

- > Police accountability and the Domestic Violence Act
- > Deciding on parole for offenders serving life sentences
- > The settling of organised crime in Bedfordview
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- > On the Record with Lt-Gen. Gary Kruser

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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.

More data mean better tools for South Africa

<http://dx.doi.org/10.17159/2413-3108/2017/v0n58a7187>

In February this year, Statistics South Africa (Stats SA) released the findings of the 2015/16 Victims of Crime Survey, and announced that it would release the 2016/17 results in November. Victim surveys, though not without fault, capture valuable data relating to crime, justice and safety that are not typically collected by criminal justice agencies. Much of this data's value lies in their ability to identify victimisation trends that may or may not appear in police data, and to gauge perceptions and experiences of criminal justice institutions.

A few weeks after the Victim Survey's release, the South African Police Service (SAPS) published crime statistics for the last nine months of 2016. Ordinarily, South Africans have had to wait until September to access crime data for October to December of the previous year. The March 2017 release is part of the SAPS's commitment, made last year, to release quarterly rather than only annual crime data. This is a significant development for all invested in crime, justice and safety in the country.

The most recent Victim Survey covers the period April 2015 to March 2016, so is best read in conjunction with the SAPS data for that year. Both sets of data reveal some notable trends.

First, more households (42%) believed violent crime in their area had increased in the three years preceding the survey than those who believed it had stayed the same (30%) or declined (28%). This marks a significant increase from 2011 when 31% believed it was increasing, but a decrease from 44% in 2014/15. The belief that violent crime is on the rise is partially supported by SAPS murder data – our best proxy for violent crime – which saw 5% more murders reported in 2015/16 than in the previous year. The Western Cape was the only province in which more than 50% of Victim Survey respondents believed violent crime was increasing. This too correlates with SAPS murder data, which show that Cape Town is South Africa's most violent city. Though not comparable to the Victim Survey, the March 2017 SAPS data suggest a tiny (0.01%) decline in murder, nationally.

The Victim Survey captured similar perceptions regarding property crime, with more respondents believing it had increased (46%) than decreased (26%) or stayed the same (28%). Again, significantly more respondents questioned in 2015/16 believed property crime had increased than did those surveyed in 2011/12 (34%), and again this marked a minor decline in the same views from 2014/15 (47%). Again, the Western Cape is the only province in which more than half of respondents (58%) believed property crime was getting worse. However, SAPS data on property-related crime suggest that reports decreased in 2015/16.

The three crime types that Victim Survey respondents thought to be the most common, and that they also feared most, were burglary (59%), street robbery (39%) and home robbery (39%). The most

common types of crime *experienced* by respondents were home burglary (5%), followed by home robbery (1%), theft from car (1%) and theft of livestock (1%). Street robbery did not feature in the 10 most commonly experienced crimes. All the most commonly experienced crime types, except crop theft, saw slight year-on-year declines.

In contrast to the Victim Survey data, the SAPS data for both September 2016 and March 2017 show notable increases in aggravated robbery, including carjacking and robbery at residential and non-residential premises. Of those Victim Survey respondents who reported that they experienced robberies in 2015/16, 66% of home robbery victims and 44% of other robbery victims had reported their experiences to police. This compares to just 60% who had reported home robberies and 33% who had reported other robberies to police in 2011. As such, the uptick in robberies found in the SAPS data may indicate changes in reporting, rather than in offending rates.

Nevertheless, it is concerning that the SAPS data suggests an increase in robberies, considering that robberies are some of the few categories of crime that police should be able to reduce. This is because common robbery is likely to occur in policeable geographic areas (hotspots), while other types of robbery are most likely carried out by experienced repeat offenders or organised syndicates, entrenched in networks that police should be able to infiltrate and disrupt.

