprudential attention. Prior to the decision of the case of Quagliani 2 (2009) profound controversy surrounded this issue. One line of argument suggested that some treaties were self-executing and as such not requiring domestic legislation to become part of municipal law. The other line of argument suggested that a legislative enactment was a prerequisite for extradition treaties to become part of South Africa’s national laws. This debate brought section 231 of the Constitution into perspective. This provision is as follows:

International agreements

231. (1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

The issue of whether treaties are self-executing in the context of South Africa in light of section 231(4) above has attracted jurisprudential attention. In the 2008 case of Nello Quagliani v President of the RSA and Steven Mark Van Rooyen & Laura Brown v President of the RSA (Quagliani 1), one of the overarching issues was whether the extradition agreement between the United States of America (USA) and South Africa formed part of municipal law.
In interpreting section 231(4) of the Constitution, the Court disregarded the notion of self-execution, describing it as lacking meaning in South Africa's context. Consequently, in resolving the issue as to whether extradition treaties formed part of municipal law, the judge ruled that

…the plain language of the sub-section requires … enactment into law of every new treaty … that clearly means a new Act of Parliament for every new treaty. I appreciate that it will be a great inconvenience if there has to be a new act passed through Parliament for every international agreement … but that is what the Constitution said and … needs to be done.

Thus, although the Extradition Act, under section 2(3)ter provides for notification of a ratified treaty in the Government Gazette, such notification was deemed not to measure up to the requirement of a legislative enactment envisaged by the Constitution. In handing down this ruling, the Court effectively disregarded the provision of the Extradition Act, which envisioned that subsequent extradition agreements would become law on the basis of notification in the Gazette.

The controversy surrounding the exact meaning of section 231(4) of the Constitution in regard to extradition treaties would, however, be far from being settled in the wake of this judgment. In a subsequent decision in the case of Steven William Goodwin v Director-General Department of Justice and Constitutional Development (Goodwin case), which also involved an extradition agreement between the USA and South Africa, the Court decided quite differently from Quagliani 1. Ebersohn J ruled, inter alia, that ‘the [extradition treaty between South Africa and USA] is a self-executing provision in its totality.’ The crucial difference between these two decisions is that, whereas the latter considered extradition treaties as self-executing, the former deemed them non-self-executing. With these two decisions on record, the exact nature of extradition treaties in South Africa’s law remained contentious. Even scholars had their word on this controversy, leaving the issue even more perplexing. Van der Vyver, for instance, is of the view that the idea of self-execution of treaties is ‘nonsensical’ and ought to be ignored. Van de Vyver is not the first to hold such a view: as far back as 1951, Professor McDougal, in the context of the USA, was of the opinion that ‘this word self-executing is essentially meaningless, and … the quicker we drop it in our vocabulary the better for clarity and understanding.’ Katz contends that, ‘provisions dealing with the incorporation of extradition agreements appear not to satisfy the constitutional requirements concerning incorporation.’ This conclusion was based on Katz’s interpretation of section 2(3)ter of the Extradition Act, which provides that the Minister shall give notice of an agreement in the Gazette. In Katz’s opinion, since the Constitution envisages incorporation of international treaties by way of legislation, notice by the minister in terms of section 2(3)ter rendered the Extradition Act inconsistent with the Constitution.

In 2009, the Constitutional Court pronounced on this controversy, seemingly settling the matter once and for all. In Quagliani 2 the Court underscored the unique nature of extradition. Extradition, the Court noted, ‘straddles the divide between state sovereignty and comity between states and functions at the intersection of domestic law and international law.’ The Court alluded that under the South African law, ‘it is unnecessary to consider the question whether a treaty is self-executing.’ Again, the Court appears to have avoided dealing with the issue, yet scholars like Botha contend, that ‘South Africa has introduced the concept of self-executing treaties into its law. Therefore, like
it or not – and mostly it’s not – it is part of our law and we have to deal with it. In adopting a stance, the Court aligned itself with views of scholars like van de Vyver, who (as noted above) take the extreme view that the notion of self-execution is ‘nonsensical’ in the South African context. Thus, the Court’s point of departure was that extradition treaties required national legislative enactments to be enforceable under South African law. The Court added that, whether or not the Extradition Act fulfilled the requirement of legislative enactment in terms of section 231 of South Africa’s Constitution, could be resolved as follows:

