

South African CRIME QUARTERLY

No. 56 | June 2016



- > Social barriers to the effective policing of domestic violence
- > Conditions in South African women's prisons
- > Measuring socioeconomic characteristics of high murder areas
- > Victim participation in the Zimbabwe criminal justice system
- > On the Record... with Phumeza Mlungwana

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Cover

A female inmate participates in a play at Sun City prison during Women's Day celebrations. The purpose of the function was to prepare female offenders for their release in August 2014.

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Editorial policy

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

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

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 (SACQ) 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.

Editorial

New partnerships in publishing and politics

<http://dx.doi.org/10.17159/2413-3108/2016/v0n56a1288>

We are very pleased to announce that the Institute for Security Studies (ISS) has partnered with the University of Cape Town (UCT) as co-custodians of the *South African Crime Quarterly* (SACQ). We believe that the UCT Centre of Criminology's commitment to advancing policy-relevant research and analysis on public safety, criminal justice and evolving forms of crime in South Africa, and the global South more broadly, complements the SACQ's objective of contributing balance and objectivity to the discourse on human security in Africa. Both institutions are committed to ensuring that SACQ remains an accessible source of up-to-date research and analysis that is policy relevant.

Since January this year we (SACQ editor and ISS senior research fellow, Chandré Gould, and UCT senior researcher and SACQ editor, Andrew Faull) have been working together to prepare for this moment. Our close collaboration will carry through to the end of the year, at which point the bulk of editorial responsibilities will shift to Andrew and UCT.

It has been a rocky first six months of 2016 for South Africa since December 2015, when President Jacob Zuma announced the surprise dismissal of the country's market-trusted finance minister, Nhlanhla Nene, and replaced him with a relatively unknown member of Parliament, Des van Rooyen. Overnight the country's stocks and bonds lost half a trillion rand in value. Investors and citizens feared the move was an attempt by the president to increase his access to the country's treasury, fears that were reinforced when the Deputy Minister of Finance, Mcebisi Jonas, and former ANC MP Vytjie Mentor publicly claimed they had been offered ministerial positions by the powerful Gupta family, who are known to be close to the president. The turbulence of what became known as 'Nenegate' was somewhat steadied when Zuma, under pressure from multiple fronts, retracted his decision and appointed former finance minister, Pravin Gordhan, to replace Van Rooyen. Yet, as we write, Gordhan's future hangs in the balance. He is under investigation by the Hawks for allegedly authorising a unit of the South African Revenue Service to spy on politicians.

In February, the Constitutional Court found that Zuma had failed to uphold and respect the Constitution by ignoring the public protector's 2014 finding that he unduly benefitted from tax-funded upgrades to his private residence. Zuma and the ANC had previously worked hard to deflect criticism and deny accountability for the matter. Despite the court's finding, at the time of writing the South African public was no closer to knowing whether the president would indeed capitulate to the court's injunction and 'pay back the money'.

In April, the president was in the public spotlight again when a full bench of the North Gauteng High Court ruled that the 2009 decision by former National Prosecuting Authority (NPA) head Mokotedi Mpshe not to prosecute Zuma for corruption was irrational, and should be revisited. However, in May, National Director of Public Prosecutions Shaun Abrahams announced that the NPA would appeal the court's decision, despite legal commentators hinting that the appeal had little chance of success. Thus, in this case too, resolution or closure appears to be a long way off.

These high-profile events, along with disruptions and conflict in Parliament, have served to create a political landscape that is both uncertain and troubling ahead of the local government elections planned for August

this year. Political uncertainty has impacted significantly on South Africa's economic growth forecasts, and for working class and unemployed South Africans the immediate future seems bleak. Moreover, criminal justice institutions – the Hawks and the NPA in particular – are deeply embroiled in these political machinations, raising questions about their ability to serve the interests of citizens without political interference.

On a far more positive note, the acting head of the South African Police Service (SAPS), career policeman Lieutenant-General Khomotso KJ Phahlane, has brought a semblance of stability to the SAPS and opened the door to increased collaboration with civil society to address the challenges facing policing. The SAPS also recently established a research unit, hinting at a new appreciation for the kinds of knowledge we aim to promote through SACQ.

In this issue of SACQ we revisit some of the key intersections of daily crime, violence and justice in South Africa's most precarious localities and among its most vulnerable groups. We begin with an article by Heidi Mogstad, Dominique Dryding and Olivia Fiorotto that explores the challenges and limitations of policing domestic violence in Khayelitsha. The article is based on data gathered through focus groups with men and women, conducted during the Khayelitsha Commission of Inquiry. Perhaps one of the most significant contributions of this article is to show that women who hold status in their community are reluctant to be identified as victims, and thus are disinclined to report intimate partner violence, because this undermines their standing and status. This calls into question the continued framing of women as victims in public discourse and policy.

Continuing the focus on gender, Carolyn Agboola's article reports on interviews with women who had been released from correctional facilities. She documents their claims of poor health care, sanitation, food, access to education and overcrowding in the female sections of the facilities in which they were incarcerated.

Lizette Lancaster and Ellen Kamman's article explores the hypothesis that risk of murder is associated with particular demographic and contextual characteristics. Police crime data, as currently presented, make it very difficult to understand actual risk across different police precincts. The authors propose an innovative and promising method of analysis through which researchers can accurately make sense of police precinct-level crime data in relation to municipal and small area boundaries, and related population data.

In Jamil Mujuzi's article, attention shifts to private prosecutions in Zimbabwe. The article explores recent changes to the country's Criminal Procedure and Evidence Act, and asks whether there are instances where the prosecutor-general is compelled to issue certificates to victims of crime that would allow them to pursue private prosecutions. Mujuzi points out that the related Zimbabwean case law may be of interest in South Africa, where juristic persons have argued that laws prohibiting private prosecutions are discriminatory and unconstitutional.

Finally, in the 'On the Record' feature, we return to Khayelitsha, where Andrew Faull interviewed the Social Justice Coalition General Secretary, Phumeza Mlungwana, about crime and policing in the area, and about the organisation's motivation for launching a court case against the SAPS.

We hope you enjoy the read.

Chandré Gould and Andrew Faull
(Editors)

Policing the private

Social barriers to the effective policing of domestic violence

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The limited ability of police to assist victims of domestic violence is often viewed as an institutional failure; a consequence of a lack of resources or inadequate training. This article presents key findings from a qualitative study of perceptions of and attitudes towards domestic violence in the South African township of Khayelitsha that highlight the complexity of responding to this form of violence. The research found that prevailing social norms and beliefs in Khayelitsha prevent domestic violence victims from seeking help from the police and that, unless there is a change in social norms, it is unlikely that there will be an increase in the reporting of cases of domestic violence.

The South African Domestic Violence Act of 1998 (DVA) is widely recognised as being a progressive law.¹ By including comprehensive definitions and remedies, the act's drafters sought to give victims and survivors of domestic violence the best protection and assistance a legal system could provide.² The DVA imposes specific obligations on police to ensure that domestic violence is not neglected.³ However, despite this, domestic violence remains pervasive and under-reported in South

Africa.⁴ A large body of empirical research shows that most victims of domestic abuse have not gained effective protection from the DVA or from the criminal justice agencies charged with its enforcement.⁵

In response to the gap between South Africa's progressive legislation and the reality experienced by victims, researchers have sought to identify barriers to the effective implementation of the DVA. These evaluations have focused on structural and institutional barriers to implementation, such as the South African Police Service's (SAPS) lack of resources, inadequate training and knowledge.⁶

Several studies have also documented the structural obstacles that marginalised women face in accessing justice.⁷ These factors are crucial, especially in poor and resource-scarce communities where the police-to-civilian ratio is low, the relationship between the community and the police is characterised by a significant lack of trust, and most victims are unemployed and poor. However, law enforcement interventions are not neutral or value free. Policing domestic violence requires authorities to interfere

* Heidi Mogstad is an MPhil student in justice and transformation at the University of Cape Town (UCT). Dominique Dryding is an MA student and African Leadership Centre Fellow at King's College, London. Olivia Fiorotto is an MA student in global health and public policy at Edinburgh University. When the data for this study were collected, all were students at UCT and Mogstad and Dryding were working for Ndifuna Ukwazi (NU); a Cape Town-based non-governmental organisation that uses research and strategic litigation to campaign for justice and equality in poor and working class communities. NU cooperates closely with community-based organisations in Khayelitsha and was one of the organisations that lodged a formal complaint against the South African Police Service (SAPS) in Khayelitsha and called for a commission of inquiry in 2011.

in private and previously unregulated spheres. To be effective, the policing of this crime depends on community norms that recognise and support police intervention as acceptable and appropriate.

This article is based on a 10-month qualitative research project on domestic violence in Khayelitsha, a partially informal township on the outskirts of Cape Town.⁸ Khayelitsha was established by the apartheid regime in 1983 under the terms of the Native Urban Areas Act, to consolidate Cape Town's legal African population in a racial enclave on the urban periphery.⁹ Despite a massive rollout of social grants and significant differences in wealth and living standards between Khayelitsha neighbourhoods, poverty and unemployment remain widespread.¹⁰ Khayelitsha is also burdened with high levels of crime and social violence.¹¹ As noted by Seekings, crime is a constant consideration in the lives of people living in Khayelitsha.¹² The township is particularly notorious for its high rates of gang violence, vigilantism and public and sexual assaults.¹³ Although local organisations and gender scholars recognise domestic violence as a prevalent social problem in Khayelitsha, violence in the household is usually overshadowed by the overwhelming focus on violence in the public sphere.¹⁴

The research was prompted by the Khayelitsha Commission of Inquiry (KCol), also known as the O'Regan-Pikoli Commission. After substantial lobbying by local organisations, Western Cape Premier Helen Zille appointed the commission in August 2012 to investigate allegations of police inefficiencies and a breakdown in the relationship between the community and the police in Khayelitsha.¹⁵ The commission was tasked with investigating all policing activities in the area, including the policing of domestic violence. This attention to domestic violence was unprecedented, as other South African commissions of inquiry focused on uncovering violent crime or events have either silenced or sidelined domestic violence and violence against women.¹⁶

Through a combination of expert and victim testimony, the commission revealed the systematic failure of police to comply with the DVA and National Instruction 7/2009, which regulates enforcement

of the act.¹⁷ However, the commission's narrow mandate left several important issues unexplored. Firstly, by focusing almost exclusively on structural and institutional problems in policing, the commission did not consider or hear evidence about the role of cultural and gendered norms and beliefs in shaping the social limits of appropriate behaviour.¹⁸ Secondly, although the commission confirmed that there was a breakdown in the relationship between the community and the police, not enough was revealed about why so few victims in Khayelitsha chose to report cases of domestic abuse and to what extent the low rate of reporting could be explained by a lack of trust in the police.¹⁹

To help address these knowledge gaps, the authors undertook a qualitative research project in partnership with the Social Justice Coalition (SJC). The research was explorative in nature. Its purpose was to map local perceptions of, and attitudes towards, domestic violence and its policing.

In this article, we reflect on some of our key findings, focusing specifically on how social norms and beliefs regulate experiences of and responses to domestic abuse. We begin by describing the research methods, followed by a presentation of the findings. Next, we discuss the role of social norms and beliefs in shaping the reluctance to involve police in cases of abuse. Finally, we conclude by summarising and discussing the implications of our findings.

Methods

Between September 2014 and June 2015 data were collected from five focus groups and seven in-depth individual interviews. The five focus groups were held in Khayelitsha in venues provided by the SJC. There was a total of 40 participants. Two of the focus groups consisted of men only, and three of women only. We divided our focus groups along gendered lines to identify the differences between how men and women speak and feel about domestic violence, and to ensure that participants would feel safe to speak openly. Since all participants were first-language Xhosa speakers, Xhosa-speaking translators helped facilitate the discussions.

Focus groups were used because they produce data and insights not easily accessible in individual interviews.²⁰ As noted by Albrecht:

Given that focus groups are social events involving the interaction of participants and the interplay and modification of ideas, such a forum for opinion gathering may render data that are more ecologically valid than methods that assess individuals' opinions in relatively asocial settings. A focus group responding to a new idea might generate opinions more like those of the public than would even a large number of isolated respondents.²¹

Focus groups are especially useful when studying group cultures and exploring degrees of consensus.²²

To supplement our data and mitigate problems associated with focus groups, we also conducted three selective in-depth interviews with women willing to talk about their personal histories of abuse and relationships with the police.²³ These interviews provided rich and detailed data and allowed us to further probe what factors and beliefs shaped victims' responses to abuse. We conducted two interviews with local counsellors of domestic violence survivors, two interviews with local activists working with gender-based violence, and one interview with a female member of one of Khayelitsha's community policing forums (CPFs).²⁴ These seven interviews provided important contextual knowledge and offered the opportunity to discuss preliminary findings.

Our interviewees were identified and recruited with assistance from SJC and the social justice organisation Ndifuna Ukwazi (NU), where Mogstad and Dryden worked during the research period. All individual interviews were conducted in English. The focus group discussions and interviews were transcribed into English and analysed, using thematic analysis.²⁵ Our primary data were supplemented by informal background interviews with local activists, members of the CPFs, and a journalist working on the KCol. The KCol's final report, transcripts of victim and expert testimonies, and meeting minutes from the community policing sub-forum dealing with domestic violence were closely read and analysed.²⁶ The study was self-funded and not reviewed by an ethics committee.

Limitations and clarifications

The terms 'local' and 'the community' are ambiguous. They are not used here to imply that all people in Khayelitsha share the views discussed. We cannot assume the presence of common values and beliefs across this large, heterogeneous, diverse township consisting of people with different experiences, knowledge, living standards and educational levels.²⁷

Participants in the focus groups were recruited by the SJC on a voluntary basis and identified using purposive sampling.²⁸ Because we were interested in exploring norms and beliefs, personal experience of abuse and/or of engagement with the police in the case of abuse were not considered necessary criteria. However, in order to stimulate clear, focused and in-depth discussions, it was important that the participants in our focus groups had some shared experiences of the challenges of policing domestic violence in their particular area.²⁹ We therefore recruited participants who were of similar age, from similar cultural backgrounds, and who shared similar living standards and income levels.³⁰

The majority of participants in the focus groups were in their late 30s and unemployed. Most of the participants were married, and almost all lived with a partner and children. All focus group participants were isiXhosa speaking. Many participants had been born in the Eastern Cape and had been residing in Khayelitsha for various lengths of time.³¹ Participants lived in informal settlements and had limited or irregular access to sanitation, water and electricity.³² This is important to note, since the KCol revealed particular problems and challenges with policing in the informal areas of Khayelitsha.³³ The focus group participants were all members of the SJC, although their history of membership and participation in the organisation varied significantly.³⁶⁴ The focus groups did not include anyone who self-identified as lesbian, gay, bi-sexual, transgender or intersex. The findings cannot therefore shed light on this population's particular concerns and challenges in dealing with police or domestic violence.

Although our findings are not representative, they provide useful insights into how cultural norms and

beliefs can complicate well-intended legal interventions, such as the policing of domestic violence.

It is also important to acknowledge our positionalities as three young, coloured and white women who do not speak isiXhosa.³⁵ Our personal traits and backgrounds influenced not only the questions we asked and what our participants chose to reveal but also how we interpreted responses and framed findings in this article.³⁶ While the fact that our participants were of the same gender, from similar backgrounds and close in age may have helped facilitate trust, participants' responses were also likely influenced by their relationships to other participants and by the sensitive nature of the topic. Although many of our participants were comfortable speaking English, our partial reliance on translators' interpretations meant that we lost some nuance and richness in responses. However, using local translators also reduced barriers to participation and helped us understand culture-specific references.³⁷

Findings

In this section, we present empirical findings suggesting that prevailing social norms and beliefs in Khayelitsha prevent domestic violence victims from seeking help from the police. While our arguments are supported by the data we collected in the field, we also draw on the insights from a wide range of studies questioning the ability of legal reforms to influence entrenched cultural and gendered norms, attitudes and practices in South Africa.³⁸

Barriers to reporting

Nearly all of the research participants maintained that involving the police in cases of domestic abuse is inappropriate because domestic abuse is a private issue. Although they acknowledged that abuse is harmful and that something ought to be done about it, participants said that involving the police was unacceptable, or disloyal. Police interference was also seen to violate culturally correct procedures.

When discussing appropriate ways of dealing with domestic violence, nearly all participants agreed that it would be best if the couple involved settled the issue without any external interference. The exception was one male participant who suggested

that street committees could step in as mediators.³⁹ Participants also said that the only culturally accepted alternative to settling the dispute between partners was to seek guidance from in-laws. As one male participant explained:

You see, here in Khayelitsha ... if I do something to my wife or she does something to me, it is very important to not go first to the police station. If I am abusing my wife, she may get out of my home and go to her home and tell her relatives, and after that, they will call my relatives ... and then we will have a meeting of some sort and solve the problem without interference from the police.⁴⁰

Our research indicated that married women faced especially strong pressure to restore peace in their families without police intervention. Whereas some men suggested that using in-laws as mediators was an example of 'culture working', female participants emphasised that 'solving the problem' was usually done without much consideration of women's personal opinions and well-being. In addition, it was stressed that the in-laws were involved not to end the abuse but to broker the peace and 'keep the family together'. As a female interviewee explained:

In the white world, people go to therapy to find out what is really causing this problem ... but in our lives, we have the option to sit down with the elders, and then they will give you advice on how to make your marriage work ... Sometimes the family gives you good advice, but let's say, if you are a *makoti* [daughter-in-law] they don't like, they do not think about you.

