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- Assessing the detection rate of commercial crime
- Peace officers and private security
- Concessions on custodial sentences
- The impact of community-based intervention on offenders
- Design Basis Threats and physical protection systems
- Reappraising illegal artisanal mining in South Africa

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Contents

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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

Who can stop the rot?

http://dx.doi.org/10.17159/2413-3108/2017/v0n61a3065

It is fitting that the first article in this issue of *South African Crime Quarterly* (*SACQ*) speaks to the South African Police Service's tackling of commercial crime. It is increasingly clear that corporate–political collusion poses a serious threat to South Africa's democratic gains. In recent months journalists have started to pick through a trove of emails released in June, known as the #GuptaLeaks. In the process they have connected the dots between tens of thousands of exchanges among the notorious Gupta business family, managers of parastatals, government ministers and allies of President Jacob Zuma, including his son Duduzane. The emails paint a terrifying picture of state capture and abuse.

The Gupta family has rubbished the leaks, which appear to have come from within its own business empire, but some implicated ANC cadres have confirmed their authenticity. Nonetheless, until late August, when the SAPS Directorate for Priority Crime Investigation (better known as the Hawks) told Parliament that it was investigating aspects of the emails, little evidence in the public domain suggested that police or prosecutors were taking them very seriously. A week later, National Prosecuting Authority (NPA) head Shaun Abrahams confirmed to Parliament that the NPA's specialised commercial crime unit was investigating Gupta-linked contracts and state capture more broadly.

Among the most important revelations in the #GuptaLeaks is strong evidence that R5.3 billion was paid to Gupta associates in kickbacks in 2014 locomotive deals between the South African parastatal Transnet and Chinese locomotive manufacturer, China South Rail (CSR). It seems that a Gupta friend, Salim Essa, used his company, Tequesta, to secure the contracts, together with Gupta associates at Transnet. A fee of R10 million for every R50 million locomotive purchased was included in the contract to be paid to Tequesta, simply for introducing CSR to Transnet.[1]

In another revelation, a Gupta-owned company, Estina, was paid R84 million and granted a fee-free lease of thousands of hectares of land near Vrede in the Free State. The deal was ostensibly intended to drive agricultural empowerment projects for residents, but instead the money appears to have landed up in the United Arab Emirates, from where it was funnelled back to South Africa through and into other Gupta-owned companies.[2] The deal was facilitated by current Minister of Mineral Resources Mosebenzi Zwane, who at the time was the Free State MEC for agriculture. Separately, but as suspiciously, Zwane launched a new mining charter in June this year, calling for rapid 'empowerment' in the sector. While few would dispute the need for South Africa's mining sector and economy at large to transform, Zwane's brash move resulted in the loss of R50 billion in JSE-listed mining stocks (a matter touched on in Mbekezeli Mzhize's article in this issue), possibly in part due to his questionable character and motivations in light of the #GuptaLeaks.[3]

Both revelations – the locomotive and agricultural deals – hint at the degree to which business people and politicians, many linked to Gupta and Zuma networks, have colluded to fleece the South African fiscus in recent years. What's more, the emails confirm suspicions that the Guptas' Oakbay Capital employed British public relations firm Bell Pottinger to craft strategies to defend the Zuma and Gupta families and their allies from mounting accusations of state capture.[4] Beginning in early 2016, Bell Pottinger staff wrote speeches and prepared talking points for Gupta and Zuma allies, which were in turn spread by Gupta-owned media outlets and Twitter bots in an enormously powerful 'fake news' operation.[5] The firm charged over R1.5 million a month as a retainer for its divisive services.

In early September, following a formal complaint by the Democratic Alliance, Bell Pottinger was expelled by the United Kingdom's Public Relations and Communications Association, ditched by shareholders, and widely condemned, including in the British Parliament and by the British High Commissioner to South Africa, for running a racially divisive campaign that has damaged British relations with South Africa. And yet, while the global public relations firm crumbles, its Gupta-Zuma clients carry on as before.

In part because of the #GuptaLeaks, and following a Constitutional Court ruling on the matter, Parliament on 8 August voted in a secret ballot in response to an opposition-led motion of no confidence in Zuma. While an unprecedented number of ANC MPs voted with the opposition, Zuma survived yet again with 198 votes against the motion, 177 for, and nine abstentions. All eyes are now on the ANC's December National Conference, which marks the end of Zuma's term as ANC president, and thus perhaps the ANC's last chance to get its house, and the country, in order.

This issue

It is hard, considering the consolidation of political and economic power revealed in the #GuptaLeaks, to imagine how South Africa's criminal justice system will stem the looting of the state. But what about commercial crime on a more modest scale? In the first article in this issue, Trevor Budhram and Nicolaas Geldenhuys use SAPS performance data to suggest that the SAPS is losing the battle against even relatively minor commercial crime. With a focus on detection rates, they convincingly argue that the SAPS performance is unjustifiably weak, and that this weakness is hidden behind the inclusion of unfounded and withdrawn cases, and the classification of whole dockets (which can include multiple charges) as single charges in its accounting systems. They suggest that this makes the SAPS look more efficient than it is, obscuring its inability to address commercial crime. In so doing, they add to a growing body of literature highlighting the pitfalls of performance targets in policing.

Next, John Kole asks whether private security officers (PSOs) could better support the SAPS crime prevention mandate if they had more legal authority. To explore this question, Kole presents data from interviews and a survey carried out with senior private security and SAPS managers, as well as with operational officers. Current legislation limits PSOs from acting beyond their capacity as private citizens. To many it is obvious that more armed, uniformed men and women with the authority to stop, search and detain suspected law-breakers will reduce crime. However, Kole questions whether more police would mean less crime. Evidence from elsewhere in the world suggests that it would not.[6] Furthermore, the proposal that PSOs be given more authority is not supported by the police or

private security managers he interviewed. Even if they did, do we really want to coerce and punish ourselves towards a more just South Africa? Our sentencing policies suggest that we do.

South Africa has harsh minimum sentences, supported by the logic that serious crime deserves serious punishment.[7] As a result, South Africa's 236 prisons, designed to accommodate 119 134 inmates, in 2016 housed 161 984.[8] In this issue, Emma Lubaale compares South African and New Zealand court decisions, asking whether South African courts can better balance custodial and restorative sentences. She suggests that South African courts perceive restorative justice sentences as weak, and shows that courts in New Zealand have used them to address serious crime. A 2015 report from the Brennan Center for Justice at New York University found that imprisonment in the US has had almost no effect on crime rates since the early 1990s.[9] This is because once prison populations reach a certain level, imprisonment has diminishing crime deterrence returns. Surely this is true of South Africa, too? If so, Lubaale's call for a balance between custodial and restorative sentences is one worth taking seriously.

South Africa's Child Justice Act (2008) promotes the principles of restorative justice for young offenders. But where can young ex-offers turn for support after serving a sentence? In his article, Sean Larner takes us inside the Rebuilding and Life Skills Training Centre (Realistic) in Gugulethu, Cape Town, and into the lives of some of the young ex-offenders who have been through its programmes. Using in-depth interviews, the article presents a case study examining the obstacles faced by young ex-offenders and the impact of Realistic's aftercare programme on their lives.

In our last research article, Cyrus Arwui, Victor Tshivhase and Rudolph Nchodu offer insight into the formulation of Design Basis Threat (DBT) statements for nuclear facilities. DBTs are recommended by the International Atomic Energy Agency as a methodology to secure radioactive sites. The higher the risk ascertained by the DBT, the more capable security systems must be. Referring to the formulation of a DBT for the Irradiation Facility at the Centre of Applied Radiation Science and Technology in Mafikeng, the article offers a fascinating insight into the types of data used and assumptions made in the formulation of a DBT, including what some might believe to be an over-reliance on reported crime numbers (not rates) in nearby towns. This raises questions about the veracity of such DBT methodologies.

Finally, in a commentary and analysis piece, Mbekezeli Mkhize reviews the challenges and opportunities posed by illegal artisanal (small-scale) mining in South Africa. He argues that the forces that push migrant miners away from their rural homes, often in neighbouring states, and pull them towards illegal mining activities, can only be addressed through an integrated network-governance response, involving a multiplicity of actors and resources.

I hope that you enjoy the issue.

A final word

This is my last issue as editor of *SACQ*. The experience has been a pleasure and an honour. I am immensely grateful for the support of former (wonder) editor, Chandré Gould, and the fabulous *SACQ* production team of Bea Roberts, Iolandi Pool and Janice Kuhler. I am also grateful to Chandré and Mark Shaw, former director of the Centre of Criminology at the University of Cape Town (UCT), for affording me this opportunity. I greatly appreciate all the technical support and encouragement

provided by Ina Smith, Susan Veldsman and their colleagues at the Academy of Science of South Africa, and for the wisdom shared by members of the *SACQ* editorial board.

Subsequent issues will be edited by Kelley Moult, Nolundi Luwaya, Diane Jefthas and colleagues at the Centre for Law and Society, UCT. I hope that you will join me in wishing them well.

Andrew Faull
(Editor)

Notes

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A losing battle?

Assessing the detection rate of commercial crime

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The South African Police Service (SAPS) struggles to protect victims from commercial crime that threatens the economy, corrodes scarce and valuable resources, and inhibits growth and development. Official SAPS statistics show that the annual detection rate in respect of reported fraud cases was 35.77% in 2014/15 and 34.08% in 2015/16. Although the detection rates for serious commercial crime are reported as 94.8% for 2014/15 and 96.75% for 2015/16, it is likely that these figures are inaccurate and, in reality, much lower. This article provides an overview of the reported incidence of commercial crime, assesses the detection rate reported by the SAPS, and seeks to determine how it can be improved.

Commercial crime has a profound impact on the economy, trade and society at large. Individuals, businesses, organisations and government suffer the consequences of these crimes, which are committed for financial gain and include fraud, theft, forgery, corruption, tax evasion, embezzlement, money laundering and racketeering, as well as facilitating, receiving and possessing the proceeds of crime. However, the relative lack of attention to and authoritative criminal sanction of commercial crimes in South Africa are of great concern. For example, various cartels that have colluded in price-fixing and related corruption in the food, steel and construction industries in recent years, have merely received administrative penalties.[1] Furthermore, as will be seen from this article, commercial crime is under-reported, and the limitations of official statistics remain a challenge. This article reviews the data on commercial crime in South Africa, assesses its detection by police, and considers how it can be better tackled.

Commercial crime

The concept of commercial crime is closely related to white-collar crime, financial crime and economic crime. The term white-collar crime was coined by sociologist Edwin H Sutherland in 1939 and is defined as 'crimes committed by a person of respectability and high social status in the course of his occupation'[2] In 1970 Edelhertz extended the definition of white-collar criminality to include any 'illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage'.[3]

* Trevor Budhram is a senior lecturer in Forensic Investigation at the University of South Africa and holds a PhD in Police Science. Nicolaas Geldenhuys is a forensic investigator and holds a Masters degree in forensic investigation.

The understanding and scope of white-collar crime have evolved and it now includes an array of different crimes that did not form part of the original concept. Terms such as financial crime, economic crime, commercial crime and corporate crime are used interchangeably with white-collar crime.[4] The most prevalent characteristics of these crimes include the absence of violence, a motive of financial gain, an actual or potential loss, and an element of misrepresentation, concealment, deceit or a violation of trust.[5] The SAPS uses the term commercial crime, which includes the criminal acts of fraud, embezzlement, theft of trust funds, corruption, forgery, uttering, money laundering and certain computer-related and cybercrimes, as well as statutory offences relating to finance, trade, commerce, business, corporate governance, tax, corruption, money laundering and the proceeds of crime and intellectual property, but excludes the physical misappropriation (theft) of moveable property.[6] The SAPS also distinguishes between general, less serious commercial crime and serious commercial crime.[7]

Investigation of commercial crime

Commercial crime is investigated primarily by the SAPS, as well as by non-SAPS government investigators and, in a private capacity, bank, corporate and private investigators. The legal framework for the investigation of crime is established by Section 205(3) of the Constitution of the Republic of South Africa 1996 (Act 108 of 1996), which places a legal obligation on the SAPS to prevent, combat and investigate crime. This is supported by the South African Police Service Act 1995 (Act 68 of 1995), the Criminal Procedure Act 1977 (Act 51 of 1977, the CPA) and various other statutes.

The investigative capacity of the SAPS comprises four sub-programmes that fall under Departmental Programme 3: Detective Service, of which two (General Crime Investigations and Specialised Investigations) perform the actual investigation work while the others (Criminal Record Centre and Forensic Science Laboratory) provide investigation-related support and forensic services.[8] The mandate for the investigation of non-serious commercial crime rests with the General Crime Investigation component of the Detective Service (i.e. station-level detectives), while serious and priority commercial crime is investigated by the Serious Commercial Crime component of the Directorate for Priority Crime Investigation (DPCI).[9] In 2016 a new national head, Commercial Crime was appointed outside of the DPCI and a Commercial Crime Unit under the control of the divisional commissioner, Detective Service was re-established, going back to the situation prior to the inclusion of the former Commercial Branch in the DPCI in 2009.[10] It is envisaged that the Commercial Crime Unit will investigate commercial crime cases not investigated by the DPCI, but which are too complex for investigation at station level. At least 14 non-SAPS government-related institutions and agencies have a statutory mandate to investigate, inter alia, commercial crimes.[11]

Incidence of reported commercial crime

The SAPS annually releases limited statistics relating to reported commercial crime. A distinction is made between general, less serious commercial crime and serious commercial crime. The SAPS has a tendency to equate general, less serious commercial crime with fraud.[12] However, neither the number of new cases or complaints for all commercial crime collectively, nor the financial cost (losses) in respect of general, less serious commercial crime is published. Table 1 reflects reported commercial crimes for the period 1 April 2013 to 31 March 2016.[13]

Table 1: Reporting of commercial crime to the SAPS – 1 April 2013 to 31 March 2016

Year	General, less serious commercial crime (fraud)	Serious commercial crime		
	New complaints (cases) reported	New cases reported	Actual loss (R billion)	Potential loss (R billion)
2013/14	79 109	6 204[14]	29.27	3.07
2014/15	69 831	3 959[15]	62.57	4.75
2015/16	71 756	3 776[16]	26.08	1.11
Total	**220 696**	**13 939[17]**	**117.92**	**8.93**

Source: SAPS Annual Reports 2013/14 to 2015/16.

An issue for concern is that different sets of data have been published by the SAPS in respect of general, less serious commercial crime for the above period. The SAPS annual crime statistics show that 76 744, 67 830 and 69 917 commercial crimes were reported during 2013/14, 2014/15 and 2015/16 respectively.[18] The differences between the two sets of figures are quite significant and arguably warrant further investigation as to their accuracy and origin.

If one compares the available SAPS commercial crime figures (i.e. fraud) for 2013/14 (79 109 new cases) with that of fraud reported as serious commercial crime (4 271 new cases), the latter constituted 5.4% of the overall fraud cases received for investigation by the SAPS. Furthermore, a total of 13 839 persons were arrested for fraud during 2013/14; of those 2 403 (17%) for serious fraud.[19]

The above figures illustrate that significant losses can be attributed to those commercial crimes reported to the police. Almost R118 billion was lost between 2013 and 2015 as a result of reported serious commercial crime. During the two-year period 2012–2013 a total of 170 678 new fraud cases were reported to the SAPS. During 2015/16, an average of 200 commercial crimes were reported to the SAPS each day. Serious fraud made up more than 5% of all reported fraud and about 66% of all serious commercial crime cases. In terms of geographical distribution, Gauteng has the highest incidence of fraud reported to the SAPS, at 33.9% in 2015/16.[20]

According to the Global Economic Crime Survey 2016, published by PricewaterhouseCoopers (PwC), which covers the period 2014 to 2015, 69% of participants in South Africa had experienced economic crime during the reporting period.[21] The most prevalent economic crimes were asset misappropriation, procurement fraud, bribery, corruption, cybercrime, human resources fraud, accounting fraud and money laundering. Apart from cybercrime the incidence of the other six types was higher than the global average. Cybercrime was on par with the global average. A total of 60% of participants lost in excess of R500 000 during the reporting period as a result of economic crime.[22]

Taking into account the above figures, the enormity of commercial crime and its penetration into society, government and the business sector cannot be disputed. The under-reporting of commercial crime exacerbates the situation, so that one can only imagine the real extent and consequences of commercial crime on the economy and society at large.

Under-reporting

It is notoriously difficult to gauge the incidence and quantify the monetary impact of commercial crime on society and the South African economy. PwC found that gross under-reporting by victims of economic crime is the norm in South Africa.[23] For the period 2014 to 2015, 66% of respondents surveyed indicated that they address incidents of economic crime internally, using in-house resources, rather than reporting it to the authorities.

The Victims of Crime surveys 2014/15 and 2015/16 show that, respectively, 26.8% and 35.0% of consumer fraud incidents were reported to the SAPS.[24] This suggests that about two-thirds of consumer fraud are not reported to the SAPS. The two main reasons for the low reporting rate are that victims have reported the crime to other authorities, and the perception or belief that the police could not or would not do anything about it. Bruce argues that crime is widely under-reported in South Africa and that official crime statistics issued by the SAPS do not accurately reflect the real crime situation.[25] Crimes that require a police reference number for insurance purposes (e.g. housebreaking, robbery, vehicle theft and theft out of vehicle) are more likely to be reported. The above findings confirm that the incidence of commercial crime is in reality much higher than what is officially reported.

SAPS performance in respect of commercial crime investigation

According to the SAPS Annual Performance Plan 2016/17 and the Performance Information Management Framework 2016/17, the purpose of the Detective Service is to perform (enable) the investigative work of the SAPS, including support to investigators in terms of forensic evidence and the Criminal Record Centre.[26] The strategic objective of the Detective Service is to contribute to the successful prosecution of offenders (crime), by investigating, gathering and analysing evidence, thereby increasing the detection rate of priority crime. The performance of the SAPS in respect of the investigation of crime is measured using three performance indicators, namely the detection rate, the trial-ready docket rate and the conviction rate.[27]

Detection rate

The detection rate is an indication of successful investigations achieved in respect of the SAPS's active investigative workload, which consists of new crimes reported to the SAPS as well as older cases that have not been finalised but are carried over from previous financial years.[28] The detection rate measures the ability of the SAPS to solve crimes during investigation. The SAPS views a successful investigation as one that has resulted in the positive identification, arrest and charging of a perpetrator, cases that are withdrawn by the complainant before a perpetrator is charged, and cases where the public prosecutor declines to prosecute ('nolle prosequi' decisions), as well as unfounded cases.[29]

The rationale for the inclusion of unfounded cases and cases withdrawn out of court in the detection rate is not clear. Since these cases often involve little or no investigation at all, it does not make sense to regard all of them as successful investigations. Yes, in certain cases where a suspect was identified and a considerable amount of time and resources spent on an investigation, only to be withdrawn by the complainant before any charge was brought, it might be argued that it was a successful investigation. However, there is no indication that factors such as time and resources spent are considered when deciding whether to include an unfounded case or a case withdrawn out of court in the detection rate. We argue that the blanket inclusion in the detection rate of all unfounded cases and

cases withdrawn out of court before a suspect is charged, results in a skewed picture of the actual ability of the SAPS to solve crime.

The SAPS's Crime Administration System (CAS) is the system used to register crime incidents for investigation, i.e. case dockets.[30] The SAPS uses the terms 'complaints reported' and 'charges reported' interchangeably.[31] When a criminal complaint is reported, a case docket is opened and allocated for investigation. A case docket can result in more than one charge being brought against a suspect (i.e. the accused, as soon as s/he is charged). The detection rate is based on charges, and calculated using the Crime Management Information System (CMIS), also known as the SAPS6. Data used by the CMIS are extracted directly from CAS.[32]

The detection rate is calculated as follows:

[(Number of charges referred to court for the first time during a reporting period) + (Number of charges withdrawn before court) + (Number of charges closed as unfounded)] divided by [(Number of charges reported) + (Number of charges brought forward from the previous reporting period)] x 100 percent.[33]

Detection rate for commercial crime

The SAPS does not report a detection rate for general, less serious commercial crime. However, it does report a detection rate for fraud (see Table 2).

Detection rate for serious commercial crime

The reported annual detection rate for serious commercial crime for the years 2013/14 to 2015/16 is listed in Table 2.

It should be noted that the detection rate for serious commercial crime is extremely high in comparison with the overall detection rate for less serious commercial crime (i.e. fraud overall). Scrutinising the reported detection rate for serious commercial crime reveals that the SAPS has likely calculated this indicator incorrectly and that its performance is in reality noticeably weaker. Although it is difficult to gauge the accuracy of the reported detection rate without the original data used by the SAPS, one can still get a good sense of it, using available public data.[34]

Table 2: Reported annual detection rate for fraud and serious commercial crime, respectively, 1 April 2013 to 31 March 2016

Year	Detection rate for fraud	Detection rate for serious commercial crime
2013/14	36.72	89.7
2014/15	35.77	94.8
2015/16	34.08	96.75

Source: SAPS, Annual report 2013/14, 160, 174; SAPS, Annual report 2014/15, 195; SAPS, Annual report 2015/16, 175, 200; SAPS, Annual Performance Plan 2016/17, 40.