Notably, though perhaps unsurprisingly, only 2% of Victim Survey respondents believed that 'white collar crime' may be the most common type in South Africa. This reveals an important bias in the way crime is conceived here, as elsewhere. It is very likely, as Robert Reiner points out in a new book, *Crime: the mystery of the common-sense concept*, that 'victimless' white collar crime, including corporate, financial and state crime, 'is likely to massively outstrip in extent and seriousness either victim-survey or police-recorded statistics'.¹

With the disbandment in 2008 of the Directorate for Special Operations (the Scorpions), the elite investigative arm of the National Prosecuting Authority (NPA), the ability to tackle corporate and state crime in South Africa was significantly weakened. The DSO was replaced by the Directorate for Priority Crime Investigations (the Hawks), which, many have suggested, has been 'captured' by those close to President Jacob Zuma, effectively shielding him and dirty business entities (e.g. the Gupta business empire) from investigation and prosecution.

Despite its potential for massive harm, it can be hard to view corporate and state crime as being as threatening as an angry adolescent hanging around a bus terminus late at night. The 2015/16 Victim Survey reveals that since 2011 there has been a notable decrease in the number of people who feel safe walking in their area of residence during the day (from 89% to 84%) and at night (from 37% to 31%). Asked whether they were prevented from engaging in daily activities because of crime, a third of 2015/16 respondents reported being unable to use public spaces, and 23% reported being unable to let their children play outside.

The first months of 2017 have seen flare-ups of anti-foreigner/xenophobia-related violence and sentiment, particularly in Gauteng where foreign nationals have been blamed for stealing jobs and generating crime. And yet, as in previous years, around two-thirds of Victim Survey respondents believed that 'people from this area' were the most likely perpetrators of crime, compared to roughly 6% who believed 'people from outside South Africa' were to blame. Most believe people commit crime for 'drugs-related need', followed by 'genuine need'.

In asking where government should spend money to reduce crime, the 2015/16 Victim Survey introduced a new category to its usual options. Previously, two-thirds of respondents consistently chose 'social/economic development'. In 2015/16 this was split into two categories, 'social development' and 'economic development', with 61% choosing the latter and only 7% the former.

There is plenty more of interest and value in both the Victim Survey and the SAPS quarterly crime data, and I would encourage readers of *South African Crime Quarterly* (SACQ) to look them up. There is, however, one more point worth mentioning on the subject. People living in South Africa are not necessarily more likely to become victims of crime than are residents of, for example, West European countries. We know this because we can compare Victim Survey data collected here to data collected in Europe and elsewhere, using comparable methodologies. What sets South Africa apart is not the prevalence of crime, but its violence, and its impact on lives already characterised by fragility and precariousness.²

What's in this issue?

The first issue of 2017 is one of variety in form and subject.

We begin with Lisa Vetten's thorough review of the adherence to, and implementation of, legislative duties placed on police by the 1998 Domestic Violence Act. Based on annual reports and parliamentary minutes, the article demonstrates what is often so very true of policing – that impressive oversight architecture and legislation does not necessarily produce the kind of police practice that is envisaged.

This is followed by an article by Robert Nanima, evaluating the discretion of the Minister of Justice and Constitutional Affairs to refuse parole to those serving life sentences under Section 78(2) of the Correctional Services Amendment Act. It examines the drafting of the relevant section of the Act, evaluates the extent of ministerial power, and reviews its application in the 2014 case *Barnard v Minister of Justice*. Using it as a case study, Nanima recommends that the minister's powers with regard to parole be revisited.

The last of our three research articles is an exceptionally creative piece by Simone Haysom and Mark Shaw. In it they ask why organised crime figures choose to live and work in particular areas, exploring the question in relation to gang boss Radovan Krejcir and the Johannesburg suburb of Bedfordview. The analysis identifies several push and pull factors that make Bedfordview desirable to crime bosses.

A case note by Franaaz Khan explores a 2015 Constitutional Court decision in the case *De Vos NO v Minister of Justice and Constitutional Development*. The decision related to the constitutionality of Section 77 of the Criminal Procedures Act. Section 77 deals with the treatment of an accused person who, due to mental illness, is unfit to stand trial, but is still required by law to be detained. Perhaps unsurprisingly, the court found that the section breached the accused's right to freedom. Khan tells us how and why.