Female focus group participants, interviewees and counsellors unanimously stressed that in-laws generally took the husband's side in a dispute, neglected women's opinions and suffering and left women with 'little control over the situation'.

While some women experienced pressure from their in-laws or family members to stay with abusive partners, many female participants had also internalised cultural norms prioritising the welfare and maintenance of the family above their own well-being.⁴¹ Several women suggested that they tolerated abuse because they did not

want their children to grow up without a father. In such situations, involving the police was seen as especially problematic as the women did not want to be responsible for sending their children's father to prison.

A number of female participants suggested that what they experienced was neither unique nor sufficient reason to break familial bonds and cultural expectations. As one interviewee succinctly put it, 'My mother was able to endure it [an abusive relationship], so why shouldn't I?'⁴² Behind these statements was an acceptance of spousal abuse as 'normal' and an experience that did not justify intervention by police or any other outside actors. In addition, both men and women said that police intervention was inappropriate because both parties were responsible for the abuse. Men felt particularly strongly about this and repeatedly stressed that women also abused their husbands and boyfriends. Several female participants also insisted on sharing the blame for domestic violence with their partner. The following reflection by one female participant is typical of many of the stories we heard. It illustrates how some participants internalised blame for the abuse they experienced and exemplifies how many female participants described domestic violence as normal.⁴³

It happens every weekend ... We shout at each other, he beats me, I try to hit him back ... But when you wake up in the morning, you will feel very sorry for your partner and what you have done, and you will never go to the cops.

A few men and women said that women were guilty of deliberately provoking men, for example by shouting or nagging. In one male focus group, it was suggested that some women want their partner to beat them so 'they can feel that they are being loved and fought over'. While the idea that some women interpret abuse as an expression of love or care was repeated in all the female focus groups, participants were careful to emphasise that they spoke about other women, not themselves.⁴⁴

Participants expressed reluctance to involve the police in domestic violence when the victim was a person whom they knew or cared about. When asked if they would call the police if they saw or

heard a friend or neighbour being violently abused, most participants said they would be highly unlikely to do so. When asked why, several stressed that it was inappropriate to meddle in other people's affairs. Some female participants stated they would help the victim in other ways, for example, by allowing the victim to sleep in their house or by encouraging the victim to leave the abusive partner or seek help from a non-governmental organisation (NGO) or social worker. One man said that he would call the police if he heard his neighbours fighting and the abuse was so loud that he could not sleep.

Social costs of reporting

Participants were also discouraged from seeking help from the police due to the social costs of doing so. While sanctions may take various forms, we focus specifically on the social costs attached to identifying as victims and seeking help from the police.⁴⁵

Both men and women worried that police interference would affect their status and reputation in the community. When discussing male abuse, all male participants mentioned concerns with being ridiculed and humiliated. As one male participant stated, 'If I were to report a case that I was raped by a girl or tell my friend ... tomorrow the whole community would know what happened to me, and it would become a joke in the community.'⁴⁶

The following extract from the transcript of a male-only focus group illustrates that cultural ideals of what it means to be a 'real man' appeared to have an especially strong influence on the behaviour of men, who said they often kept their personal experiences of abuse secret due to fear of being seen as weak or 'controlled by their women'.

Man 1: The problem is that we as men are ashamed to come out.

Interviewer: Why is that?

Man 2: The problem is the way we grew up ... because men can't cry. Something like that ... So you take it as a disgrace to go to the police station to report [abuse] ... and people in the community will also laugh behind your back. Let's say, your girlfriend kicked you or whatever, and you got bruises ... You come and tell people, 'She did this

to me' ... Then you will notice that they laugh at you ... and keep asking, 'What did she do to you?' and laugh.

Interviewer: Is this what makes it difficult to go to the police?

Man 2: Very difficult. Very difficult.

Man 3: You don't want to feel inferior. That she has the power. Feel like a coward.

Like the men, the women primarily feared gossip and judgement. One woman explained that she could not talk about her abuse with her closest family members or friends, as 'you know it is going to spread and everyone is going to look at you differently'.⁴⁷

Women viewed self-identifying as victims as shameful and embarrassing. Female participants' reasons for shame differed. Some women said that it was shameful to go to the police as others might think that they had overreacted or acted in a way that justified the abuse. Others viewed involving the police as disloyal to both their partner and family. Some women stressed that identifying as victims would make them appear weak and powerless in their relationships. When the women who said this were asked what they would do if they were exposed to abuse, they suggested that it was 'better to just leave [their abusive partner]' than involve the police.⁴⁸

One of the interviewees was in an abusive relationship for more than eight years but never considered reporting the abuse to the police. When asked why she explained that she was known as a strong, opinionated woman in the community and feared that identifying as a victim would reflect badly on her. She said it felt shameful to admit to being abused, even to herself, as it contrasted with her own self-image. Only once she had chased her husband out of the house did she tell her friends and family about her abuse. Contrary to what she had believed, this did not result in a loss of status in the community. However, she said she was happy that she had never brought the police into the picture, because it would have called into question her ability to deal with things on her own.

Another interviewee confessed she had hidden her abuse from her friends and family for nearly 10 years because she believed they would judge her for staying with a man who was abusing her.

You make means for people not to judge you for staying. Even your family. There were times when I would pack my things and take a bus home to Eastern Cape, no matter how much it would cost me. [But] when I was home I would act as if I was there just for fun, visiting, whereas I was there to express my feelings ... and I will come back to Cape Town and he will be scared that 'Ooh, she has told the mother everything' but I didn't say anything ... I covered it up because I did not want my family to look down on him. Because I am his partner. And when you look down on him, you look down on me too.⁴⁹

After having kept the abuse a secret for nearly a decade, the woman eventually told her family and in-laws about the abuse and filed for a divorce. At this point, the woman had a sustainable job and income and was not economically dependent on her partner. But after confronting the stigma of self-identifying as a victim, the woman faced considerable external pressures to keep her family together. Some of the pressure came from her in-laws, who were largely unresponsive to her interests and arranged family meetings to prevent the divorce from going ahead. Her own mother, who she had initially been afraid would judge her for staying with an abusive partner, also begged her to stay in the relationship for her sake and for the sake of the children. This woman's story illustrates that abused women may face various forms of external and internal pressures to stay in abusive relationships. Even after taking the important and difficult step to self-identify as a victim and filing for a divorce, it took the woman an additional five years before she finally managed to leave her partner.

Attitudes towards police

For some participants, the unwillingness to involve police in cases of abuse appeared to be informed by their distrust of police in Khayelitsha. When asked what they believed would happen if they approached the police as victims of abuse, most participants suggested that the police were unlikely to provide any meaningful assistance because the police shared the same attitudes towards abuse and victimhood as they did.

Participants were particularly sceptical of the police's motivation to assist male victims, believing officers

would not take them seriously and might laugh at them for 'acting like a woman'.⁵⁰

Man: If you are violated as a woman, you can get help, but if you are violated as a man, you can't get any help.

Interviewer: Why is that?

Man: They [the police] take it as a joke. They laugh at you as a man. And if you fight back yourself, you are arrested.

Visibly frustrated at being scapegoated as abusers while their own alleged suffering was left unacknowledged, the men emphasised that involving police would never work to their advantage as officers would always take the woman's side.

The problem is that if I am fighting with you, the police will not ask 'What is happening?' or 'How did this thing start?' ... They will just take me to the station, although it was the woman's fault.

In one focus group a few men complained that some women reported consensual sex as rape, or abused their male partners knowing that they would never go to the police.⁵¹

While male participants indicated that female victims of abuse would receive better help and support from police, several female participants insisted that involving the police was pointless as they would not provide any real assistance.⁵²

As the following brief extract from a female focus group illustrates, the women believed that police were not interested in helping them as they, too, considered abuse to be a private matter. The women also suspected that police were tired of dealing with women's complex needs.

Woman 1: It is a challenge in our police station. If it is domestic violence, the police say it is a family matter. (Other women nod and agree.)

Woman 2: Because if the wife goes and reports it [the abuse] and opens a case to go to court ... all of the sudden, after a month, she drops that case. You see ... [In the eyes of the police] I just use a government article. Misuse it, you see.

While most of our participants expressed a strong distrust in the police's willingness to assist victims of abuse, it is important to note that not all criticisms were based on first-hand experience. While some participants shared personal experiences of encounters with the police, others' disapproval was based on second-hand accounts or assumptions about how the police would respond. In contrast, the member of the police sub-forum and the two local counsellors who were interviewed argued that the police in Khayelitsha are, in their experience, better trained to respond to domestic violence today than a few years ago. The counsellors emphasised that today police are more sensitive and respectful of male and LGBTI victims.⁵³ Regardless of whether this is true or not, participants' negative view of the police is likely to reinforce their unwillingness to approach them in cases of abuse.

Discussion of findings

Norms play a crucial role in individual choice, by specifying what is acceptable and what is not in a society or a group.⁵⁴ Norm-compliance is ensured in two ways. Firstly, people are encouraged to conform to a set of norms by expectations or threats of sanction. Sanctions can be both positive and negative but often include exclusion, ostracism or violence. Secondly, norm-compliance is ensured through the more subtle process of internalisation, in which members of society are socialised to think of certain ways of being and doing as normal and natural. If norms are successfully internalised, external sanctions are not needed to elicit conformity, as 'norm-abiding behaviours are perceived as good and appropriate, and people will typically feel guilt or shame at the prospect of behaving in a deviant way'.⁵⁵ Our data suggest that both these dynamics shaped participants' reluctance to involve the police in cases of domestic abuse.

Our research indicates that participants' reluctance to involve the police was strongly influenced by the social shame, stigma and humiliation expected from self-identifying as a victim and seeking help from police; this was the case for both men and women. The consequence of this is that abusers enjoy de facto impunity while victims are left isolated, disempowered and ashamed.⁵⁶

However, there are nuances that should be explored. Although participants emphasised that abuse was bidirectional, this does not mean that women were considered as abusive as men, or that participants believed that men suffered as much as women. Female participants who spoke about abuse inflicted on their male partners usually framed it as an act of resistance.

It is also important to recognise the performative nature of interviews and focus groups. Participants do not simply communicate information but define and position themselves in front of their audience and bring certain truths into being. With this in mind, female participants' eagerness to share stories of their acts of abuse against their partners might be interpreted as attempts to distance themselves from an image of women as passive, powerless victims. Similarly, male participants' frequent insistence that 'men are also abused' is a clear contestation of the one-dimensional image of men as violent aggressors.⁵⁷

There were limits to participants' reluctance to involve the police in cases of abuse. Both men and women said they would consider approaching the police if they believed the abuse had an extremely negative influence on their children, for example if it resulted in a failure to provide food or pay children's school fees, or was also directed at children. However, in these situations police interference was identified as a last resort, and both men and women said they would rather leave with their children or go to a social worker. Some women said they would consider reporting their husbands to the police if they did not have children, or if their children were older. Several women explained that they might choose to stay in an abusive relationship to protect their children from anticipated economic hardships. However, our research indicates that economic factors often interact with social norms, placing added pressure on women to accept and endure abuse, and increasing the costs associated with seeking help. When pushed, some participants admitted that they would want to get the police involved if the abuse became very violent and they feared they (or a loved one) might be seriously hurt or killed. This finding aligns with other studies showing that cultural norms might condone and

privatise domestic abuse, but only within certain boundaries of severity.⁵⁸ However, even in these scenarios participants had highly ambivalent feelings about seeking help from police, partly due to the anticipated personal and familial costs of police intervention.

Finally, the research indicates that the reasons participants felt shame were strongly influenced by their own gender and their views about gender. The research indicates that a dominant model of masculinity in Khayelitsha is associated with power and control over both self and others. Consequently, identifying as a victim was seen as unmanly, shameful and humiliating. Female participants' reasons for shame differed, and were influenced by the model of femininity they endorsed. Women who endorsed a traditional form of femininity based on cultural ideals of submissiveness and endurance feared that they would be perceived as overreacting or deserving of abuse, as they had misbehaved or failed to act like a proper woman.⁵⁹ As indicated, involving police was believed to incur specific social costs, as women feared they would be stigmatised by family members or others who would see this measure as an act of disloyalty or a violation of culturally accepted procedure.⁶⁰ In contrast, women who endorsed a more progressive form of femininity feared that identifying as victims of abuse would make them appear weak and powerless in front of their family and friends.⁶¹ Here, involving the police was defined as deeply embarrassing and was expected to have a negative impact on women's status and reputation in the community. Importantly, however, these models of femininity are ideal types.

As the personal stories of our interviewees indicate, women's decisions to stay in abusive relationships and not seek help from the police can be influenced by various forms of external and internal pressure, operating simultaneously or at different times. This indicates that thinking in terms of a rigid traditional/progressive binary is not always useful.

Discussion

The research findings reveal the external and internal pressures on women to keep families together in the face of abuse, almost at all costs. The internalisation of norms led women to downplay and tolerate

abuse to the extent that it compromised their physical and psychological health and well-being. These factors clearly complicate the job of policing domestic violence, as the private nature of this crime makes police intervention largely dependent on victims' identification of abuse as a crime worthy of intervention.

The research also indicates that women's response to abuse is particularly influenced by social norms defining what is best for their children. Following Carol Gilligan, this thinking might be understood as a distinctly female moral reasoning guided by a moral orientation towards relationship maintenance and care for others.⁶² As Meyer stresses, such decisions should not be interpreted as irrational acts. In contrast, 'costs and benefits are simply assessed on a broader, less selfish scale, taking into account the costs and benefits for individuals close to the rational decision-maker'.⁶³ The fact that abused women may often prioritise their children's well-being above their own suffering demonstrates the importance of existing laws and policies designed to address the safety and well-being of both mothers and their children.

The findings highlight the significance for victims of social shame and stigma attached to public revelation and help-seeking in cases of abuse. Rather than dismissing victims' decisions not to involve the police in cases of abuse as a sign of passivity, non-cooperation or acceptance of the status quo, our findings suggest that non-reporting is a calculated, legitimate strategy to protect oneself from a variety of social costs, including social stigma, gossip, humiliation and shame. This builds on other studies conducted in South Africa.⁶⁴

Our findings offer a deeper and more nuanced understanding of the social costs of reporting domestic violence by showing that victims' reasons for shame and embarrassment are dependent upon the victims' gender and the model of masculinity and femininity that they endorse. Non-reporting can be a calculated strategy to avoid social and other costs, and as such, victims may be served better by interventions that do not rely on a criminal justice response.

However, steps should also be taken to reduce the social costs associated with seeking help from the police. Since sensitive and empathic policing is necessary to overcome the stigma associated with reporting domestic violence, the KCol's recommendation, that improved internal and external oversight over implementation of the DVA is necessary, should be supported.⁶⁵ However, reducing the costs of help seeking depends on transforming social and gendered norms and attitudes towards police intervention and victimhood held by police and society at large.

By attending to the performative nature of focus groups discussions, this article has drawn attention to men and women's reluctance to identify with harmful yet prevailing stereotypes of 'women-as-passive-victims' and 'men-as-aggressive-abusers'. This reluctance indicates that many women may see advocacy that emphasises female victimhood as disempowering. Women-centred advocacy may also alienate men who are frustrated at being scapegoated as abusers, while at the same time being fearful of the consequences of identifying as victims of abuse. To reduce the social costs associated with self-identifying as victims of abuse, further steps must be taken to confront simplistic and disempowering discourses and create opportunities for men to explore alternative masculinities.

Conclusion

Problems in policing are commonly framed as institutional failures. When thinking about policing in this manner, it is easy to conclude that the solution lies within the institution itself, or requires more resources and support from the government. Combrinck and Wakefield, for example, argue that 'the South African Police Service holds the key to a successful implementation of the [DV] Act' and recommend that persistent shortcomings be addressed with better and additional training.⁶⁶ The Khayelitsha Commission of Inquiry also focused on structural and institutional challenges in policing and crafted recommendations with these concerns in mind.

This article has examined the challenges and limitations of policing domestic violence from a different angle. Reflecting on key findings from a small qualitative study of local perceptions and attitudes

towards domestic violence and the policing of this crime in Khayelitsha, we have drawn attention to the powerful disciplinary influence of social norms and beliefs in regulating responses to abuse. While acknowledging that victims' experiences of and responses to abuse are shaped by a variety of factors, our findings suggest that victims' responses to domestic violence are constrained by dominant social norms and beliefs, framing police involvement in cases of abuse as being inappropriate and shameful. The findings suggest that the social norm defining household violence as a private issue regulates the behaviour not only of victims but also of potential witnesses and third parties. Whereas higher compliance with the DVA will necessarily require considerable resources, this suggests that the effective policing of domestic violence is predicated on shifts in norms and beliefs, defining police interference in cases of abuse as problematic, if not unthinkable.

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Notes

- 1 See L Vetten, Domestic violence in South Africa, Institute for Security Studies (ISS), Policy Brief 71, 2014.
- 2 Ibid.; Anticipating problems associated with statutory definitions, the law also includes a 'catch-all' category covering abuse that is otherwise not covered.