The detection rate for serious commercial crime is calculated as follows:

[(Number of charges referred to court for the first time, where a case represents at least one charge) + (Number of additional verifiable charges referred to court for the first time) + (Number of complaints withdrawn out of court) + (Number of complaints unfounded/false)] divided by [(Number of cases/complaints reported, where a new case represents at least one charge) + (Number of additional verifiable charges referred to court for the first time) + (Number of charges brought forward, where a case represents at least one charge)] x 100%.[35] Using the above formula, one can substitute data from the SAPS *Annual report 2014/15* as follows:[36]

Detection rate = 94.8% = 100% x [(Charges referred to court for the first time) + (Additional verifiable charges referred to court for the first time) + (Charges withdrawn before/out of

court) + (Charges unfounded)] / [(New charges/ complaints reported) + (Charges brought forward from previous years) + (Additional verifiable charges reported)]

Whereas,

New charges/complaints reported = 3 930 (one case is equivalent to one charge)

Total charges referred to court for the first time = 126 953

Charges referred to court for the first time = 2 422 (one case is equivalent to one charge)

Additional verifiable charges referred to court = (126 953 – 2 422) = 124 531

for the first time

Total charges reported = 128 623 (sum of new charges reported and additional verifiable charges reported i.e. referred to court)

Therefore,

$$\frac{126\ 953 + (\text{Charges withdrawn before/ out of court}) + (\text{Charges unfounded})}{3\ 930 + 124\ 531 + (\text{Charges brought forward from previous years})} = 0.948$$

One can estimate the sum of the number of charges withdrawn before (out of) court and unfounded charges at between 0% and 100% of the new charges reported (3 930), since it is likely that the bulk of charges withdrawn and unfounded originate from new charges reported. Therefore, the number of charges brought forward from previous years is estimated to be between 5 456 and 9 601.[37]

While a total of 126 953 charges, linked to 2 422 cases, were referred to court for the first time during the period (i.e. an average of 52 charges per case docket), it is highly unlikely that the actual number of charges still under investigation brought forward from the previous year can be so low. What the SAPS is actually doing is substituting the number of case dockets brought forward with charges, where a docket is equal to a charge, while totally disregarding a large number of charges still under investigation, brought forward from previous years. To this end the SAPS acknowledges its own limitations and challenges insofar as the detection rate for serious commercial crime is concerned, stating that 'new cases reported cannot be kept accurately [sic] in terms of charges, since charges added to an accused in practice are only formulated months, even years, after the case is initially received … in practice, charges are formulated when the investigation is completed and the state prosecutor formulates the charge sheet'.[38]

By implication it is impossible to keep accurate statistics relating to newly reported serious commercial crime. However, the SAPS fails to explain what happens as the investigation progresses and possible charges are identified and investigated. In reality, charges contemplated against a suspect are investigated over a period of time and are known to both the investigating officer and state prosecutor well in advance of compiling the charge sheet.[39] However, these charges are not taken into account when calculating the detection rate before a suspect is charged. This results in an inaccurate detection rate, which does not reflect the actual detection capabilities of the SAPS across all outstanding charges still under investigation.

Although no raw data is available in respect of the serious commercial crime detection rate for 2015/16 (i.e. 96.75%), logic dictates that in order to achieve such a high performance, the raw figure for charges referred to court would have had to be in the same order as that of 2014/15 (probably between 126 000 and 130 000 charges). In 2015/16 a total of 3 776 new cases/charges were reported.[40] It would be impossible to refer such a high number of

charges to court from a relatively small pool of between 9 000 and 14 000 charges.[41]

Table 3 illustrates the relationship between the sum of charges withdrawn before/out of court and unfounded charges on the one hand, and, on the other, charges brought forward from previous financial years, based on a 94.8% detection rate and a number of 3 930 new charges reported (2014/15 figures).

Table 3: Relationship between the sum of charges withdrawn before/out of court and unfounded charges, and charges brought forward from previous years, using figures for the 2014/15 serious commercial crime detection rate

Charges withdrawn and charges unfounded	Charges brought forward
0	5 456
200	5 667
400	5 878
600	6 089
800	6 300
1 000	6 511

Source: Calculations performed by authors, using available SAPS data for 2014/15.

Based on a total of 1 000 charges withdrawn before/out of court and unfounded charges, the variation in the detection rate in relation to the number of charges linked per case docket brought forward from previous years, is shown in Table 4.

Table 4 is based on a total of 1 000 charges withdrawn before/out of court and unfounded charges against varying charges per docket ratio for cases brought forward from previous financial years.

Table 4 shows that as the charges to case docket ratio for cases brought forward ('old' cases) increases, the detection rate decreases against a fixed total for charges withdrawn before/out of court and unfounded charges (a sum of 1 000 in the example). The detection rate drops to as low as 32.9% if an average of 40 charges are investigated per docket brought forward. If one uses a ratio of 52 charges per case docket brought forward (i.e. the ratio of charges per docket referred to court for the first time in 2014/15) and entirely remove charges withdrawn before/out of court and unfounded charges from the formula, the detection rate would be as low as 30.8%, while the SAPS reports that it is 94.8%.[42]

Table 4: Serious commercial crime detection rate

Charges per case docket ratio for dockets brought forward from previous financial years	Detection rate
1	94.8
10	66.1
20	49.5
30	39.5
40	32.9
50	28.2
60	24.6

Source: Calculations performed by authors, using available data for 2014/15.

A further challenge relates to the accuracy of SAPS data, for example in the 2013/14 financial year.[43] During this period the number of new charges reported was 87 615, while the total number of charges referred to court for the first time was 83 913 (of which 3 417 were new charges referred to court for the first time on new cases). A total of 6 204 new cases were received for investigation. If one deducts this from the new charges reported (87 615), the number of additional verifiable charges referred

to court for the first time should be 81 411. If the 3 417 new charges referred to court for the first time are deducted from the total charges referred to court for the first time (83 913), one should also get the number of additional verifiable charges referred to court for the first time. However, this calculates to 80 496 charges, which is different from the 81 411 calculated previously. The difference in these two figures raises doubts as to the accuracy of the data. Furthermore, it is not clear from the detection rate formula whether the additional verifiable charges reported or referred to court for the first time stem from the new charges/complaints (cases) reported, from charges brought forward from previous years, or from both.

Additionally, and as discussed earlier, the fact that the detection rate includes all complaints withdrawn before/out of court before anyone is charged, as well as unfounded complaints, contributes to an inaccurate reflection of the SAPS's performance in respect of serious commercial crime. This amounts to an irregular inflation of the detection rate, based on fictitious successes. Against the above backdrop it is argued that multiple significant inaccuracies can be found in relation to the detection rate for serious commercial crime as reported by the SAPS, and that the actual detection rate is much lower.[44]

Conclusion and recommendations

Despite limited successes achieved by law enforcement in combatting commercial crime, serious concerns exist over the lack of data available in the public domain to assess the performance of the SAPS in this regard, as well as the accuracy and trustworthiness of the serious commercial crime detection rate in particular. Burger, Gould and Newham make a valid point, stating that, from an analytical point of view, accurate and reliable crime statistics are needed to develop appropriate crime reduction strategies.[45] Besides, inaccurate and unreliable statistics have negative effects, including an increase in public mistrust in the police, as well as an increased perception and fear of crime. Accurate, reliable and timely crime statistics enable members of the public to make informed decisions about their own safety and security, promote trust in the police and government, and encourage citizens to become involved in crime-prevention initiatives.[46]

The detection rate for all fraud is the lowest it has been in three years (34.08% in 2015/16), yet reported commercial crime has risen by about 3% since 2014/15. The actual serious commercial crime detection rate is estimated to be between 30% and 40% (based upon a charge to docket ratio of 30 to 40). Considering that the detection rate includes cases withdrawn by complainants, cases where prosecution has been declined, and unfounded cases, the SAPS needs to significantly improve its performance. Almost two-thirds of all reported commercial crimes go unsolved, and adding to this is the notable under-reporting of commercial crime incidents. Whichever way one looks at this, it is clear that the SAPS is not coping with commercial crime and is slowly but surely losing the battle. PwC reports that 70% of respondents interviewed regarded the SAPS as inadequately resourced and trained to deal with economic crime.[47] The question should be asked as to why such a large percentage of respondents hold this view. What were their experiences in this regard and how can the situation be addressed or improved? The SAPS should take a hard look at its performance in this area and find appropriate measures to improve it. We propose an in-depth inquiry into the low detection rate and unsatisfactory impact of police efforts on these crimes, involving knowledgeable role players from the public and private sector to help find appropriate solutions. These could include training interventions, mentorship programmes, and the revision

and updating of training material related to commercial crime investigations.[48]

In addition, we believe that the SAPS needs to address several issues:

- **Under-reporting of commercial crime.** The SAPS should develop and implement an access-controlled online reporting platform for commercial crime. Complaints that do not require investigation should be recorded using a simple one-page template (similar to the old 'crime chart'), instead of opening a docket. This should save time and costs spent on docket administration.
- **Revision of formula for calculating the detection rate of crime.** The current formula should be amended to exclude those complaints withdrawn before/out of court and unfounded complaints in respect of which a certain amount of actual investigation has not been done. Only complaints where the investigation has reached a reasonably advanced stage should be included in the detection rate. This will enhance the trustworthiness and reliability of crime statistics and provide a more accurate picture of reality.
- **Discrepancy in data for fraud/commercial crime detection rate.** An independent audit of SAPS statistics is proposed to determine reasons for the differences in reported fraud and commercial crime figures from annual crime statistics and annual reports, as published by the SAPS on its website.
- **Inaccurate detection rate for serious commercial crime and lack of sufficient data.** The CAS should be adapted to enable users to capture large numbers of charges against a suspect in an efficient manner. Performance management systems for commercial crime should include all charges under investigation brought forward from previous financial years when calculating the detection rate. If statistics relating to charges referred to court can be kept, it should be plausible to do the same for charges still under investigation. The use of manual statistical systems should be phased out and only computerised systems allowed (CAS and CMIS). The SAPS should also publish all raw data used during calculations.
- **Improving commercial crime statistics.** A comprehensive breakdown in this regard should be published at least twice a year to include different crime types/categories, modus operandi trends, victims/targets, and geographical incidence of crimes. The same should be done for cases reported as 'other fraud' under serious commercial crime. We argue that in order to effectively combat commercial crime, law enforcement should maintain an accurate, reliable regime of regular crime threat and crime pattern analyses, designed to review, adapt and strengthen crime-fighting strategies.

In conclusion, we advocate more accurate, reliable, timely and comprehensive commercial crime statistics that should be made available to relevant role players who can assist to assess problem areas and develop effective combatting strategies. This should strengthen efforts to combat these crimes across the commercial crime landscape.

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Notes

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5 Ibid.

6 SAPS, *Annual report 2013/14*, 160, 174; SAPS, *Annual report 2014/15*, 204; SAPS, *Annual report 2015/16*, 175; SAPS, DPCI, *Commercial crime mandate*; SAPS, *Performance information management framework 2016/17*, 114, http://www.saps.gov.za/about/stratframework/strategic_plan/2016_2017/technical_indicator_description_2016_2017.pdf (accessed 22 November 2016).

7 Ibid. The SAPS's distinction between serious commercial crime and general, less serious commercial crime apparently arises from the relevant regulatory framework provided in terms of the South African Police Service Act 1995. The DPCI was established to prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption (Section 17B and 17C). Its functions (Section 17D) are to prevent, combat and investigate selected national priority offences (Section 16[1]), corruption-related offences and offences or categories of offences referred to it by the national commissioner, all subject to policy guidelines issued by the minister of police and approved by Parliament in terms of Section 17K(4) ('Policy guidelines'). Also see *Helen Suzman Foundation v President of the Republic of South Africa and Others*; *Glenister v President of the Republic of South Africa and Others* [2014] ZACC 32; Parliament of the Republic of South Africa, *Revised 2015 policy guidelines for the Directorate for Priority Crime Investigations (DPCI)*, 23 July 2015, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/150818dpci.pdf (accessed 22 November 2016); Parliamentary Monitoring Group (PMG), Directorate for Priority Crime Investigation (DPCI): mandate and activities, 17 September 2014, https://pmg.org.za/committee-meeting/17552/ (accessed 22 November 2016).

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12 SAPS, *Annual report 2013/14*, 160, 174; SAPS, *Annual report 2014/15*, 204; SAPS, *Annual report 2015/16*, 175.

13 SAPS, *Annual report 2013/14*, 160; SAPS, *Annual report 2015/16*, 175.

14 Of these 69% were fraud cases (see SAPS, *Annual report 2013/14*, 174, 178–179).

15 SAPS, *Annual report 2014/15*, 224, 225.

16 SAPS, *Annual report 2015/16*, 202, 204.

17 Over the three-year period from 1 April 2013 to 31 March 2015 fraud made up 66% of these cases.

18 SAPS, *Crime statistics 2015/16*, http://www.saps.gov.za/services/crimestats.php (accessed 21 November 2016).

19 SAPS, *Annual report 2013/14*, 107, 178.

20 SAPS, *Crime statistics 2015/16*.

21 PricewaterhouseCoopers, *Economic crime*.

22 Ibid.

23 Ibid.

24 Statistics South Africa, *Victims of crime survey 2014/15*, 66, 88, https://www.statssa.gov.za/publications/P0341/P03412014.pdf (accessed 23 October 2016); Statistics South Africa, *Victims of crime survey 2015/16*, 69, 93, http://www.statssa.gov.za/publications/P0341/P03412015.pdf (accessed 19 March 2017). The reporting rate for 2014/15 in respect of consumer fraud is provided as 26.8% in the 2014/15 survey, yet it is reported as 27.2% in the 2015/16 survey.

25 J Burger, C Gould and G Newham, The state of crime in South Africa, *South African Crime Quarterly*, 34, December 2010, 10–11.

26 SAPS, *Performance information management framework 2016/17*, 78.

27 SAPS, *Annual report 2014/15*, 198–201; SAPS, *Annual report 2015/16*, 169–170.

28 SAPS, *Performance information management framework 2016/17*, 80.

29 SAPS, *Annual report 2014/15*, 200. The SAPS (usually a detective branch commander or unit commander at an investigation unit) assesses the complainant's statement and other information/evidence. This can happen at the start of the investigation (preliminary investigation stage) or later during the investigation. If the SAPS believes that it is clear that a legal element or elements of a crime is/are missing and that no crime has been committed, the case is closed as unfounded. In some cases the SAPS will approach the prosecuting authority to decline prosecution. Those cases are then closed as withdrawn before court.

30 Ibid., 198–201.

31 SAPS, *Performance information management framework 2016/17*, 80–81; SAPS, *Annual report 2014/15*, 198–201; SAPS, *Annual report 2015/16*, 169–170.

32 Ibid.

33 Ibid.

34 On 26 September 2016 a formal request was submitted to the SAPS in terms of the Promotion of Access to Information Act 2000 (Act 2 of 2000) to obtain more comprehensive raw data in respect of the detection rate for serious commercial crime for the period 2012/13 to 2015/16. Despite various follow-up enquiries, the SAPS has provided neither the requested data nor any reason for refusing to provide same (the request is deemed to have been refused in terms of the act). A subsequent appeal was lodged in terms of the act but no outcome has so far been received. The request and appeal were also submitted to the DPCI at national level but to no avail. It was established that the requested figures are readily available from the national head, Serious Commercial Crime, DPCI.

35 SAPS, *Performance information management framework 2016/17*, 114.

36 SAPS, *Annual report 2014/15*, 221.

37 Calculations performed by the authors. The detection rate only takes into account charges that are under investigation and not pending in court. Charges already on the court roll, even though they might still be investigated, are not counted for the detection rate.

38 SAPS, *Performance information management framework 2016/17*, 114. Factors that are cited as having a negative influence on the SAPS's ability to keep accurate statistics in respect of serious commercial crime charges include the extent and complexity of serious commercial crime cases and the duration of investigations (large cases can take several years to finalise).

39 Prosecutors and SAPS investigating officers dealing with serious commercial crime cases work together in terms of a prosecutor-guided investigation (PGI) methodology, whereby they cooperate to form a joint investigation and prosecution team for the duration of the case. This is to ensure more efficient investigations and prosecutions in complex and voluminous cases. National Prosecuting Authority (NPA), *Annual report 2015/16*, 22.

40 SAPS, *Annual report 2015/16*, 200–204.

41 This is the charges reported for 2015/16 rounded off to 4 000 and added to the 'charges' brought forward to 2014/15, rounded off to between 5 000 and 10 000.

42 Even if one calculated the detection rate using a 'best possible scenario' approach by:

- Including a sum total of 1 000 charges withdrawn before/out of court and unfounded charges,
- The lowest possible number of charges brought forward from the previous year (5 456), and
- A charges to case docket ratio of 10 for dockets brought forward from the previous year,

the serious commercial crime detection rate for 2014/15 would be 69.9%.

43 SAPS, *Annual report 2013/14*, 174, 178–179.

44 In addition to the SAPS's inaccuracies pointed out in respect of serious commercial crime, it must also be taken into account that the average rate of error for SAPS crime statistics is said to be between 10 and 11%, as was testified before the Khayelitsha Commission of Enquiry. Statistical errors include incorrect classification of crimes on the Crime Administration System (CAS), the failure to capture multiple charges (counts) in dockets and the failure to register cases on CAS. What makes the situation worse is that the SAPS manual on crime definitions and crime codes used for the registration of case dockets on CAS, in respect of commercial crime, only includes corruption, theft by false pretences, fraud, forgery and uttering. This means that all other types of commercial crime are classified and registered under incorrect crime codes on CAS, which leads to incorrect crime statistics. A US study conducted by the research company Rand Corporation between 1973 and 1975 on the organisation and effectiveness of the criminal investigation fraternity in the US found that about 30% of indexed arrests were made by first responders to crime scenes (e.g. patrol officers). In about 50% of cases the identity of the perpetrator was supplied by victims or witnesses. The remaining 20% of arrests were made by investigating officers, of which only about 3% can be attributed to actual investigative efforts that led to the identification of suspects. The authors, who are both former investigators and members of the Commercial Crime Unit (CCU) of the SAPS, suggest that a similar pattern can be found in South Africa today in respect of commercial crime cases and, likely, other crime types too. From many years of practical experience in the CCU, we suggest that a significant number of arrests are made by uniformed members responding to complaints, security personnel or members of the public and that the charges subsequently referred to court are included in the numbers used to calculate the detection rate. Khayelitsha Commission of Inquiry, *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, August 2014, 62, http://www.khayelitshacommission.org.za/images/towards_khaye_docs/Khayelitsha_Commission_Report_WEB_FULL_TEXT_C.pdf (accessed 11 July 2017); SAPS, *Crime definitions (2012) to be utilized by police officials for purposes of the opening of case dockets and the registration thereof on the Crime Administration System*, National Commissioner's reference 45/19/1 dated 2011/11/07, 35–58, 201, 210–214; Peter W Greenwood, *The Rand Criminal Investigation Study: its findings and impacts to date*, Rand Corporation, July 1979, 2–3, https://www.rand.org/content/dam/rand/pubs/papers/2008/P6352.pdf (accessed 11 July 2017).

45 Burger, Gould and Newham, The state of crime in South Africa, 10–11.

46 The availability of official crime statistics has improved somewhat with the announcement in 2016 that these would now be released both quarterly and annually, while the figures for the first three quarters of 2016/17 were released in March 2017. In addition to this, Statistics South Africa also releases an annual victims of crime survey.

T Gqirana, Crime stats to now be released quarterly, *News24*, 9 June 2016, http://www.news24.com/SouthAfrica/News/crime-stats-now-to-be-released-quarterly-radebe-20160609 (accessed 11 July 2017).

47 PricewaterhouseCoopers, *Economic crime*, 1.

48 Reyes also proposes a number of useful tactical measures to improve the efficiency and solving rate of criminal investigators, including a proper case management system that can be used to monitor performance outputs as well as time management. See R Reyes, Tactical criminal investigations: understanding the dynamics to obtain the best results without compromising the investigation, *Journal of Forensic Sciences and Criminal Investigation*, 2:2, 15 March 2017.

Exploring questions of power

Peace officers and private security

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There is a need for different stakeholders to work together to help the South African Police Service (SAPS) combat crime in Gauteng. Through the Constitution, the SAPS is mandated to combat crime. Private security officers (PSOs) are well positioned to help the police, as they may witness crimes in the course of their duties. PSOs protect organisations (public and private) and individuals as their paying clients. But the PSOs can only perform their duty as ordinary citizens, not as police. This article presents the findings of interviews and a survey intended to gauge the extent to which senior actors in the private security industry and the police think security officers need additional legal powers, and what powers would be suitable for them to help the police combat crime.