There are two ways in which this question can be answered. The first is to say that the Agreement itself does not become binding in domestic law, but the international obligation the Agreement encapsulates is given effect to by the provisions of the [Extradition] Act. The second approach is that once the Agreement has been entered into as specified in sections 2 and 3 of the [Extradition] Act, it becomes law in South Africa as contemplated by section 231(4) of the Constitution without further legislation by Parliament. It is not necessary for the purposes of this case to decide which of these approaches is correct, for their effect in this case is the same. Either the Agreement has ‘become law’ in South Africa as a result of the prior existence of the Act which constitutes the anticipatory enactment of the Agreement for the purposes of section 231(4) of the Constitution. Or the Agreement has not ‘become law’ in the Republic as contemplated by section 231(4) but the provisions of the Act are all that is required to give domestic effect to the international obligation that the Agreement creates. I conclude, therefore, that on either of the approaches identified above, no further enactment by Parliament is required to make extradition between South Africa and the United States permissible in South African law.

The Constitutional Court, in light of the above ruling, reinforces the view that for an extradition treaty to have legal force at the national level, it has to draw on national legislation, which either gives it effect or anticipates it. National legislation, in this case the Extradition Act, either gives effect to the international obligation under the Extradition Agreement, or, the Extradition Act renders the extradition agreement ‘law.’ Mindful of the caveats pointed out by scholars like Botha on courts’ failure to deal with the self-execution head on, it can be said that the Court in Quagliani 2 does not consider enactment of individual national legislation a requirement for extradition treaties entered into by South Africa to become part of municipal law.

The notion of self-execution of treaties finds its roots in the United States, where there is also a fair share of controversy regarding this notion. In fact, some commentators find it meaningless in terms of its application in the USA. As in South Africa, the USA has tried to give meaning to its application. Notably, despite the recognition of self-execution, there are instances where domestic legislation is required for treaties to have effect. Examples here are where the treaties are vague, when the treaties make it explicit that legislation is required and where the goal that the treaty seeks to advance can only be advanced by a national legislation. Generally, however, no legislation is required to give effect to self-executing treaties. The question then is: what is the implication of this current position for provisions such as article 44(5) of the UNCAC? Notably, amidst the seemingly settled stance in the decision of Quagliani 2 are provisions such as article 44(5) of the UNCAC, which give states the option to consider the UNCAC ‘the legal basis for
extradition in respect of [corruption offences proscribed under the UNCAC].' In effect, in the absence of an extradition agreement, article 44(5) constitutes an Extradition Agreement that provides the basis for imposing on state parties to the UNCAC an international obligation to extradite. Provisions similar to article 44(5) are also evident in other treaties, such as article 16(5) of the United Nations Convention Against Transnational Organised Crime and Protocols thereto. In regard to these provisions, commentators like Bassiouni opine that whereas the other provisions of the UNCAC are not self-executing, article 44, specifically on the issue of extradition, is self-executing. The fact that provisions such as article 44 are self-executing, Bassiouni submits, makes the further enactment of legislation unnecessary for purposes of giving the clause legal force at the national level. Bassiouni’s stance would appear to be contradictory to Van der Vyver, who views it as ‘nonsensical.’ Bassiouni’s argument adds onto the concerns raised by commentators like Botha and Dugard who take the stance that the notion of self-execution as referred to by the Constitution should not be ignored. This leaves the question: what is the status of articles such as 44(5) of the UNCAC in South Africa’s municipal law?

Despite the fact that scholars remain seemingly unsettled on the issue, the self-execution of extradition provisions in international treaties has to be measured against South Africa’s current stance on the notion of self-execution. As to whether or not South Africa would be required to enact national legislation to give effect to article 44 of the UNCAC, the decision of the Constitutional Court in *Quagliani* offers guidance, although it has been the subject of criticism. Botha, for instance, finds the decision ‘profoundly unsatisfactory’. Dugard adds that ‘the Court has given an incomprehensible and confusing interpretation of s 231(4) and failed to throw any light on the meaning of the term “self-executing”.’ He insists that courts ‘must address the meaning to self-executing treaties and not pretend that the proviso to s 231(4) does not exist.’ However, despite such criticism, the decision of the Constitutional Court remains the position under South African law. This means that the Extradition Act would be viewed either as giving effect to the international obligation to extradite under the UNCAC, or, the Extradition Act, in anticipation of article 44, renders article 44 of the UNCAC ‘law’ under South African law. However, that a number of states have made reservations to article 44(5). What then is the implication of this for the international obligation to extradite?