- 3 L Vetten, Addressing domestic violence in South Africa: reflections on strategy and practice, Centre for the Study of Violence and Reconciliation, 2005, 5.
- 4 Vetten, Domestic violence in South Africa.
- 5 See, for example, C Albertyn et al., Women's freedom and security of the person, in E Bonthuys and C Albertyn (eds), *Gender, law and justice*, Cape Town: Juta, 2007, 323.
- 6 See, for instance, P Parenzee et al., *Monitoring the implementation of the Domestic Violence Act*, Cape Town: Institute of Criminology, University of Cape Town, 2001; L Vetten, Show me the money: a review of budgets allocated towards the implementation of South Africa's Domestic Violence Act, *Politikon: South African Journal of Political Studies*, 2, 2005, 19–26; S Mathews and N Abrahams, *Combining stories and numbers: an analysis of the impact of the Domestic Violence Act (No. 116 of 1998) on women*, Gender Advocacy Programme and Medical Research Council, 2001; J Smit and F Nel, An evaluation of the implementation of the Domestic Violence Act: what is happening in practice?, *Acta Criminologica*, 15, 2002, 3; L Artz, Magistrates and the Domestic Violence Act: issues of interpretation, Institute of Criminology, University of Cape Town, 2003; M Manamela et al., Policing domestic violence effectively at Rietgat Police Station: an assessment, *Acta Criminologica: CRIMSA Conference: Special Edition*, 2, 2010, 99–113; D Smythe, Missed opportunities: confiscation of weapons in domestic violence cases, *SA Crime Quarterly*, 10, 2004, 19–26; H Combrinck and L Wakefield, Going the extra mile: police training on domestic violence, *SA Crime Quarterly*, 31, 2010, 27–34; L Artz and D Smythe, South African legislation supporting victims' rights, in D Lillian and R Snyman (eds), *South African handbook on victimology*, Pretoria: Van Schaiks, 2005.
- 7 See specifically D Smythe and L Artz, Money matters: structural problems with implementing the DVA, *Agenda*, 66, 2005, 24–33; L Artz and D Smythe, Bridges and barriers: a five year retrospective on the Domestic Violence Act, *Acta Juridica*, 2005; P Parenzee and D Smythe, *Domestic violence and development: looking at the farming context*, Cape Town: Open Society Foundation South Africa and Institute of Criminology, University of Cape Town, 2002; D Smythe and P Parenzee, Acting against domestic violence, in W Dixon and E Van der Spuy (eds), *Justice gained? Crime and crime control in South Africa's transition*, Cape Town: Juta, 2004; L Artz, *Violence against women in rural Southern Cape: exploring access to justice through a feminist jurisprudence framework*, Institute of Criminology, University of Cape Town, 1999; Matthews and Abrahams, *Combining stories and numbers*.
- 8 The Domestic Violence Act (DVA) recognises domestic violence as a complex crime that can involve many different victims and perpetrators. Our research focused on violence between intimate partners, broadly interpreting violence in line with the act to include physical, sexual, emotional and economic forms of abuse.
- 9 For a detailed overview of Khayelitsha see J Seekings, *Economy, society and municipal services in Khayelitsha, report for the Commission of Inquiry into Allegations of Police Inefficiency in Khayelitsha and a Breakdown in Relations between the Community and the Police in Khayelitsha*, Centre for Social Science Research, University of Cape Town, 2013.

- 10 Ibid. See also G Super, Violence and democracy in Khayelitsha: governing crime through the community, *Stability: International Journal of Security & Development*, 4:1, 2015, 1.
 - 11 See, for example, EA Pieterse, *Counter-currents: experiments in sustainability in the Cape Town region*, Johannesburg: Jacana, 2010, 261.
 - 12 Seekings, *Economy, society and municipal services in Khayelitsha*, 23, 19. See also Mthente Research, *Community safety barometer 2011/2012 – precinct reports for Lingeletu West, Harare and Khayelitsha (Site B)*, commissioned by Western Cape Government, 2012, <http://www.khayelitshacommission.org.za/media-press/press-statements/100-general.html?start=48> (accessed 1 September 2015).
 - 13 For an overview see C O'Regan and V Pikoli, *Towards a safer Khayelitsha. Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha*, ch. 4, 40–45, http://www.khayelitshacommission.org.za/images/towards_khaye_docs/Khayelitsha_Commission_Report_WEB_FULL_TEXT_C.pdf (accessed 1 September 2015).
 - 14 Informal conversation with representative from MOSAIC, personal communication, April 2015. See also MOSAIC, Fact sheet 1: Domestic violence in Khayelitsha, <http://www.mosaic.org.za/kfactsheet.pdf> (accessed 15 June 2015).
 - 15 See Khayelitsha Commission, <http://www.khayelitshacommission.org.za> (accessed 15 August 2015).
 - 16 The widely heralded South African Truth and Reconciliation Commission has, for instance, been criticised by gender scholars for privileging the recovery of truths pertaining to political and public violence and thereby marginalising the suffering women experienced during apartheid, both inside and outside their homes. See Fiona Ross, *Bearing witness: women and the Truth and Reconciliation Commission in South Africa*, London: Pluto Press, 2003; S Meintjes, Gendered truth? Legacies of the South African Truth and Reconciliation Commission, *African Journal on Conflict Resolution*, 9:2, 2009. More recently, both the Marikana Commission of Inquiry itself and the media and academia's coverage of it have been criticised for focusing narrowly on police brutality towards (male) miners while silencing women's narratives and needs and the wider socioeconomic context. See A Benya, Absent from the frontline but not absent from the struggle: women in the Marikana Massacre, *Femina Politica*, 22:1, 2013, 144–147.
 - 17 For a victim testimony, see Ms Ntsilane's testimony in O'Regan and Pikoli, *Towards a safer Khayelitsha*, Appendix B, August 2014. For an overview of the expert testimonies from L Vetten and L Artz, see O'Regan and Pikoli, *Towards a safer Khayelitsha*, 140–145 (phase 1), 336–340 (phase 2).
 - 18 Gail Super argues that the commission's narrow focus on policy inefficiency also diverted attention away from the socioeconomic conditions that generate crime. See Super, Violence and democracy in Khayelitsha.
 - 19 The commission concluded that the relationship between the community and its police is characterised by a significant level of distrust. See O'Regan and Pikoli, *Towards a safer Khayelitsha*, xxxv.
- Lack of trust in the police is a general problem in South Africa. The 2007 Human Sciences Research Council (HSRC) South African Social Attitudes Survey found that 60% of citizens do not trust the police. Human Science Research Council, Between trust and scepticism: public confidence in institutions, http://www.hsrc.ac.za/HSRC_Review_Article-85.phtml (accessed 1 September 2015); A Faull, Corruption in the South African Police Service, ISS, Paper 226, November 2011.
- More recently a national survey conducted by Futurefact revealed that 'three quarters of South Africans believe that a lot of police are criminals themselves' and 33% said that they were 'scared of the police'. See Futurefact, Futurefact finds: Three quarters of South Africans believe that a lot of police are criminals, 3 February 2015, <http://www.futurefact.co.za/futurefact-finds/futurefact-finds-three-quarters-south-africans-believe-lot-police-are-criminals> (accessed 10 February 2016).
- 20 For a methodological reflection on focus groups based on research in South Africa see I Macun & D Posel, Focus groups: a South African experience and a methodological reflection, *African Sociological Review*, 2:1, 1998, 114–135.
 - 21 TL Albrecht et al., Understanding communication processes in focus groups, in D Morgan (ed.), *Successful focus groups*, London and New York: Sage, 1993, 54, quoted in *ibid.*, 119.
 - 22 DL Morgan and RA Krueger, When to use focus groups and why, in DL Morgan (ed.), *Successful focus groups: advancing the state of the art*, Newbury Park: Sage, 1993, 3–19.
 - 23 A weakness of focus groups is that participants can collude or collaborate to silence a particular issue. For a thorough discussion of the advantages and disadvantages of focus groups, see S Wilkinson, Focus groups in feminist research: power, interaction and the co-construction of meaning, *Women's Studies International Forum*, 21:1, 1998, 114.
 - 24 Community police forums (CPFs) involve partnerships between representatives of the community and local police. The purpose of the forums is also to allow for input from the community and promote better communication and relationships between the community and the police. In Khayelitsha there are CPFs at the police stations in Site B, Harare and Lingeletu West. See Safe Khayelitsha, Community police forums and sub-forums, <http://safekhayelitsha.org.za/local-safety-structures/community-police-forums-and-sub-forums/> (accessed 1 February 2016). For a critical discussion of the CPFs and other measures to promote community-centred strategies in Khayelitsha, see L Freeman and C McDonald, Mapping Khayelitsha: the complexity of everyday policing in a high crime area, *SA Crime Quarterly*, 53, 2015.
 - 25 Thematic analysis enables the identification and analysis of themes that speak to something important and relevant to the study. See V Braun and V Clarke, Using thematic analysis in psychology, *Research in Psychology*, 3, 2006, 77–101.
 - 26 Following the commission's recommendations, eight sub-forums were established to deal with specific crimes and thereby bridge certain 'policing gaps'. One of these sub-forums deals with gender-based violence and has, according to one of its members, defined policing of domestic violence as a key issue. Personal communication, Khayelitsha, April 2015. For more information on the police sub-forums see Freeman and McDonald, Mapping Khayelitsha, 27–28.

- 27 For an overview, see Seekings, *Economy, society and municipal services in Khayelitsha*.
- 28 For more information see Social Justice Coalition (SJC), About us, <http://www.sjc.org.za/about-us> (accessed 25 May 2015). Purposive sampling is a non-probability sampling method that allows for the selection of participants who fit into the particular research. See R Schutt, *Investigating the social world: the process and practice of research*, New York: Sage Publication, 2015, ch. 5.
- 29 Macun and Posel, Focus groups: a South African experience, 4–5.
- 30 Ibid. As noted by Macun and Posel, homogeneity is also important to ensure that the members of the group ‘feel as comfortable and uninhibited with each other as possible’.
- 31 As Seekings notes, Khayelitsha remains a largely ‘immigrant community’. According to the 2011 census, most adults living there (69%) were born in the Eastern Cape. See Seekings, *Economy, society and municipal services in Khayelitsha*, 12.
- 32 According to the 2011 census, 46% of Khayelitsha’s population live in informal settlements, and the majority of residents live in shacks. Although access to public services has expanded steadily, a significant minority of residents still rely on communal, generally unsatisfactory facilities, including inadequate sanitation arrangements. See Seekings, *Economy, society and municipal services in Khayelitsha*.
- 33 During the commission’s hearings repeated complaints were raised about the failure of the Khayelitsha SAPS to patrol in informal neighbourhoods. See O’Regan and Pikoli, *Towards a safer Khayelitsha*, ch. 6, 128. For a discussion of the particular challenges of policing in informal settlements see the testimony of Major General D Molo, *ibid.*, 252.
- 34 According to an SJC representative, the organisation has approximately 2 000 members in 12 branches in Khayelitsha. On average, 10–30 members attend branch meetings while the remaining members attend only larger events. The majority of SJC members are unemployed and live in informal settlements. Personal communication, Khayelitsha, 21 April 2015.
- 35 In terms of ‘racial classification’, one of us is white and European, one coloured South African and one white South African.
- 36 See, for example, J Flavin and A Desautels, Feminism and crime, in C Renzetti, L Goodstein and S Miller (eds), *Rethinking gender, crime and justice*, New York: Oxford University Press, 2006, 11–28.
- 37 For a discussion of the use of a translator in qualitative research see, for example, A Young, Qualitative research and translation dilemmas, *Qualitative Research*, 4:2, 2004, 161–178.
- 38 For example, see Albertyn et al., Women’s freedom and security; M Hunter, The master’s tools revisited: can law contribute to ending violence against women?, *IDS Bulletin*, 37:57, 2006; R Jewkes, J Levin and L Penn-Kenkana, Risk factors for domestic violence: findings from a South African cross-sectional study, *Soc Sci Med.*, 55:9, 2002, 1603–1617; J Goldscheid, The parallel processes of law and social change: gender violence and work in the United States and South Africa, *Feminist perspective on international justice: from international and criminal to alternative forms of justice*, Intersentia, 2013, 313; Penelope Andrews, Violence against women in South Africa: the role of culture and the limitations of the law, *Temple Political and Civil Rights Law Review*, 8, 1998, 425–515.
- 39 Notably, the man who suggested this was a member of a street committee (a community structure that works to mediate conflicts and promote safety in communities). According to Freeman and McDonald, street committees in Khayelitsha operate largely outside the remit of the SAPS and are seen as ‘belonging’ to the South African National Civics Organisation (SANCO). See Freeman and McDonald, Mapping Khayelitsha, 27–37. In the focus group his suggestion received no support from other participants. Due to the relatively small sample, we cannot exclude the possibility that other community members would be more appreciative of and willing to engage in local and informal dispute resolution mechanisms, as was found by Artz and Smythe, Bridges and barriers.
- 40 Another man in the same focus group explained that his closest kin were not in Cape Town, so the right thing to do would be to find somebody from his extended family or clan to step in and ‘help solve the problem’. Focus group interview, male group, Khayelitsha, 24 April 2015.
- 41 See also R Jewkes, Intimate partner violence: causes and prevention, *Lancet*, 359:9315, 2002, 1423–1429.
- 42 Personal communication, Khayelitsha, 17 April 2015. Notably, the argument that ‘my mother accepted it so I should too’ was also mentioned by a woman in our focus groups. According to one counsellor we interviewed, this statement was a typical sign of what she described as an ‘old mentality’. Personal communication, Khayelitsha, 21 April 2015.
- 43 See also S Bollen et al., *Violence against women in metropolitan South Africa: a study on impact and service delivery*, ISS, Monograph 41, 1999.
- 44 One of the counsellors we interviewed confirmed that victims in counselling frequently explained their partner’s abuse as acts of love or care, but hypothesised that it was often an excuse women made for themselves to stay in the relationship. Personal communication, Khayelitsha, 15 April 2015.
- 45 In the South African context, studies have demonstrated that women’s reasons for non-reporting are influenced by the economic and violent sanctions that involving the police are anticipated to bring. See L Artz, Fear or failure? Why victims of domestic violence retract from the criminal justice process, *SA Crime Quarterly*, 37, 2011, 3–10; Jewkes et al., Risk factors for domestic violence; L Vetten et al., *Implementing the Domestic Violence Act in Acomhoek, Mpumalanga*, Tshwaranang, Research Brief 2, 2009; L Vetten et al., *Micro-study of the DVA: implementation of the Domestic Violence Act at nine South African courts*, Report prepared for the Department of Justice and Constitutional Development, 2009. Further rationalising victims’ decisions to not involve the police in cases of domestic abuse, studies have also demonstrated that police interventions into these matters are temporary and inconclusive at best, and might often exaggerate the violence. See, for example, A Altbeker, Policing domestic violence: the enthusiasm gap, *SA Crime Quarterly*, 12, 2005, 13–18; J Steinberg, *Thin blue line*, Jeppestown: Jonathan Ball Publishers, 2008.
- 46 Focus groups interview, male group, Khayelitsha, 25 September 2014.

- 47 Focus group interview, female group, Khayelitsha, 25 September 2014.
- 48 Focus group interview, female group, Khayelitsha, 21 April 2015.
- 49 Personal communication, Khayelitsha, 15 April 2015.
- 50 Interestingly, it was suggested that lesbian women would experience similar forms of ridicule if they looked or dressed like men.
- 51 Focus group interview, male group, Khayelitsha, 24 April 2015.
- 52 Research conducted by Lillian Artz suggests that involving the police is not necessarily 'pointless' as female victims of abuse can use the system to negotiate security and non-violence. See Artz, *Fear or failure*.
- 53 Personal communication, Khayelitsha, 15 and 21 April 2015.
- 54 C Bicchieri, *The grammar of society: the nature and dynamics of social norms*, Cambridge: Cambridge University Press, 2006.
- 55 C Bicchieri and R Muldoon, Social norms, in Edward N Zalta (ed.), *The Stanford encyclopedia of philosophy*, Stanford: Stanford University Press, 2014.
- 56 See KA Kelly, *Domestic violence and the politics of privacy*, New York: Cornell University Press, 2003, 2.
- 57 Our male participants' eagerness to challenge the image of men as violent and aggressive may have been influenced by the fact that we were female researchers.
- 58 Jewkes, *Intimate partner violence*.
- 59 Women who are complicit in the unequal structuring of gender relations and at least tacitly accept their subordination, endorse or enact a traditional or emphasised femininity. See R Connell, *Gender and power: society, the person and sexual politics*, Palo Alto: University of California Press, 1987. Importantly, Connell underlines that these models of femininity should not be read as fixed categories as the relationships in which gender is constituted are dynamic.
- 60 See also Jewkes et al., Risk factor for domestic violence.
- 61 See also R Jewkes and R Morrell, Sexuality and the limits of agency among South African teenage women: theorising femininities and their connections to HIV risk practices, *Soc Sci Med.*, 74:11, 2012, 1729–1737; TE Barlow et al., The modern girl around the world: a research agenda and preliminary findings, *Gender & History*, 17, 2005, 245–294.
- 62 C Gilligan, *In a different voice: psychological theory and women's development*, Cambridge, MA: Harvard University Press, 1982, quoted in S Meyer, Why women stay: a theoretical examination of rational choice and moral reasoning in the context of intimate partner violence, *Australian & New Zealand Journal of Criminology*, 2, 2012, 181.
- 63 Meyer, Why women stay, 181.
- 64 For similar findings, see S Bollen et al., *Violence against women in metropolitan South Africa: a study on impact and service delivery*, ISS, 1999; Human Rights Watch, *Violence against women in South Africa: state response to domestic violence and rape*, New York: Human Rights Watch, 1995.
- 65 For the commission's recommendations pertaining to domestic violence see O'Regan and Pikoli, *Towards a safer Khayelitsha*, 458–459.
- 66 H Combrinck and L Wakefield, Going the extra mile: police training on domestic violence, *SA Crime Quarterly*, 31, 2010, 27–34.