The Constitution of the Republic of South Africa 1996, Section 198(a) notes that the national security of citizens is the responsibility of government. Section 199(1) states that the security services protecting the country are the South African National Defence Force (SANDF), the South African Police Service (SAPS) and any intelligence services formed in line with the Constitution. In short, the term 'security services' refers to law enforcement agencies that offer a public service to citizens.

The term 'security service', in the Constitution, excludes private security services. A public service is 'one which is provided collectively and from benefits of which non-payers cannot be excluded', while a private service is 'a service that is provided to a specific user or consumer, to the exclusion of everyone else'.[1] The private security industry is mainly concerned with servicing paying clients, who are also protected by the police service. As such, clients of private security companies enjoy more safety and security than others.

The public police service cannot prevent crime by itself. In 1996 the South African government compiled a document known as the National Crime Prevention Strategy (not in force at present), which encouraged the establishment of partnerships between the police and private security, the latter seen as a potential crime prevention body.[2] In most instances, the contribution of private security officers (PSOs) to reducing crime is likely a result of crime rates stretching the capacity of police. For example,

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during a 1970s spike in airline hijackings in the United States (US), police had to be deployed at airports to ensure the safety of passengers. As a result, police were withdrawn from normal duties, creating what Berg calls a vacuum.[3] This led to private security personnel being deployed at airports to provide safety and security while police were redeployed to perform their rightful tasks.[4]

In South Africa in the 1950s and 1960s, robberies targeting businesses at industrial sites escalated. In response, the security company Springbok Patrols (now Fidelity Security) developed a cash-in-transit unit.[5] PSOs also became the 'eyes' and 'ears' of the police in combatting crime in general. While it may be assumed that PSOs are helpful to police in terms of crime prevention, the question explored in this article is: Do PSOs need additional legal powers to help the police combat crime in South Africa?

As one of the stakeholders involved in crime prevention, the private security industry has experienced rapid growth in recent decades. PSOs now significantly outnumber police in South Africa, and elsewhere.[6] In 2011 the ratio of PSOs to police was as follows: South Africa 2.87:1; US 2.26:1; Australia 2.19:1; Honduras 4.88:1; India 4.98:1 and Guatemala 6.01:1.[7] This places the private security industry in a good position to help police combat crime effectively. Thus, if PSOs are given additional legal powers or afforded the status of peace officers, it may increase their effectiveness as crime prevention agents.

The study on which this article is based involved one-on-one interviews with senior management, and self-administered questionnaires with operational members from both the SAPS and the private security industry.

The aim of the study was to build a case for PSOs receiving additional legal powers to help police reduce crime, given that South Africa is a country with a high crime rate.

Giving PSOs the powers of peace officers to help police combat crime will empower them to arrest any person who commits any offence in their presence in their jurisdiction, rather than only offenders committing Schedule 1 offences, as is currently the case. The reason PSOs who are given additional legal powers will be restricted to their jurisdiction is clarified in Section 334 of the Criminal Procedure Act 1977 (Act 51 of 1977), which states that the minister may declare certain people peace officers for specific purposes within a specified area.

Contextualisation: peace officer status

PSOs can only be afforded additional legal powers if they are awarded peace officer status by the minister of justice, as stipulated in Section 334 of the Criminal Procedure Act. Of critical importance this section states that

> the employer of any person who becomes a Peace Officer under the provisions of this section would be liable for damage arising out of any act or omission by such person in the discharge of any power conferred upon him under this section, the State shall not be liable for such damage unless the State is the employer of that person, in which event the department of State, including a provincial administration in whose service such person is, shall be so liable.

It is clear from the act that any public or private citizen may be given the status of peace officer. The purpose of conferring that status is to broaden an individual's legal powers in accordance with objectives to be achieved. For instance, PSOs may be

given additional legal powers to help police combat crime. However, the act also notes that private security companies will be liable for any misconduct by their employees and so should pursue additional powers only for their most competent employees.[8] According to Schonteich, special powers (e.g. search and seizure of articles suspected to have been used in the commission of crime) have been given to some PSOs in the United Kingdom and the US, but this has been contingent on proper training being given to the relevant officers.[9] If deserving PSOs are awarded these powers, it will help them to face the many security challenges of the current era, from property crime to terrorism. South Africa could draw on the experiences of other middle-income countries with comparable violent crime rates by exploring initiatives that empower deserving PSOs and make them more effective in preventing crime. As a result they would no longer be restricted to arresting people who commit Schedule 1 offences (e.g. serious crimes such as theft, robbery, arson and malicious damage to property), as is currently the case. Consequently, they may be able to help the police to lower crime levels in South Africa.

The only legislation empowering PSOs to combat crime in South Africa is Section 42 of the Criminal Procedure Act. This allows security officers to arrest without warrant anyone who commits a schedule 1 offence in the presence of security officers (where security officers are deployed).

The powers granted to PSOs to combat crime are the same as an ordinary citizen's powers to arrest a perpetrator. When security officers arrest a criminal, they have to call in the police to take the matter further. The same applies to Metro Police officers, the only difference being that they have been awarded peace officer status. This is clearly outlined in Section 64(F) (3) of the South African Police Service Act 1995 (Act 68 of 1995).

Minnaar has noted that the issue of additional legal powers for South African PSOs has been discussed since 1997, when the South African Security Association (SASA) made a submission to Parliament to amend the act.[10] Its submission was rejected. Minnaar also notes that strict regulation is important in this type of initiative. A 2010 study exploring the effectiveness of the Private Security Industry Regulatory Authority (PSIRA) found that most private security provider participants believed the industry was not well regulated.[11] Gumedze found the same in a 2007 study.[12]

Research purpose, questions, methods and procedures

The purpose of this study was to explore the perceptions of police and security officers with regard to whether private security industry personnel need additional legal powers to help the SAPS prevent and fight crime in South Africa.

The following questions guided the study: Do PSOs in South Africa need additional legal powers to act in support of the SAPS in combating crime effectively? (Asked in interviews with top management of the SAPS and the private security industry [PSI]). If so, to what extent? (Asked in self-administered questionnaires with operational members of both the SAPS and PSI).

One-on-one interviews (qualitative)

One-on-one interviews were conducted with the management of selected PSI (contract and in-house) service providers and the police station management of the SAPS. High-ranking officials from both the SAPS and PSI were chosen because they are responsible for strategic decision-making within their organisations. Two participants from each organisation were purposively selected to participate in the study.

Twenty police stations participated, with 37 officers at various levels being interviewed – from the station commander to the operational manager/visible policing (VISPOL) head.

From the 20 private security organisations participating in the research, the researcher interviewed 30 people at various levels, ranging from managing director to marketing manager and operational manager. Interviews were carried out in neutral settings.

The aim of the interviews was to test the following perception-based hypothesis (positive and negative statements):[13]

H_1: Security officers in South Africa need additional legal powers to act in support of the SAPS in combatting crime effectively

The hypothesis was tested through the empirical data gathered during interviews.

Survey questionnaire (quantitative)

To complement the interviews, a survey questionnaire was designed and distributed to a sample of private security service providers and members of the SAPS. Three hundred questionnaires were distributed to the SAPS and PSI respondents: 173 police officers and 163 PSI members returned completed questionnaires.

Private security companies and police stations were randomly selected in Gauteng province. A multi-stage probability sample was used, whereby the units (e.g. cities) and sub-units (e.g. police stations and private security companies) of analysis were randomly sampled.

Data collected from the questionnaires were coded, entered into Epi-info and analysed, using the Statistical Package for the Social Sciences (SPSS) version 22. Descriptive statistics were used to find patterns across the variables, using frequencies and proportions. A reliability analysis was carried out to determine the reliability of the aspects on *additional powers for private security officers*. The respondents at operational level were asked to read the statements provided and indicate the extent to which they agreed/disagreed with them. As a result, leading questions were intentionally formulated. The reason this question was phrased differently to that presented to respondents at the top management level was precisely to test perceptions of its potential operationalisation. Response choices on the individual items were formulated and closed-ended with a five point Likert scale, ranging from strongly agree (1) to strongly disagree (5).

Research findings and analysis

Additional powers for PSOs: views of SAPS and PSI top management

Both the SAPS and PSI participants were asked the following question: 'Do private security officers in South Africa need additional legal powers to act in support of the SAPS in combatting crime effectively?'

Sixteen of the PSI respondents indicated that PSOs do not need additional legal powers to act in support of the SAPS in combatting crime; 11 felt that PSOs need additional legal powers; and three indicated that they were unsure. Only one respondent (of the 16 PSI respondents) indicated that PSOs could be given additional legal powers if the regulating authority was effective.

In this regard, respondent 9 noted: 'If I give my guard more powers and they use that next door and my client is attacked, who can I penalise? I do not think they need more powers.' It makes sense that security company owners might reject the idea, because they are in business and their business is to look after their paying clients. As such, security company owners will need assurance that when their PSOs help police to reduce crime it

will not be to the detriment of their own paying clients. The role of PSOs can be effective and beneficial to non-paying clients. For example, in a residential area protected by a PSO, neighbours who are not protected by any security company enjoy the benefit when the PSO sees crime committed and reports that incident to the police.

This is supported by respondent 14, who said: 'No, private security officers should not have additional legal powers. It will create a lot of confusion. Now, you arrest and you call the police. We do not have to take over SAPS powers. More so these powers will likely be abused by security guys.'

The 11 participants who supported the idea that PSOs should be given additional legal powers proposed that they be given the power to stop and search people suspected or known to have committed an offence, and the power to arrest someone, irrespective of the nature of the offence. Currently, PSOs can do such things only as private citizens in line with Section 42 of the Criminal Procedure Act, as outlined above.

Ten of the 37 SAPS participants indicated that PSOs need additional legal powers to act in support of the SAPS and Metro Police in combating crime, 13 opposed the idea and 14 were unsure. The respondents gave different reasons for their views. For instance, respondent 4 said: 'If private security personnel will be under control of SAPS they may need those powers. Otherwise they will abuse these powers. If SAPS members abuse powers, the Minister of Police is held responsible. If private security officers abuse these powers, who will be responsible?'

SAPS participants were generally concerned about the possibility of abuse of power by PSOs. PSOs are not suited to working with police, participant 30 stated: 'Even if private security officers can get additional legal powers they cannot go as far as police because some of them work with criminals.' In some parts of Gauteng, especially in the northern areas of Johannesburg (e.g. Rosebank, Sandton, Parktown, Parkview, Morningside, Parkhurst), officers from security companies such as ADT, Fidelity, G4S and Bidvest Protea Coin detain criminals and call the police to make the arrest, but according to some PSI participants, the police do not take them seriously. As participant 18 from the PSI clarified: 'A security guard arrests a criminal and calls the police but when the police turn around the corner they let the criminal free and the same criminal will make sure that he will come and just confirm to you that police let him free.' If security officers had peace officer status within the geographical area where they work, they could take control of alleged criminals until such persons come before a court of law.

Views from the SAPS and PSI participants at an operational level

Operational SAPS and PSI respondents were asked to reflect on the application of additional legal powers for PSOs, using a scale of 1 (strongly agree) to 5 (strongly disagree). The survey of operational officers was conducted first, in order to inform the interviews. The one-on-one interviews with top management, combined with the survey results, were intended to build a case for giving PSOs additional legal powers to help police reduce crime. The question asked of respondents at both operational level and top management level was: To what extent do you think private security personnel should be given extralegal powers to help public police combat crime in public? The respondents were asked to read the statements provided and indicate the extent to which they agreed/disagreed on a five-point Likert scale (1 = strongly agree, 2 = agree, 3 = neutral, 4 = disagree and 5 = strongly disagree) (see Table 2).

Please note: The researcher would like to acknowledge that the information in both tables 1 and 2 is not clear and may have impacted the results.

Table 1: PSI views on the granting of additional legal powers to private security personnel

Statement	Level of agreement					Sample size	Rank
	1 (Strongly agree)	2 (Agree)	3 (Neutral)	4 (Disagree)	5 (Strongly disagree)		
In order for private security personnel to be given peace officer powers, Safety and Security Sector Education and Training Authority (SASSETA) should design a specific training course to be attended by security personnel wanting to be peace officers	65.0% (93)	24.5% (35)	8.4% (12)	–	2.1% (3)	143	1
In order for security personnel to be given peace officer powers, security personnel should attend training administered by the police	55.9% (80)	31.5% (45)	6.3% (9)	2.1% (3)	4.2% (6)	143	2
The power to stop and search members of the public when suspecting them to be in possession of any unauthorised items suspected to have been used in crime	62.2% (89)	23.1% (33)	5.6% (8)	5.6% (8)	3.4% (5)	143	3
To be given peace officer powers by the minister of police	43.3% (61)	33.3% (47)	9.9% (14)	7.1% (10)	6.4% (9)	141	4
Powers of arrest with a warrant	48.6% (70)	27.8% (40)	8.3% (12)	7.6% (11)	7.6% (11)	144	5
An independent body headed by a retired judge could be established to allocate the status of peace officer to private security personnel	31.9% (45)	33.3% (47)	18.4% (26)	7.8% (11)	8.5% (12)	141	6
Powers of arrest without a warrant for any offence committed under any crime schedule	35.9% (51)	21.8% (31)	21.8% (31)	9.9% (14)	10.6% (15)	142	7

Table 2: Additional legal powers for private security personnel as viewed by the SAPS

Statement	Level of agreement					Sample size	Rank
	Strongly agree	Agree	Neutral	Disagree	Strongly disagree		
1. In order for private security personnel to be given peace officer powers, SASSETA should design a specific training course to be attended by security personnel wanting peace officer powers	34.2% (51)	34.9% (52)	11.4% (17)	8.7% (13)	10.7% (16)	149	1
2. In order for security personnel to be given peace officer powers, they should attend training administered by the police	33.3% (50)	32.7% (49)	14.7% (22)	8.7% (13)	10.7% (16)	150	2
3. The power to stop and search members of the public when suspecting them of being in possession of unauthorised items suspected to have been used in crime	36.0% (54)	22.7% (34)	13.3% (20)	11.3% (17)	16.7% (25)	150	3
4. Powers of arrest with a warrant	25.7% (38)	27.7% (41)	11.5% (17)	15.5% (23)	19.6% (29)	148	4
5. Powers of arrest without a warrant for any offence committed under any crime schedule	24.2% (36)	26.8% (40)	16.8% (25)	15.4% (23)	16.8% (25)	149	5
6. To be given peace officer powers by the minister of police	18.0% (27)	22.0% (33)	23.3% (35)	16.0% (24)	20.7% (31)	150	6
7. An independent body headed by a retired judge could be established to allocate the status of peace officer to private security personnel	13.4% (20)	18.8% (28)	28.9% (43)	21.5% (32)	17.4% (26)	149	7

For the purposes of presenting the research findings, 'strongly agree' and 'agree' are condensed under 'agree', and 'strongly disagree' and 'disagree' are condensed under 'disagree'.

Statement 1: For private security personnel to be given peace officer powers, SASSETA should design a specific training course: 90% of PSI respondents at the operational level

agreed with the statement, 8% were neutral and 2.1% disagreed. At the operational level, 69.1% of SAPS respondents agreed with the statement, 11.4% were neutral and 19.4% disagreed.

The reason both groups of respondents agreed with the statement may be attributed to the fact that SASSETA is the body responsible for quality assurance of training in South Africa's PSI. It is therefore understandable to have such a body offer specific training on peace officer powers.

Statement 2: For security personnel to be given peace officer powers, they should attend training administered by the police: 87.4% of PSI respondents agreed with the statement, 6.3% were neutral and 6.3% disagreed. Among the SAPS respondents, 66% agreed with the statement, 14.7% were neutral and 19.4% disagreed.

In this statement there is agreement between the respondents from the PSI and respondents from the SAPS to the same degree in all respects, that is, from both groups the level of agreement is high, neutral views are medium, and the level of disagreement is low. The PSI might want security personnel who want peace officer powers to be trained by the police, possibly because they believe the police are best suited to this, having been granted peace officer powers on joining the police service. One needs to consider that respondents were asked leading questions.

Statement 3: With regard to the power to stop and search members of the public who are suspected of being in possession of unauthorised items used in a crime, 85.3% of PSI participants agreed with the statement, 5.6% were neutral and 9% disagreed. From the SAPS, 58.7% of respondents agreed with the statement, 13.3% were neutral and 28% disagreed.

It can be observed that the PSI and the SAPS respondents agreed to the same degree on all aspects. That is, the level of agreement is highest in both instances, followed by disagreement in both instances, while the fewest are neutral in both instances.

The power to stop and search members of the public who are suspected of possessing unauthorised items used in the commission of a crime is a good thing for private security personnel to have, but it has implications: What happens when private security personnel step outside the law while carrying out that duty? Who will be liable for a wrongful act committed by a PSO who has been declared a peace officer? It is thus important that security officers undergo training to equip them with the skills they need to be able to effectively perform their task as peace officers.

Statement 4: In respect of officials needing peace officer powers given by the minister of police, 76.6% of PSI respondents agreed, 9.9% were neutral and 13.5% disagreed. Of the SAPS respondents, 40% agreed with the statement, 23.3% were neutral and 36.7% disagreed. The reason both groups believe peace officer powers should be conferred by the minister of police may be that currently, such powers are awarded by the minister locally. This might be an indication that the respondents want the status quo to remain.

Statement 5: As regards powers of arrest with a warrant, 76.4% PSI respondents agreed with the statement, 8.3% were neutral and 15.2% disagreed. From the SAPS, 53.4% respondents agreed with the statement, 11.5% were neutral and 35.1% disagreed.

Again, the power to arrest with a warrant may be viewed as merely following procedures written on the warrant itself. Arresting a perpetrator should not have implications for private security personnel, unless they wrongfully arrest the innocent or fail to follow the

necessary steps after executing an arrest, which would entitle victims to lay civil claims against such personnel.

Statement 6: An independent body headed by a retired judge could be established to confer the status of peace officer on private security personnel: 65.2% PSI respondents agreed with the statement, 18.4% were neutral and 16.3% disagreed. From the SAPS, 32.2% respondents agreed with this statement, 28.9% were neutral and 38.9% disagreed.

It is clear that there is a disagreement between the PSI and SAPS respondents on this issue. This may be attributed to the fact that respondents from the SAPS want the status quo, whereby they are given these powers by the minister of police, to remain. Respondents from the PSI want that to change and, in their view, an independent body such as a retired judge could be ideal.

Statement 7: As regards powers of arrest without a warrant on any offence committed under any schedule 1 offence: 57.7% PSI respondents agreed with the statement, 21.8% were neutral and 20.5% disagreed. From the SAPS, 51% respondents agreed with the statement, 16.8% were neutral and 32.2% disagreed.

At an operational level, respondents from both groups agreed on six statements regarding private security personnel being afforded additional legal powers. However, they disagreed on the issue of an independent body headed by a retired judge being appointed to confer peace officer powers. This contradicts the responses of top management from both groups: there, the majority were of the opinion that private security personnel should not be given additional legal powers. Top management were only asked if PSOs in South Africa needed additional legal powers to act in support of the SAPS and the Metro Police in combatting crime effectively. The reason this question was phrased differently from the one presented to respondents at the operational level was precisely to test whether it would be possible at an operational level to implement the idea, if top management approved in principle. Thus, all respondents were asked the same question, in different ways. It can be concluded that top management of both groups agreed that PSOs should not be given additional legal powers to act in support of the police in combating crime. This proves the hypothesis false.

As regards the seven items presented to both groups at the operational level, all respondents agreed, in all items, that PSOs should be given additional legal powers to act in support of the police in combatting crime in accordance with the extent to which they agreed with the question. This supports the hypothesis.

Discussion and concluding remarks

It is clear from this study that senior SAPS and PSI managers reject the hypothesis.

The four groups of respondents (SAPS operational level, SAPS top management level, PSI operational level and PSI top management level) had differing opinions. The respondents from the top management levels of both the SAPS and PSI overwhelmingly agreed that PSOs should not be given additional legal powers to act in support of the police in reducing crime. Although the reasons for this rejection vary, the following may apply: the PSI is profit driven and looks after its paying clients. This was confirmed by respondent 18 from SAPS top management. They can only extend their crime prevention mandate to non-paying clients to a limited extent, by reporting any crime they witness to the police. Top management may fear that PSOs will be distracted from protecting paying clients to focus on public members who are not clients. This will negatively affect business, because if business is not delivering the services that clients are

paying for, they may terminate their contracts. However, it is equally possible that when PSO or security officers are known to arrest criminals, their private clients will be happy and private business may grow.