A review essay by Ardil Jabar and Richard Matzopoulos builds on related violence prevention work published in SACQ in recent years. This approaches violence not as a criminal justice matter but rather a public health and 'whole of society' issue. Through a review of related concepts and literature, the authors describe the concept of a violence observatory, and suggest that South Africa would benefit from the establishment of such an entity.

We end this issue with an *On the Record* interview with Deputy National Commissioner and head of the SAPS Management Intervention division, Lt Gen. Gary Kruser. In the interview, conducted by Johan Burger, Kruser describes some of the innovative and important changes taking place within the SAPS, including insight into its *Back-to-Basics* programme.

Please enjoy.

Andrew Faull
(Editor)

Note

- 1 R Reiner, *Crime: the mystery of the common-sense concept*, Cambridge: Polity, 2016, Kindle location 2427.
- 2 C Stone, Crime, justice, and growth in South Africa: toward a plausible contribution from criminal justice to economic growth, Center for International Development, Working Paper, 131, 2006, <http://www.treasury.gov.za/publications/other/growth/07-Crime/01-CRIME,%20JUSTICE%20AND%20GROWTH%20IN%20SOUTH%20AFRICA%20-%20TOWARDS%20A%20PLA.pdf> (accessed 10 March 2017).

Police accountability and the Domestic Violence Act 1998

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In 1998, in an attempt to undo the long-standing neglect of domestic violence, legislators placed a set of duties on the police in relation to domestic violence, and coupled these with a unique system of accountability relations and practices. This article examines the effect of these in three ways: a review, both of complaints of misconduct and of the station audits conducted in terms of the Domestic Violence Act's prescripts, and analysis of the workings of the act's accountability mechanisms over time. These show the act's system of accountability to have had some success in making domestic violence a policing priority, but only after a number of years of interaction across the domains of the political, legal, bureaucratic and social. Accountability has revealed itself to be a contingent outcome and practice that takes different forms at different times. It also remains an ambivalent undertaking in relation to domestic violence. While answers may be demanded of the police, oversight of these responses is lodged with an agency possessing limited capacity and weak institutional authority.

Women in South Africa are considerably more likely than men to experience violence at the hands of their intimate partners. Intimate partner violence, including its most lethal expression, murder, is also the form of violence most frequently experienced by women.¹ In 2009, the most recent year for which figures are available, 57% of the women who were killed died at the hands of their intimate partners. Calculated as a prevalence rate of 5.6 per 100 000, this murder rate was five times the global average.²

These startling figures emerge out of a long history of police neglect of domestic

violence, as this South African Police (SAP) submission to the Police Board in 1994 illustrates:

It is a world-wide belief that the police should not interfere or get involved in household disputes. The rationale behind this relates to law enforcement as the primary function of the police – and law can only be enforced when someone lodges a criminal complaint with the police. Once they get involved in household disputes, the police are blamed for interfering in private matters.

The priorities of policing are determined by the community. Figures of other serious crimes reported to the SAP confirm this fact. More attention has to be devoted to

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those serious crimes, which are more frequently reported.³

In 1998, in an attempt to redefine these priorities, which located ‘household disputes’ somewhere between invisibility and triviality, legislators prescribed a novel set of duties applicable to the policing of all forms of domestic violence, and embedded these within an accountability structure intended to identify and penalise non-compliance. How has this emphasis on accountability translated into practice? What, specifically, have been its effects on the policing of intimate partner violence?

To answer these questions, this article begins by detailing the framework of police accountability created by the Domestic Violence Act (DVA), and then follows this with a critical analysis of the administrative data produced both by the South African Police Service (SAPS) and by the agencies responsible for overseeing the SAPS’s implementation of the DVA. The basis of this review is the archive of annual and other reports produced for Parliament by the SAPS, the Independent Complaints Directorate (ICD) and the Civilian Secretariat for Police (CSP) over the past 16 years, with additional data drawn from parliamentary minutes and reports, court decisions and media reports.