**Extradition provisions in international treaties and reservations**

As extradition agreements between states are created by treaties, they are governed by treaty law; the Vienna Convention on the Law of Treaties (VCLT). In terms of the ‘*Pact sur servanda*’ rule, as entrenched under the Vienna Convention, South Africa is bound by all treaties to which it is party and is bound to perform such a treaty in good faith. Article 27, which bars states from invoking provisions of its domestic laws as a justification for failure to perform an extradition treaty also bears mention here. In principle, parties to international treaties are bound by the obligations contained in those treaties. It is also important to note that one of the galvanizing factors for the adoption of the UNCAC was the commitment to facilitate cooperation amongst states in the prosecution of corruption-related crimes. The need for member states to the UNCAC to accord due regard to extradition is equally borne out by the wording of the Preamble to this treaty. That said, however, international obligations may be subject to some limitations, particularly where states make reservations to certain provisions of a treaty. It is explicit in article 44(5) of the UNCAC (as is article 16(5) of the United Nations
Convention Against Transnational Organised Crime), that making the UNCAC the basis for extradition is optional. Notably, article 44(5) provides that a state party ‘may consider’ the UNCAC the basis for extradition. Emphasis is to be placed on the term ‘may’, which suggests that the provision is discretionary and as such, states parties have the option of not making the UNCAC the basis for extradition. The UNCAC is unambiguous about the optional nature of article 44(5), going as far as to provide under its article 44(6) that:

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) … inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition… and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek … to conclude treaties on extradition with other States Parties … to implement this article.

It is worthwhile noting that different states have exercised different options in regard to article 44(6). Some have considered the UNCAC the basis for extradition in the absence of an extradition agreement, while others have opted out. South Africa has invoked article 44(6)(a) and this has had the effect of making the UNCAC the basis for extradition with regard to crimes envisaged in the UNCAC. This option is not unique to South Africa. Other state parties to the UNCAC have invoked a similar approach. Examples include Canada, the United States, Chile, Guatemala, Kuwait, Montenegro, Paraguay, Poland, Russia and Uruguay. Examples of states which have exercised the option not to make the UNCAC the basis for extradition include Bolivia, Cuba, El Salvador, Pakistan and Seychelles. Bolivia submits that its legal basis for extradition is existing extradition treaties as opposed to the UNCAC. Mauritius takes the view that ‘[t]he Extradition Act [of Mauritius] does not at present allow Mauritius to take the Convention as the legal basis for co-operation on extradition with other States Parties to the Convention.’ Similar reservations are evident in respect of the United Nations Convention Against Transnational Organised Crime. So what does this mean for South Africa as a party to the UNCAC?

It is, of course, indisputable that in the absence of extradition agreements between states, provisions such as article 44 of the UNCAC constitute a basis for imposing international obligations on states to extradite. But does that international obligation bind all parties to the UNCAC? To answer this, recourse is made to the VCLT, and particularly the section on reservations. Article 19 of the VCLT makes provision for reservations unless prohibited. States can therefore opt out of certain obligations under a treaty using this mechanism. In terms of article 21 of the VCLT, reservations made in terms of Article 19 have the effect of modifying the obligations of the reserving state in its relations with other states parties to the treaty. The Convention, however, makes it explicit that ‘the reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.’ When states, such as Bolivia and Mauritius, make reservations to article 44(5), it follows logically that the article has no legal obligations on them on extradition matters. Therefore, without an extradition treaty between Bolivia and South Africa, no obligation to extradite exists between these two states. This, however, as article 21 of the VCLT puts it, does not ‘modify the provisions’ of the UNCAC for other parties, which consider article 44(5) as the basis for extradition. Therefore, the fact that states are party to the same international treaty that makes
provision for extradition does not guarantee the existence of an international obligation to extradite. This position may be distinguished from the extradition provision under the Draft Comprehensive Convention Against International Terrorism.\textsuperscript{82} Although this instrument has not been adopted, it is particularly instructive as it puts the extradition provision under treaties, such as the UNCAC, into proper perspective. Article 18 of this Draft Convention generally makes provision for extradition. State parties have no liberty to make reservations to provisions on extradition in terms of draft article 18(5). As such all parties to the Convention Against International Terrorism, if adopted, would be placed under the obligation to extradite.

Overall, the argument made in this section does not seek to challenge the basis for extradition clauses in international treaties to impose obligations on states. It is rather that there may be limitations that come with such provisions. Precisely put, the discussion only asks us not to treat extradition clauses in international treaties as a guarantee for extradition. Where possible, states that make extradition dependent on international agreements must remain alive to the need for bilateral extradition treaties. It may indeed be impracticable to enter into extradition agreements with individual states. But the limitations surrounding extradition clauses in international treaties are real and constitute reason for not rendering extradition agreements between individual states less important.