In addition, PSI top management may be afraid that security officers will be subjected to litigation while busy protecting the public, for instance if they fail to follow proper procedure. Such legal issues could tarnish the image of the security organisation. Once an arrest has been made, security officers will need to present as witnesses their case in a court of law (which to some extent happens in the current se-tup), which will compromise human resources on the ground (the operational needs of the security company). As a result, security officers may be overworked; however, this could be compensated for and built into a revised system. Of critical importance is that, even if PSOs made arrests, the police would still be responsible for further investigating alleged crimes and preparing dockets for court.

SAPS top management also opposed PSOs having additional legal powers to help police combat crime. Possible reasons may include the fact that they do not believe anyone other than public police can prevent crime effectively (as claimed by respondent 11 from PSI top management respondents); they fear that security companies might not take responsibility for the actions of their officers (as the police minister does for police officers – this was the view of respondent 9 of PSI top management respondents); and they may fear that PSOs will collude with criminals in committing crimes. As top management, the police are concerned about strategic aspects of the SAPS: they want to avoid any possible obstacles to their work in preventing or combatting crime. A forced partnership with another stakeholder in crime prevention may lead to unforeseen complications.

At an operational level, both groups disagreed with their superiors. The reason for this is that the PSOs do the practical security work and they think additional powers would assist them to do this; their daily interactions with the public inform the scope of growth in the PSI.

In terms of the statistical reliability test, the Cronbach alpha was used to determine how unified the items in the dimension are, by measuring the internal consistency (the extent to which all of the items within a single instrument yield similar results).[14] A high Cronbach value signifies that the items are measuring the underlying (or latent) construct. The following is a rule of thumb: >0.9 – excellent, >0.8 – good, >0.7 – acceptable, >0.6 questionable, >0.5 poor and < 0.5 unacceptable.[15] However, the generally agreed lower limit for Cronbach's alpha is 0.7, although it may decrease to 0.6 in exploratory research.[16] In this research, 0.6 is deemed an acceptable level. The following measures of reliability were obtained for the PSI and the SAPS on the dimension 'additional powers for private security' (see Table 3).

Table 3: Reliability of results of issues regarding additional legal powers for private security officers

Aspect	No. of items	Cronbach's alpha	Acceptable level
PSI	7	0.687	Acceptable
SAPS	7	0.890	Excellent

The overall reliability of this dimension was 0.687, which is acceptable, and thus overall the instrument was reliable. In terms of the SAPS the overall reliability of the same dimension was 0.890, which is excellent, thus the overall instrument was reliable.

Businesses always strive to grow their profit margins. With this in mind, it is important to look at different ways of empowering crime

prevention partners such as PSOs. The government's main interest is to ensure that all citizens are safe in a democratic manner that does not oppress anyone. The police cannot do this by themselves. Private security companies have significant human and infrastructural resources. Of course, this does not suggest that empowering PSOs will end crime in South Africa.

This study explored the opinions of police and security officers at both the operational and top management levels. At an operational level there was agreement that PSOs should be given additional legal powers. Top management had a different view, however. The few respondents from top management who agreed that PSOs should be given additional legal powers pointed out that such powers could include making arrests, as well as stopping and searching members of the public who are suspected of having committed a crime. For a more definitive answer on this matter, more research is needed.

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Notes

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Concessions on custodial sentences

Learning from the New Zealand approach to restorative justice

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South African courts, in at least two reported cases, have dealt with restorative justice (RJ) in sentencing offenders (i.e. State v. Thabethe *(*Thabethe*); and* State v. Seedat *(*Seedat*). In both cases, the Supreme Court of Appeal gave limited regard to RJ, with the presiding judges '[cautioning] seriously against the use of restorative justice as a sentence for serious offences'. However, in countries such as New Zealand, courts have handed down custodial sentences in cases of serious offences while giving due regard to RJ at the same time. The purpose of this article is to highlight some of the strategies that New Zealand courts have invoked to ensure that a balance is struck between retributive justice and RJ. On the basis of this analysis, a conclusion is drawn that RJ can play a role in criminal matters by having it reflect through reduced sentences. With such a strategy, courts can strike a balance between the clear and powerful need for a denunciating sentence on the one hand, and RJ on the other.*

Restorative justice (RJ) has been understood and conceptualised differently by different scholars.[1] Courts have also conceptualised and invoked this approach varyingly.[2] A golden thread that runs through these different conceptualisations is the understanding that RJ makes healing and redress of the harm caused by offending, restoration, compensation and communication a priority.[3] Although RJ is devoid of a universally accepted definition, some concepts overlap across the literature. Notably, it constitutes an approach different from the retributive approach to justice, the latter being understood as a predominantly accusatory system of justice and the former constituting a new approach, which places emphasis on healing and redress of the harm caused by crime.[4] As a number of criminal justice systems are predominantly accusatorial, RJ continues to reside on the peripheries. Worthy to note, however, RJ is not novel to the criminal justice systems of South Africa and New Zealand. There is an abundance of jurisprudence clearly demonstrating the preparedness of the courts in these countries to invoke RJ in criminal matters. It is pertinent to note, however, that despite the fact that RJ has featured in criminal matters in both New Zealand and South Africa, it has been received and invoked differently.[5] South Africa, as will be demonstrated in the cases of *S v. Thabethe (Thabethe)*[6] and *S v. Seedat (Seedat)*,[7] appears to be taking the extreme position – that

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RJ has no place and should not constitute an option in cases of serious offending. New Zealand, on the other hand, appears to be taking a middle ground – ensuring that a balance is struck between retributive justice and RJ.

Much has been written about RJ and whether or not it should have a role in criminal justice. Invoking RJ often brings the notion of punishment sharply into focus, in particular raising questions about whether RJ, if invoked, would be compatible with punishment. According to Terblanche, the 'purposes of punishment should be dealt with as part of the interests of society component of the Zinn triad'.[8] The components of the Zinn triad are prevention, retribution, reformation and deterrence. This approach can, however, be criticised for not according due regard to the rights of victims. RJ, therefore, brings with it interesting possibilities with regard to the gaps in conventional systems of justice.

Not surprisingly, literature abounds on the need for criminal justice systems to prioritise RJ in criminal matters. The entire literature cannot be canvassed; however, some of it will suffice. Batley advances the viewpoint that RJ should have a role and place in all offences, including the serious.[9] Batley and Skelton urge criminal justice practitioners to explore pragmatic models with a view to making RJ a reality.[10] Van der Merwe and Skelton see no reason why custodial sentences should not co-exist along with RJ, contending that the views of victims need to be given due weight by ensuring, among others, that RJ is blended with a 'just deserts' approach.[11] Du Toit and Nkomo discuss the role that congregations can play in advancing RJ.[12] Although they do not discuss the issue from a criminal justice perspective, the points they advance are relevant. They argue that, while the seriousness of offending needs to be acknowledged, equal emphasis needs to be placed on 'encouraging a movement towards a unified future'.[13] The authors place various elements of RJ into perspective, including the notion of reparation. They take the view that 'the term "reparations" acknowledges that a monetary or material compensation cannot make up for losses such as a death of a family member or the trauma of torture, but suggests it is rather a symbolic gesture and an acknowledgement of wrongdoing, which is proposed as the starting point of reconciliation.'[14] In their opinion, therefore, reparation is an element not to be underestimated in so far as dealing with offending is concerned.

Commentators, however, bemoan the slow pace at which courts have warmed up to RJ. Skelton, for instance, submits that, although the Constitutional Court of South Africa has embraced RJ, some flaws remain; for instance, courts' exclusive emphasis on court-ordered apologies.[15] This tends to undermine the broader perspective through which RJ can be viewed. Gxubane is critical of criminal justice practitioners' tendency to place some cases, especially serious ones, beyond the realm of RJ.[16] He attributes this practice to the misguided view that RJ and punishment are diametrically opposed, and as such cannot co-exist. This assumption is puzzling in light of certain commentators' argument that some punishment is necessary to enhance the effectiveness of RJ.[17] Louw and Van Wyk have concluded that 'in general legal practitioners find restorative justice to be suitable in the South African context'.[18] They are equally concerned that 'undue emphasis is placed on retribution and on the extensive use of imprisonment in the current justice system, despite the availability of restorative options'.[19] A cross-cutting concern in the literature, therefore, is the limited regard accorded to RJ. It remains unclear, however, how this concern can be addressed in a system inclined towards retribution.

This article explores some viable strategies for incorporation of RJ in a criminal justice system such as South Africa's, which is potentially retributive. This is achieved by drawing insight from the approach of the courts in New Zealand. Following this introduction, the article briefly discusses the position of the Supreme Court of Appeal of South Africa on RJ in cases of serious offending, using *Thabethe* and *Seedat* as examples. It then critically analyses selected court decisions in New Zealand, demonstrating how courts dealt with RJ in cases of serious offending and ensured that RJ complemented denunciating sentences for serious offending. The strategies adopted by New Zealand courts are highlighted. Since New Zealand's courts, like South Africa's, are predominantly accusatory, the article explores what South Africa's justice system can learn from New Zealand's with regard to RJ.

Restorative justice in South Africa: the *Thabethe* and *Seedat* cases

The *Thabethe* case that came before the High Court concerned an accused (Thabethe) who was found guilty of the rape of the complainant, his 15-year-old stepdaughter.[20] The rape occurred at a time when the accused and the complainant's mother were living together as companions. During this companionship, the accused covered the living expenses of all family members, including the complainant.[21] The accused pleaded guilty to raping the complainant and was accordingly convicted. During the proceedings, the complainant testified that although she was hurt by the accused, she wished that he would not be sentenced to a custodial sentence since her entire family was financially dependent on him.[22] As the true wishes of the complainant could not be established during trial proceedings, the court considered a victim/offender programme.[23] Neither the prosecution nor the defence objected to the programme.[24] The programme involved the victim, the offender, a probation officer and the Restorative Justice Centre of Pretoria.[25] It was successfully concluded, during which the complainant reiterated her wish that the convict not be given a custodial sentence.[26] The court found the case fit for application of RJ and, on this basis, handed down a 10-year term of imprisonment, suspended for five years.[27] With the sentence suspended, it meant that after five years the convict would no longer be at risk of imprisonment.

The High Court's approach is to be welcomed in how it embraced RJ. This approach affirms calls by scholars to accord due regard to RJ in criminal matters. However, it is also to be faulted for giving limited regard to the denunciating role of custodial sentences in cases of serious offending. Giving due regard to RJ does not necessarily suggest that custodial sentences should be disregarded. Rather, a proper balance needs to be struck between punishment and RJ. By not considering custodial sentences at all, the High Court failed to strike a proper balance between RJ and the denunciating role that custodial sentences play.

The Director of Public Prosecutions appealed the above decision in the Supreme Court of Appeal, which ruled that RJ constitutes a viable sentencing option in criminal matters.[28] However, it was sceptical of RJ's role in cases of serious offending. It noted emphatically that in serious crimes, RJ is unsuitable because it fails to 'reflect the seriousness of the offence and the natural indignation and outrage of the public'.[29] In the court's view, the circumstances of the case, even though compelling, did not justify a sentence based on RJ.[30] The court went on to firmly 'caution seriously against the use of restorative justice as a sentence for serious offences which evoke profound feelings of outrage and revulsion amongst law-abiding and right-thinking members of society'.[31] The

Supreme Court of Appeal is to be commended for according due regard to the seriousness of child rape by considering a custodial sentence. However, in downplaying the role of RJ, it ended up forfeiting RJ for the goals of deterrence and denunciation (by way of custodial sentences). Accordingly, this court also failed in its task of striking a balance between RJ and retributive justice, seemingly suggesting that RJ cannot co-exist alongside retributive justice in cases of serious offending.

The case of *Seedat* also pertained to the sexual offence of rape.[32] The accused (Seedat), who was 60 years at the time the crime was allegedly committed, was charged before the Regional Court with the crime of rape of the complainant (a 57-year-old woman).[33] The court found Seedat guilty and accordingly convicted him. Before arriving at the sentence, both the prosecution and the defence led evidence. The prosecution led the evidence of a clinical psychologist who relayed the complainant's wishes that the court should not impose a community-based sentence but instead that an order for financial compensation be made on account of the trauma she suffered owing to the rape.[34] The state was against the complainant's request, preferring a lengthy term of imprisonment on account of the seriousness of rape.[35] The trial court, having taken into account the submissions of both the defence and the prosecution, sentenced Seedat to seven years' imprisonment.[36]

It can be deduced from the trial court's decision that, although the complainant desired that the sentencing process accord regard to compensation, this was not an option for the state. It is also evident that the possibility of balancing compensation and a custodial sentence was not explored by the trial court. Seedat appealed the trial court's decision in the High Court. The High Court had to address a number of issues, including the validity of the sentence handed down. Although it dismissed Seedat's appeal, it set aside the sentence imposed by the High Court by suspending it in its entirety for five years subject to some conditions, including a requirement that the convict pay the complainant a total of R100 000.[37] Notably, Seedat did not plead guilty, but he was nonetheless prepared to pay the said compensation.[38] From the foregoing decision, the High Court is to be commended for giving regard to one of the elements of RJ – the voice of the victim. However, by suspending the sentence in its entirety, the High Court failed to strike a balance between the victim's voice and the seriousness of rape.

The Director of Public Prosecutions appealed the sentence handed down by the High Court in the Supreme Court of Appeal, contending that it was incompetent and invalid because no custodial sentence was imposed.[39] The Supreme Court of Appeal took the view that RJ was not an appropriate sentencing option for a matter as serious as rape.[40] The court therefore reversed the High Court sentence, drawing on its own earlier decision in *Thabethe*.[41] It consequently substituted the suspended sentence with four years' imprisonment.[42] Although the Supreme Court of Appeal, by considering a custodial sentence, was alive to the seriousness of rape, it ended up dismissing the role of RJ altogether on account of rape being a serious crime. By not exploring the possibility of striking a balance between RJ and custodial sentences, the court excluded the goals of RJ from the sentencing agenda. In the court's view, 'a sentence entailing a businessman being ordered to pay his rape victim in lieu of a custodial sentence is bound to cause indignation with at least a large portion of society'.[43] The issue of concern in *Seedat* is not so much the four-year sentence ultimately handed down, but rather the total disregard of the victim's requested compensation and, more generally, the possibility of harmony between

custodial sentences and compensation. Arguably, compensation did not have to be pitted against a custodial sentence.

New Zealand: striking a balance

The cases discussed thus far illustrate how courts tend to struggle to balance the retributive theory of justice and RJ at the sentencing stage. In both *Thabethe* and *Seedat*, because the Supreme Court of Appeal needed to affirm the gravity of the crimes (sexual offences), a sentence that excluded custodial sentence would not be an option. Some form of custodial sentence was indeed warranted, but in imposing such a custodial sentence, the Supreme Court of Appeal disregarded the outcome of the RJ process. A question worth asking is: did both the High Court and the Supreme Court of Appeal have to choose one approach over the other, or can a balance be struck to incorporate both? In the next section, New Zealand's case law is reviewed to help answer this question. This review is intentionally limited to three cases in which a balance was struck between punishment and RJ.

The *Clotworthy* case

The case of *R v. Clotworthy* (*Clotworthy*) is celebrated in New Zealand as establishing a persuasive precedent for RJ's relevance to serious offending.[44] In *Clotworthy*, the offender, having spent the day drinking alcohol, stabbed another man (the victim) in an act described as one of aggression.[45] It was established that the stabbing was random and without explanation. The offender was charged with the offence of wounding with intent to cause grievous bodily harm, an offence punishable by up to 14 years' imprisonment.[46] Based on previous decisions of a similar nature, an appropriate sentence for the crime would have ranged from three and a half to six years in prison.[47]

The Auckland District Court welcomed an RJ meeting, where both the victim and offender saw no point in a custodial sentence. Instead, they agreed that the offender pay the victim's substantial medical bills. The Auckland District Court was presented with this agreement and asked to hand down sentence. It sentenced Clotworthy to two years' imprisonment (suspended), and ordered him to pay $15 000 to the victim and perform 200 hours of community service.[48] The state appealed this sentence. The New Zealand Court of Appeal ordered a custodial sentence of three years and ordered the convict to pay $5 000 reparation to the victim.[49] It based this on the historical precedent of sentences for such crimes, and the offender's willingness to plead guilty and to pay compensation.[50] In handing down this sentence, the judge ruled that RJ must be 'balanced against other sentencing policies'.[51] The judge added that 'the restorative aspects can have, as here, a significant impact on the length of the term of imprisonment which the court is directed to impose'.[52]

A number of points in *Clotworthy* are worth highlighting:

- Although the offence was serious, allowing a custodial sentence of up to 14 years' imprisonment, RJ was not discounted.
- The outcomes of the RJ meeting were not conclusive. The court still exercised its discretion to determine the appropriate sentence, with a view to ensuring a balance between RJ and other sentencing goals, such as deterrence.
- The outcomes of the RJ meeting were considered together with other sentencing policies.
- The outcome demonstrated that RJ can justify reduced sentences.
- The case confirms that RJ and retributive justice can be complementary.

With *Clotworthy* in mind, are the rulings in *Thabethe* and *Seedat*, to the effect that RJ has no place in cases of serious offending, defensible? Perhaps the court should have allowed RJ to inform the length of the sentence handed down. Instead, the Supreme Court of Appeal dismissed the notion of RJ as irrelevant where custodial sentences are unavoidable. This view subordinates RJ, and unnecessarily so.

Significantly, the *Clotworthy* decision has also been criticised for considering RJ too narrowly. Some contend that its focus on reparation obscures the wider goals and objectives of RJ.[53] In truth, the New Zealand Court of Appeal, in blending RJ (in the form of reparation) with a custodial sentence, limited RJ's potential contribution. However, it is arguably better for RJ to be applied piecemeal rather than being downplayed, as happened in *Seedat* and *Thabethe*.

The *Police* case

The 2001 decision in *Police v. Stretch* (*Police*) pertained to an offender who was convicted of multiple driving offences and manslaughter in New Zealand.[54] Although the case involved no formal RJ referral, the families of the offender and deceased met with the intention of resolving the dispute in a restorative manner. As with *Clotworthy*, striking a balance between RJ and traditional sentencing was not straightforward. Confronted with both families' wishes, the High Court sentenced the offender to 18 months in prison.[55] It is worthy to note that the historical precedent of sentences for manslaughter was three and a half years.[56]

Dissatisfied with what it saw as a lenient sentence, the crown appealed in the Court of Appeal, which increased the sentence to two and a half years. The court recognised the value of RJ, but in light of the *Clotworthy* case, believed the 18-month sentence too lenient for manslaughter.[57] The court also gave due regard to the victim's family, noting that '[i]n this context, the most compelling part of the material available to the sentencing Judge, was the clear statement of the dead girl's father that for him, and his family, a lenient sentence would most assist them in the healing process'.[58] The court added that:

> It appears the principles of restorative justice may stand in conflict with principles of deterrence which represent the norm, but if the recognition of restorative justice in Clotworthy is to have practical effect, then I think a balance must be sought, no matter how difficult it might be to find that balance.[59]

Again, a number of points are worth highlighting:

- Invoking RJ does not require a light prison sentence.
- RJ can be invoked alongside a custodial sentence. In this case, RJ resulted in a shorter custodial sentence than that apparent in previous case law.
- The appellate court can increase the length of a custodial sentence to ensure that a proper balance is struck between RJ and other sentencing policies.

The *Police* case is of relevance to the South African *Thabethe*. Notably, when the RJ sentence handed down by the court was appealed in the Supreme Court of Appeal, the presiding judge in the latter court stated:

> I have no doubt about the advantages of restorative justice as a viable alternative sentencing option provided it is applied in appropriate cases. Without attempting to lay down a general rule I feel obliged to caution seriously against the use of restorative justice as a sentence for serious offences which evoke profound feelings of outrage and revulsion amongst law abiding and right-thinking members

> of society. An ill-considered application of restorative justice to an inappropriate case is likely to debase it and make it lose its credibility as a viable sentencing option.[60]

Pertinent to note, this same position was endorsed by the same court in *Seedat*, in which RJ was downplayed, having no role whatsoever in informing the length of the sentence handed down. The court in *Police* acknowledged that restorative elements are not enough to justify a light sentence (18 months for causing death), but did not rule out the role of RJ in informing the final sentence handed down. In contrast, in South Africa's *Thabethe* and *Seedat* the initial sentences were set aside without regard to RJ.