Accountability: a framework

Political theorists conceptualise accountability as consisting of two elements: answerability, or the obligation on authorities to explain and justify their actions; and enforceability, the power to sanction authorities.⁴ Relations of accountability can therefore be discerned when one agency is required to answer to another; these responses can be questioned; and both formal and informal consequences can result as a consequence of the judgements or evaluations of these responses. These need not only be negative.⁵ Relations of accountability are distributed across two dimensions. One, the vertical axis, connects state and citizen through elections

and participation in law reform processes, while the horizontal axis is constituted by the range of agencies and bodies distributed across the various arenas of the state that monitor and answer to each other.⁶ With horizontal relations largely excluding non-state actors, accountability has begun to emerge through a third set of relations designated as diagonal, or hybrid. These seek to insert citizens into oversight functions through a range of monitoring exercises (particularly in relation to budgeting exercises).⁷

In addition to the focus on relations and mechanisms, accountability refers to desired standards of conduct. South Africa’s DVA, which sets out a normative framework for police conduct in relation to domestic violence, and couples this to a set of accountability mechanisms, encapsulates both these understandings.

The Domestic Violence Act, its duties and structures

The DVA introduced a comprehensive set of systems and duties, both internal and external to the SAPS, aimed at ‘afford[ing] the victims of domestic violence the maximum protection from domestic abuse that the law can provide’.⁸ These entitle domestic violence complainants to a range of services from the police. Complainants must be provided with written information about their rights and the criminal and civil remedies available to them, and have this notice explained in a language of their choice. Members of the police must also assist complainants to find suitable shelter, and/or to obtain medical treatment. In addition, they are obligated to serve notice on the abuser to appear in court; serve protection orders; arrest an abuser who has breached a protection order or committed a crime (even without a warrant); remove weapons from the abuser or from the home; and accompany the complainant to collect personal items from her/his residence.⁹

Where the DVA largely prescribes services to victims, *National Instruction 7/1999* and the *National Policy Standard for Municipal Police Services Regarding Domestic Violence*, gazetted in March 2006, set out all aspects of the police's duties to maintain records of domestic violence incidents. Such documents comprise domestic violence registers; copies of protection orders and warrants of arrest; and various reports on the handling of individual complaints. Because these documentary obligations largely provide evidence of individual police officers' compliance with the duties listed above (although this is not their only purpose), commanding officers are expected to scrutinise these various records and take corrective action when they are not satisfactorily maintained, and when members have not provided the necessary services. Failure to comply with the DVA's provisions is treated as a form of misconduct in terms of the South African Police Service Act of 1995.¹⁰

Supervision by commanding officers is not the only form of oversight provided for by the DVA. The DVA also imposes a duty on the SAPS to refer all categories of domestic violence-related misconduct to the ICD, whether these lapses are identified in the course of supervision or via complaint. This is to enable the ICD to recommend either the institution of, or exemption from, disciplinary proceedings.¹¹

Complaints provide another source of information about the standard of police conduct. Domestic violence complainants who are unhappy with services received may complain to the station commander and, until early 2012, could also lodge a separate complaint with the ICD.¹² The ICD categorised these complaints as follows: class I complaints comprised cases where police members were responsible for the deaths of their intimate partners; class II complaints included cases of rape or assault committed by police members

against their intimate partners; and class III complaints dealt with the police's failure to provide assistance to domestic violence complainants.¹³ This last category also fell within class IV complaints investigated by the ICD, which were considered the least serious form of police wrongdoing.¹⁴

Before 2012, bi-annual reports to Parliament by the SAPS and the ICD added another layer of organisational accountability. In these the SAPS and the ICD were required to detail the number and nature of complaints received by each agency, as well as the disciplinary proceedings instituted as a result (along with the outcomes of those proceedings). While the ICD was to report on the recommendations it had made to the SAPS regarding disciplinary processes, the SAPS was to detail its responses to those recommendations. These institutional arrangements were recalibrated in 2012 when the ICD was reconstituted as the Independent Police Investigative Directorate (IPID), and both IPID and the national office of the CSP were established in law.¹⁵

Where IPID was established to give greater bite to oversight of the SAPS (the Portfolio Committee having noted in 2008 already that the ICD had been rendered a 'toothless bulldog' by the SAPS),¹⁶ the CSP was inaugurated to give effect to Section 208 of the 1996 Constitution. Despite this constitutional provision, only the provincial structures had been set up in the 1990s, in the form of departments of community safety. The result was a bifurcation of the system of accountability. Killings by a police member within the context of an intimate relationship are dealt with by IPID, while assaults by police members against their intimate partners and non-compliance with the DVA are transferred to the CSP.¹⁷ Responsibility for the six-monthly reports to Parliament was also transferred to the CSP which, in turn, delegated aspects of this

reporting function to the provincial departments of community safety.