\textbf{Conclusion}

Extradition is generally secured by entering into extradition treaties by states. Some international treaties containing clauses on extradition, though not extradition treaties per se, may also be relied on to have alleged offenders or fugitives surrendered in an event where the concerned states do not have extradition treaties with each other. This however, may be subject to certain limitations as discussed in the sections above. The fact that two states are party to a treaty, which has provisions on extradition, does not automatically establish an obligation to extradite.

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\textbf{Notes}

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2 Ibid.
7 President of the Republic of South Africa v Quagliani 2009 2 SA 466 (CC) (Quagliani 2).
8 Ibid, para 1.

Factor v Lanheimen 290 US 276, 287.


2012 (1) BCLR 77 (GSJ).

S v Makwanyane 1995 2 SACR 1 – see particularly the judgment of Ackerman J, para 152 ff.


Examples of these being, corruption, organised crimes, crimes against humanity and torture.

C Mitchell, Aut dedere, aut judicare: The extradite or prosecute clause in international law, Genève: Graduate Institute Publications, 2009.

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Article 7 of the UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, UNT, vol. 1465, 85, https://www.refworld.org/docid/3ae6b3a94.html (accessed 7 May 2019).


Ibid, 5.

These are war crimes, crimes against humanity, genocide and the crime of aggression.

Bassiouni and Wise, Aut dedere aut judicare: The duty to extradite or prosecute in international law.


Strydom et al, International law.


Article 8(2), UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.


See for example Ngolele, The content of the doctrine of self-execution as enforcement mechanism, 153; Olivier, Exploring the doctrine of self-execution as enforcement mechanism, 99.


Nello Quagliani v President of the RSA and 6 Others Case 28214/06 TPD 18.4.2008; and Steven Mark Van Rooyen & Laura Brown v President of the RSA and 7 Others Case 959/04 TPD 18.4.2008 (unreported) (Quagliani I). See detailed decision of the court for the facts and circumstances leading to this decision.

Ibid, 12–18.

Ibid, 18.

Section 2(3)ter of the Extradition Act (Act 67 of 1962) provides that ‘The Minister shall as soon as practicable after Parliament has agreed to the ratification of, or accession to, or incorporation of extradition agreements, give notice thereof in the Gazette.’

Section 231(4) of the Constitution of South Africa of 1996.

Steven William Goodwin v Director-General Dept of Justice and Constitutional Development Case 21142/08 TPD 23.6.2008 (unreported).


Van der Vyver, Universal jurisdiction in international criminal law, 130.

Cited in J Dugard, International law: A South African perspective, Cape Town: Juta, 2012, 56. See also USA Supreme Court of Appeal Decision in Medelin v Texas 128
S Ct 1346 (2008); 170 L Ed 2d 190 (2008) in which this position was affirmed.

52 Katz, The incorporation of extradition agreements, 311.
53 Ibid.
54 Ibid.
55 Quagliani 2, 1.
56 Ibid, 37.
58 Quagliani 2, 37.
59 Quagliani 2, 46 and 47.
60 Dugard, 56.
64 Ibid.
65 Van der Vyver, Universal jurisdiction in international criminal law, 130.
69 Ibid.
72 Ibid, Article 27.
73 See generally the UNCAC.
74 UNCAC, Preamble.
76 Ibid.
77 Ibid.
78 Ibid.
79 Ibid.
80 Whereas states such as Latvia, Russia, Armenia and Bahamas consider the United Nations Convention Against Transnational Organised Crime as the basis for extradition, others such as Vietnam have opted out. On this, see United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12&chapter=18&lang=en (accessed 28 March 2018).
Book review

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Marie Rosenkrantz Lindegaard, Surviving gangs, violence and racism in Cape Town: Ghetto Chameleons, Abingdon: Routledge Advances in Ethnography, 2017
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ISBN: 978-0-203-57895-7 (ebk)

Every so often a different perspective on current topics emerges on the gang research scene that changes the orientation of scholars for decades to come. A new way of seeing and understanding the current gang discourse emerges in the work of intrepid researcher, Marie Rosenkrantz Lindegaard’s book, Surviving Gangs, Violence and Racism in Cape Town: Ghetto Chameleons. The book answers questions regarding what young men in gangs on the Cape Flats do, how they associate, and how they use mobility to move and change their cultural repertoires in gang and suburban spaces.

Ghetto chameleons is structured into 14 chapters divided into four parts over 289 pages and is a deep dive into longitudinal ethnography with 47 young men (of which four were given in-depth attention) over a period of 12 years. In her own words, the book is an attempt to answer a challenge posed by her supervisor, Andrew D Spiegel, who claimed that white people cannot do research in townships. It is clear that Lindegaard, through the book, answered that challenge admirably well. Throughout the book, Lindegaard adds layers to the initial ethnographies of the four men she studies and analyses, drawing the reader into the world she describes.