The *Cassidy* case

The 2003 decision in the case of *R v. Cassidy* (*Cassidy*) pertained to the offence of manslaughter in New Zealand.[61] The facts leading to this decision were as follows: there was a scuffle at a bar between the victim and the bar manager, in which the victim (a customer at the bar) assaulted the bar manager. The offender, who was employed at the bar, intervened with a view to defending the bar manager. In the course of intervention, the offender, using his hand, struck the victim (i.e. the customer at the bar). The victim lost his balance, fell backwards and struck his head, resulting in his death.[62] The matter came before the High Court of New Plymouth, in which a formal RJ meeting was convened between representatives of the offender and the victim.[63] At the RJ meeting, the offender accepted full responsibility for the offence. He also expressed sorrow and deep remorse for having caused the victim's death, and apologised unequivocally to the victim's family. Following the meeting, the court was tasked with determining an appropriate sentence. Notably, the presiding judge told the offender:

> I intend to give you credit for attending the restorative justice process. I know you have said it is the hardest thing you have done and I can understand that. You did not need to do it, and you will be given credit for that. I accept there has been genuine remorse and a genuine attempt by you to assist the victim's family.[64]

Ultimately, having considered and balanced all the factors, the offender was sentenced to two years' imprisonment. The following is worth noting:

- Manslaughter, however serious an offence it is, did not bar the court from according due regard to RJ.
- The outcome of the RJ meeting informed the sentence handed down.

In sum, in *Cassidy*, as with *Clotworthy* and *Police*, RJ was ultimately blended with retributive justice.

Discussion and conclusion

A position has been taken by South Africa's Supreme Court of Appeal, as apparent in *Thabethe* and *Seedat*, that RJ should not be used in cases of serious offending. This position seems to be based on the premise that RJ processes cannot rest comfortably alongside a sentencing process where the outcome is a custodial sentence or punishment. Despite the foregoing position, scholars, including those in South Africa, have long called for RJ to be accorded due regard in criminal matters. The decisions of the Supreme Court of Appeal in both *Thabethe* and *Seedat* appear to confirm Louw and Van Wyk's concern that emphasis is often placed on custodial sentences, to the detriment of RJ. The courts' trend also seems to affirm Gxubane's anxiety about criminal justice practitioners' tendency to place serious cases out of reach for RJ. Indeed, the proactive step taken by the High Court to invoke elements of RJ in both *Seedat* and *Thabethe* is commendable. However, the High Court's approach confirms Skelton's concern that in

invoking RJ, courts sometimes place exclusive emphasis on notions of RJ such as 'apologies', to the detriment of the seriousness of crime.

From *Thabethe* and *Seedat*, it may be concluded that the courts are not striking a balance between RJ and punishment. Thus, an outstanding challenge remains: how can RJ be blended into a system that potentially advances the notion of just deserts? This article has attempted to address this question by drawing on selected decisions from New Zealand courts to show that if a proper balancing exercise is invoked, elements of RJ can co-exist alongside a sentencing approach that results in custodial sentences. This can be effectively accomplished by having RJ elements inform the length of the custodial sentence handed down. The foregoing position remains defensible in light of the fact that the literature affirms that RJ does not necessarily have to exclude punishment. Thus, the adoption of such an approach has the potential for allowing the implementation of calls long made by commentators concerning RJ.

Of course, New Zealand's approach is not perfect, nor should it be transplanted to South Africa. Rather, consideration of New Zealand's case history may help to throw up imaginative solutions for sentencing judges in South Africa who are confronted with similar tensions.

Because of the reporting system of New Zealand case law, some judgements could not be accessed in full. Thus, in some cases, the author had to make recourse to case notes. This ultimately impacted negatively on the validity of the conclusions drawn and, more importantly, deprived the discussion of a more rigorous engagement with these judgements.

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Notes

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2 For instance, in cases such as *S v Maluleke* 2008 1 SACR 49 (T) para 34, restorative justice (RJ) was implicitly conceptualised as an alternative to retributive justice, while in cases such as *R v Clotworthy* (1998) 15 CRNZ 651, RJ was viewed as one of the issues to be taken into account in the balancing exercise with a view to determining the appropriate sentence handed down.

3 Refer to definitions in endnote 1 for the cross-cutting similarities.

4 Ibid.

5 In addition to the decisions of the courts in these two countries, there is some legislative basis for the application of RJ in both countries. In the case of New Zealand, Section 7(1) of the New Zealand Sentencing Act 2002 makes room for the application of RJ. This section lists a number of purposes for sentencing, including holding an offender accountable for harm, promoting a sense of responsibility and acknowledgement of that, providing for the interests of the victim and providing reparation. Commentators contend that the foregoing goals provide a legislative basis for RJ to be invoked. In South Africa there is legislation in place that underscores the need to invoke RJ, a notable one being South Africa's Child Justice Act 2008 (Act 75 of 2008).

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29 Ibid., para 20.

30 Ibid., para 22.

31 Ibid., para 20.

32 *Seedat*.

33 Ibid., para 1.

34 Ibid., para 13.

35 Ibid., para 15.

36 Ibid., para 16.

37 Ibid., para 18.

38 Ibid., para 42.

39 Ibid., para 29–38.

40 Ibid., para 38.

41 Ibid., para 38–43.

42 Ibid., para 42, 43.

43 Ibid., para 40.

44 *R v Clotworthy* (1998) 15 CRNZ 651 (C.A) [*Clotworthy*]. See facts of case at H Bowen and T Thompson, Restorative justice and the Court of Appeal's consideration in the Clotworthy case, The FIRST Foundation, http://www.firstfound.org/vol.%201/bowen.htm (accessed 25 June 2017).

45 *Clotworthy*.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid.

50 Ibid.

51 *Clotworthy*, 661. One could glean from the ruling of the court at page 659 that the task before it was more than handing down a non-custodial sentence with a view to advancing the interests of the parties but, as the court itself ruled, '[a] wider dimension must come into the sentencing exercise than simply the position as between victim and offender. The public interest in consistency, integrity of the criminal justice system and deterrence of others are factors of major importance.'

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Pathways from violence

The impact of community-based intervention on offender reintegration in Gugulethu

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Crime has gripped public discourse in democratic South Africa.[1] Cities such as Cape Town, Durban and Nelson Mandela Bay have some of the highest homicide rates in the world.[2] Most South Africans do not feel safe at night[3] nor do they believe government is capable of maintaining law and order.[4] Nationally the picture is bleak. But at the local level, innovative responses to crime are underway, illustrating the constraints and advantages of community-based interventions. Established in 2004, the Rebuilding and Life Skills Training Centre (Realistic) is a community-based response to youth crime in the township of Gugulethu in Cape Town. Using in-depth interviews, this article presents a case study examining the obstacles faced by young ex-offenders in Gugulethu, and the impact of Realistic's aftercare programme on their life path.

This article aims to identify obstacles to integration faced by young ex-offenders in Gugulethu; assess how the resulting needs were addressed by Realistic's aftercare programme; and highlight the constraints and advantages of community-based intervention as a model of crime reduction.

Study aims and methods

In total, 48 participants were interviewed. Forty were male and eight female. All were formerly incarcerated, living in Gugulethu, and between 18 and 35 years old. Half were recruited from the local parole office, Mitchells Plain Community Corrections, and the other half from the aftercare programme at Realistic. Participants were drawn from these two groups to provide a point of comparison, since parolees were not enrolled in any community-based intervention. The executive director and most experienced social worker were also interviewed about their perspectives on Realistic's work.

The goal of participant interviews was two-fold: identify obstacles to integration and then determine if services rendered by Realistic's aftercare programme aligned with the resulting needs. Participants were interviewed about experiences in prison and after, life and criminal histories, and their plans for the future. Ex-Realists were asked about their experience at Realistic; parolees were asked about their

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experience of parole. Interviews were semi-structured, leaving room for participants to talk about subjects of interest to them.

A research assistant, formerly incarcerated and from Gugulethu, sat in on all interviews to translate when necessary and to help participants feel comfortable with an outsider (i.e., the interviewer: a white, English-speaking middle-class American male).[5] Interviews lasted on average an hour. Ethical approval was obtained from the University of the Western Cape.

Normative and moral assumptions

This study is based on the assumption that successfully integrating ex-prisoners into their communities will reduce pressure on courts and prisons, shrink the pool of repeat offenders, and bolster public safety. It is assumed that incarceration alone has little corrective effect. Like a patient who acquires an infection from bacteria she was exposed to during corrective surgery, juveniles exposed to the brutalisation of prison can develop behavioural problems that reinforce criminality.[6] Last, there is a moral imperative to treat prisoners and ex-prisoners with dignity and as people capable of contributing to society.

State of prisons and prisoners in South Africa

South Africa is host to the largest prison population on the continent.[7] Evidence suggests quick turnover among remand detainees. Nearly 300 000 remand detainees were released from prison in one year, according to a 2014 report by the Judicial Inspectorate for Correctional Services.[8] But since only 43 000 were held at any one time, a staggering 86% of remand detainees were incarcerated for less than a year.

This practice does provide temporary relief from imprisoned persons. And prisons could serve only to contain criminals. But there is compelling evidence that correctional programmes, from classes to counselling, are worth the money. One recent RAND Corporation meta-analysis of the literature on correctional education programmes found that not only did they reduce the risk of recidivism and increase the likelihood of obtaining employment post-release, but they also returned substantial savings to the taxpayer. One US dollar (US$) invested in educational programmes returned US$4 in savings from reduced prison-related costs.[9]

And yet Section 38(1)(a) of South Africa's Correctional Services Act (CSA) renders remand detainees as well as prisoners sentenced to under two years' incarceration ineligible for educational, psychological and drug counselling services. The strategy is, effectively, contain and release – an approach seemingly at odds with sections 2(c) and 36 of the CSA, which calls for the promotion of 'human development [for] all prisoners', and describes the goal of imprisonment as 'enabling the sentenced prisoner to lead a socially responsible and crime-free life in the future'.

Moreover, containment is a one-dimensional strategy. Investing in programmes that support the journeys of people receptive to positive change would generate taxpayer savings through reduced prison-related expenditures (which a 2014 NICRO report found to be around R10 000 per month per prisoner).[10] If anything, it makes less sense to deprive remand detainees, rather than long-term prisoners, of key programmes and services, because they are the ones about to re-enter society.

To manage psycho-social and material challenges outside prison walls, young ex-offenders may turn to support services. Interventions delivered in unfamiliar environs, such as residential facilities, prisons and probation offices, fail to fully consider the real-world contexts that offenders return to. Research indicates that interventions set in localised contexts – neighbourhoods, homes,

schools – are more effective than unfamiliar contexts.[11] Experimental evidence also suggests that community-based interventions are cost-effective relative to imprisonment. For example, Robertson et al. found that community-based cognitive-behavioural therapy resulted in average savings of US$1 435 in prison-related expenditures per youth offender.[12]

These studies were, however, conducted in the US – a context so fundamentally different from South Africa's that its translational value is debatable.[13] This article wishes to address the lack of research on community-based interventions and offender reintegration specific to South Africa.

Governmental response: the White Paper on Corrections

Well over a decade ago, the White Paper on Corrections (2005) proposed policies that would reconstruct the prison system with 'rehabilitation' or social integration as the primary objective, declaring that prisons should 'provide an environment that fosters moral [and] spiritual regeneration'.[14] The agency responsible for leading implementation, the Department of Correctional Services (DCS), has responded to this clarion call with indifference. A 2014 NICRO report found one educator for every 227 sentenced prisoners and one psychologist for every 1 565. Moreover, just 20% of sentenced prisoners availed themselves of educational or psychological services.[15] If only sentenced prisoners can access counselling, drug and educational services, automatically denying these to 30% of the prison population, and if 80% of sentenced prisoners do not even use such services, the vast majority of ex-offenders are released without acquiring new educational or psychological tools.

Of course, fulfilling this legislative mandate is a complicated project. To that end the CSA established the sentence plan, a tool used to track the individual needs of over 100 000 sentenced prisoners.[16] By tracking these, the sentence plan can guide the appropriate delivery of educational and psychological services. But since services are only available to sentenced prisoners serving more than two years, hundreds of thousands of prisoners are necessarily excluded.

The white paper was clear that social integration, i.e., attainment of psychological well-being and financial independence, should be the primary objective of corrections. Yet in its 2016/17 budget summary, the DCS allocated less than 10% of its budget to these operations.[17] Funding educational, psychological and employment services is a social investment. Diverting a young offender at risk of a so-called criminal career could return lucrative dividends. One US study found that reforming a single young offender could save the state well over US$5 million.[18] Further, the prison and court systems are unable to handle their respective caseloads. South Africa's prisons are severely overcrowded, with occupancy at 133%, while cases routinely stall as detainees await trial, unable to pay bail.[19] Addressing social integration is thus in the government's interest: if ex-prisoners do not reoffend, it will ease the burden on the courts and prisons and enhance public safety.

Local dynamics in Gugulethu

In 1957 the area known today as 'Gugulethu' simply consisted of sand dunes, uninhabited beyond the occasional farm.[20] But after razing District Six in 1958, the apartheid government established an emergency camp in these dunes and forcibly relocated black residents.[21] Almost 60 years later it is home to nearly 100 000 people and is quite developed, with a mall and public sports centre.[22] In spite of Gugulethu's sudden and violent inception, it has produced a rich legacy, including prominent politicians and musicians, athletes

and entrepreneurs, and scores of unsung anti-apartheid heroes.[23]

Still, the violence out of which Gugulethu was born is a demon it has been unable to exorcise. Someone is murdered, on average, every other day.[24] Young people from poor households are exposed to gangsters on the street, marketing their glamorous lifestyle. Drugs, most prominently methamphetamine, are widely used in the Western Cape province.[25] The proliferation of drugs and glorification of gangsterism reinforce each other.[26]

Meanwhile, a weak national and local economy, and apartheid's regulation of movement in and out of Gugulethu, have contributed to a self-imposed quarantine among residents. Those who do not work, especially school-age children, rarely visit the world outside of their township. If children rarely leave, seeing only the poverty, overpopulation and decay featured in many neighbourhoods in Gugulethu, they may take that reality for granted. This limited and inward-looking perspective can have unquantifiable effects on a person's sense of possibility. Together, these factors contribute to a situation where Gugulethu regularly reports some of the highest numbers of murders and carjackings in the country.[27]

There is a limited supply of peer-reviewed research on offender reintegration in Gugulethu specifically.[28] This study hopes to address that gap.

Realistic

Realistic is a community-based organisation operating out of a storefront in Gugulethu's commercial district. It provides a range of social services to local youth, both ex-offenders and those at risk of imprisonment. Importantly, it is one of few places in Gugulethu where any young person can walk off the street and speak with a social worker. Other community members may also stop by for a free meal. Realistic is a bona fide community institution.

Aside from its informal services, born of immediate need more than strategic planning, Realistic offers two formal programmes: an on-site aftercare programme for at-risk youth and ex-offenders, and a separate crime prevention programme taught at local high schools. This study interviewed former participants in the aftercare programme (referred to as 'ex-Realists'). The aftercare programme runs Monday through Friday from 9 am to 4 pm Programme participants are exposed to a variety of therapeutic activities, from group and individual counselling to a 21-day nature survival camp and restorative justice conferencing.

All sessions are facilitated by a social worker. In these sessions, participants learn to express their feelings and explore their relationships with friends and family, consider why they think they use or have used drugs, relate to their peers about shared struggles, and after the weekend reflect on whether or not they had accomplished their goals. The aftercare programme is six months long.

Hypothesis and overview of findings

It was hypothesised that 75% of ex-Realists would stop offending behaviour (i.e., drug abuse and criminal activity) after exposure to the programme. But the evidence indicated otherwise: 50% were rearrested and approximately 66% reported continued use of drugs or alcohol after participation in the programme. Participants reported that Realistic's programme was effective at stopping their offending behaviour while enrolled, but failed to follow up afterward or address material obstacles.

Still, when it came to catalysing the development of ex-Realists, Realistic performed exceptionally well. Virtually all ex-Realists reported having learned valuable lessons about

acceptable and unacceptable behaviour, their self-worth and the possibility of change, all of which are critical to navigating life's demands.

These findings suggest that Realistic has limited effectiveness at reducing offending behaviour in the long term. The stumbling block to success is that services rendered only partially conformed to the needs of ex-offenders. Participants reported a range of urgent financial, educational, psychological and relational needs left unaddressed by the aftercare programme. To address risk factors that underpin chronic reoffending, community advocates and government officials must engage with both material and psycho-social obstacles to community integration.

Findings: obstacles to integration

Interviews revealed two types of obstacles on the path to integration: material and psycho-social. First, descriptive statistical analysis revealed widespread unemployment and drug use, diminished family structure, and a high rate of reoffending. Thematic analysis of transcripts, informed by the work of Braun and Clarke, revealed five psychological and social trends in participants' lives that appeared to reinforce criminal tendencies.[29]

Descriptive statistical analysis of material obstacles

Descriptive statistical analysis revealed that participants came from homes that suffered from diminished family structure and low levels of social cohesion (Table 1). Only eight of the 48 participants grew up in households with both parents. Some of these participants reported that while both parents may have been in the home, they were often embroiled in protracted conflicts that gave rise to a toxic environment. As one participant reported, his parents were both in the house, but slept in separate rooms and used him as a pawn in their ongoing arguments. Most participants lived with a single parent (n=29, 60%), while a sizable number lived with relatives (n=10, 21%), and one lived in a foster home. Since virtually all participants relied on family support, the diminished family structure made their journey to social integration more difficult. While family support alone is not enough to help the ex-offender surmount obstacles to integration, it is a key source of emotional and financial stability. Assistance from governmental and non-governmental organisations (NGOs) is particularly important for ex-offenders who do not have robust family support.

Most participants lacked a formal education. Only 17% (n=8) possessed a matric certificate. Insufficient formal education compounds the difficulty of finding full-time employment, since a basic formal education or English fluency are preferred in the service industry, leaving construction as the only viable option for unskilled ex-offenders. The only participant who had full-time employment, as an instructor at a nearby gym, possessed a matric certificate and was fluent in English. The 98% (n=47) unemployment rate among participants should be viewed in light of the already high 40.3% unemployment rate among black South African youth (ages 15–34).[30]

Table 1: Snapshot of sample

	Avg. age	Gender ratio (M:F)	Avg. number of arrests	Matric graduation rate	Desistance from drugs	Unemploy-ment	Repeat offenders	Rate of two-parent household
Total	27.29	10:02	4.17	8	13	47	41	8
Percentage	N/A	N/A	N/A	17%	30%	98%	85%	17%

Table 2: Source of income

	Family	Crime	Self-employment	Casual job	Formal job	Welfare	Romantic partner
Ex-Realist	14	1	1	3	0	2	3
Parolee	15	6	1	0	1	0	0
Total	29	7	2	3	1	2	3
Percentage	60.41%	14.58%	4.17%	6.25%	2.08%	4.17%	6.25%

Although without formal employment, some participants received income from odd jobs, while others relied on government support (Table 2). Their income rarely exceeded R1 500 per month and none was financially independent. Among the seven participants who reverted to crime, only one was financially independent. He told the interviewer and possibly himself that because of his long-term unemployment, he had to continue to sell drugs to finance his family's needs. The other six relied on their families for housing.

There is an economic vacuum after prison and struggling families are left to fill the financial void. Ex-offenders' unemployment placed pressure on their families. In their report on the socioeconomic impact of pre-trial detention in Kenya, Mozambique and Zambia, Muntingh and Redpath noted, 'it is the poor who are subsidising imprisonment'.[31] The same was true for ex-Realist participants, whose families, many of whom lived in poverty, subsidised their cost of living.[32] Ex-offenders relied on impoverished family members for housing (n=42, 88%) and supplemental income (n=29, 60%).