Memories of the 'inside'

Conditions in South African women's prisons

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The inadequate conditions of South Africa's correctional facilities are well known. Health care, sanitation, food provision, access to education and reading materials, and, in particular, overcrowding are considerable challenges faced by the Department of Correctional Services (DCS). Based on interviews with former prisoners, this article retrospectively examines the conditions under which female inmates are incarcerated in South Africa. Findings show that prison conditions in some female correctional facilities are poor and impact negatively on prisoners during, and sometimes after, their incarceration. ('Prisons' and 'correctional facilities' are used interchangeably in this article.)

Section 35(2) of the Constitution of the Republic of South Africa stipulates that all individuals, including female prison inmates, have the right to conditions of imprisonment that are in line with human dignity.¹ This includes access to exercise, adequate accommodation and diet, reading material and medical treatment. Similarly, Chapter III, Part A of the Correctional Services Act 1998 outlines proper conditions under which prisoners are to be incarcerated.² These documents stipulate that the human dignity of prisoners should be respected, and that they should be provided with adequate floor space, food and diet, sufficient clothing and bedding, exercise, health care, and reading material of their choice. However, as the testimonies of the former prisoners in this article illustrate, these rules and regulations are not always adhered to.

Conditions in South African prisons are described by Gordin and Cloete as 'horrifying'.³

They note that conditions are unhygienic for many reasons, including an insufficient number of bathroom facilities, and inadequate supplies of toilet paper and soap.⁴ These conditions are made worse by a prison population that is growing faster than correctional infrastructure can cope with, in terms of both quantity and quality.⁵ Overcrowding places pressure on prison resources, and in turn generates tension and increases violence amongst inmates.

Between March 2007 and March 2015, female inmates represented between 2.2% and 2.3% of the total South African prison population.⁶ However, the population of female inmates in South African prisons is low compared to those of some other countries, which range between 2% and 9%.⁷

Perhaps not dissimilar to South Africa, research in Pakistan has shown that women who are imprisoned suffer poor health as a result of the structural challenges, such as poverty and undernutrition, that inform their pathways to crime.⁸ Even in Scotland, a

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comparatively wealthy country, there has been an inability to meet the international standards of imprisonment for women, resulting in healthcare being neglected.⁹ There is a relative scarcity of research on women's prisons in South Africa and other parts of the world.¹⁰ Like the inadequate resources allocated to female prisons, the lack of research on women's prisons can be attributed to the fact that female prisoners constitute a small percentage of the global prison population. This article therefore attempts to contribute to the under-researched area of female imprisonment.

Methods

This study forms part of a wider project that examines the experiences of women prior to, during and after incarceration in South Africa. This article draws on in-depth interviews with 10 female ex-prisoners who completed their prison sentences in correctional facilities in Pretoria, South Africa. The use of in-depth interviews is advantageous because it assigns participants a central role in the interview, fosters interpersonal interaction and allows participants to speak freely.¹¹

Ethical clearance was obtained from the Ethics Committee of the Department of Sociology, University of South Africa (UNISA) before the data gathering began. Interviews were conducted in a social worker's office at the Department of Correctional Services (DCS), a shopping mall, two university campuses, the dormitory of a nursing school, and on the grounds of the Union Buildings, thus protecting participants from intentional harm. Participation was voluntary, and informed consent was obtained from all the participants. Pseudonyms were used to ensure anonymity.

Access to participants was facilitated by the DCS, which provided the names of female prisoners released from prisons in Pretoria between 2009 and 2014, and of female prisoners who were about to complete their parole in 2014. The participants in the second category, women on parole, were not imprisoned at the time but they reported to the DCS periodically throughout the duration of their parole.

All the women were first contacted telephonically and the study was introduced to them. Appointments were set up with those who were willing to be

interviewed. Getting women ex-prisoners to participate in the study was challenging. Out of a total of 75 women ex-prisoners contacted for the broader study (of which this article is a product), only five agreed to take part. Their unwillingness may be informed by the stigma that is associated with imprisonment. Another 15 participants, from the broader study, were obtained through 'snow balling' and by making contact with the parolees when they reported to the DCS.

The interviews took between 30 minutes and five hours. The aim was to solicit detailed knowledge of and perceptions on participants' experiences before, during and after incarceration. The interviews were transcribed, and, following Babbie, the transcribed interviews were analysed using open coding, axial coding and selective coding.¹² In the open coding stage, labels were attached to data, in the axial coding stage, the main themes generated through open coding were connected and subsequently developed in the selective coding stage. Interview notes were also included in the data analysis. Although the interviews covered a range of topics, only those aspects that relate to the conditions of imprisonment are shared in this article. In the next section I discuss the study's findings, which relate to conditions of imprisonment.

Findings

In discussing the conditions of their imprisonment, the participants focused on four broad themes. These were physical, educational, occupational and social conditions. Physical conditions included overcrowding, healthcare and food, hygiene and sanitation; educational conditions included access to education and reading materials; occupational conditions included prison work and skills acquisition; and social conditions included exercise and recreational facilities, and contact with the outside world.

Physical conditions

Overcrowding

Although the overcrowding in female prisons in South Africa is not as severe as it is in male prisons, all South African prisons are filled beyond their capacity, with some prisons recorded as housing two to three times their capacity between April 2013 and March 2014.¹³

Overcrowding generates and exacerbates tension and violence in prisons through competition for resources, including toilets, showers, basins, beds and bedding.¹⁴ These tensions were illustrated by respondents:

They actually fight in the showers. When the first warden walks past and say 'You can go bath', you have to go bath at that time so as to avoid the rush to the bathrooms later, which may result in fights. (Bonolo)

Others spoke of how overcrowding negatively impacted their privacy and dignity:

[W]e have got this open shower where we bath. We, the ladies [inmates], made curtains to give us some privacy. Everybody that passes by the shower pulls aside the curtain and peeks into the shower where you are having your bath. That's not nice. They have got no respect for you. (Amanda)

I don't like people around me, it's very irritating. We sleep four to six people in one room and the room is like a cubicle, it's small. You haven't got any privacy ... That's the most difficult thing, the lack of privacy. (Emelyn)

According to the participants, due to overcrowding two inmates sometimes had to share a single bed. Furthermore, the bedding provided was insufficient and often in a poor state. One participant noted that the cells were so overcrowded that she was made to sleep in the corridor:

They got me a bed and they put it in the corridor because there is no space. (Amanda)

The DCS acknowledges that overcrowding poses a challenge in South African correctional facilities, and has suggested the following measures to combat the problem:

The strategy to down manage overcrowding involved the reduction of the length of detention of remand detainees, the improved management of conversion of custodial sentences to community correctional supervision, the introduction of electronic monitoring, the effective functioning of the parole system, the piloting of halfway houses for parolees without monitorable addresses, the creation of additional bed space

through centre upgrades and through the building of new facilities ... The department intends to down manage the level of overcrowding to the extent that by ... [the end of] 2017 the inmate population should be 151 208 with available bed space to the amount of 122 167.¹⁵

Due to the increasing female prison population, which may continue to grow in future, it is likely that inmates will continue to outnumber beds.¹⁶ Prison overcrowding is not a South African problem only. It remains a challenge in prisons worldwide, with many countries experiencing an increase in prison populations.¹⁷ As I explore below, overcrowding is the root cause of many other problems that female inmates in South Africa face. One of these is unhygienic conditions and inadequate healthcare.

Healthcare

Many prisoners in several countries suffer poor health, which sometimes precedes their incarceration.¹⁸

The state of healthcare in South African correctional facilities is reflected in the 2013/2014 annual report of the Judicial Inspectorate for Correctional Services (JICS) in response to the requests and complaints made by inmates regarding the alleged failure of correctional facilities to provide medical treatment. This was the second most common category of request and complaint recorded by the JICS in 2013/2014.¹⁹

This study found that the healthcare provision in certain South African correctional facilities was poor and inadequate. Participants reported that some institutions did not have doctors to attend to the medical needs of female prisoners. A number of pregnant female inmates did not receive medical care at any point in their incarceration, and some pregnancies allegedly went unnoticed by the authorities.²⁰ While nurses were available to attend to inmates, participants claimed that there were too few of them to meet their healthcare needs.

In addition, respondents reported that wardens and nurses did not give proper attention to reports of ill-health from female inmates. As a result, inmates resorted to treating their illnesses themselves, using home-made remedies. Amanda explained the steps she took to alleviate the symptoms of a cold

after what she deemed inadequate attention and medication given to her by the prison nurse:

For colds, we usually make a mixture of ... hot water, a spoon of maple syrup, a spoon of lemon juice, and two tablets of crushed ... You learn survival skills in there [chuckles].

Self-medication was also common:

I never got any medicine from the Kas [clinic] while I was there [in prison]. I had an abscess in my mouth ... I had to buy antibiotics from another woman [fellow inmate] who was taking antibiotics for her tooth that was removed by the dentist, because I would not have been attended to at the clinic because I smoke. (Emelyn)

Furthermore, the stigma felt as a result of being in chains during hospital visits dissuaded some inmates from reporting cases of ill health to the prison authorities:

Sometimes, the sick people are given the option of being taken to a hospital, outside the prison premises, but most of them decline because they are embarrassed by and dislike the shackles that are attached to their ankles whenever they are taken outside the prison. (Melitta)

The health of the female inmates, which is often compromised before incarceration, was reportedly made worse by the food available to them. Some inmates who had specific ailments and required specialised diets reported difficulties accessing these in the correctional facilities.

Food

The poor health of the female prisoners may in part be a reflection of the food that is provided at correctional facilities. It has been argued that prison food should be as nutritious as budget allocations will allow, because good food reduces prisoner discontent and ensures prisoners' good health, which can lead to long-term cost savings for prison authorities.²¹ Most participants in this study reported being fed poor quality food during their incarceration. They claimed that the food was 'terrible' and in some cases not properly cooked. The food in some prisons was said to be rotten. As a result, some participants reported being close to starvation at times.

Participants also reported that prison food was monotonous and did not constitute a balanced diet. They reported that their diet consisted mainly of carbohydrates in the form of bread and pap (a porridge made from ground maize), which was sometimes served with cabbage and boiled eggs. Participants' narratives suggest that some inmates could request special diets for health (diabetic and HIV-positive inmates) and religious (Halaal foods for Muslims) reasons, and that this food was generally of a better quality. Still, one participant who suffered from fibromyalgia reported that the food that she was given during her incarceration was not tailored to her health requirements, and this worsened her condition. The monotony of prison food made some participants develop a dislike for particular types of food; so much so that they did not eat these foods once released from prison.

Hygiene and sanitation

Along with the poor quality of food provided in correctional facilities, participants also complained of unhygienic and unsanitary conditions, which they believed may have contributed to ill health. The lack of cleanliness in prison was a source of major concern for participants, a worry heightened by the fact that they felt helpless when it came to improving the hygiene of their cells and/or prisons:

No tissues, no cleaning stuffs, they came after a long time. And you can get germs from the toilets. You can get sick. How are you going to clean the toilets? Imagine 50 or 60 people in one toilet. (Patricia)

Participants reported that the unhygienic conditions were worsened by the inadequate provision of water and cleaning materials, the insufficient number of toilets and bathrooms, and the location of toilets and bathrooms inside some cells:

[W]hile you are bathing, with soap all over your body, the water goes off. And now you have to wipe off soap from your body because you are all soapy, and then rinse yourself again tomorrow. It was sad. They give you this long bar of green soap, it's for the whole block for the whole month. It's ultimate survival in there, you have to be clever, intelligent to survive in there. (Bonolo)

The first time that I get to prison ... there is only one toilet and bath for 50 to 60 inmates here. The toilet is at the back [behind] of the beds. There are no doors between the toilets and the cell rooms, the toilets are right inside the cells ... (Emelyn)

The toilet and bathrooms are just beside where you eat and sleep. It's not alright. It's not hygienic. (Jessica)

The insufficient supply of toiletries reported by Patricia and Bonolo has been noted by the JICS as being widespread in facilities across South Africa.²²

Respondents noted that conditions were made worse by the presence of pests such as rodents and cockroaches. The failure to address hygiene and sanitation problems may contribute to the spread of diseases in and outside prisons, in particular tuberculosis, which is rampant in South African prisons.²³

Educational conditions

This section focuses on the access that the participants had to formal education and reading materials during their incarceration. The participants reported that they had varied access to formal educational opportunities and reading materials during their imprisonment.

Education

Some participants discussed their access to formal education while they were in prison:

I was studying. I was getting my N6 in business management. I was getting my diploma in theology. I did others courses in prison, like HIV/AIDS and drugs-related courses. I got my diploma in prison. (Grace)

However, the opportunity to study in prison was not without challenges. Some participants claimed that even though they wanted to enrol for formal education while in prison, they were prohibited from so doing by the prison staff. Others claimed that the short lengths of their prison sentences prevented them from enrolling, as only inmates with lengthy sentences were allowed to enrol in the prison school. Other participants felt that favouritism played a part, and that even though they indicated their desire to

enrol for formal education during their incarceration, they were not granted this opportunity because they were not one of the prison warden's favourites.

Access to reading materials

Only a few participants had access to reading materials during their incarceration, and these materials were not always sufficient or adequate. For instance, one participant claimed that there were very few books in her prison library and that she read them all before the end of her prison sentence. Other participants claimed that books in their prison libraries were outdated. However, visitors were allowed to bring inmates reading materials:

The library was closed because they said they do not have enough people to work there. Then my daughters started bringing me books on their visits. (Emily)

Some of the female correctional facilities lacked libraries, while others had their libraries shut down during the periods that the participants were incarcerated. Participants opined that idleness was exacerbated by non-existent or insufficient reading materials, although idleness was also reported as a reason why some inmates took to reading. Some of the inmates in correctional facilities where these services were available chose to alleviate idleness by learning skills or engaging in prison work, as discussed in the next section.

Occupational conditions

The work that the female inmates engaged in and the skills that they were taught are examined in this section.

Prison work and skills acquisition

The importance of work while in prison has been well established.²⁴ Prison work provides inmates with emotional stability, and ensures order in these institutions.²⁵ Prison work for female inmates in the present study consisted mainly of jobs that kept the correctional facilities running; for instance, cooking in the kitchens, working in the laundry or wash bay, cleaning the offices within the prison facility, and working in the crèche and tailoring workshop. Although the majority of prison work done by female

prisoners was unpaid, one participant said she received a little remuneration in return for work. It appears that the female prisoners who worked in the workshop of this particular prison received stipends in return for the work they did. This participant also discussed working for fellow female inmates in exchange for food and/or material things:

The ladies work for other ladies [prisoners work for fellow prisoners] and get paid with chocolates and phone cards. The ladies wash clothes for other ladies for something [in exchange for the above-mentioned items]. (Vanessa)

Even if they were not being paid, some female inmates did voluntary work in prison as it helped them pass time while they were serving their sentences. However, the majority of female prisoners remained idle throughout their incarceration.

Some participants reported that vocational training was offered to them while they were in prison, for instance tailoring, needlework and beaded jewellery making, but that most female prisoners opted not to participate in these training sessions. Other participants did not have any vocational training opportunities in their correctional facilities. The main reason women chose not to participate in vocational skills training was because the correctional facilities did not make this compulsory, and because the women did not think that it was important to learn these skills.

Social conditions

Exercise, recreation and contact with the outside world, in the form of telephone calls, electronic communication and visits from family and friends, constitute the social conditions that will be discussed in this section.

Exercise and recreation

Section 35 (2)(e) of the South African Constitution provides that 'everyone who is detained, including every sentenced prisoner has the right to conditions of detention that are consistent with human dignity; including at least exercise ...'.²⁶ Similarly, the 2014/2015 Annual Report of the JICS states that '[e]very inmate must be given the opportunity to exercise sufficiently in order to remain healthy and

is entitled to at least one hour of exercise daily. If the weather permits, this exercise must take place in the open air.'²⁷ Some participants claimed that the rights of prisoners to exercise were not always upheld. A few participants noted that they were given time to exercise in prison, while others reported that they were not. The confinement of prisoners has a negative impact on their opportunities for exercise.²⁸ The majority of participants recounted the lack of opportunities for recreation in prison, resulting in idleness among the inmates, which sometimes led to fights:

There were a lot of [physical] fights between the inmates, some of which were caused by deciding which television channel to watch. Most fights break out without anyone, except the parties that are involved in the fights, knowing the causes of the fights. (Melitta)

Most of the recreational activities that female inmates engaged in were organised by the inmates themselves and took place inside their prison cells in the form of card and board games, with very few activities being performed outside of their cells. However, some of these activities had to be stopped by correctional officers because they were encouraging vices such as gambling. On public holidays, the prison authorities organised activities for the inmates and the inmates' families were allowed to partake in some of these activities under the supervision of the wardens.

These activities formed part of the contact that the female inmates had with people from outside their correctional facilities; this is discussed in more detail in the next section.

Contact with the outside world

An important aspect of prison life is the contact that incarcerated persons have with people who are not incarcerated. Indeed, 'for many prisoners, one of the most distressing features of imprisonment is separation from family and friends and contact with them is the thing that they value above all else'.²⁹

In this study, the frequency of contact varied between participants, with some not having any contact with their friends and family members throughout their incarceration. Those who did have contact reported communicating telephonically, electronically and through visits. The use of personal cell phones by

female prisoners is prohibited and inmates reported that those who were caught in breach of this rule were often punished with solitary confinement. Inmates claimed that they were allowed to use public telephones located inside the prisons, but that calls to family and friends were often restricted by the prison authorities. There were specific days and times within which calls could be made, and the time allocated to calls was brief, approximately five minutes per inmate. This was because of the large number of inmates who wanted to use the telephones.