The scholarship on gangs and violence has been thick and predictable with ethnographic accounts of gangs and gangsters. The most recent book, Gang Town by Don Pinnock¹ took a new approach to biological criminological understandings of gang violence with an analysis of epigenetics as a means to explain the extreme violence of some gang members. Van der Spuy² questioned where his analysis leaves us:

The question is what, if anything, makes areas on the Cape Flats, as the title Gang Town implies, so extraordinarily gang-ridden and subject to a kind of violence that goes beyond run-of-the-mill “altercations”, so well explicated in a book like Homicide? Pinnock’s answers – a kind of culture of violence, availability of

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firearms, widespread drug usage and low quality unsuitable school education – in a sense explain everything, but leave us wondering precisely what the key variables are.

South African scholarship on gangs has been varied and nuanced. Some scholars have focused on structural analyses of gangs,3 while others4 have contested the early explanations provided by those who support the structuralist analysis of the Cape Flats gang problems. Kynoch5 explores links with Cape Flats gangs in other parts of the country as well as their political connections. He is supported in this work by Glaser6 who discovers the political role of the ‘Hazels’ and the ‘Dirty Dozen’ gangs in Soweto in the early 1968–1976 period.

But it is the work of Jonny Steinberg7 and later Steffen Jensen8 that places the prison gangs and street gangs on the Cape Flats squarely in focus by examining their genesis, development and relationships through using ethnographic research approaches to illuminate the characters and methods of these gangs.

Internationally, Jensen and Rodgers9 question the roles allocated to the gangs by police officers in Nicaragua and South Africa, and provide us with an opportunity to consider policing approaches to gangs. Several other studies10 make the same point about police approaches being heavy-handed and having the unintended effect of providing the glue for social solidarity within gangs. But Lindegaard shifts our attention away from what the police do. Her book focusses instead on what young men do, post-apartheid, in predominantly Black and Coloured areas of the Cape Flats and how they see themselves.

**Unpacking Chameleons in the Ghetto**

Lindegaard’s work finds its own expression in view of the depth of the characters she follows with her ethnographic approach. She employs a colourful methodology, including handing her participants cameras to record their daily lives (and that of others) in the ghetto, and skilfully uses these images in her book.

The use of metaphors – such as chameleons for young people who code-switch depending on where they find themselves and how they use mobility to traverse their surroundings – is effective. It provides a new way of seeing what is hidden in plain sight when it comes to gangs and violence and how young people make sense of what they are up against. As Lindegaard explains:11

This book is about young men I got to know during my ethnographic fieldwork in Cape Town who behave like chameleons. They move between Black and Coloured townships and White suburbs on a daily basis and change their ‘colour’ to fit in and be safe.

Lindegaard’s chameleons are born post-apartheid. There are a number of other metaphors that are used by young people to label other layers of young people who don’t neatly fit in. We are introduced to coconuts, gangsters and chameleons, all metaphors for young people surviving on the Cape Flats through their own creative mobility. These metaphors are chosen by the young men to describe themselves which Lindegaard appropriates for the purposes of the book. Lindegaard breaks down the social meanings of these terms for her reader. Coconuts are young people who attend former ‘Model C’ schools, speak well, are unfamiliar with the slang of the townships in isiXhosa and are not streetwise. Gangsters are young people who are increasingly in conflict with the law and hang out with people who are involved with violence and crime. Chameleons attend the (mainly white) former ‘Model C’ schools outside the community and become chameleons upon re-entering the community on the Cape Flats.
Mobility, suburbs and ghettoes

A thoroughgoing theme in the study is the examination of mobility. The author introduces us to concepts of residential and transitory mobility by emphasising how young men use their mobility in dealing with the associated risks of living on the Cape Flats and moving between schools in white suburbs and ghettoes.

Residential mobility produces and increases social disorganisation, the risks of crime and consequently, increases in crime. Transitory mobility involves leaving the townships and participating in activities in the suburbs, such as schooling and leisure. In her thick description of residential mobility, Lindegaard offers an analysis of class and race-based segregation between townships, ghettoes and white suburbs through the lives of her subjects which she follows. She also sets out the consequences of this mobility for her coconuts, gangsters and chameleons.

Talking cultural repertoires

In Chapter three, a distinction is made between gang, township suburban and flexible cultural repertoires. This discussion is an important contribution to the literature especially on gang studies because of the way it adds to our understanding of street culture and individual choices, cultures and interactions with others. Lindegaard draws on the work of Swidler in defining cultural repertoires as a toolkit that includes a range of actions, habits, skills and styles. Lindegaard’s gang repertoires refer to young men who initiate conflict and are involved in or affiliated with gangs. Involvement is specific and points to a range of repertoires with respect to designer clothing, language, music and style. All of these indicators firmly establish the gang cultural repertoires of the youth she describes.