Beyond current unemployment, a number of participants reported that they had no prior work experience. An even larger number reported a scattershot history of unskilled labour positions, typically performing an isolated short-term construction job or two. The two participants who were self-employed had technical skills and resources they leveraged to generate income. One participant was trained by a local NGO to bake goods, which he sold to schoolchildren (the NGO let him use its kitchen after graduating from its programme).[33] The other participant had a driver's licence and rented a minibus taxi to drive children to and from school. However, he was only allowed a taxi route because his late grandfather had been a taxi boss. Routes are fiercely contested and have resulted in so-called taxi wars.[34]

Substance use was reported by the majority of participants (89.6%). The most popular drug was dagga (cannabis), followed by methamphetamine and mandrax (methaqualone, often crushed and smoked with cannabis) (Table 3). The rates of reported drug abuse in the sample, most notably dagga, meth and mandrax, outstripped that of the general youth population by a magnitude of tens.[35]

Table 3: Illicit substances used

	Dagga	Mandrax	Meth	Ecstacy	Cocaine/ crack	Heroin	Polydrug user	None
Ex-Realist	23	19	20	0	3	0	18	1
Parolee	15	9	12	3	4	1	16	5
Total	38	28	32	3	7	1	34	6
Percentage	79.17%	58.33%	66.67%	6.25%	14.58%	2.08%	70.83%	12.50%

Lastly, descriptive statistical analysis revealed the vast majority of participants (85.4%) to be repeat offenders. Indeed, many were chronic repeat offenders with over four arrests on average.[36]

Qualitative analysis of psycho-social obstacles

To construct a rich thematic description of the complete data set, dominant themes were explored and analysed, rendering five major themes central to the life experience of participants:

- Inability to articulate frustration
- Perceived invisibility due to low social status
- Glorification of gangsterism
- Normalisation of violence
- Criminogenic effect of drug addiction

First, the inability to articulate frustration in a healthy manner was an engine of violent behaviour for some participants. One participant raised in a single-parent household reported that he was unable to feel grief after his mother and only reliable guardian died: 'I don't feel anything, man. I feel like I don't have a heart, you know what I mean.'[37] This emotional numbness impacted his relationship with his long-time girlfriend: '[I]t's a problem even in my relationship. Because I once raised my hand to my girlfriend. Yeah, that broke my heart … We were arguing and arguing and arguing for a long – I don't know where that come from, and then I raised my hand.'[38] This pattern was reiterated by others, such as a participant raised in a foster home who reported that he was unable to share his feelings of abandonment as a teenager. Often, he would engage in capricious violence against his peers, reporting, 'I would always take a chair and, like, hit someone with it.'[39]

When a female participant, who had a fraught relationship with her child's father, discovered he was spreading lies about her to friends and family, she did not use only words. Instead, 'I stabbed him,' she reported. 'Three holes. In the chest, in the arms, and on top of his heart.'[40] Her feelings afterward were tinged with regret, but mostly cathartic: 'After I stabbed him, I regretted it. But at another point, I didn't regret it. It was like a relief coming out.'[41] Rather than use socially appropriate means of conflict resolution, she stabbed him multiple times and nearly killed him – reporting that it felt good. Given a history of loss and maltreatment, frustration and anger are understandable. But among participants the consequence of this anger, and the inability to articulate it, manifested in impulsive violent behaviour.

Second, participants reported that they had low social status as children and felt socially invisible. One participant said that because he grew up without money for fashionable clothes, he would stay inside every weekend: 'I must stay inside. I won't be able to go with my friends, because they all dressed to kill, you know.'[42] To cope, he said, 'I would just get myself high every day. Yeah, so that I can be able to sleep at night.'[43] But using drugs as a means of inoculating himself against his own emotions had consequences. He said that if he could not afford drugs at the time, 'then I have to look for it the whole night until I get it. Somebody must get hurt for it.'[44] Another participant provided a detailed account of social dislocation after moving to Gugulethu from more affluent suburbs, which ultimately led him to join a street gang:

> I wasn't used to coming here in Gugulethu; I was shocked. I'm used to staying in places like Wynberg and Newlands. I can see I couldn't fit with the, with the style of Gugulethu. And they were teasing me. I was wearing things like this [gestures at clothes] … So, that's how everything started – I began to join a gang in Gugulethu.[45]

It seems that feelings of social invisibility and alienation led to low self-esteem. In turn, many

coped with these powerful emotions through the numbing effects of drugs or gang induction.

Third, some especially perceptive participants reported that gangsterism is glorified in Gugulethu, that it is viewed heroically, as an almost noble pursuit, by young people. One participant said of gangsterism in his neighbourhood: 'We used to think that's the good stuff. We used to practice it in Cape Town and at school and stuff. We started doing the things our big brothers were doing.'[46] Gangsters market their lifestyles to impoverished youth through conspicuous consumption, broadcasting their social status with peacockish displays of material (if relative) wealth. Further, older gangsters would act as pseudo-paternal figures. It appears that for some impressionable teenagers, the social currency of gangsterism dulls its morally reprehensible qualities. Indeed, it is seen by these individuals as a shortcut to the top of the social hierarchy.

The fourth dominant theme was the normalisation of violence. Many participants were surprisingly blasé about lethal violence. For example, one participant, the victim of a shooting at age 17, said that being shot multiple times was not a big deal for him: 'It's used to happening in the township. Since we are boys, things like that happen. We stab another boy there in the street or you hit him with a stick or with a slingshot [catapult]. Then, you know, we don't go to that area. Ever.'[47] Another participant said of his role model growing up, who was a well-known gangster: '[H]e had everything. He had nice girls, everything. So I used to like him. Eventually he died; they shot him dead.'[48] It is not surprising that a violent death is par for the course among gangsters, who live violent lives. It is, however, worth noting that young adults submitted to these conditions view gun violence as such a regular feature of their lives that it does not merit a strong response. Perhaps for survival, many participants have numbed themselves emotionally to the lethal violence occurring around them.

The fifth and final theme of participants' life experience was the criminogenic effect of drug use. One participant reported that his gang never actually planned their crimes, it 'would just happen' when they were craving drugs.[49] Another provided an in-depth description of a robbery he committed while living in Paarl, reporting that he smoked marijuana with his partner because 'it's to make us not fear what we are going to do'.[50] However, he said he complained to his partner because he preferred to smoke meth, suggesting by virtue of his preference that he smokes with some frequency before crime, ideally hard drugs. A third participant echoed that feeling of drug-induced invincibility, reporting, 'We smoke to have the power to go and do that thing [robbery]. As I said to you, when I smoke, I feel like … on top of the world – like nobody can beat me.'[51] There are a number of reasons participants used to explain their use of hard drugs, ranging from its being a coping mechanism to sheer boredom. In the above cases, drug use became a behaviour intimately linked to criminal activity.

Findings: successes and shortcomings of community-based intervention

Successes: Social support and outdoor activities

The most outstanding feature of Realistic's aftercare programme is the positive social support rendered by both professional social workers and peers in the support group. Social workers appeared to have a substantial impact on their clients, helping them to open up and share their emotional baggage. One participant remarked, 'Here you get your own social worker when you feel like talking and something is troubling you. You just take the weight out of your shoulders.'[52] For a number of clients, it was the first opportunity in which they could be open

about their issues and receive unconditional support. Referring to a social worker, another participant reported, '[H]e was the first person. I felt relieved that I can be opened.'[53] It is hard to overstate the power of this acceptance on the self-esteem of a young person accustomed to the dismissal of their fears and frustrations. That said, for support to be effective, the client must want help in the first place. Borrowing an old adage, the social worker interviewed for this project remarked, 'You can bring the horse to the water, but you can't make it drink.'[54]

The peer support group was also viewed favourably by most participants. Group reflection with peers helped them learn how to express themselves appropriately. Some participants described their peers at Realistic in familial terms, indicating how close-knit the group can become over time. Below are several excerpts:

- 'The peers and colleagues were helpful because I would start to share with them what drugs were doing to me. They were start[ing] to feel like family. Give me some advices. Stay away from bad company outside. Hey, Realistic showed me the light, man.'[55]
- 'When I sat in that group, in that circle there, I felt this was my family … whatever you say, it stays here.'[56]
- Through reflection in the peer support group one participant learned: 'To do things, to see things, that thing is wrong, that thing is right … Realistic changed my mind. I'm different now.'[57]
- 'Here, we were told to speak out. So that's the thing that I didn't do. So when it came to me, I speak out everything. And then I was told to do this; not do that. You see, those things help me.'[58]
- 'Realistic is a support group whereby you share, you see. You share your instincts. You share everything that is in you.' [59]

It appears that, through social support, participants learned important life skills – including the difference between acceptable and unacceptable behaviour, the important skill of self-expression and the value of respect – and, in the process, found a place of belonging.

Aside from positive social support, the second major success is Realistic's outdoor activities. Realists are taken to beaches, the bush for a 21-day survival camp, and Table Mountain for an overnight camping trip led by park rangers. The executive director noted that many of the Realists had grown up with Table Mountain in view their whole lives, but had never actually been on the mountain.[60] For certain participants, it seems that the effect of getting out of the township into natural beauty is nothing short of transformative. In light of the idle lifestyle imposed on them in prison and the self-imposed quarantine among township youth, the change of scenery enables them to break the stagnation, reflect and see new possibilities. One ex-Realist reported that after the outdoor activities,

> I would feel free. Because I know there is no boyfriend who is going to be taunting my head. My mom will be like – sometimes when you are at home just be asking you this, this, this, and that. You just, free and happy. Being a family … When you out there, you get something. You introspect yourself, and then you get answers. Sometimes you don't. Sometimes you still asking yourself. But at least something is happening … Experiencing new things in the camp makes you think. Ask yourself. Be happy – be you, be you.[61]

Another participant felt similarly. But instead of escaping from toxic social relationships, he felt reconnected with his childhood, a visceral reminder of life before drug dependency:

> Part of these thing I was used to because I'm coming from that side [the Eastern Cape]. So it was like, to me, life can go on without drugs. I used to grow up this way. This can still happen in my life if I just stay focused … There are activities you can do for fun besides drugs.[62]

If Realists wanted to reflect and introspect, trips out of the township presented a special occasion to do just that. For those who rarely leave, the opportunity for self-reflection, afforded by an escape to tranquil nature, could reawaken a dormant sense of possibility for change. It is not a cure-all, but judging from participant statements, the respite from Gugulethu did seem to promote personal growth.

Shortcomings: no follow-up and full unemployment

Despite the progress Realistic achieved with participants, it also had stark limitations. Realistic clearly is useful. The question is how useful, and whether the resources invested in it could be put to better use elsewhere.

Participant interviews revealed one major shortcoming: there is no formal follow-up after the six-month programme ends. Meta-analyses of the drug treatment literature have found that continuing care after in- and out-patient treatment is an effective way to reduce relapse among recovering addicts.[63] Innovations in continuing care have also minimised the cost of a continuing care programme. For example, one study found that a text messaging-based aftercare programme, in which young addicts received daily self-monitoring and feedback texts, had a significant positive correlation with negative drug tests, indicating its promise as a viable continuing care programme for recovering youth.[64] Even if an ex-offender does not have access to a mobile device, this finding still suggests that low-cost but regular reminders can be an effective tool in battling drug dependency.

The lack of formal follow-up could feasibly be addressed by modifying Realistic's theory of change. Currently, the theory of change used by Realistic assumes that development naturally continues after programme termination, even without formalised follow-up. This is not the case. Half of the ex-Realists interviewed were re-arrested following their enrolment in the aftercare programme – and one-third of the ex-Realists reported that they were still using hard drugs. As one participant remarked, after graduation, 'You will sit around; do nothing. You will get temptation … When I was back in the community, I went back to old friends and started doing bad habits again.'[65] Another participant described how Realistic is an island of positivity unto itself, useful like a man standing in the way of a wave:

> You found out you've got 20 people that are supporting you in a positive way. But when you are going out there are 400 peoples on the negative side … most especially now that I'm from prison, and I see that my other friends who are also from prison are driving nice cars – and you figure that, no man, I'm not used to go to school and don't have any money. So I want money. So another thing is just that if I'm with them, while they are busy bringing their money after the robbery … At least when I go home, I will have some R300 or R400.[66]

It seems that without regular reinforcement of Realistic's teachings, the reality of township life will wash away progress over time. However, research suggests that mentoring programmes can be effective in establishing and building on new positive behaviours.[67] Potential low-cost solutions might include creating a programme where sponsors mentor new graduating Realists à la Alcoholics Anonymous, or alternatively, a peer reflection group where ex-Realists come back to talk with current Realists about the

struggles they have faced after graduating from the programme.

Descriptive statistical analysis also revealed a significant shortcoming: no ex-Realists were employed. To be fair, scarcity of economic opportunity is by no means specific to Realistic. Only one parolee had full-time employment and two were self-employed; and all three accomplished this entirely on their own initiative. That said, Realistic can do more to advocate for programme graduates. Solutions include canvassing local businesses for part-time work, leveraging its credibility in Gugulethu to establish apprenticeships with local skilled labourers for selected graduates, or mandating enrolment in the Expanded Public Works Programme, a database of short- to medium-term jobs available with government contractors, designed to alleviate extreme poverty in South Africa.[68]

The difficult question is, however, whether the skills deficit faced by young ex-offenders is already too great to overcome. This enquiry could guide the optimisation of resource allocation – i.e., which ex-offenders are worth investing in. Of course, this approach has a steep downside: it relegates a presumably large number of able-bodied adults to a life of financial dependence and social alienation.

Realistic versus parole

The support offered by Realistic represented a critical first step for participants, but was insufficient to stop offending behaviour altogether. It was, however, considerably better than the alternative. Only a few parolees reported getting any service referrals from their case officer. For example, only two of the 24 parolees interviewed were offered employment services by their case officer, even though 23 lacked full-time employment. Moreover, these jobs exposed them to exploitation. One of the two reported that he quit after he was assaulted by his supervisor for asking why he did not receive his agreed-upon salary.

Direct comparison of ex-Realists and parolees proved more difficult than anticipated. Because ex-Realists had left the programme, it was possible to see if they had recidivated afterwards and to draw a conclusion about the impact of Realistic's programming. In contrast, parolees were still on parole. Since it was not possible to compare the recidivism rates of these two groups after Realistic and parole respectively, their experiences in obtaining support services were compared instead.

Discussion

Department of Correctional Services Strategic Plan 2015–2016

These findings suggest a chasm between policy and reality. Responsibility for this implementation gap largely lies with the DCS, but it does not seem like it is on the right path. Strategic objectives for community integration outlined in its *Annual report 2015/16* do not correspond with the obstacles to integration found in this article.[69] In fact, they hardly make sense at all. While the sub-programme on community integration correctly described its purpose as providing support systems for the integration of ex-offenders back into society, it rather inexplicably listed the corresponding objective as improving the participation of victims in the restorative justice process. Victim–offender mediation is not a support system. It is not clear why the CS would focus on a single issue when there are many other factors at play. Furthermore, Realistic's shortcomings point to the stark limitations of support programmes that are short-term and strictly psycho-social in nature.

The other performance indicator for community integration examines the proportion of parolees integrated through halfway house partnerships. As opposed to the first performance indicator, it is germane to community integration, but – again,

inexplicably – the enrolment target is 80 parolees (in 2015 there were around 52 000 parolees).[70] It strains credulity to say that these two indicators alone measure the performance of released prisoners. This method was either ill-conceived or the DCS created asinine performance indicators to remain wilfully ignorant of how its wards are faring in the community.

Government–civil society partnerships

The above findings suggest serious obstacles to integration and a lack of direction on the part of government. In spite of the task's intimidating size, community members like the social workers at Realistic are busy working to address endemic problems of crime, violence and drug proliferation. It would be in government's best interest to capitalise on and invest in civil society organisations that empower people at community level.

Considering the resource constraints faced by government, the most rational way to address prisoner integration nationally is through large-scale coordination with civil society. Government has to outsource services, but it must also be the first to reach out. More than a decade ago, the white paper directed the DCS to create an environment conducive to partnerships with civil society organisations.[71] However, in the course of this research there was no indication that the DCS helped orchestrate an effort to organise allied NGOs, such as Realistic.

Terminating criminal behaviour in an individual is a complex process, requiring the support of multiple stakeholders. The long-term impact of Realistic's work is ultimately stifled by its lack of coordination with vocational schools, local businesses, allied NGOs and government agencies (specifically the DCS) that could assist ex-Realists in their journey after graduation. Limited opportunity after Realistic resulted in difficulty for programme graduates – many of whom abstained from drugs and crime while in the programme, but fell back into old social circles and behaviours afterwards. The situation was worse for parolees who received little formalised support, relying instead on their families for assistance. Family reliance is not an appropriate substitute for professional support.

Limitations

This study is not an exposition of social integration generally, but rather a bottom-up engagement with the perceptions of ex-offenders in Gugulethu specifically. It should be noted that due to the modest sample size, this study's findings cannot be generalised beyond Gugulethu. Furthermore, the self-report nature of interviews is subjective, reflecting only the perceptions of ex-offenders. Interviews allow for detail of individual cases, but there was noticeable variance across participants' willingness to talk. Some shared above and beyond the questions; others said the bare minimum. Thus, for pragmatic reasons, detailed excerpts were selected as telling examples of common perspectives. Despite interviewing 48 ex-offenders, there is only so much this data alone can tell us.

Bearing this in mind, future research is needed to test the present findings across multiple samples and other community-based organisations, to see if they are reproducible. Longitudinal research would also help to assess the impact of government–civil society partnerships on recidivism rates for ex-offenders. A high-quality study on the national recidivism rate would be helpful for such research, as it would provide a benchmark to compare the recidivism rates among participants of specific programmes or initiatives.

Conclusion

Thematic and statistical analysis of 48 participant interviews revealed two major findings:

- After their release from prison ex-offenders reported facing both material and psycho-social obstacles to integration.

- While providing valuable short-term social support, Realistic is insufficient for many programme participants, because it fails to address their material needs and follow up after graduation.

Realistic is both a beacon of hope and an oasis of positivity. With minimal resources, the aftercare programme can transform participants' inner lives. As one participant noted: 'I don't kill people anymore. My mother doesn't cry anymore. There's no one coming to complain. Those things – I feel relieved.'[72] Participants performed remarkably well while in the programme, but many fell off track after they left the oasis. Realistic's impact will ultimately be reflected in the applicability of its teachings to new domains, such as the home or the workplace. Individual risk factors need to be considered in a post-graduation plan, with formalised follow-up and service referrals where appropriate.

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20 MA Pillay, The making of people: the story of gangs on the Cape Flats, *Word and Action*, 53, 425, 2014, 25–32; M Plaatjie, *Gugulethu: the fragments of unwritten history*, Cape Town: Salty Print, 2013.

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22 City Population, 2011 census for Gugulethu.

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25 I Eigelaar-Meets et al., A social and demographic trends analysis of the Western Cape: 2011/2012, Soreaso, 7 March 2012, 39, http://soreaso.co.za/reports/Social%20and%20Demographic%20Trends%20Analysis_Western%20Cape_8%20March%202012.pdf (accessed 6 May 2017); A Pluddemann et al., South African Community Epidemiology Network on Drug Use (SACENDU): update: alcohol and drug abuse trends: July – December 2009 (Phase 27), Human Sciences Research Council, Research report, 2010, http://www.hsrc.ac.za/en/research-data/view/5191 (accessed 6 May 2017); MS van Heerden et al., Patterns of substance use in South Africa: results from the South African Stress and Health Study, *South African Medical Journal*, 99:5, 2009, 358–366. Based on the increased proportion of addicts seeking treatment for methamphetamine abuse, these articles suggest that abuse of this drug is on the rise, particularly in the Western Cape.

26 R Chetty, Social complexity of drug abuse, gangsterism and crime in Cape Flats' schools, *South African Journal of Criminology*, 3:2015, 54–65.

27 Crime Stats SA, Worst ten precincts: largest number of reported crimes, 2016, https://www.crimestatssa.com/topten.php (accessed 6 May 2017). It would be preferable to compare rates of criminal activity, but no such research was found. The rate of reported carjackings in Gugulethu was 0.21% and the rate of reported murder was 0.19%. However, without data from other municipalities, the meaning of these crime rates is unclear.

28 A search of the University of Western Cape's database turned up 14 peer-reviewed studies on crime in Gugulethu generally (search terms 'gugulethu crime', 'gugulethu offenders', 'gugulethu reintegration' and 'gugulethu reentry'). None of them pertained directly to youth offender re-entry. It appears this peer-reviewed study is the first of its kind for Gugulethu.

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30 Statistics South Africa, National and provincial labour: youth, 14, http://www.statssa.gov.za/publications/P02114.2/P02114.22015.pdf, (accessed 2 May 2017).

31 L Muntingh and J Redpath, *The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia*, Dullah Omar Institute, 2016, 2.

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33 The non-governmental organisation, Learn to Earn, is a vocational training programme that teaches historically disadvantaged South Africans marketable skills and provides some life skills training, to engage unemployed clients in the formal or informal economy. See Learn to Earn, Training philosophy, http://www.learntoearn.org.za/index.php/training/lte-training-philosophy (accessed 6 September 2017).

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36 Although a blunt tool for approximating criminal involvement – an arrest does not equal guilt; sometimes people are arrested arbitrarily – the high number of arrests on average suggests study participants have had extensive experience with the criminal justice system.

37 Interview, Participant 48, Gugulethu.

38 Ibid.

39 Interview, Participant 38, Gugulethu.

40 Interview, Participant 37, Gugulethu.

41 Ibid.

42 Interview, Participant 31, Gugulethu.

43 Ibid.

44 Ibid.

45 Interview, Participant 34, Gugulethu.

46 Interview, Participant 41, Gugulethu. By 'big brothers' the participant is referring to older gangsters (he did not have any older brothers).