Although solitary confinement was outlawed in South African correctional facilities in 2008, participants reported that some female inmates were subjected to solitary confinement, often under the guise of segregation.³⁰ Solitary confinement is defined as 'being held in a single cell with the loss of all amenities', while segregation involves 'segregation of an inmate for a period of time, which may be for part of or the whole day and which may include detention in a single cell ...'³¹ According to the participants, the conditions for segregation were often not adhered to by the authorities so that at times their punishment essentially amounted to solitary confinement.

Participants reported that electronic communication was virtually non-existent and that there were no computers in their institutions. As a result, they did not send or receive electronic messages. However, one participant claimed that prisoners in good standing with the wardens had access to computers. According to this participant, these particular inmates performed chores for some wardens in their homes and used the wardens' computers, with the wardens' knowledge, to access social media, particularly Facebook.

In addition to the electronic communication that some participants had with the outside world, some received regular visits during their imprisonment, while others did not. On average, participants reported that they were allowed one visit per week. In her interview, Amanda noted:

We [she and her sister] were the people with the most visits in prison ... It's sad for the other people because there are some people that never had visitors while we were there... because their families live far away from the prison.

Conversely, when Elizabeth was asked how often she saw her family and friends during her imprisonment, she responded:

Not very often because I was in Durban [Westville prison]. It was not so easy. I see them [her family] when I go up and down to the courts [before she was sentenced], but after that one or two times.

Other inmates said that they received no visitors during their incarceration because their families lived far away from the correctional facilities and could not afford the transportation costs to visit. Some of the participants who received regular visitors shared the items their visitors brought with the inmates who did not receive visitors.

Conclusion

This study documented former inmates' reports of poor conditions in female correctional facilities in South Africa. Some of the prison conditions reported are not peculiar to South Africa, as studies have shown that some countries experience the same, or worse.³²

Although the DCS is taking steps to improve the conditions under which female inmates are incarcerated, more needs to be done in this regard.³³ The provision of adequate conditions of incarceration for female inmates can improve their health and reduce the tensions and fights that occur between inmates. By prioritising exercise for female inmates, many of the fights that break out in female prisons could be curtailed, as some of the aggression and idleness that leads to these fights can be channelled positively into exercise. The DCS also needs to place more emphasis on recreation for female prisoners. The participants' narratives indicate that regular recreational activities, particularly those that are organised by prison authorities, are non-existent, or few and far between. The introduction of, or increase in, recreational activities may help reduce the idleness that currently pervades such institutions, and the resulting levels of aggression between inmates.

Prison staff should be trained and monitored to ensure they adhere to the DCS's regulations and standards regarding the treatment of female inmates. Prison staff can increase the participation of female prisoners in vocational skills training by helping them to recognise the relationship between the acquisition of skills and

rehabilitation. This can be done by highlighting the link between skills and financial freedom, especially after release from prison. If skills that translate into employment upon release are taught in female prisons the inmates may be encouraged to participate more actively, because unemployment is one of the challenges that ex-prisoners experience.³⁴ Another way of motivating prisoners could be to sell the items made in skills training centres and to give inmates a percentage of the sales (even if they would not have access to the money while incarcerated).

The inadequacies reported by former female inmates interviewed for this study with regard to the physical, educational, occupational and social conditions of incarceration in some South African female correctional facilities suggest that this situation needs to be improved as a matter of urgency.



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Measuring socioeconomic characteristics of high murder areas

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Every day, on average, more than 49 people are murdered in South Africa. A better understanding of the demographics of locations with high murder and other crime rates could assist the development of initiatives to reduce them. It could also provide the basis for research into how social structures and relationships affect violence reduction. This article explores the hypothesis that the risk of murder is associated with certain demographic characteristics in particular locations. It proposes a method for analysing the demographic characteristics of police precincts in relation to the murder rate, and provides a summary of initial results. The article concludes with a discussion on the usefulness and limitations of this approach.

Theoretical framework

South Africa's high violent crime rates are predominantly the result of interpersonal violence perpetrated by people who know each other.¹ Various researchers have explored these trends in relation to the Chicago School's social ecological approach to understanding crime, and subsequent theories of social disorganisation.²

Shaw and McKay were among the first to introduce a scientific method to address problems of social control and disorganisation. Social disorganisation, they suggested, occurs where social control is weak, because conventional institutions of social control (such as family structure, schools, churches

and voluntary community organisations) are incapable or unable to 'order' the behaviour of the community's youth.³

Abbott summarises the Chicago School's social ecological approach by noting 'that one cannot understand social life without understanding the arrangements of particular social actors in particular social times and places ... [N]o social fact makes any sense abstracted from its context in social (and often geographic) space and social time. Social facts are *located facts*. [emphasis in original]'⁴

Furthermore, crime is not evenly distributed across all locations.⁵ For this reason, Chicago School scholars such as Park, Burgess and McKenzie were the first to combine qualitative and quantitative research methods to understand the social dynamics of communities in particular locations.⁶

Shaw and McKay concluded that low economic status, ethnic heterogeneity and residential mobility are three structural factors that have a negative impact on social disorganisation and could, in turn, account for variations in delinquency and crime.

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Sampson and Groves note that while the testing of macro-level characteristics such as median income from census data could generate a useful preliminary test, it does not provide the variables required to measure, among others, the impact of community structures and relationships on crime.⁷ It is therefore important to note that a comprehensive analysis of risk factors will require multiple datasets in addition to crime and census data.

Using victimisation data in addition to administrative data, Sampson and Groves extended the structural factors identified by Shaw and McKay to include family disruption and urbanisation. They also expanded the theoretical framework to include intervening mechanisms such as ‘sparse local friendship networks’, ‘unsupervised teenage peer groups’ and ‘low organisational participation’.⁸

Subsequent studies on social disorganisation link structural factors to delinquency as well as property and violent crime, to varying degrees. Poverty and economic deprivation are strongly associated.⁹

The drivers of interpersonal violence based on the social ecological framework are best summarised by the ecological model adopted by the World Health Organization (WHO).¹⁰ Here, interpersonal violence is regarded as the result of a combination of multi-level

factors related to the individual, relationships, the community and society. The ecological framework is outlined in Figure 1.

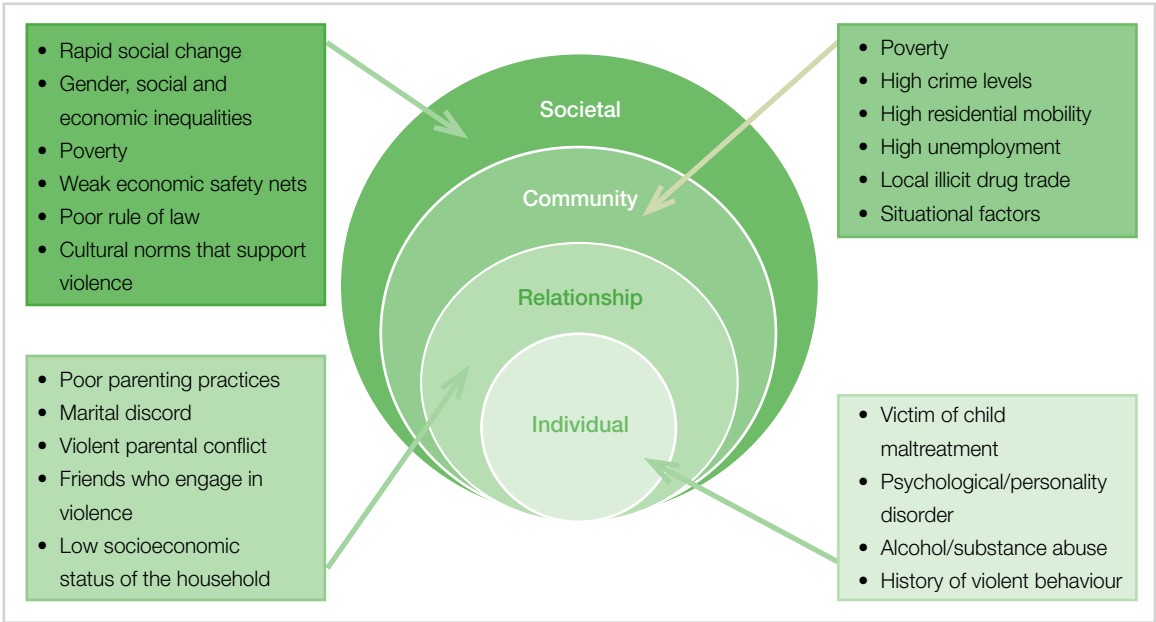
Therefore, the predictors of murder and other violent crimes are interrelated, requiring multi-stage interrogation and analysis. As such it is important to study the impact of such factors on crime and violence rates in stages, using different data sets and utilising multiple methods.

This article provides a description of the first steps one might follow in initiating an interrogation of the risk factors contained in the community and societal spheres of Figure 1, with the appropriate variables available in the South African census. The exploratory analysis undertaken here is purely intended for illustrative purposes, aiming to highlight the possible uses for the linked data. Comparing areas with high murder rates can provide helpful insights into the level of risk of murder in different communities in South Africa.

Current available crime data

On an average day more than 49 people are murdered in South Africa.¹² Since 2013 the murder rate has increased by 9.2% from 30 murders per 100 000 to 32.9.¹³

Figure 1: The ecological framework: WHO examples of multi-level risk factors



Source: Adapted from WHO.¹¹

Currently, the most accessible figures available on murder are the South African Police Service's (SAPS) crime statistics. The SAPS releases its recorded crime statistics annually (usually in September) for the previous financial year (April of the previous year to March of the release year). Among the 29 different crime and violence categories, the SAPS provides murder statistics for the country, for each province, and for all 1 139 police station precincts.

Crime rates (per 100 000 population) are made available on a provincial and national level. While this enables comparisons across the provinces, it gives very little information about the differences between local level areas and so-called 'crime hotspots'. A crime hotspot is regarded by Eck et al. as 'an area that has a greater than average number of criminal or disorder events, or an area where people have a higher than average risk of victimization'.¹⁴

The precinct level murder figures provided by the SAPS have many limitations. Among others, only raw figures are provided, without any correction for the size of the population in the precinct. This means that the murder risks across precincts cannot be compared because the size of the population can be very different. One precinct may consist of 5 000 inhabitants while the neighbouring precinct may have 60 000 inhabitants. Furthermore, the specific location of criminal incidents within the precinct is not provided.

Statistics South Africa (Stats SA) can provide information about the number of households and the number of individuals per municipal ward, but these boundaries do not coincide with the SAPS precinct boundaries. This makes it difficult to link the census data to the crime statistics at a local level, so as to get a better understanding of comparative crime rates per 100 000 population. However, the Institute for Security Studies (ISS) has developed a method for providing this type of analysis. The following section gives a detailed explanation of this methodology.

Aim of the study

Using murder rates per 100 000 population allows for comparisons of locales with the highest risk of murder, and between different precincts.

This study explores the hypothesis that the risk of murder is associated with certain demographic characteristics in particular locations. To do this, a three-fold process was used:

1. Estimating population size per police precinct and linking census data
2. Calculating crime rates
3. Undertaking multiple regression analysis

The section below contains a discussion of the methodology followed to undertake this process.

Methodology

Estimating population per precinct and linking census data

To provide an estimation for the number of households and the number of individuals living in each precinct, the ISS developed a methodology whereby Stats SA's small area data from the 2011 census and the police precinct boundaries released by the SAPS are projected onto each other, creating polygons. Small areas are units of analysis provided by Stats SA to allow for in-depth analysis of census data. With the release of the Small Area Layer (SAL) level of data from the 2011 census, it becomes possible to provide an estimate of the population per precinct.

In areas with high population density, the surface area of the unit of analysis will be small, as the areas are based on a rough estimate of the number of households. In sparsely populated areas, the area covered by this unit of analysis may therefore be much larger.

Overlaying the spatial data from the 2011 census with precinct boundary data provided by the SAPS, 96% of the SAL units fall completely within the boundaries of a police precinct. Figure 2 gives an example of the overlay of precinct boundaries (green lines) with the SAL layer. The population data and household census data for the areas that fall completely within the precinct boundaries are assigned to that police station.

For the remaining 4% of SAL areas, a very basic area proportional assignment was used. For example, if 30% of small area X falls within precinct A and

Figure 2: Image of the overlay of precinct boundaries (green lines) with the SAL layer



70% within precinct B, 30% of the population and all related census data are allocated to precinct A, and 70% of the population is allocated to precinct B. Adding up all the small areas and partial small areas within each precinct then gives us an estimated population per precinct.

Each year, Stats SA releases mid-year population estimates at a provincial and district municipality level. The population estimates per police station are updated each year, using the district level population growth estimates provided by Stats SA in the mid-year population estimates. This growth rate is then applied to all the precincts in that district.¹⁵

Calculating crime rates

To calculate the crime rates for each police precinct, the number of crimes per precinct from the 2014/2015 SAPS crime statistics are divided by the population per precinct. The total is multiplied

by 100 000 to derive the crime rate per 100 000 population.

Multiple regression analysis

The data were analysed using multiple linear regression utilising SPSS 23 statistical software. Linear regression is used to predict the influence of various input variables (independent variables) on one output variable (dependent variable). Various models were tested to ensure minimal collinearity between the independent variables in each model. The independent variables and dependent variables are described below.

Independent variables

Several independent variables were identified in the initial and exploratory research based on the ecological framework, as they provided insight into the individual, relationship, community and

societal characteristics of the population in each precinct. As our analysis is limited to data from the 2011 census, the indicators below were used in the regression models.¹⁶ These indicators could be used to approximate the different layers of risk factors mentioned in the ecological framework model. The selected variables are summarised in Figure 3 and a detailed description is provided in the text.

Figure 3: Independent variables

Population density	Tenure status
Ethnic heterogeneity	Gender of head of household
Urbanisation	Education level
Immigrants	Orphans
Low income	Young males
Unemployment	Relative poverty
Informal housing	

Population density

Population density was calculated using the population estimates per precinct as calculated for 2014/2015, divided by the surface area of the precinct in km² according to the SAPS precinct boundary data. The population density for South Africa is estimated at 43 people per km².

Ethnic heterogeneity index

Sampson et al. theorise that ethnic heterogeneity as a measure of social disorganisation can influence certain types of crime in a specific area.¹⁷ A commonly used measure for heterogeneity is the heterogeneity index described by Blau.¹⁸ The index is calculated on the population group variable, and is described by $(1 - \sum p_i^2)$ where p_i is the fraction of the population in a given group. This measure increases when heterogeneity increases, and is zero when there is no heterogeneity (for example, when only one population group is present).

Proportion urban

Census 2011 provides the variable *geotype*. The proportion urban variable was calculated by dividing the number of people living in urban *geotype* areas by the total number of people in the precinct.

Proportion immigrants

The proportion of immigrants in each precinct was calculated using the migration questions from the

2011 census. Each person in the household was asked whether they stayed in the same area 10 years before and, if they had moved into the area within the last 10 years, they were asked for their country or province of origin. If they were from outside South Africa, they were classified as 'immigrant'.

Proportion low income

Monthly household income is used as an indicator of household level poverty. Many households survive on social grants, including child support grants and old age pensions. The proportion of households in a police precinct with a total monthly household income below R1 600 per month¹⁹ was calculated to give an indication of poverty.

Proportion unemployed

Using the labour force data from Census 2011, the proportion of unemployed people in the labour force (ages 15–65) was calculated per precinct.

Proportion informal

The number of households living in informal dwellings was calculated relative to the total number of households.

Proportion renting

The number of households renting their dwelling was calculated relative to the total number of households.

Proportion female head of household

The number of households headed by females was calculated as a proportion of the total number of households in the area.

Proportion low education

To estimate the number of people with no or limited education, the total number of people with primary school education or less (up to and including Grade 7) was calculated as a proportion of the total number of people in the area.

Proportion orphans

The percentage of orphans was determined by calculating the number of children under the age of 20 whose mother is not alive, as a percentage of the total population.

Proportion young males

The percentage of young males was calculated by dividing the number of males between the ages of 18 and 35 by the total population.

Relative poverty

To estimate the relative poverty of a precinct compared to surrounding areas, the average income was calculated for each precinct and municipality. Relative poverty is the average municipality income divided by the average precinct income. A high value for this indicator implies that the municipality average income is relatively high compared to the precinct average income, and the precinct population is relatively poor when compared to the rest of the municipality. A low value for this indicator implies that the precinct average income is relatively high compared to the rest of the municipality.

Dependent variables

The initial focus of the research was to identify socio-economic indicators, which could help predict the murder rate at a precinct level. During this analysis it became clear that the murder rate at a precinct level fluctuates heavily in the smaller precincts, creating unwanted outliers in the data. These outliers are more pronounced in the precincts with smaller populations, and these were excluded from the analysis.

The fluctuations are less pronounced if the average murder rate over 10 years is applied to the model, and a further analysis was done using this dependent variable.

One of the conditions of multiple regression models is that the residual values have to follow a normal distribution. For the dependent variables used in this model, this is not the case. A common transformation applied to the data is log transformation. The natural log value of each dependent variable is entered into the model instead of the value. After this transformation, the residual values follow a normal distribution.