Township repertoires relate to young people who do not disregard conflict and fight back, who are streetwise, but are not necessarily involved in gangs. This is a very useful insight, which is often missed by scholars and shows the very fine distinction of young people on the periphery of the gang, but who are sometimes labelled as gangsters. In Lindegaard’s study these youngsters rarely left the townships.

Suburban repertoires see young men escape and run away from the conflict, like one of her subjects who is not considered streetwise. These individuals often speak English (which they acquired in former ‘Model C’ schools) in the townships and wear certain types of clothes (often including brightly coloured clothes). They carry books, listen to classical music, carry musical instruments, and are marked as privileged and studious.

Flexible cultural repertoires see young men avoid conflict and confrontation. They also avoid being seen as either streetwise or not. This repertoire, according to Lindegaard is characterised by a shifting between, and adapting to, both suburban and township repertoire.

Chapter four invites the reader to engage with a real-life event of one of the research subjects who becomes involved in violence and a fight. For any ethnographic researcher the tantalising descriptions of the violent event allows for a reflexive stance and deep analytical thrust into the ‘relationships between mobility and cultural repertoires’ as presented by Lindegaard.

Drawing on the work of Bourdieu, Lindegaard provides an analytical tool for understanding how young men position themselves and are influenced by horizons of time and space, with respect to townships and suburbs. In observing and theorising the conflicts of the young men in her study, Lindegaard engages the structure and agency debate so aptly delineated by Bourdieu.

Outsiders researching locals? Methods and ethics

Chapters five to seven provide us with the field observations methodology used to
conduct the research and addresses the risks in the research process. The strength of the methodology lies in the large sample of young men that Lindegaard followed, and her ability to undertake multiple ethnographies of individual young people. She conducted 130 interviews with the 47 participants, including some inside prison, overcoming numerous challenges, like language. Much happened to the participants, which the author includes in her analysis and she shows how things change over the extended period of her study: some of her participants were incarcerated, while others moved out of the townships.

One of the most interesting sections in the book is the discussion on her position as a white foreign female who was an outsider, researching in black and coloured townships. Her persuasively reflexive stance shows an awareness of her limitations, but she acknowledges that at the same time her outsider identity provided her with the type of access that local researchers could not expect to have. Conversely, it should also be noted that there are limitations with what locals will share with outsiders, and locals can also provide outsiders with information that leads to incorrect assumptions. Lindegaard engages this complexity, and this section of the book provides an interesting exposition of how outsiders (particularly the foreign outsiders) process and analyse the information that their participants give them.

Lindegaard’s argument here is persuasive and she answers the challenges posed by her supervisor. She also provides readers with a nuanced discussion of the ethical dilemmas that she faced as a researcher in this environment, for example, knowing about or witnessing violence that participants perpetrate. This is something that Marks also discovered in her research on public order police, as well as Venkatesh who became a gang leader for a day. Lindegaard chose not to report the violence she witnessed as it would have affected her ability to continue with her research.

The interesting thing about Lindegaard’s book is that it appears to be a straightforward ethnographic account of what she calls chameleons, coconuts and gangsters. However, as you continue reading, the book hones in on the lives of four of the participants. As you dive deeper the reader becomes accustomed to names, lives and associations of some of the participants. The simplicity of these observations skilfully provides the foundation for Lindegaard’s analysis, which becomes more complex and nuanced as she presents patterns that emerge from the research. For example, in Chapter eight of the book, she shows how the young people are positioned as racist, coconuts, chameleons and gangsters. As the characters start to take on a life of their own, which any effective ethnographic study does, Lindegaard manages to draw her reader into their lives and, in so doing, entices us into the next few chapters.

Dispositions, complexities and ambiguities

In Chapters nine and ten Lindegaard focuses in on the stories of four young men. She presents them as (in their own words) ‘real persons’ (even though she does not use their real names), and readers can identify with these young men growing up in the townships, and deploying the cultural repertoires she describes. We first meet Gerritjan whose disposition is that of a ‘Jock, friend and racist’. The second case is Lethu, who is sensitive, soft and well-off, but is socially excluded, in another league and a coconut. The third presents Ubeid who is effeminate, determined and successful, but who is also a gangster, provider and a chameleon. The last young man, Sipho, is popular, lonely and hustles, but presents as a streetwise humble gangster.
In her analysis, Lindegaard shows how the participants position themselves through a process of intense negotiations and ambiguities, and how doing so allows these young men the opportunity to claim their cultural repertoire in their various settings. The author draws on Erving Goffman’s concept of the presentation of the self when interviewing the young men in her study. Goffman highlights how events beyond the control of the individual in showing himself may embarrass or make him ashamed, and in so doing, bring his presentation of the self into question and leaves others feeling hostile. He argues:

It makes everyone present feeling ill at ease, nonplussed, out of countenance, out of, embarrassed, experiencing the kind of anomy that is generated when the minute social systems of face-to-face interactions breaks down.