47 Interview, Participant 41, Gugulethu.

48 Interview, Participant 11, Gugulethu.

49 Interview, Participant 26, Gugulethu.

50 Interview, Participant 34, Gugulethu.

51 Interview, Participant 43, Gugulethu.

52 Interview, Participant 39, Gugulethu.

53 Interview, Participant 10, Gugulethu.

54 Personal correspondence, P Mayaki, Social Worker at Realistic, 20 February 2017.

55 Interview, Participant 18, Gugulethu.

56 Interview, Participant 27, Gugulethu.

57 Interview, Participant 26, Gugulethu.

58 Interview, Participant 29, Gugulethu.

59 Interview, Participant 38, Gugulethu.

60 Personal correspondence, S Madikane, Executive Director of Realistic, 20 February 2017.

61 Interview, Participant 39, Gugulethu.

62 Interview, Participant 33, Gugulethu.

63 JC Blodgett et al., How effective is continuing care for substance use disorders? A meta-analytic review, *Journal of Substance Abuse Treatment*, 46:2, 2014, 1–24; R Fiorentine, After drug treatment: are 12-step programmes effective in maintaining abstinence?, *American Journal of Drug and Alcohol Abuse*, 25:1, 1999, 93–116.

64 R Gonzales et al., Substance use recovery outcomes among a cohort of youth participating in a mobile-based texting aftercare pilot programme, *Journal of Substance Abuse Treatment*, 47:1, 2014, 20–26.

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68 City of Cape Town, Find a work opportunity through the Expanded Public Works Programme (EPWP), http://www.capetown.gov.za/Work and business/Jobs-and-skills-development/Work-for-the-City-of-Cape-Town/Find-an-opportunity-with-EPWP (accessed 3 May 2017).

69 Department of Correctional Services, *Annual report 2015/16*, http://www.dcs.gov.za/docs/2016%20doc/DCS%20Annual%20Report%202015-16.pdf (accessed 28 May 2017).

70 South African Government, Correctional Services, http://www.gov.za/about-government/government-system/justice-system/correctional-services (accessed 28 May 17).

71 Department of Correctional Services, White Paper on Corrections in South Africa, 70.

72 Interview, Participant 10, Gugulethu.

Planning for nuclear security

Design Basis Threats and physical protection systems

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Design Basis Threats (DBTs) are summarised statements derived from a threat assessment for which a physical protection system (PPS) is planned and designed. This article describes the development of a DBT for the Irradiation Facility at the Centre for Applied Radiation Science and Technology (CARST) in Mafikeng, based on its threat and its risk as a radioactive source. The purpose of the DBT was to serve as a threat assessment technique, providing a basis for planning a PPS by operators of the centre. A competent authority for nuclear security then gives approval for the implementation of the physical protection plan. The DBT assessment methodology is an International Atomic Energy Agency (IAEA) recommended method for designing security measures corresponding to the categories of radioactive sources. The higher the risk, the more secure the facility should be.

A Design Basis Threat (DBT) describes the summary of attributes and characteristics of potential insider and/or external lawbreakers, who might attempt sabotage or the unauthorised removal of nuclear or radioactive material, against which a physical protection system (PPS) should be designed.[1] Development of a DBT is important because it enables nuclear facility operators to protect and secure nuclear and other radioactive materials with associated facilities and activities. The International Atomic Energy Agency (IAEA), through its information circular on Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Rev.4), described how to develop a notional DBT.[2] A number of IAEA member states, recognising the importance of the DBT tool, requested that workshops be organised and the method for development, maintainance and usage of a DBT be presented. In May 2009 148 states ratified the final document, which describes the processes for formulating a DBT.

Physical protection of facilities should be based on up-to-date evaluations of threats,

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encompassing all those identified by a state's security agencies.[3] These evaluations are formalised through a threat assessment process. A DBT can then be derived from this process to facilitate the development of protection mechanisms for the facility. A DBT describes the motivation, intentions and capabilities of potential lawbreakers and uses these to inform the protection systems. A DBT also describes the attributes and characteristics of potential insider (current employees at the facility) and outsider (a group of criminals or former disgruntled employees) lawbreakers who might plan or attempt a malicious act. These malicious acts may include unauthorised removal or sabotage of a facility's nuclear assets, which should be protected and secured through a designed and evaluated PPS. The DBT would also serve as a deterrent to a lawbreaker who wishes to carry out a malicious act, because of its use in the design and evaluation of PPS. It is therefore essential that a facility's protection is appropriate and that those with access to it have proper authorisation, in accordance with national laws and regulations, and the physical means to protect it.

This article describes the development of a DBT, and summarises the statements from the threat assessment for the Irradiation Facility at the Centre for Applied Radiation Science and Technology (CARST) in Mafikeng. It considers the consequences of a possible security event, such as unauthorised access or sabotage of the radioactive source housed in one of the centre's buildings, as well as the need for a well-designed and evaluated PPS.

Risk assessment

A risk assessment is a rational and orderly approach to problem identification and probability determination. It is a method for estimating the expected loss from the occurrence of an adverse event.

Risk assessments will never be a precise methodology, because they are about estimation and probabilities.[4] CARST has at its disposal critical equipment used in its training and research work. In any security event affecting the assets of the facility, the centre stands the chance of suffering economic loss, since these assets are worth millions of rands. In addition, significant human and physical resources may be needed to decontaminate the centre after a possible breach.

Most irradiation facilities conduct routine risk assessments in order to determine if their security systems are adequate. Risk assessments produce different results for different facilities, but generally always consider the likelihood of a negative event, in this case a security incident and its consequences. Security risk can be measured using the equation:[5]

$$R=P_A \times (1-P_E) \times C \qquad (1)$$

where:

- R is the risk to the facility in the event of an adversary getting access to or stealing critical assets
- P_A is the probability of an attack during a particular period
- P_E is the effectiveness of the PPS against the identified threat
- $1-P_E$ is the vulnerability of the PPS against the identified threat
- C is the consequence value.[6]

The probability of an adversary attack during a particular period (P_A) can be very difficult to determine, but the probability ranges from 0 (no chance at all of an attack) to 1.0 (certainty of an attack). Critical assets, the loss of which would have serious consequences, still require protection if the P_A value is low, and so are still given high priority.[7]

Threat assessment

The threat assessment of a facility's assets and radioactive sources is the basis on which a DBT statement is formulated and a physical protection system designed. For the DBT of the CARST in Mafikeng, selected crimes recorded in close proximity to the centre (in towns A and B) over a three-year period were taken into account. This is because such crimes may be attempted and committed at the centre itself. An analysis of the possible consequences of unauthorised acquisition of the radioactive sources from CARST was performed.

Based on vulnerability analysis for specific sources, an assessment of the risk was made. The level of this risk determined the security measures required to protect the sources. The higher the risk, the more security capability is required. CARST is located on a university campus. The centre is located between an undergraduate residence and the Animal Health department of the university. The university is located in Town A, with Town B – the provincial capital – in close proximity. The centre has four permanent workers, two of whom live in Town A and two in Town B. Crime types considered a serious threat to the facility committed in and around towns A and B informed the DBT.

In the fairly recent past there have been a number of infiltrations of the Pelindaba nuclear research facility located outside Pretoria. A portable computer was stolen in 2005, while in 2007 a group of armed men broke into the facility at different points, deactivated a number of security layers, entered the control room for 45 minutes and escaped, but without removing any nuclear material.[8] In 2012 another violation of protective measures at the facility occurred and was described as an act of 'common' criminality.[9] The hundreds of kilograms of highly enriched uranium (HEU) held at the facility, which could be weaponised, may have been stored in 'locked-down' locations but the breaches remain a concern. Effective protection systems should deter adversaries from even attempting to access such facilities.[10] Instead, these infiltrations re-emphasise the need for a graded formulation of threats for all nuclear facilities, based on the potential harm that their uncontrolled nuclear material or radioactive sources can cause.

This is crucial, because nuclear hazards caused by the sabotage or unauthorised removal of nuclear materials and other radioactive materials can be devastating. Any possible criminality near such a facility must also be considered a threat to it.

The DBT on which this article is based considered selected crimes recorded in towns A and B. In 2013 towns A and B recorded 4 349 and 4 107 crimes respectively.[11] In 2014, 3 908 crimes were recorded in town A and 4 172 in town B.[12] In 2015, 4 395 crimes were recorded in town A and 4 139 in town B.[13] There are 78 towns and cities in the province in which towns A and B are located. Of these, towns A and B accounted for 86% and 58% respectively of the 12 selected crimes recorded in 45 police stations in the province, as presented in tables 1 and 2.

Although crime is notoriously difficult to measure, with crime reported to police offering only a partial view of actual crime types and rates, it is common practice to use official crime records to inform DBT analyses.[14]

The last national census in South Africa was carried out in 2011. It records a population of 38 297 for Town A and 291 500 for Town B. Statistics South Africa reports that the population growth rate from 2001–2011 was +1.17% per year. If the same is applied to Town A, its population in 2017 would be approximately 41 073, and Town B's 312 626.[15]

By using this data, together with police crime statistics, approximate crime rates can be calculated for each town, which can in turn inform the DBT.

Table 1: Selected crimes committed in Town A in 2013, 2014 and 2015

Crime	Town A, with yearly number of crimes, ranking by prevalence of crime type in the province (if in top 10 of province's 78 precincts) and crime rates per 100 000 residents								
	2013	Provincial prevalence ranking	Per 100 000 residents	2014	Provincial prevalence ranking	Per 100 000 residents	2015	Provincial prevalence ranking	Per 100 000 residents
Unlawful possession of fire arms and ammunition	4	N/A	**9.74**	21	6th	**51.13**	16	10th	**38.96**
Common robbery	110	5th	**267.82**	96	6th	**233.73**	108	4th	**262.95**
Robbery with aggravating circumstances	308	3rd	**803.45**	330	2nd	**803.45**	352	2nd	**857.01**
Malicious injury to property	333	3rd	**810.75**	220	6th	**535.63**	188	8th	**457.72**
Burglary at non-residential premises	135	10th	**328.68**	131	9th	**318.94**	172	7th	**418.77**
Drug-related crime	302	7th	**735.28**	385	8th	**937.35**	433	7th	**1 054.20**
Robbery at non-residential premises	83	1st	**202.08**	76	3rd	**185.03**	70	2nd	**170.43**
Kidnapping	9	8th	**21.91**	14	5th	**34.09**	8	N/A	**19.48**
Burglary at residential premises	844	4th	**2 054.88**	651	4th	**1 584.98**	920	2nd	**2 239.91**
Robbery at residential premises	77	3rd	**187.47**	82	2nd	**199.64**	108	1st	**262.95**
Crimen injuria (stalking)	54	6th	**131.47**	41	N/A	**99.82**	25	N/A	**60.87**
Carjacking	13	5th	**31.65**	15	3rd	**36.52**	7	N/A	**17.04**

Note: Crimen injuria is the act of unlawfully and intentionally impairing the dignity or privacy of another person. Stalking a person deprives him/her of privacy.

The crimes in the tables were selected due to their nature. Firearms and ammunition can be used to enter the centre. Robbery and burglary targeting the houses of centre employees may lead to the theft of vital information, keys or pass codes for entry to the centre. Crime committed at or against the centre could be carried out under the influence of drugs. Lawbreakers may stalk or kidnap an employee or their family member in order to extract information or to aid their entry to the centre. Vehicles stolen through carjacking may be used

Table 2: Selected crimes committed in Town B in 2013, 2014 and 2015

Crime	Town B, with yearly number of crimes, ranking by prevalence of crime type in the province (if in top 10 of province's 78 precincts) and crime rates per 100 000 residents								
	2013	Provincial prevalence ranking	Per 100 000 residents	2014	Provincial prevalence ranking	Per 100 000 residents	2015	Provincial prevalence ranking	Per 100 000 residents
Unlawful possession of fire arms and ammunition	9	N/A	**2.88**	8	N/A	**2.56**	15	N/A	**4.80**
Common robbery	164	2nd	**52.46**	133	2nd	**42.54**	114	2nd	**36.47**
Robbery with aggravating circumstances	205	6th	**65.57**	234	8th	**74.85**	236	7th	**75.49**
Malicious injury to property	260	5th	**85.57**	169	N/A	**54.06**	156	N/A	**49.90**
Burglary at non-residential premises	313	3rd	**100.12**	213	5th	**68.13**	268	4th	**85.73**
Drug-related crime	112	N/A	**35.83**	223	N/A	**71.33**	278	N/A	**88.92**
Robbery at non-residential premises	32	N/A	**10.24**	48	5th	**15.35**	50	5th	**16.00**
Kidnapping	19	1st	**6.08**	13	7th	**4.16**	9	8th	**2.88**
Burglary at residential premises	385	N/A	**123.15**	415	N/A	**132.75**	410	N/A	**131.15**
Robbery at residential premises	24	N/A	**7.68**	35	9th	**11.20**	34	N/A	**10.88**
Crimen injuria (stalking)	80	4th	**25.59**	46	8th	**14.71**	45	7th	**14.40**
Carjacking	9	9th	**2.88**	10	7th	**3.20**	5	N/A	**1.60**

to transport stolen items from the centre, or used in an attack on the centre. Because it can be very difficult to determine the probability of an attack (PA) at a particular time, records of these types of crimes help to determine criminal risk in the area.

Tables 1 and 2 illustrate a decrease in common robbery, malicious injury to property, burglary at non-residential premises and crimen injuria (stalking) from 2013 to 2014 in both Town A and Town B. In the same period there was an increase in robbery with aggravating circumstances, drug-related crime, carjacking and robbery at residential premises. Unlawful possession of arms and ammunition and kidnapping increased in Town A but decreased

in Town B in 2014, while burglary at residential premises and robbery at non-residential premises decreased in Town A but increased in Town B in 2014, compared to 2013.

Again, the tables illustrate a decrease in carjacking, malicious injury to property, kidnapping and crimen injuria (stalking) from 2014 to 2015, in both Town A and Town B. In the same vein, burglary at non-residential premises, robbery with aggravating circumstances and drug-related crime all increased in 2015 in both towns. Burglary at residential premises, common robbery and robbery at residential premises increased in Town A but decreased in Town B in 2015, whilst the unlawful possession of arms and ammunition, and robbery at non-residential premises decreased in Town A and increased in Town B in 2015, compared to 2014.

Despite these fluctuations in reported crime, police in towns A and B recorded more crime than all but nine other precincts in the province. The tables show the number of crimes, each with its corresponding crime rate per 100 000 residents. Crime rates provide a more realistic picture of risk than do totals of recorded crime. In this case, the selected crimes were committed relatively consistently for the three-year period of the study.

Types and methods of lawbreakers

When formulating a DBT it is assumed that in any attack against a facility, there are three kinds of possible lawbreakers: outside lawbreakers (outsiders), inside lawbreakers (insiders who work at the facility) and outsiders working in collusion with insiders but not active in every attack.[16] Outsiders can be a group of criminals, terrorists or extremists. There are two types of insider lawbreakers: passive and active. Insiders can collude with outsiders to help them defeat protective layers of the PPS while under duress (e.g. a threat to the life of his/her family) or willingly (part of the criminals, or not happy with a decision taken by management).

There are three primary methods that lawbreakers may employ during an attack. One is deceit: the act or practice of deceiving someone by concealing or misrepresenting the facts. Stealth (movement that is quiet and careful in order not to be seen or heard, or a secret action) is another. The last method involves strength or energy as an attribute of physical action to coerce, especially with the use or threat of violence, commonly termed *force*.

Considering the nature and complexity of recorded crime in the towns surrounding the centre, including unlawful possession of firearms and ammunition, robbery with aggravating circumstances, robbery at residential and non-residential premises, and malicious damage to property, it is probable that all of these will involve the use of force. Deceit is more likely to form part of crimes such as common robbery, kidnapping and some crimen injuria, such as stalking. Stealth may be employed when entering premises to commit crimes such as burglary.

All three infiltrations that took place between 2005 and 2012 at the Pelindaba nuclear facility, South Africa's main nuclear research centre, run by the South African Nuclear Energy Corporation (NECSA), should inform the developer and evaluator of a DBT for CARST. The DBT should focus on the specific methods used by lawbreakers, and take into account technological advancements, in order to prevent future break-ins. In the 2005 infiltration, protection measures were breached, enabling entry into the facility and theft of a portable computer.[17] This breach could have been carried out by an outsider, or an outsider working in collusion with insiders. The lawbreakers might have defeated the security

system by deceit – using false authorisations and identification – or by stealth – an insider defeating the detection systems and enabling outsiders to enter the facility covertly. These methods could also be employed by either of the groups of lawbreakers mentioned above.

In 2007 the lawbreakers probably used force to enter the facility, since they were armed, and managed to deactivate security layers and enter from different directions, in groups, simultaneously. There may also have been an element of stealth, since these armed men were able to penetrate the control room for a period of 45 minutes and escape without being detected. These attacks may have been masterminded by a certain group of people, e.g. criminal outsiders, disgruntled former or current employees, or a combination of the two.

Similarly, the third violation of protective measures at the facility in 2012, described as an act of 'common' criminality, might have used stealth by an insider or deceit by an outsider working in collusion with an insider. Outcomes of the investigations of these three infiltrations have not been made public, but in 2010 the Democratic Alliance (DA) wrote to the IAEA, asking it to ensure that South Africa's uranium stock, which can be used for nuclear weapons, was securely stored. DA spokesperson Pieter van Dalen asked the IAEA to help South Africa have its uranium downgraded. The party also asked the agency to get the South African government to disclose the outcome of an investigation into the 2007 security breach at Pelindaba, where the uranium was stored – but to no avail.[18]

Capabilities of lawbreakers

In formulating a DBT, it can be assumed that lawbreakers committing the above crimes may possess firearms and other tools like pliers, hacksaw blades, crowbars and knives. In addition to their own weapons and hand tools, they would probably use any other tool or piece of equipment found at the attacked premises that would facilitate their criminal objectives. Lawbreakers also use a range of transportation, including cars, trucks and helicopters, all of which must be taken into account.

The aftermath of past attacks (such as the sarin attack on the Tokyo subway in 1995, the attack on the World Trade Center in New York City in 2001, anthrax attacks in New York and Florida in 2001 and the Madrid and London train bombings in 2004 and 2005, respectively) has compelled security analysts – in particular nuclear security professionals – to include weapons of mass destruction as an emerging lawbreaker capability and threat. These weapons include chemical, biological, radiological or explosive materials that have the ability to cause mass casualties, public fear and lasting contamination.

The above information was used to guide the design of a PPS for CARST. It took into consideration all tactics, capabilities, types of attack and groups of people who might attack CARST, so as to put in place a PPS to protect the centre against these attacks.

Potential actions and motives of lawbreakers

When there is an attack at a facility, lawbreakers' actions depend mainly on their goals, such as theft, sabotage, terrorism and political protest.

The motives of lawbreakers might be ideological, economic, revenge (by former or current employees), or based on the belief that provincial leadership only responds to strike action and violence. In South Africa, and in the province where the centre is located, most crimes committed have to do with pride, masculinity, shame, upbringing, and a culture of violence at school and at home.[19] Even if lawbreakers are driven by ideology, they still

expect to derive some self-fulfilment from their unlawful actions. Some Muslim extremists embrace martyrdom and sacrifice their lives to destroy and kill, in the belief that the afterlife holds sufficient reward, as promised in the Quran.[20] Certain companies pay criminals to destroy the facilities and equipment of others in the same line of business. Personal vendettas might lead lawbreakers to covertly steal vital information with the intention to blackmail and destroy reputations.

Results: Design Basis Threat statements

According to the IAEA's Code of Conduct, a categorisation system for radioactive sources should be maintained so that measures to control and secure are commensurate with the radiological risks.[21] This categorisation system is based on the potential that radioactive sources have to cause deterministic health effects, which only appear after threshold values are exceeded and for which the severity of effect increases with an increasing dose beyond the threshold. The value of the source's activity (A), divided by its dangerous value (D), determines the category and the extent of damage it can cause. A radioactive material can be said to be 'dangerous' if it can cause permanent injury or be immediately life threatening if not managed safely and securely. Radioactive sources are grouped into five categories; category one being the most dangerous.

In the two towns surrounding CARST there is a significant amount of criminal activity during the day and at night. Communities know of the university and its facilities, including the irradiator and other equipment, but there has been little formal interest in it to date other than from students and researchers.

There have been two organised protests at the university, in 2008 and 2015. Student activists and others protested and vandalised grocery and computer accessory shops on one of the three campuses of the university. The two protests received a great deal of media attention. The student activists were able to drive the university security guards off the campus and the police were only contacted once the university had been forced to close.

Based on the above assessment, the designer of a physical protection system of nuclear facilities housing category 1–3 radioactive sources should consider the determination, violent nature and methods of both potential insider and outsider lawbreakers, either by stealth or deceptive actions. These considerations should also be applied to a minimum of two to three lawbreakers who may attack at any time during the day or night, with determination and violence. The following should be noted:

- Insider lawbreakers may be trained and possess skills in handling radioactive material. They may also have hand tools to help them break through barriers or assist an outsider to do so.
- Knowledgeable individuals who work in the facilities may provide insider assistance in an attempt to participate in a more passive role, for instance, facilitating entrance and exit, disabling alarms and communications, and participating in non-violent attacks. Such internal threats can arise from any employee in any of the positions at the facility.
- The conspiracy between individuals in the facility and outsiders may entail access to and detailed knowledge of nuclear power plants or other nuclear facilities, and/or items that could facilitate theft of nuclear materials – for example, small tools, false documents, facility keys and pass codes and substitute nuclear material.
- Lawbreakers' weapons, which the PPS and the security response team should be able to

overcome or counter, will likely include pistols, since there are a number of crimes involving the unlawful possession of firearms and ammunition in surrounding towns.