Murder rate

The murder rate was calculated by dividing the number of murders in the precinct in the 2014/2015 year of analysis by the total population of that precinct in 2014/2015, and is reflected as the number of murders per 100 000 people. Precincts with an estimated population below 20 000 are excluded from this analysis.

Murder rate average over 10 years

In smaller precincts, the murder rate per 100 000 population will fluctuate drastically, even when the

actual number of murders remains small. For this reason, the average number of murders was calculated for the last 10 years, and then divided by the current population. This will lead to less obvious fluctuations in the murder rate, especially in the smaller precincts, and all precincts are included in this analysis.

Key findings

In this section, the statistical results of each model will be presented.²⁰

Murder rate

Out of all the variables analysed in the murder rate model, and taking into account collinearity between the variables, the variables presented in Figure 4 had a significant effect on the murder rate/100 000 in precincts with more than 20 000 people (700 stations were included in this analysis).²¹

Figure 4: Significant variables in murder rate

	Standard-ised Beta coefficient	T-test	Significance
(Constant)		13.167	0.000
Renting	0.236	5.186	0.000
Informal	0.169	4.128	0.000
Relative poverty	0.155	3.993	0.000
Orphans	0.512	9.967	0.000
Urbanisation	0.337	6.118	0.000
Adjusted R-square: 0.237			

According to this regression model, police stations in more urban areas, with more informal housing, more people renting property, a higher percentage of orphans, and that are relatively poor compared to the rest of the municipality, tend to have a higher murder rate.

Murder rate 10 year average

When looking at the 10 year average murder rate, the influence of a few murders in police precincts with small populations is much lower. Therefore, the analysis could include all the police stations. The variables for population density, unemployment and

relative poverty have a significant effect on the 10 year average murder rate per precinct (1 139 included in this analysis).

Figure 5: Significant variables for 10 year murder rate

	Standard-ised Beta coefficient	T-test	Significance
(Constant)		9.450	0.000
Population density	0.279	9.367	0.000
Unemployment	0.391	12.090	0.000
Relative poverty	-0.117	-3.535	0.000
Adjusted R-square: 0.254			

According to this regression model, police stations with a higher population density, higher unemployment rates, and lower relative poverty compared to the rest of the municipality, tend to have a higher average murder rate over 10 years.

Discussion on limitations

The use of census data

The estimated population derived using the spatial overlay methodology has certain limitations. Firstly, the census population count may not be accurate. Stats SA corrects for undercounts based on area characteristics, but on a small area level these inaccuracies may not be adequately addressed. Census counting errors can be assumed to differ in different area types. For example, it may be more difficult to count dwellings and households in informal areas, and fieldworkers may not reach all the dwellings in vast rural areas.

Secondly, the households may not be evenly distributed within the small areas, while using straightforward area proportional methodology results in certain households being counted in one precinct while they actually reside in another.

Thirdly, census data are only released every 10 years. The last census was undertaken in 2011, which means that the population distributions may have changed. High mobility and developments in certain

areas may result in large shifts in the population per police station that are not accounted for when using the spatial overlay method.

Lastly, using district municipality population growth rates on a local level may also lead to some inaccuracies in the population-per-precinct estimates, as it does not take into account the population changes within the districts. It does, however, allow for a population growth factor to be applied to the police precinct population data when no other estimates for station level population are available.

The use of crime statistics

As noted previously, crime patterns are not evenly distributed. This is also the case in police precincts that differ considerably in size and density. Therefore, precincts have their own crime hotspots but the crime statistics in their current format do not provide disaggregated figures at a street or block level. In addition, under-reporting rates for various crimes may vary across precincts.

Some experts may argue that analysing crime rates at a station level is not going to yield valid results, since crime can be committed during participation in any routine activity that may occur in a different precinct than the one of residence. This is a valid point, as it points to limitations in the format of our current crime statistics. The statistics as they are provided to the public do not provide any information on the place of residence of the perpetrator or the victim. The crime statistics only reflect at which police station the crime was recorded. In the case of murder this is the station under whose jurisdiction the murder occurred, or the victim was found.

Crime research shows that in many urban areas the daytime population is very different to the night-time population. People commute into certain areas to work or look for work during the day, and go home at night. This can skew the reporting at certain stations. Moreover, some crimes are more likely to take place close to home than others.

Due to the large variations in population per precinct, and population densities, murders taking place in precincts with a very low population figure can cause major fluctuations in the murder rate per capita for those precincts. Filtering the smaller precincts

(in terms of population) may reduce some of the 'noise' caused by this phenomenon, but it also filters out valuable information from more than a third of the police stations. Other methods of addressing this issue need to be explored. Including other types of violent crime may normalise the population size effect and provide more insight into the effect of socio-economic factors on violent crime.

Discussion on findings and future research

The preliminary statistical analysis above shows a range of associations between murder and precinct-level socioeconomic variables. For instance, the analysis demonstrates that about 25% of murders over a 10-year period can be explained by the variables included in the model.

This and other findings highlight certain considerations for future research. The first is perhaps obvious; that, while basic socioeconomic analysis on its own may indicate significant associations, it will not yield any particularly strong associations with specific socioeconomic variables. This confirms the complexity of the drivers of crimes such as murder.

There may be other crime categories, for instance other violent crimes or property crime, that show stronger associations, but this falls outside the scope of the present study. Previous studies by among others Brown, Breetzke, Demombynes and Ozler would provide some guidance in this regard.²² Applying this methodology to other types of crime may give valuable insights into the socioeconomic factors driving crime, while reducing the effect of some of the limitations of this analysis.

The findings support the notion that more disaggregated crime data at a sub-precinct level, perhaps at an SAL level, could yield more meaningful findings at a neighbourhood level. Essentially, most police station precincts contain different socioeconomic realities within their boundaries.

As highlighted in recent discourses on social disorganisation theory, the drivers of various forms of violent crime and property crime may be diverse, and require multi-level analysis derived from numerous data sources as well as different methodologies.²³ At this point in time, limited data are available at a

precinct level, which limits the analysis to some very basic socioeconomic indicators.

The analysis in this article should be regarded as exploratory in nature. The methodology employed and findings indicate the complexity of the research required, but also provide a useful springboard for further research. For instance, the independent variables used were developed through this exploratory process, and are by no means exhaustive. Variables such as 'female headed households' are not without controversy, and these debates should be incorporated in future studies.²⁴ Furthermore, future research should include variables from other data sets such as victimisation data, if available, so that more of the issues mentioned in the ecological approach to crime prevention can be incorporated.

Conclusions

The data linking methodology used in this study can form the basis for the development of more sophisticated measurements to investigate certain associations between the risk factors identified in the ecological framework. These include the association between crime and poverty, economic deprivation, various indicators of inequality, heterogeneity, mobility, urbanisation, and many other variables identified in recent social ecology discourses. Among these will also be indicators of the impact of social structures and relationships on crime and violence. These indicators include trust in institutions, feelings of belonging or perceptions of social or group integration, and a willingness to show solidarity.²⁵

Precinct-level census information can be used together with other police performance data in the planning of police station-level responses to crime and violence. For example, population figures together with other variables can complement the understanding of the nature of the community serviced by policing structures. In turn it can help inform a rational allocation of resources at police-station level.



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Notes

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- 14 Eck et al., *Mapping crime: understanding hotspots*, 2.
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- 16 The technical and mathematical description, as well as supplementary selection criteria, falls outside the scope of this article.
- 17 Sampson and Groves, Community structure and crime, 783.
- 18 P Blau, *Inequality and heterogeneity*, New York: Free Press, 1977.
- 19 Income measured in October 2011, not indexed.
- 20 For the purposes of this article, complete tables containing the statistical results for each of these models were left out to ensure ease of interpretation, as the tables with log transformation provide a complex set of results that is difficult to interpret and describe.
- 21 Collinearity is a condition in multiple regression in which some of the independent variables are highly correlated. Including the smaller precincts in this analysis caused large fluctuations in the murder rate in the small precincts, where one murder in a year would be able to push the murder rate up by 5/100 000.
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Private prosecutions in Zimbabwe

Victim participation in the criminal justice system

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Two recent developments have changed the face of private prosecutions in Zimbabwe. Firstly, the prosecutor-general had to decide: (1) whether private companies may institute private prosecutions; and (2) whether the prosecutor-general, if he had declined to prosecute, was obliged to issue a certificate to a crime victim to institute a private prosecution. Both questions were answered in the negative. Victims of crime challenged this in court and the Supreme Court ruled that the prosecutor-general is obliged to issue a certificate should he decline to prosecute. In response, the prosecutor-general adopted two strategies: (1) to apply to the Constitutional Court against the Supreme Court's ruling that he is obliged to issue such a certificate; and (2) to have the relevant sections of the Criminal Procedure and Evidence Act (CPEA) amended so that the law clearly states that he is not obliged to issue such a certificate, and that companies are not permitted to institute private prosecutions. This article argues that despite these recent amendments to the CPEA, there are cases where the prosecutor-general may be compelled to issue a certificate to a crime victim to institute a private prosecution. These developments are important for South Africa, as a South African non-governmental organisation has petitioned the courts and argued that a law prohibiting it from instituting private prosecutions is discriminatory and therefore unconstitutional. South African courts may find Zimbabwean case law helpful in resolving this issue.

One feature of an effective government is its ability to enforce the law and have those who break it prosecuted and sanctioned. All over the world, government officials are entrusted with the responsibility of prosecuting those alleged to have broken the law. However, in Zimbabwe and some other African jurisdictions such as Swaziland, South Africa, Uganda, Zambia, Seychelles and Mauritius, a public prosecutor can choose whether or not to prosecute a suspect, even if there is evidence that the suspect committed an offence.¹ This discretion is open to abuse; a fact that courts in countries such as the United Kingdom (UK) and South Africa have

recognised.² It is partly because of this that in some countries a victim of crime has the right to institute a private prosecution against a person they believe perpetrated a crime against them. Since public prosecutors traditionally have the duty and right to prosecute crimes, the victim's right to institute a private prosecution is not welcomed by some public prosecutors, who view it as a threat to their independence. As the Supreme Court of Zimbabwe stated in *Telecel Zimbabwe (Pvt) Ltd v AG of Zimbabwe N.O.*, 'the practice has always been for the State jealously to guard its right to prosecute offenders'.³

Two recent legal developments have changed the face of private prosecutions in Zimbabwe. These

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relate to: (1) whether private companies may institute private prosecutions; and (2) whether the prosecutor-general, in the event that he has declined to prosecute, is obliged to issue a certificate to a victim of crime allowing him or her to institute a private prosecution. Both questions were answered in the negative by the prosecutor-general. Victims of crime went to court to seek clarity on these issues (these cases are discussed below). The Supreme Court has held that juristic persons, such as private companies, have a right to institute private prosecutions and that the prosecutor-general is obliged to issue a certificate should he decline to prosecute. In response, two strategies were adopted: (1) the prosecutor-general applying to the Constitutional Court challenging the Supreme Court's ruling; and (2) the government having the relevant sections of the Criminal Procedure and Evidence Act (CPEA) amended to make it clear that the prosecutor-general is not obliged to issue such a certificate, and that companies are not permitted to institute private prosecutions. In this article I argue that there will be cases where the prosecutor-general may be compelled to issue a certificate to a victim of crime to institute a private prosecution, even if recent amendments to the CPEA are passed. These developments are important for South Africa, because a South African non-governmental organisation (NGO) has petitioned the courts and argued that a law prohibiting it from instituting private prosecutions is discriminatory and therefore unconstitutional. South African courts may find Zimbabwean case law helpful in resolving this issue.⁴ Although the article highlights the CPEA amendments, it is beyond its scope to analyse them. Rather, I explore the options that are likely to be available to a victim of crime, should the prosecutor-general decline to issue a certificate to institute a private prosecution. In order to put the discussion in context, it is important to review the law governing private prosecutions in Zimbabwe and the circumstances that have led to its amendment.

Private prosecutions in Zimbabwe and recent case law from the Supreme Court

In Zimbabwe the issue of private prosecutions is not dealt with in the Constitution but in the Criminal

Procedure and Evidence Act (CPEA).⁵ There are many sections relevant to private prosecutions in the CPEA but only those relevant to this article are discussed.

Section 13 of the CPEA provides that where the prosecutor-general has declined to prosecute any offence, 'any private party, who can show some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually has suffered by the commission of the offence' may institute a prosecution against the alleged perpetrator. Section 14 provides a list of persons who have a right to institute a private prosecution; that is, people with 'substantial and peculiar interest' as a result of the commission of the offence. This list includes the victim of a crime, a husband in the case of an offence committed against his wife (but not vice versa), and the legal guardian or representative of some categories of victim.

Section 16(1), which is to be amended, provides that:

(1) Except as is provided by subsection (2), it shall not be competent for any private party to obtain the process of any court for summoning any party to answer any charge, unless such private party produces to the officer authorised by law to issue such process a certificate signed by the [prosecutor-general] that he has seen the statements or affidavits on which the charge is based and declines to prosecute at the public instance, and in every case in which the [prosecutor-general] declines to prosecute he shall, at the request of the party intending to prosecute, grant the certificate required.⁶

Section 20 provides that:

In the case of a prosecution at the instance of a private party, the [prosecutor-general] or the local public prosecutor may apply by motion to any court before which the prosecution is pending to stop all further proceedings in the case, in order that prosecution for the offence may be instituted or continued at the public instance and such court shall, in every such case, make an order in terms of the motion.⁷

The following are most important among these sections: One, a victim of crime has a right to institute

a private prosecution. This is a right provided for in section 14 of the CPEA. Two, under section 14 the categories of people who may institute private prosecutions are limited.

Referring to jurisprudence from South African courts, the Supreme Court of Zimbabwe held in *Telecel Zimbabwe (Pvt) Ltd v AG of Zimbabwe N.O.* that:

The object of the phrase ['substantial and peculiar interest'] was clearly to prevent private persons from arrogating to themselves the functions of a public prosecutor and prosecuting in respect of offences which do not affect them in any different degree than any other member of the public; to curb, in other words, the activities of those who would otherwise constitute themselves public busybodies ... Permission to prosecute in such circumstances was conceived as a kind of safety-valve. An action for damages may be futile against a man of straw and a private prosecution affords a way of vindicating those imponderable interests other than the violent and crude one of shooting the offender. The vindication is real: it consoles the victim of the wrong; it protects the imponderable interests involved by the deterrent effect of punishment and it sets at naught the inroad into such inalienable rights by effecting ethical retribution. Finally it effects atonement, which is a social desideratum.⁸

Three, for a victim of crime to institute a private prosecution s/he needs a certificate from the prosecutor-general. But having such a certificate does not automatically mean a victim must institute a private prosecution. Apart from the fact that s/he must offer a security deposit to the court, s/he may not proceed with a private prosecution if the court thinks it an abuse of process. The Supreme Court held that 'notwithstanding the possession of a certificate, the court may, in the exercise of its inherent power to prevent abuse of process, interdict a private prosecution pursuant to such certificate'.⁹

Another issue is whether under section 16 of the CPEA the prosecutor-general is obliged to issue a certificate should he decline to prosecute. In answering this question, the Supreme Court referred

to a case from the High Court of South Africa that dealt with a similar issue, and held that:

The language of s 16(1) of the CP&E Act is categorically clear ... In any event, in construing this provision, we must also have regard to the [prosecutor-general's] constitutionally guaranteed independence and wide discretion in matters of criminal prosecution. Taking this into account, it seems to me that the exercise of his discretion vis-à-vis any intended private prosecution involves a two-stage process. The first stage is for him to decide whether or not to prosecute at the public instance. If he declines to do so, the next stage comes into play, i.e. to decide whether or not to grant the requisite certificate. In so doing, he must take into account all the relevant factors prescribed in s 13 of the Act ... If he cannot show any such interest, the [prosecutor-general] is entitled to refuse to issue the necessary certificate. However, where the private party is able to demonstrate the required 'substantial and peculiar interest' and attendant criteria, the [prosecutor-general] is then bound to grant the certificate *nolle prosequi*. At that stage, his obligation to do so becomes peremptory and s 16(1) can no longer be construed as being merely permissive or directory. This conclusion clearly does not impinge on the [prosecutor-general's] principal discretion to prosecute or not to prosecute at the public instance. That decision is an incident of his constitutional primacy in the sphere of criminal prosecution and is generally not reviewable. Indeed ... [he can take over private proceedings under section 20 of the CPEA]. However, once he has declined to prosecute and is met with a request for private prosecution by a party that satisfies the 'substantial and peculiar interest' requirement of s 13, he has no further discretion in the matter and is statutorily bound by s 16(1) to issue the requisite certificate.¹⁰

The Supreme Court makes it clear that the prosecutor-general is not obliged to issue a certificate simply because he has declined to prosecute. However, the prosecutor-general is obliged to issue a certificate once the private party has demonstrated that they have a substantial and peculiar interest and

that they meet the other criteria under section 16. The challenge though is that the South African High Court decision, which was relied on by the Supreme Court in its decision on this issue, has been criticised in a subsequent High Court (full bench) decision.¹¹ The criticism was that there was a long line of cases that expressly stated that it is not for the South African director of public prosecutions but for the court to determine whether a private prosecutor has a substantial and peculiar interest in the matter. In 2015 the South African Supreme Court of Appeal stated that '[t]he prosecuting authority is obliged to furnish a certificate called *nolle prosequi* to someone who wishes to prosecute privately'.¹² This means that it is no longer a valid precedent in South Africa.