Each of the characters that Lindegaard portrays exhibits this crisis of presentation of self and she draws strongly on Goffman in understanding how these moments play out.

Chapter ten sketches the horizons that the four young men see for themselves, and how they understand their motivations in choosing certain actions. Interestingly, Lindegaard here chooses to link how the young men position themselves to both their structural location (after apartheid) and the normative groups with which they associate. She shows how the work echoes the findings of Horowitz and Schwartz who show how gangsters choose to blend into their environments and behave in respectful ways in some spaces (for example, at a cotillion), but who behave quite differently in the same space when insulted. According to Lindegaard, they argue that there is something inherently ambiguous in the rules governing the behaviour of groups of young men:

In this context, normative ambiguity refers to the absence of higher-order rules for reconciling contradictions between conflicting codes for conduct in situations where one or both parties feel that ill-mannered behaviour of others is a sign of calculated disrespect.

The reader is presented with these complexities in the thick description of places within which the four young men travel and inhabit. We see how they move outside their segregated places in the ghettos and townships and enter the suburbs for education, employment, crime and social interaction. In the process of what Lindegaard describes as this ‘transitory mobility,’ the young men change their social positioning to fit the environments they move into and engage.

This finding is insightful, as previous literature on gangs in South Africa has not gone into such descriptive detail of its ethnographic research subjects. Through this data, Lindegaard shows how mobility has different effects on the positioning of both Coloured and Black participants and the harassment they experience in both the suburb and ghetto to ensure that in both spaces they fit in. In exposing this mobility, Lindegaard emphasises that the young men are not what they position themselves to be.

The benefit of Lindegaard’s longitudinal study is that the reader is introduced (in Chapter twelve) to the changes that the young men undergo across the duration of the study. The length of time it took for the researcher to return to Cape Town – after the initial introduction in 2005, follow ups in 2006 and 2008, and return in 2017 – meant that things had shifted for the four participants. Lindegaard had negotiated the terms of writing about the four young men, allowing them to see the text and comment on it and to interpret their responses. This type of ethnographic methodology brings the researcher closer to the researched and it is unsurprising that it brought out the emotions
and anxieties that she addresses in this chapter. After she returns in November 2008 and checks in on her participants, she describes how interacting with them requires of her to walk a tight balancing routine as much has changed for the participants.

In this chapter then, we see the racist performing suburban repertoires, the coconut moving from suburban to flexible repertoires, the continuous flexible performances of the ghetto chameleon and the fatal end of the gangster performance. In addition, she documents the passages of other participants (she interviewed ten out of fifteen participants in 2006 and fourteen out of fifteen participants responded to her text in her book), which is very useful.

Chapter thirteen draws consequences for the research agenda and future research, with particular emphasis on mobility and cultural repertoires, racism, gangs and flexible repertoires. Lindegaard makes a call for research on development of a theory on mobility and crime; on violence as positioning and a theory of gangsterism as performances. The concluding chapter pulls together the threads set out in the first three chapters by following the current lives of the participants going into adulthood, and mapping how they have changed their lives – in some cases continuing their education, ceasing racist behaviour, and moving from being gangsters to store managers.

Conclusion

Ethnographies are never easy to accomplish successfully because they involve following real people with real lives. Doing this kind of research drains the emotions of the researcher and requires patience when trying to make sense of events as they unfold, to discern what your subjects are really saying and to stay sane in the process. In a longitudinal research process like the one that Lindegaard accomplished, it is much more difficult to keep track of your participants, and given the size of her sample this was enormously complex.

The ethnographic approach of Lindegaard brings a fresh perspective to what scholars have studied for decades on the Cape Flats. The book allows us to see that gangsters are much more than just gangsters: not homogeneous, mobile, and with perspectives about themselves that they use flexibly, depending on their environment. The study exposes a link between crime and mobility that requires much more engagement. Much can be said about the four principal characters who appear in her research, but in the final analysis, these characters are young people with whom we can all identify with and know. Lindegaard has, through this book, called for a more general theory of mobility and crime, which is well overdue.