- Lawbreakers will most probably have access to vehicles, from either carjacking or rentals, for transporting radioactive materials from the site. Specialist vehicles are normally used for transporting radioactive materials, but lawbreakers may not be aware of the risk associated with transporting a radioactive source close to their bodies.

Conclusion

A DBT statement is essential when designing a PPS, from the threat assessment to the facility's assets. In the threat assessment conducted for CARST, attention was duly given to crimes recorded in the surrounding towns. There is a high risk of contamination and unwarranted radiation exposure if there is a security breach at the centre. This would become a financial burden for the country and the university, since significant resources would be needed for decontamination and the treatment of anyone exposed to harmful materials or radiation. The three successful infiltrations at Pelindaba illustrate that any nuclear facility is at risk, including CARST. Because it is difficult to ascertain exactly when a lawbreaker might attack a facility (see Equation 1), security experts must consider all the consequences of a potential breach. If the consequence is serious, then the risk is also serious. The DBT statements that were derived from the CARST threat assessment enable policymakers and security agencies to make informed decisions in designing and evaluating their physical protection systems. These assessments and DBT statements also enable the competent authority for nuclear security to consider which PPS to approve when applications are made.

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New interventions and sustainable solutions

Reappraising illegal artisanal mining in South Africa

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Despite its contribution to the South African economy, the South African mining industry is plagued by illegal artisanal mining (IAM). Although artisanal mining was recognised as a means to alleviate poverty after 1994, current legislation criminalises such work. This article reviews the limited literature on IAM in South Africa to show that there is poor synergy between mining industry stakeholders. It recommends two theoretical perspectives from which to reappraise the underlying causes of IAM, concluding that an industry-tailored, theoretically informed intervention is required.

Illegal artisanal mining (IAM) is a serious environmental and social problem in South Africa.[1] 'Illegal' mining is an act of mining that contravenes the Mineral and Petroleum Resources Development Act (MPRDA). Despite its illegality, many scholars believe such mining has an important role to play in rural economic development.[2] The global demand for gold has triggered a surge in illegal mining in various parts of the world, including Indonesia, Venezuela (where 91% of gold is produced illegally), Colombia (80%) and Ecuador (77%).[3]

After agriculture, more South Africans are employed in the mining sector than in any other.[4] The industry provides 500 000 direct and 800 000 indirect jobs, and contributes 16% to the country's gross domestic product (GDP).[5] Nevertheless, gold and diamonds are frequently extracted informally, with serious environmental consequences.[6] While this harm is done, scholars have struggled to quantify it, as there is no common international or national definition of what illegal mining entails.[7]

Research on IAM in South Africa is limited.[8] Available statistics are primarily rough estimates, and thus lack credibility.[9] The resulting misunderstandings over unregulated and informal mining impede solutions to related challenges.[10]

Aside from Thornton, few scholars have explored IAM in South Africa with any nuance. His work offers a groundbreaking interdisciplinary approach to IAM.[11] He

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posits that illegal artisanal miners (IAMs) are largely misrepresented by the South African government and media.[12] As a consequence, fragmented and parochial interventions are adopted. Inevitably these are generalised, and often involve violent crackdowns, the imposition of penalties and the marginalisation of IAMs, with little consideration as to how they might otherwise earn their livelihoods.

The purpose of this review is to develop an integrated approach in reappraising IAM in South Africa. It draws from local and international best practices, and aims to answer two questions, namely: what is a viable approach to IAM, and what are international best practices for achieving sustainable artisanal mining?

The need for networked governance

Mineral and financial losses due to IAM are widespread, despite collaborative efforts between the South African Police Service (SAPS) and the mining industry's security personnel. Coetzee and Horn suggest that a lack of context-specific, integrated and standardised methods for managing illegal activities has perpetuated the problem.[13]

Solving highly complex problems such as IAM requires cross-sector cooperation, organisation and governance.[14] This must be implemented alongside capacity building (e.g. training for IAMs) and exploration of contextually relevant solutions. The integration of capacities and resources is best achieved through the networked governance perspective, where a culture of close cooperation between government, local communities, law enforcement agencies, the South African National Defence Force (SANDF), SAPS, civil society organisations (CSOs) and non-governmental organisations (NGOs) is instilled. However, this cooperation needs to be aligned with other global and regional initiatives such as the Communities of Artisanal and Small-scale Mining (CASM) Charter, Yaoundé Vision and Africa's Mining Vision, wherein the practice of IAM is not criminalised but is encouraged as a niche source for sustainable livelihoods.[15]

Similarly, interventions will benefit from collaborative arrangements at the global level through the United Nations (UN), World Bank and International Monetary Fund; at the regional level through the Southern African Development Community; and at the domestic level. Collaborative arrangements can be viewed both as bottom-up and multi-level approaches. Operationally, government (national and local) needs to spearhead the reappraisal of IAM through poverty alleviation strategies. Tactically, all stakeholders should be included as much as is practically possible.

This article uses the theoretical models of networked governance and capitalism in crafting and understanding a context-specific approach to reappraising IAM.

Conceptual analysis

IAM may be understood differently by different people in different countries. This article understands it as artisanal and small-scale mining (ASM), which, when informal, is described as informal artisanal mining (IAM). In Ghana, IAM is referred to as *galamsey*, in Mongolia it is referred to as ninja mining, while in South Africa illegal miners are referred to as *zama zamas* – an isiZulu term meaning 'try and try again'.[16] Because there is no common definition of IAM, Zvarivadza asserts that such activities are largely attributed to informal and unregulated ASM.[17] Formal or legal ASM occurs when companies comply with environmental and health-related mining regulations, while informal ASM (IAM) occurs when they do not. Importantly, small-scale mining can be regulated like large-scale mining but, as a

result of widespread flouting of artisanal mining legislation, is often regarded as IAM.[18]

ASM is as important as large-scale mining as a provider of livelihoods in poverty-stricken communities.[19] The same holds true for IAM. Hentschel et al. contend that ASM relates to 'mining by individuals, groups, families or cooperatives with minimal or no mechanization, largely in the informal (illegal) sector of the market'.[20] They acknowledge the challenges in differentiating 'artisanal mining' that is purely manual/informal and very small in scale from 'small-scale mining', involving mechanisation and somewhat larger scales.

Characteristics to be considered in defining the type of mining include, inter alia, 'production volume, number of people per productive unit, intensity (volume) of capital employed, labour productivity, size of mine claim, quantity of reserves, sales volume, operational continuity, operational reliability, and duration of the mining cycle'.[21]

IAM can occur on the surface or underground, and in either formal or abandoned/closed mines.[22] Thornton offers four key challenges with regard to how IAM is conceptualised. First, he contends, it is not clear what legislation or by-laws criminalise IAM. Second, if miners are considered trespassers it is difficult to identify them among the many other people using informal pathways that criss-cross mineral-rich land. Third, South Africa's surface laws do not relate to its underground resources. Finally, IAMs are not 'stealing gold' from actively worked industrial mines.[23] So how does one properly define an illegal miner?

One way of defining IAMs is to consider them as those who contravene the Mineral and Petroleum Resources Development Act (MPRDA) in South Africa. ASM is not only recognised as a sub-sector of formal mining but is also considered a poverty alleviation strategy acceptable in terms of the MPRDA.[24] The act places all minerals under custodianship of the state, and requires that anyone wanting to extract minerals must first apply for a permit from the state.[25] Mining activities are illegal when they fail to comply with the required permit, health and safety obligations. In this regard, Section 2 of the Mine Health and Safety Act (MHSA) prescribes three conditions that govern both operational and dormant mining activities.[26]

First, the employer of a mine needs to provide conditions for safe operations and a healthy working environment.[27] If a mine is not being worked, but a closure certificate has not been issued, the owner must take reasonable steps to 'continually prevent injuries, ill-health, loss of life or damage of any kind from occurring at or because of the mine'. The act also requires that the holder of a mining concession apply for a closure certificate upon, among others, the lapsing, abandonment or cancellation of the concession.

Taking the above into account, it may be posited that the fundamental difference between legal miners and illegal miners is that illegal miners do not pay taxes, lack permits and environmental impact analyses, and have lower labour standards.[28] They also lack the capital and equipment required for large-scale mining.

Theoretical and ideological perspectives

Network governance

Various theoretical and empirical efforts have informed recommendations aimed at reappraising IAM. It has proven difficult to deal with IAM where strategies and resources are not integrated across and between stakeholders. For this reason, network governance is appealing.

Network governance sees actors with shared interests come together as co-producers

of governance strategies.[29] The resulting accumulation of competencies and knowledge can help overcome complex challenges.[30] Network governance proposes that NGOs, the private sector, scientific networks, local communities, CBOs, CSOs, and regional and international institutions collaborate to foster reciprocal trust in cooperative rather than top-down partnerships.[31] Of course, because such synergies are difficult to create and manage, network governance can be difficult to implement.

Capitalism

Capitalism is an economic system that allows private actors to own and control property to serve their own interests. In democratic capitalist states the activities of private actors are bound by the rule of law. At first glance, this appears to support equality. But, as Anatole France noted with unabashed irony over a hundred years ago: 'In its majestic equality, the law forbids rich and poor alike to sleep under bridges, beg in the streets and steal loaves of bread.'[32] As a result, rich and poor do not begin their days on an equal economic footing. To this end, Merkel maintains that capitalism and democracy follow different logics, the former promoting the unequal distribution of property and goods, the latter, equal rights and the wellbeing of all.[33]

Democracy has been condemned for increasing economic inequality in South Africa and elsewhere.[34] Apartheid's race-based capitalism benefitted the white minority and marginalised the black majority.[35] Importantly, mining and racial domination have been central to South African capitalism, but its harm is not easy to undo.[36] In mid-2017, under the guise of addressing this, Mineral Resources Minister Mosebenzi Zwane proposed a highly controversial mining charter, calling for increases in black ownership of mines by 4% to 30% within a year.[37] The charter also requires that 14% of mining shares should be given to black entrepreneurs.[38] While change is imperative, the minister's move may be self-serving as he tries to leverage populist calls for 'radical economic transformation' to further his own political career. While the proposed charter was immediately rejected by the Chamber of Mines of South Africa and relevant trade unions, its proposal still resulted in an estimated R50 billion in stock being lost overnight.[39]

South Africa's broader neoliberal macro-economic policy, Growth, Employment and Redistribution (GEAR), has also impacted the economy. While it sought to redistribute wealth through job creation and economic growth, this has not been achieved.[40] In August 2017 Statistics South Africa announced that more than 30 million South Africans lived in poverty.[41] Yet there are no obvious alternatives to capitalism after the collapse of Soviet-era socialism. How can South Africa's mining industry benefit the poor? Might IAM hold an answer?

Explanations for IAM in South Africa

The Chamber of Mines contends that IAM takes place on the surface and underground, at closed, abandoned and operating mines.[42] It posits that urgent steps need to be taken to address a rise in IAM in South Africa and the continent more broadly.[43] Banchirigah confirms that economic stimulus strategies employed by governments in sub-Saharan Africa have not offered sustainable results, but caused environmental and social harm.[44] In South Africa, it has been suggested that IAMs are misrepresented as poor, ignorant migrants from other African countries.[45] Such representations weaken efforts to curb illegal activities, by stigmatising rather than promoting support for these miners.

IAM should be recognised and regulated, and understood as a product of particular contexts

and factors. According to Banchirigah, these contexts and factors include persistent poverty and unemployment. The presence of these factors in neighbouring African countries, and South Africa's relative wealth, attract job seekers to South Africa. Those unable to find work may resort to IAM as a form of 'self-employment'. The chamber estimates that 70% of arrested IAMs are from neighbouring countries.[46]

There is no connection between ordinary policing and IAM. SAPS officials are not specifically trained to police IAM. Yet, the chamber has called on the SAPS to deal with IAM criminality, such as the bribing of mine security personnel to gain entry to shafts.[47]

Consequences of IAM in South Africa

If IAM is not reappraised it can lead to undesirable consequences, such as those listed by Zvarivadza in Table 1.

International responses

Internationally, several strategies have been implemented to address IAM. One notable strategy is the CASM Charter, a global initiative launched in March 2001 with the aim of:

- Reducing the occupational health and safety risks to miners
- Improving the policy environment and institutional arrangements governing small-scale mining

Table 1: Challenges posed by informal/unregulated mining activities

Social	Environmental	Economic	Safety and health
Crime	Deforestation	Lack of collateral security	High fatality rate
Sex work and spread of sexually transmitted diseases	Pollution of water bodies	Difficulty in obtaining information for planning purposes	Rapid spread of diseases
Alcoholism and substance abuse	Soil erosion	Rent-capturing difficulties	Lack of protective clothing
Neglect of human rights	Siltation of rivers	Lack of education and professionalism	Unsupported or poorly supported mining activities
Conflict and lack of security	Dust and noise pollution	High grading of mining operations	Unsafe working tools
Child labour	Land degradation	Failure to adapt to technological advances	Chief reliance on natural ventilation
Denigration of cultural and ethical values	River diversion	Mineral rush effect (Tragedy of Commons)	Poor lighting
Destruction of cultural heritage sites	Mercury and cyanide pollution	Retardation of economic growth	Uncoordinated and limited transportation
Gender discrimination	Destruction of biodiversity	Short-sighted planning	Exposure to dust and dangerous gases
Limited social amenities	Poor disposal of mine tailings	Corruption	Insufficient safe drinking water

Source: Zvarivadza[48]

- Increasing the productivity and improving the livelihoods of miners
- Working to advance alternative livelihoods through effective use of their natural resource capital, in part, by conservation of biodiversity in IAM areas[49]

The Yaoundé Vision initiated by the African Union in 2002 and the Mining Minerals and Sustainable Development (MMSD), published in the same year, provide a roadmap in terms of how governments on the continent can assist ASM initiatives.[50] The Yaoundé Vision operationalised Africa's Mining Vision, which seeks to transform mining into a knowledge-based economy. It identifies IAM as the backbone of many rural economies and a source of livelihoods.[51] It seeks to build grassroots capacity and growth, and encourages inter-linkages with the broader social economy.[52]

Sustainable employment would most certainly improve the livelihoods of illegal miners. Creating jobs for low-skilled workers in formal ASM and rural areas would dissuade illegal activities. Since IAM is primarily about the search for employment, Banchirigah and Hilson have recommended strong support for agrarian-orientated activities in Sub-Saharan Africa.[53] In Ghana, re-agrarian-orientated activities have already been shown to be a viable strategy to reduce poverty, one of the push factors driving IAM.

At the more traditional security front, companies in China and Turkey have used satellite-borne, repeat-pass differential synthetic aperture radar interferometry (D-InSAR) to detect on- or in-ground IAM activities.[54] The challenge with D-InSAR is to differentiate between legal and illegal mining activities. Relatedly, Synthetic Aperture Radar (SAR) satellites are able to ensure long-term surveillance of specific mine sites.[55]

An integrated model

Reappraising IAM in South Africa requires context-specific approaches tailored to improving the socioeconomic conditions that drive people to such activities. To start, an empirical needs analysis is required in order to understand what pushes IAMs to the work (push factors) and what attracts them to IAM (pull factors). It is important to find out from IAMs themselves how they can be assisted, instead of using a top-down approach.

Best practices combine the use of surveillance technology such as D-InSAR with the implementation of strategies such as Africa's Mining Vision and objectives, MMSD, the CASM Charter, and agrarian-orientated activities. If implemented in South Africa, the poor and marginalised must be consulted as part of a 'whole society' intervention, which is inclusive of all stakeholders.[56]

In accordance with a network governance proposition, the South African government has in place national strategies linked with international initiatives. No progress can be made within the mining sector if there are no empowerment projects to alleviate poverty. Essentially, capitalism does not encourage compromise, but rather unidirectional, hierarchical decision-making.[57] Conversely, the South African government's black economic empowerment (BEE) policies introduced in 2003 (subsequently known as broad-based black economic empowerment) are an important step in reducing economic inequality, as are its affirmative action goals. BEE has sought to increase black participation and ownership of the economy, including the mining industry, but has only benefitted a small, often politically connected elite (the 'New Elite').[58] According to Jeffery, this elite accounts for only 15% of the black population.[59] To correct this, regulated, procedurally fair expansion of black ownership of mining is necessary for South Africa as a

whole, for neighbouring states, and for the future of IAMs in particular.

A network governance intervention should include the use of advanced technology such as D-InSAR and surveillance cameras, along with strengthening the security cluster with highly skilled personnel. A reporting system that includes a monitoring and evaluation capacity is needed to assess progress.

Network governance interventions

Because IAM is driven by poverty and a need for rural economic development, scholars have advocated for both proactive and reactive interventions, summarised here:[60]

- All stakeholders, in consultation with government and the Chamber of Mines, need to support initiatives to reduce health hazards and environmental degradation.
- Poverty alleviation initiatives targeting artisanal miners must be implemented. These should include providing IAMs with skills that improve their prospects of employment in the formal sector, specifically, for non-South Africans, in their countries of origin.
- Subsidies and financing should be made available for ASM together with business development aid, such as technology transfer and managerial and accounting support. This should be provided by government, the CM and civil society.
- Partnerships should be fostered between ASM and large-scale mining.
- Corruption in government should be stamped out, and a strong legal framework, which balances the above development goals with strong checks and balances, should be instituted.
- The ASM sector should be formalised and registered. This will allow ASM to become self-sustainable (while remaining networked) and recognised as a legitimate livelihood strategy.[61]

Conclusion and recommendations

This article has argued for a network governance approach to understanding and supporting, rather than criminalising, ASM. IAM, it is suggested, can be viewed both as a governance and security challenge, and as an economic opportunity or survival strategy. Criminalisation of ASM, as is the case with IAM, is unlikely to yield long-term societal gains. Instead, it exposes IAMs to various risks, obscures the root causes of IAM, and leaves these unaddressed, resulting in the further marginalisation of impoverished rural communities.

Network governance models predict that long-term stability is not possible without the investment and collaboration of a broad range of actors. These include government, civil society, and international, regional and local organisations. These groups' resources and programmes should, ideally, be strategically aligned and integrated in ways that produce holistic, sustainable solutions to IAM.

Understanding the daily lives of IAMs is crucial. Without this understanding, ill-conceived policies such as the 2017 mining charter, BEE and GEAR are bound to fail. New policies should be formulated and implemented in ways that do not reinforce racial discrimination or inequality, but rather grow an inclusive mining sector and general economy.

Since IAM affects many countries in the sub-Saharan region, regional cooperation networks must be developed to understand the push and pull factors driving this sub-type of small-scale mining. For instance, South African companies and authorities may need to invest in the economies of neighbouring states to provide alternatives to IAM and related migration.

It is difficult to deal with IAM amid South Africa's great economic inequality. Thus, gradual transfer of skills and ownership in the mining sector, as in others, is required in ways that do not incentivise or allow room for corruption or political capture. The mining sector and government must do more to support communities surrounding major mines.

Finally, there should be more involvement of universities and research organisations that understand the plight and the needs of IAMs, and can offer effective solutions to the state of IAM.

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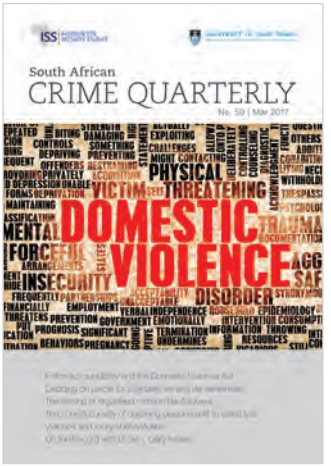
Previous issues

Once considered peripheral, and a green matter, wildlife crimes have moved up global security and policy agendas. This special issue on Organised Environmental Crime, guest edited by Annette Hübschle, explores the phenomenon from a range of perspectives. These include 'whole of society' and collaborative governances, community-focused anti-poaching interventions, trans-national anti-piracy collaborations, the 'cultural impact' of wildlife crime, and a controversial 'shoot-to-kill' anti-poaching policy in Botswana.

The first issue of 2017 is one of variety in form and subject. Research articles include a review of the adherence to, and implementation of, legislative duties placed on police by the Domestic Violence Act, the discretion of the minister of justice to refuse parole to those serving life sentences, and an exploration of why organised crime figures choose to live and work in particular places. A case note reflects on the treatment of an accused person who, due to mental illness, is unfit to stand trial but who must still be detained, and a review essay considers whether South Africa would benefit from a violence observatory. The issue ends with an On the Record interview with the SAPS head of management interventions.



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