Another important issue that the court dealt with is whether juristic persons and in particular companies may institute private prosecutions. It should be recalled that the CPEA does not expressly state that legal/juristic persons may or may not institute private prosecutions. The prosecutor-general's argument, based on South African case law, was that companies may not institute private prosecutions. The Supreme Court relied on earlier jurisprudence from the then Federal Court of Rhodesia and Nyasaland, and Zimbabwean legislation to hold that there is nothing that expressly prohibits companies from instituting private prosecutions. The court also distinguished the relevant South African case law on the subject and held that a 'private corporation, is entitled to institute a private prosecution in terms of s 13 of the Act. However, this entitlement is subject to the issuance of a certificate *nolle prosequi* under s 16(1)' by the prosecutor-general if he/she is satisfied that the private corporation 'meets the requirements of s 13'.¹³ What is not clear is whether a private company has a right or an entitlement to institute a private prosecution. The court uses both words interchangeably. What is clear is that the fact that the victim is a private corporation may not be the sole reason upon which the prosecutor-general bases his or her decision to refuse to issue a certificate to institute a private prosecution.

Another issue that the court dealt with was whether the prosecutor-general's decision not to issue a certificate to a victim who meets the requirements in the Act is reviewable. The court, referring to English

and Zimbabwean case law on the issue of reviewing irrational or unreasonable administrative decisions, held that on the facts of the case it was dealing with, the prosecutor-general's decision not to issue a certificate to the applicant could not be reviewed on the ground of irrationality. This is because the facts did not show that 'his decision is so irrational in its defiance of logic or accepted moral standards that no reasonable person in his position who had applied his mind to the matter could have arrived at it'.¹⁴

On the issue of whether the respondent's decision was illegal and therefore reviewable, the court held that:

[T]urning to the legality of the respondent's decision not to issue his certificate, it is clear that he has failed to exercise his statutory powers on a proper legal footing. Having declined to prosecute at the public instance, he should have considered whether or not the appellant satisfied the 'substantial and peculiar interest' requirement of s 13 of the Act. He did not do so but proceeded to decline his certificate *nolle prosequi* on the basis that there was insufficient evidence to prosecute. He consequently failed to correctly understand and give effect to the requirements of s 16(1) which regulated his decision-making power. Put differently, by withholding his certificate, he was guilty of an error of law by purporting to exercise a power which in law he did not possess. He thereby contravened his duty to act lawfully in accordance with the peremptory injunction of s 16(1). This constitutes a manifest misdirection at law rendering his decision reviewable on the ground of illegality.¹⁵

The above decision makes it very clear that under certain circumstances the prosecutor-general is obliged to issue a certificate to a private prosecutor to prosecute.

However, the prosecutor-general was determined to render that court ruling irrelevant, and set about his task, using two strategies. One, he approached the Constitutional Court, arguing that he is the only person with the discretion to decide whether or not to issue a certificate. This application was a result of contempt of court proceedings brought against him

for refusing to issue a certificate to the guardian of a minor rape victim to institute a private prosecution against a powerful politician who allegedly sexually assaulted and raped the girl and whom the prosecutor-general declined to prosecute. This application was heard at the end of October 2015 and dismissed (see discussion below).

The second strategy, which is likely to render the outcome of the application to the Constitutional Court moot, involved the November 2015 National Assembly's passing of the Criminal Procedure and Evidence Amendment Bill which, *inter alia*, amends section 16 of the CPEA. This was the second time that amendments to section 16 had been passed. They were first passed in October 2015. Following fierce opposition from some members of Parliament, the initial amendments were withdrawn and the new amendments were introduced. However, before the amendment can come into force, the bill must be approved by Senate and sent to the president for assent, following which, the date on which the act will commence must be published in the Government Gazette. Six days after the initial amendments were passed by the National Assembly and before the bill could be tabled before Senate, the Constitutional Court found the prosecutor-general guilty of contempt of court because of his refusal to issue certificates to private prosecutors. He was sentenced to 30 days' imprisonment unless he issued the certificates within 10 days. He issued the certificates and in January 2016 one of the victims instituted a private prosecution against a powerful politician who allegedly sexually assaulted and raped her.

At this point it is apt to review the amendments.

Amendments to the CPEA

In this section I highlight the amendments introduced with regard to private prosecutions. The Criminal Procedure and Evidence Amendment Bill amends various sections of the CPEA.¹⁶ Relevant to this discussion is section 16. The memorandum to the bill states that:

Under section 16 of the Act, no one can institute a private prosecution unless the prosecutor-general has issued a certificate stating that he or she does not intend to prosecute the case in

the name of the State. This clause will remove any suggestion that the prosecutor-general is compelled (despite being constitutionally mandated to initiate or discontinue all prosecutions) to issue such a certificate. It also prohibits any corporate body or registered or unregistered association from applying for or receiving such a certificate.

Clause 6, which amends section 16, provides that, as a general rule, a private prosecutor shall not institute a private prosecution if s/he is not in possession of a certificate from the prosecutor-general stating that 'he or she has seen the statements or affidavits on which the charge is based and declines to prosecute at the public instance'. The prosecutor-general is obliged to grant the certificate in question if a private prosecutor requests it in writing (in the form of a sworn statement), and if the applicant:

(i) is the victim of the alleged offence, or is otherwise an interested person by virtue of having personally suffered, as a direct consequence of the alleged offence, an invasion of a legal right beyond that suffered by the public generally; and (ii) has the means to conduct the private prosecution promptly and timeously; and (iii) will conduct the private prosecution as an individual (whether personally or through his or her legal practitioner), or as the representative of a class of individuals recognised as a class for the purposes of the Class Actions Act.¹⁷

The amendment allows the prosecutor-general to refuse to grant a certificate to the applicant if one of the following arise: '(a) that the conduct complained of by the private party does not disclose a criminal offence; or (b) that on the evidence available, there is no possibility (or only a remote possibility) of proving the charge against the accused beyond a reasonable doubt; (c) that on the facts alleged, there is a civil remedy available to the private party that will meet the justice of his or her case equally well or better; (d) whether the person to be prosecuted has adequate means to conduct a defence to the charge; or (e) that it is not in the interests of national security or the public interest generally to grant the certificate to the private party.'¹⁸ Some members of Parliament were opposed to these amendments for

the following reasons: one, they deprive victims of crime their right to institute a private prosecution as they give the prosecutor-general discretion in issuing certificates; two, they are contradictory in that they appear to oblige the prosecutor-general to issue a certificate should he decline to prosecute, but give him the discretion to decide whether or not to issue the certificate; three, they are unconstitutional because they empower the prosecutor-general to exercise judicial powers (determining whether or not a victim of crime has a prima facie case); and four, they deprive victims of their right to remedy should the prosecutor-general decline to prosecute.¹⁹ These submissions address all significant weaknesses in the amendments.

In the next and final section, I consider the future of private prosecutions in Zimbabwe in light of these amendments. I give particular attention to whether there are circumstances in which the prosecutor-general may be compelled to issue a certificate to a victim of crime.

The future of private prosecutions instituted by crime victims in Zimbabwe

What are the issues likely to define or shape the future of private prosecutions in Zimbabwe? As stated earlier, some opposition members of Parliament were of the view that the amendments effected by section 16 are unconstitutional. If Senate were to pass the amendment and the president assents to the bill, its constitutionality may be challenged before the Constitutional Court and the court may declare it unconstitutional. Were the court to do so, one cannot rule out the possibility that some applications for private prosecutions will be declined. This is because the prosecutor-general has the discretion to refuse to issue a certificate.

Were this to happen, victims aggrieved by the prosecutor-general's decision would have to challenge it in court. As discussed above, the prosecutor-general's decision may be reviewed by a court if it is irrational or unreasonable. It may also be reviewed if it is illegal. If a court finds the decision not to issue a certificate to a private prosecutor to be irrational or unreasonable or illegal, it would have to

set it aside and order the prosecutor-general to issue such a certificate.

It should be noted that section 260(1)(b) of the Constitution provides that the prosecutor-general 'must exercise his or her functions impartially and without fear, favour, prejudice or bias'.²⁰ If a court finds that the decision not to issue a certificate to a private prosecutor was made contrary to any of the grounds laid down in section 260(b), that decision would have to be set aside and the prosecutor-general would have to issue a certificate. This is the case although section 260(1)(a) provides that the prosecutor-general shall be 'independent and is not subject to the direction or control of anyone'. It would be erroneous to interpret this provision to mean that the prosecutor-general cannot be ordered by a court to perform or refrain from performing an act. To interpret 'anyone' under section 160(1)(a) to include a court of law would be a mistake and would put the prosecutor-general above the law. It should also be noted that section 164(3) of the Constitution provides that 'an order or decision of a court binds the State and all persons and governmental institutions and agencies to which it applies, and must be obeyed by them'. The prosecutor-general's decision may also be reviewed under section 68(1) of the Constitution on administrative law grounds.

Related to this, the prosecutor-general may take over a private prosecution, whether based on a certificate he has issued voluntarily or after a court order, for the purpose of stopping it. As mentioned, section 20 of the CPEA allows a public prosecutor to take over a private prosecution. Whereas section 20 is clear that a public prosecutor may take over a private prosecution for the purpose of instituting or continuing with such a prosecution at the public instance, it does not state that a public prosecutor may take over a private prosecution for the purpose of stopping it. However, the moment a private prosecution is taken over by a public prosecutor, it ceases to be a private prosecution. A public prosecutor may therefore stop it. This means that a public prosecutor may decline such a prosecution using his discretion not to prosecute.

In Canada, the UK, Mauritius, Vanuatu, Tonga, Singapore, Samoa and Australia, public prosecutors

take over private prosecutions and either continue with them, as public prosecutions, or discontinue them.²¹ On 4 September 2015 Zimbabwe's prosecutor-general published in the Government Gazette the 'General principles by which the National Prosecuting Authority decides whether and how to institute and conduct criminal proceedings', which, *inter alia*, states the circumstances in which he may take over and discontinue a private prosecution.²² This raises the question of whether there are circumstances in which a public prosecutor's decision not to prosecute may be reviewed. The Administrative Justice Act categorises decisions to institute, continue or discontinue criminal proceedings and prosecutions as administrative actions. The challenge is that these decisions cannot be reviewed under this act. This is because the critical provisions of the act, which would have enabled the victim to know why a decision was taken by a public prosecutor to discontinue criminal proceedings, and to make representations to the prosecutor to challenge a possible discontinuation, are not applicable to the administrative decisions to institute, continue or discontinue criminal proceedings and prosecutions. This means the private prosecutor cannot make an application to the High Court to order the public prosecutor to supply reasons why he discontinued a prosecution. This means that a court may have to use its inherent common jurisdiction to review such decisions. And as explained, this would require the applicant to convince a court that the public prosecutor's decision to discontinue the prosecution was either irrational or illegal. Importantly, in Swaziland, Seychelles and South Africa, courts have held that a public prosecutor's decision to prosecute or not is not beyond judicial scrutiny.²³ Whether or not the above provisions of the Administrative Justice Act are constitutional in the light of section 68 of the Constitution, is debatable.

Section 62 of the Constitution of Zimbabwe provides that:

1. Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every

level, in so far as the information is required in the interests of public accountability.

2. Every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right.
3. Legislation must be enacted to give effect to this right, but may restrict access to information in the interests of defence, public security or professional confidentiality, to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.²⁴

In light of section 62 of the Constitution and in the spirit of transparency and accountability, one would expect the prosecutor-general to explain to a victim why he has decided not to prosecute, or to discontinue a private prosecution. The prosecutor-general's failure to share such information could be challenged on the basis that it violates the right to access information under section 62 of the Constitution.

For the prosecutor-general to continue withholding that information he must convince the court that he is doing so for any of the following three reasons in the interests of defence, public security or professional confidentiality. If the prosecutor-general indeed exercises his powers without fear, favour, prejudice or bias, one would expect him to establish and publish guidelines for victims wanting to challenge decisions not to prosecute. In some jurisdictions, including the UK and Scotland, such guidelines have been published.²⁵ The relevant legislation in Zimbabwe is the 2002 Access to Information and Protection of Privacy Act.²⁶ This act was enacted before the 2013 Constitution. It provides the right to access information (section 5), and the prosecutor-general's decision not to prosecute is not one of the records excluded from the application of the act. However, section 17(1)(e) of the act provides that '[t]he head of a public body shall not disclose to an applicant information whose disclosure would reveal any information relating to or used in the exercise of prosecutorial discretion'.²⁷ Under section 17(3)(a) of

the act, '[t]he head of a public body may disclose, after the completion of an investigation by the police, the reasons for a decision not to prosecute to:

(a) a person who was aware and had an interest in the investigation, including a victim or complainant, or relative or friend of a victim or complainant'.²⁸ In terms of section 2, read with the second schedule to the sct, the prosecutor-general is a head of a public body.

The Access to Information and Protection of Privacy Act thus gives the prosecutor-general the discretion not to disclose to a victim of crime the information relating to his decision not to prosecute. I argue that in the light of section 62(1) of the Constitution, a strong case may be made that section 17(3)(a) of the Access to Information and Protection of Privacy Act is unconstitutional, as it may be invoked by the prosecutor-general to evade public accountability relating to his decision not to prosecute.

Conclusion

This article has dealt with the law relating to private prosecutions in Zimbabwe. I have focused on the possible effects of CPEA amendments on the ability of victims to participate in the criminal justice system by exercising their right to institute private prosecutions. I argued that the amendments are likely to limit but not to eliminate the right of these victims to institute private prosecutions. I have demonstrated that the prosecutor-general's decision not to issue a certificate to victims of crime to institute private prosecutions may be reviewed on the grounds of unreasonableness or illegality. It may also be reviewed under section 68 of the Constitution as an administrative action. I have also argued that section 17(3)(a) of the Access to Information and Protection of Privacy Act may be unconstitutional for giving the prosecutor-general the discretion to decide whether or not to make information relating to his decision not to prosecute available to a victim of crime. It is recommended that, in line with international trends that recognise the right of victims to participate in criminal justice systems, Zimbabwe should adopt measures aimed at strengthening such rights. These measures should include strengthening the right to institute private prosecutions.



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Notes

- ¹ *R v Ndlangamandla* (57/2001) [2005] SZHC 148 (15 December 2005). *Liebenberg v Minister of Safety and Security and Another* [2009] ZAGPPHC 88 (18 June 2009) para 19.18. *Masiko & Ors v The DPP & Ors* (Miscellaneous Cause 220 of 2008), <http://www.ulii.org/ug/judgment/high-court/2009/3> (accessed 10 February 2016). *Kaunda v People* [1992] ZMSC 1 (19 March 1992); (1992) S.J. 1 (S.C.), <http://www.zamlii.org/zm/judgment/supreme-court/1992/1> (accessed 10 February 2016). *Brioche & Ors v Attorney-General & Another* [2013] SCCC 2, <http://www.seylii.org/sc/judgment/constitutional-court/2013/2> (accessed 10 February 2016). *Mohit v The Director of Public Prosecutions of Mauritius* (Mauritius) [2006] UKPC 20 (25 April 2006).
- ² *Gujra R (on the application of) v Crown Prosecution Service* [2013] 1 All ER 612. *Freedom Under Law v NDPP and Others* 2014 (1) SACR 111 (GNP).
- ³ *Telecel Zimbabwe (Pvt) Ltd v AG of Zimbabwe N.O.*, SC 1/2014; Civil Appeal SC 254/11, 15.
- ⁴ See *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* 2016 1 SACR 308 (SCA).
- ⁵ Criminal Procedure and Evidence Act 1898 (as amended in 2004), Harare: Government Printer, ch. 9:07.
- ⁶ *Ibid.*, section 16(1).
- ⁷ *Ibid.*, section 20.
- ⁸ *Telecel Zimbabwe (Private) Limited v Attorney-General of Zimbabwe N.O.*, SC 1/2014, Civil Appeal SC 254/11, 6.
- ⁹ *Ibid.*, 16.
- ¹⁰ *Ibid.*, 18–19.
- ¹¹ *Singh v Minister of Justice and Constitutional Development and Another* 2009 (1) SACR 87 (N). *Nundalal v Director of Public Prosecutions KZN and Others* [2015] ZAKZPHC 28 (8 May 2015).
- ¹² *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* [2015] ZASCA 206 para 9.
- ¹³ *Telecel Zimbabwe (Private) Limited v Attorney-General of Zimbabwe N.O.*, SC 1/2014, Civil Appeal SC 254/11, 19.
- ¹⁴ *Ibid.*, 23.
- ¹⁵ *Ibid.*, 24.
- ¹⁶ Criminal Procedure and Evidence Amendment Bill 2015 (HB 2-2015), Harare: Government Printer, 2015.
- ¹⁷ *Ibid.*, section 16(2)(a).
- ¹⁸ *Ibid.*, section 16(3).
- ¹⁹ See submissions by Hon. Ziyambi and Hon. Majome, *National Assembly Hansard*, 42:23, 24 November 2015, 41–45, <http://www.parzim.gov.zw/national-assembly-hansard/national-assembly-hansard-24-november-2015-vol-42-no-23> (accessed 10 February 2016).
- ²⁰ Constitution of the Republic of Zimbabwe, Harare: Government Printer, 2013.