This book is required reading for any scholar addressing this theory and exploring the links between gangs, cultural repertoires and mobility.

Notes

1 D Pinnock, Gang Town, Cape Town: Tafelberg, 2016.
5 G Kynoch, From the Ninevites to the Hard Living Gang: Township gangsters and urban violence in twentieth-century


8 S Jensen, Gangs, politics and dignity in Cape Town.


19 Ibid.
SACQ author guidelines

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Articles in Issue 64 confront questions about what proper governance and accountability mean in the criminal justice environment, and how research, law and policy reform may engendering change. Gareth Newham and Brian Rappert reflect on the ways that operations-focused research collaborations between police and external bodies can shape policing in practice. Lukas Muntingh looks into police oversight, in particular the powers and performance of the office of the Western Cape Police Ombudsman. Shifting focus to the public’s pushback against inadequate governance, Lizette Lancaster presents data from the Institute for Security Studies’ Protest and Public Violence Monitor that shows how wide-ranging and geographically dispersed protest grievances are. Fatima Osman looks at the latest version of the Traditional Courts Bill and asks whether it sufficiently addresses the fundamental objections to previous versions. Bill Dixon reviews two books: Andrew Faull’s Police work and identity: a South African ethnography; and Sindiso Mnisi Weeks’s Access to justice and human security: cultural contradictions in rural South Africa. In ‘On the Record’ Guy Lamb and Ncedo Mngqibisa discuss the in-the-field realities doing of doing a randomised household survey in South Africa.

Articles in Issue 63 illustrate or address change, justice, representation and response in criminal justice in South Africa and beyond. Guy Lamb and Ntemi Nimilwa Kilekamajenga ask how systems and agencies learn from periods of crisis and reform. Lamb focuses on the impact of massacres by the police on policing reform, and Kilekamajenga focuses on the options for reform in the overburdened and overcrowded Tanzanian criminal justice and prison systems. Peter Alexander et al. examine the frequency and turmoil of community protests between 2005 and 2017, and challenge us to reconsider the ways in which protest is framed as violent, disruptive and disorderly, and how we measure and represent it in the media and elsewhere. Jameelah Omar provides a case note on the Social Justice Coalition’s successful constitutional challenge of provisions of the Regulation of Gatherings Act. In ‘On the Record’ two scholar/activists, Nick Simpson and Vivienne Mentor-Lalu, discuss the water crisis and its impact on questions of vulnerability, risk and security.
Previous issues

Issue 66 is a special edition on decolonising prisons guest edited by Nontsasa Nako from the University of Johannesburg. In this issue, Thato Masiangako examines the frames of rationalisation employed by migrants and student and community activists, who were victims of police violence, showing how enduring cultural, social and institutional histories shape popular perceptions and may account for ‘the enduring nature of prison’, despite their experiences of unfair detention. Palesa Madi and Lubabalo Mabhenxa argue that the insistence on verification of address in bail hearings makes it difficult for the poor and marginalised to be released on bail in South Africa. Untalimile Crystal Mokoena and Emma Charlene Lubasa examine bail, or verification of address as a condition for granting bail, and show that remand conditions, as they stand, create unequal access to justice. Anthony Kaziboni uncovers the crude manipulation of social problems and abuses at the Lindela Repatriation Centre by following media reports on Lindela over a period of 18 years. Judge Jody Kollapen suggests in ‘On the Record’, that decolonisation is a broad concept, and the high rate of crime places undue focus on crime and punishment rather than on the various factors that produce social malaise.

In Issue 65 David Bruce analyses statements from the injured and arrested strikers taken by the Independent Police Investigative Directorate in the five days immediately after the Scene 2 massacre at Markkana. Robert Doya Nanima looks at whether the latest version of the proposed Traditional Courts Bill provides a satisfactory mechanism to evaluate evidence in criminal cases before it is admitted. Mahlomogolo Thobane and Johan Prinsloo discuss ‘bank associated robberies’ – robberies (or attempted robberies) of cash that are committed against a bank client while en route to or from a bank or ATM. Nicole van Zyl considers whether evidence of sexual grooming influences the decisions of South African courts when passing sentence on offenders who have been found guilty of sexual assault or rape of children. Elrena van der Spuy reviews Anneliese Burgess’s book, Heist! South Africa’s cash-in-transit epidemic uncovered, published in 2018 by Penguin Random House. ‘On the Record’ presents a conversation between Nicolette Naylor (Director, Ford Foundation for Southern Africa) and Sibongile Ndashe (Executive Director: The Initiative for Strategic Litigation in Africa) on sexual harassment and the law.