- 21 Jamil Ddamulira Mujuzi, The right to institute a private prosecution: a comparative analysis, *International Human Rights Law Review*, 4:222–255, 2015, 244–250.
- 22 *Zimbabwean Government Gazette*, XCIII:67, 4 September 2015 (General Notice 247 of 2015), 993–995.
- 23 *R v Ndlangamandla* (57/2001) [2005] SZHC 148 (15 December 2005) (Swaziland); *Brioche & Ors v Attorney-General & Another* [2013] SCCC 2 (Seychelles); *S v Sehoole* 2015 (2) SACR 196 (SCA) para 12 (South Africa).
- 24 Constitution of the Republic of Zimbabwe, Harare: Government Printer, 2013, Section 62.
- 25 Crown Prosecution Office, Victims' Right to Review Scheme, 2014, http://www.cps.gov.uk/victims_witnesses/victims_right_to_review/ (accessed 10 February 2016); Crown Office and Procurator Fiscal Service, Lord Advocate's rules: review of a decision not to prosecute – Section 4 of the Victims and Witnesses (Scotland) Act 2014, http://www.crownoffice.gov.uk/images/Documents/Victims_and_Witnesses/Lord%20Avocates%20Rules%20-%20June%2015%20v2.pdf (accessed 10 February 2016).
- 26 Access to Information and Protection of Privacy Act 2002, Harare: Government Printer, ch. 10:27.
- 27 *Ibid.*, section 17(1)(e).
- 28 *Ibid.*, section 17(3)(a).

On the record

Interview with Phumeza Mlungwana, Social Justice Coalition

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In March this year a prominent South African grassroots organisation, the Social Justice Coalition (SJC), announced that it would be taking the South African Police Service (SAPS) to court. Andrew Faull spoke to the SJC's General Secretary, Phumeza Mlungwana, about crime and policing in Khayelitsha, Cape Town.

Andrew Faull (AF): Your founding affidavit states that you want the SAPS to address three issues, which emerged out of the 2013/14 (*Khayelitsha*) *Commission of Inquiry into allegations of police inefficiency in Khayelitsha and a breakdown in relations between the community and the police in Khayelitsha (KC)*. These are:

1. The urgent and equitable allocation of policing resources. Ensuring that the poorest areas with the highest levels of crime have a sufficient number of competent and experienced police personnel in support of the proper prevention and investigation of crime;
2. The urgent development of guidelines for visible policing in informal settlements; and
3. The development of a plan by the SAPS at a national level to address vigilantism.

Why these three issues?

Phumeza Mlungwana (PM): We want to say to the police, whether you agree with the commission or not, you need to look at the facts. You're not allocating resources properly; vigilantism happens in this area, it doesn't happen in Camps Bay or Sandton, it happens in poor townships. Let's not treat some communities as if they are more important than others. We've been struggling for two years to get the police minister to see beyond the politics of the commission. We just want to say 'You need to get your house in order, minister,

and do something about resource allocation.' As a last resort, we had to launch a court application. In a different space we would have welcomed the minister saying, 'I'm going to do one, two, three to address [the KC recommendations]', but it was clear that the police were not willing to do that, to take the life of a person in a poor community as urgent. We all have the right to safety. We are saying the distribution of resources must be equitable. It must take into account the types of crimes in these areas, population numbers, and infrastructure. How do we deal with informal settlements? We know they don't have roads but are we then going to say they don't deserve policing? We feel the resources are the beginning of addressing the commission's other recommendations. Without resources you can't ensure that an area like Khayelitsha is safe. We believe police are resisting the implementation of the commission's recommendations.

We chose two other recommendations made by the commission which we feel are important and aren't being addressed. One is visible policing. We knew before the commission that visible policing doesn't happen in informal settlements. This came out strongly in the commission, too. The commission said that the SAPS should develop a strategy to deal with informal settlements. We want to ensure that they develop guidelines so that police know how policing should work there.

The other thing is vigilante attacks. Before the commission the SAPS told us they would establish a task team to look at vigilantism. They found that the Khayelitsha police were dealing with about 75 vigilante cases, even though only 13 or 14 had been reported in the media. We've always known it is a big problem. We shouldn't have these attacks. This is what we want to address in our case. If we have police resources and visible policing we shouldn't have vigilante attacks.

AF: The SJC recently launched a companion to the KC's report. It is a beautifully compiled document, rich with text, photographs and sketches. The photograph on the inside cover is an aerial view of an informal settlement, with hundreds of shacks cramped together, clearly only navigable by foot. When I look at this I wonder what kind of policing the SJC thinks will be effective?

PM: This image is of an informal settlement, there are little paths running between the shacks but cars can't really go in. The SAPS needs to understand this community. Let's say a person wants to report a crime. If I were a police officer, obviously I wouldn't be able to find the address of the victim in the informal settlement. But if you tell me you are at a shop, as a police officer who works in that area, I should know where that shop is. There's a community language. If there's a crime happening and you call the police, the police don't respond. I don't see why if police cars can't come in, they can't park their car and walk. Now the safety concerns for police are there, obviously you can't have one or two policemen walk in alone, so they need a strategy or plan that tells them how to work in those areas. And we've seen them walk and we've seen them use motorbikes and horses in Khayelitsha. The question is, how can they do it in a meaningful way? If this were my area as a policeman I would ask, 'Where does crime mostly happen?' They get crime reports, they know the hotspots; they could develop strategies. But then without resources there is a lot of pressure on police who are trying to do something but their hands are tied. This is where community relations come in. There are a lot of leaders in these areas, community policing forums (CPF), street committees; police should work with them and communicate about crime.

Whether communities have an answer or not, police have a role to play. They should police people. They can't say, 'Well he's staying in an informal settlement so there's nothing we can do.' What we're saying as the SJC is, we want the SAPS to do their bit. We will continue asking the City of Cape Town and others to do their bit, installing street lights in informal settlements, ensuring that CCTV cameras that should help police are working. There have been about 16 CCTV cameras for the past 10 years and I think nine are not working. Some are not positioned properly. The police were saying they have trouble getting the data from the City because some are broken and aren't maintained.

The province also has a role to play, everyone has their own role, but the SAPS must take responsibility for its role. That's what we're saying.

AF: I recently spoke to the head of the City's metro police. He told me they have thousands of crimes recorded on CCTV but that SAPS detectives never ask for the footage.

PM: One of the things that came out of the commission was that the SAPS felt it was a waste of time to go to Goodwood to look for CCTV footage, only to find the cameras in Khayelitsha were not working. The police in Khayelitsha are also extremely under resourced. For example, the detectives should be investigating about 20–25 cases, but in Khayelitsha each detective has over 130-something cases, and lots of those are serious crimes. So for a detective to go all the way to Goodwood and not find the footage, or to find it but realise it's not useful, it wastes their time.

There was recently a murder on the corner of a road in Khayelitsha where there is a camera. Everyone knew there was a camera and thought for sure the police would use the footage. The police got the footage and the camera was pointing in the wrong direction, the camera didn't catch anything.

AF: But there will always be a 'wrong' direction.

PM: Yes, but then why do we have 80 CCTV cameras in Sea Point but only 16 in Khayelitsha, which are not functioning? Cameras can move around, we've seen it, they can be placed strategically. I can't stab you and the CCTV camera doesn't see anything. All

must play their part. We're talking about the SAPS because the commission was focused on them. Some of the things in our case are not fair on the police on the ground. Police leadership needs to step up and support them.

AF: In less violent, often wealthy countries, citizens see pervasive CCTV as an infringement of their rights. Is there a surveillance threshold which Khayelitsha residents would not be happy to cross, or do you think they want a CCTV camera or cop on every corner?

PM: I don't know. There are a lot of CCTV cameras in the city centre and I've never heard anyone complain about them. There are obviously ways of doing things that don't infringe on the rights you're trying to protect. Generally I don't think having police around is a problem. It's how they are around, how they assert their presence that's important. The same with CCTV.

We know there's lots of profiling in Khayelitsha. Police drive by and see people walking at night and they search them. We know there are problems with that, so we need to have a conversation about how it should be done. If the police have a plan they need to talk to the people whose safety they want to advance. They can't sit in their boardroom and say this is how we're going to do visible policing; they need to know how the people in that area think it should happen. Often communities have their own thinking on these issues.

AF: Speaking of communities, many SAPS officers are born, raised, recruited from, and still live in townships much like and including Khayelitsha. As such, we might assume they share experiences, frustrations and desires with the residents of Khayelitsha. How do you think these shared experiences affect the way police work in townships?

PM: Experiences may be shared but I don't think we can understand police's experience just as community members. There is a culture in the police. I've seen a lot of policemen like me, they're black, they can be brutal sometimes. But I've also seen some who can be really genuine and understanding. They say, 'I know my seniors don't agree with the commission, they don't agree with what you're

doing, but I agree with it because I know how it feels to be unsafe.' I don't know what happens inside the police but it can change people. You might be my neighbour but if you work in the police and see 20 murders a weekend, that must do something to you, either make you empathetic or make you aggressive. I'm not sure how they deal with their sanity. I know a lot of policemen who really, genuinely care about what happens in our communities, who really care about victims. I think Khayelitsha's Cluster Commander, General Brandt, is a great example; there are also junior policemen who respond in the vans, who sit in the CSC [Community Service Centre], who are kind. It's a combination of personality and baggage. So township residents working as policemen might see the community differently. These policemen are the people I think can play a huge role in changing the way police think. They might think 'We're not just policing poor people, black people, people who are just criminals who drink and murder and rape. There are so many other socioeconomic factors that speak to crime.' Those are the people the SAPS should tap into. Those are the people who should lead the police, people with community-oriented thinking.

AF: It has been suggested that nearly all South Africans see violence as a legitimate problem-solving tool, be it towards our children, lovers or spouses, or proving our masculinity, unless we are the recipients of violence. Some might say it is because police share these views that they believe communities support their use of force. What do you think?

PM: I've experienced a lot of crime, as have my family members and our SJC members. But a lot of people will tell you, 'If I go and report a crime and it is solved then I'll be motivated to report again.' So it's a cycle. People don't report crimes and instead deal with people themselves. If someone has their cell phone stolen in Khayelitsha they are not going to go to the police because they know they won't get it back. It's easier if I take two tough boys and we try to find my phone. We beat that person up and I get my phone. If someone's phone is stolen in a rich area, they know it is insured so they don't have to go after the perpetrator. If I were a policeman I would call the police right there so that people know you can call the police for these things. That's how you address

these problems. People's behaviour changes with experience.

AF: But the reality of criminal justice all over the world is that many crimes go unreported, and few lead to conviction. It's not particular to South Africa. If communities think that what they see on American TV is real, then we are in trouble. Most crimes are never solved, anywhere.

PM: If someone gets stabbed now, we call the police, they arrive in two hours. Then the community are going to blame them. On the other hand I recently reported a house robbery to the police. That person hasn't been convicted but because the police treated me well, they took the statement, they took fingerprints, they sent me an SMS, I'm not frustrated with the police. They even took me home because it was 3am. That gave me a different view of the police.

On the other hand, someone was killed behind my friend's house. The police came the following day at two o'clock. They came, took the body and left. They didn't ask questions, they didn't speak to the neighbours, but people in the community know who did it. It's not just about reporting a case and having it solved. It's about comfort.

AF: Newspapers recently reported that a police informant in the (Khayelitsha resident) Sinxolo Mafevuka rape and murder case was stabbed in the neck – allegedly by Sinxolo's boyfriend, who is also a cousin of the two men charged with the crime. The investigating officer told the court that the family of the two men had threatened to assault people who gave information to the police. Similar stories abound in South Africa – this idea that people want police to prevent and solve crime, as long as it doesn't involve them (the public) having to share information with police, and as long as the investigation isn't against someone important to them. Rather, some resort to violence to protect the criminally accused. So we have communities saying 'I want the police to help me when I'm a victim, but if you talk to the police when I'm the aggressor, I'm going to stab you.'

PM: That's a hard one. There are people who have been stabbed in the Sinxolo case. The detective himself is verbally abused every time he leaves court, the family is cursing him. This is the tension. That's

why the SJC doesn't say the SAPS must arrest just anyone, they must arrest the right person. Also, the police have not been good at protecting witnesses. People are scared of being intimidated. Detectives say witnesses don't want to come forward. When they ask, 'Who killed who?' people are going to think about their own families. If I get killed [for speaking to the police], who's going to look after my family? This is why police must think differently when policing different areas. If you know people are scared of talking to detectives, why visit them in your police car at their house? Can't they make an arrangement to meet somewhere else? Small things like that. People see you speak to detectives and they will think you are a witness and they will try to silence you.

AF: That makes sense but you can also see how a police officer might see it as their duty to come to you, rather than expect you to spend money going to them.

PM: You can reimburse them, they have money for informants.

AF: But this is a problem in South Africa. Detectives often don't get information unless they pay for it.

PM: Until people are safe they won't talk. A lot of people have a lot of information but nobody is going to the police because they fear for their own safety.

AF: I am worried the idea of witness protection is misunderstood. It involves leaving the city, giving up your life. Nobody wants to do that, unless they are 100% committed to justice.

PM: I am a witness in a murder case. Some guys murdered a friend of mine and I was there. Two of us are witnesses. These guys work in Khayelitsha. We were told we can give our testimony in camera but the lawyer of the accused would have to meet us to be sure we exist. So our fear was not just the people arrested, our fear was their friends who could target us. In that case my friend's family resisted. For me, I knew my safety was at stake but I knew I had to do this because the work I'm doing is not about me, it's about addressing this system. But I've never been offered any protection. They just say 'If something happens just call the detective.' That's fine, I can live with that, but how many people get told that and think, 'I'm not going to testify against

my brother who's committed a crime, and then have to walk home with him.' So a lot of people fear for their safety.

AF: I agree, but how can we move beyond this? How can police in Khayelitsha feasibly offer protection to every witness, when they're already under resourced?

PM: I think the one thing they can do is protect witnesses' identities. This also means protecting the relationship I have with you as a detective. I'm not your friend, I'm giving you information. A lot of the police only care about solving the crimes, not about the person giving the information. I don't agree with paying witnesses, but if I spend R20 to come to you, the least you can do is pay me my R20. Even ask me to come to the police station. I think there are creative ways to protect people who want to give information. There is no one answer but there needs to be a lot of thinking about how to improve things for witnesses.

AF: Moving to vigilantism, what kinds of interventions do you think police should put in place?

PM: It's a combination of a lot of things. Currently the SAPS don't have a clear way of defining vigilante attacks. Once they define it they can monitor it, where it happens, why it happens, and can develop strategies. It must be dealt with systematically. How do you deal with the fact that there are people on the scene but they don't want to talk? Do they treat it like any other case? What about when there are 20 suspects? Police don't have a sense of who to arrest. So the commission was saying it's too vague, it's a type of crime and should be treated as a type of crime, just like murder and aggravated robbery. Then we can develop systematic ways of addressing it.

AF: We have definitions for assault, theft, robbery. It doesn't necessarily make them easier to prevent.

PM: Not just a definition, let's treat it as a problem. Currently we don't even know how many vigilante attacks we have. If we improve people's safety and trust in the police there will be less vigilante killings. So not just a definition but a way of understanding it and how to respond to it. The nice thing about legal definitions and policies is you can hold people to account. There are protocols on what should be

done when you report a rape case. The fact that we have nothing similar for vigilante attacks means we are just going to say, 'It's just another vigilante attack.' We need something communities can use to ensure something is done about it.

AF: If there were suddenly three times as many cops on the streets of Khayelitsha tomorrow, the community might think, 'The government and police have heard us.' But threefold police won't mean a threefold reduction in crime. That's a myth. If people don't want to talk to cops, if their relationship is fraught, if young men continue to feel victimised by police, then having visible police won't necessarily make things better. Policing can be very undemocratic.

PM: It's not just numbers; we need police who are experienced. That should have an impact on crime because people can report more. If those police are working it will affect the kinds of cases that are reported. It will also affect the relationship between the police and the community, which is important. If people know they will be arrested if they do something, they will think before they do it.

Understanding the police has made us and our partners sympathise with police on the ground who are doing amazing work. We're not going to sympathise with you if you're doing something wrong. But there are a lot of police who are trying to do the best that they can, despite challenges and lack of resources. They're struggling but they're trying.

AF: Thanks very much for your time.

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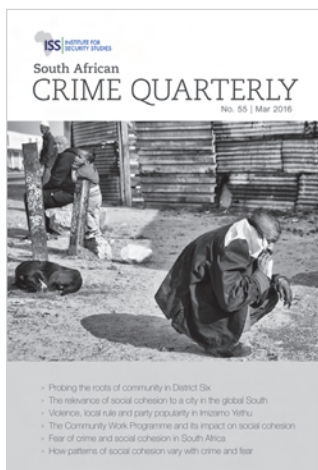
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Previous issues

SACQ 55 is a special edition on social cohesion, guest edited by Vanessa Barolsky. The issue explores the role of social cohesion in understanding and addressing violence in South Africa. Articles present a complex picture that does not support a hypothesis that social cohesion reduces violence, as articulated in international literature. Rather, violence in South Africa can be an organising principle of social cohesion.

In this edition Camilla Pickles asks whether obstetric violence should be criminalised. Inge Wessels and Cathy Ward offer a model for assessing the evidence base of parenting programmes. Carina du Toit and Zita Hansungule analyse judgements relating to the sentencing of children who turn 18 just before they are sentenced. Hema Hargovan assesses the use of victim/offender dialogues and how they inform parole decisions. Gwen Dereymaeker analyses civil claims against the SAPS and Simon Howell et al. discuss fluctuations in drug prices over time in Cape Town.



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