In terms of the CSP Act, the purpose of the Secretariat is to exercise civilian oversight over the police, as well as to provide the minister with strategic advice regarding the development and implementation of policies.¹⁸ The CSP's chief functions and duties are supervisory, cooperative and commendatory. While the Secretariat can monitor the police's compliance with the act, and make recommendations to the police regarding disciplinary procedures and measures to be adopted in cases of non-compliance, it cannot conduct investigations, or enforce compliance with its recommendations. Indeed, until late in 2016 when regulations were finally gazetted, it was not even formally empowered to receive complaints.¹⁹ Thus, rather than giving greater bite to oversight of the DVA, this transfer of functions to the CSP eroded police accountability for the policing of domestic violence, once again raising questions about the status of domestic violence in the overall policing scheme of things.

Examining the effects of this transfer, as well as the workings of the DVA's accountability system, is the focus of the remainder of the article.

SAPS compliance with its duties

The DVA is well used. In 2015/16, 275 536 applications were made for protection orders.²⁰ Of these, approximately 99 076 (or 35.9%) were made final, and 39 550 warrants of arrest issued for violation of the terms of a protection order.²¹ Case studies of individual police stations already show that policing services were not always provided during all stages of this process.²² This review turns to ICD and CSP records for their assessment of SAPS compliance with the DVA's prescripts. These data are neither routinely nor consistently collected, however, and their reporting is not standardised from one year to the next. The quality of information is also

variable, as Parliament's Portfolio Committee for the Police has noted.²³ Outside of PowerPoint presentations, no formal reports by the CSP appear to have been signed off after 31 March 2015, meaning that information about the most recent station audits is also not available.²⁴ To correct for these limitations, numerical data have either been adjusted or not utilised at all. In general, the numerical data should be treated as broadly indicative, rather than categorical.

Provision of policing services to complainants of domestic violence

Between 1 January 2001, when it began collating data on the DVA, and its dissolution in March 2012, the ICD produced 23 reports to Parliament detailing SAPS compliance with the legislation. The reports for 2000 and 2001 could, however, not be located. But between 1 January 2002 and December 2011, the ICD captured a total of 1 403 complaints of police non-compliance with the DVA, with three-quarters of these representing a failure to ensure complainants' safety. Of these, failure to arrest the abuser was the most frequent complaint (52.1% of all complaints), followed by the refusal to open criminal cases (13.6% of cases). In a further 12.3% of complaints the police were alleged to have failed to assist survivors of domestic violence to find suitable shelter or obtain medical treatment. This percentage also included cases where the police did not escort victims to collect their personal property, or seize dangerous weapons from the abuser.

The ICD would have issued recommendations to the SAPS in each of these complaints. Analysis of complaints recorded between 1 January 2006 and 31 December 2011 (chosen because reporting on complaint outcomes was most standardised during this period) suggests that the SAPS provided no information to the ICD in 67% of the 694 domestic violence complaints submitted during this period. Comparison with a different study's review of police response to

ICD recommendations suggests this percentage may have been even lower than the SAPS response to class IV complaints generally. This review of 573 complaints lodged between the ICD's inception and 2007 found the SAPS to respond to 50.2% of recommendations in this category of complaints.²⁵

The transfer of oversight from the ICD to the CSP led to an even lower rate of response by the SAPS. In the first year of its new role, the CSP received a total of 22 complaints from three provinces, a 77% decline in the number (94) recorded by the ICD in its final 12-month reporting period.²⁶ By its third six-monthly report, the CSP could count 27 complaints from four provinces.²⁷ However, not one of the complaints recorded in the CSP's second and third reports had been forwarded to the CSP by the SAPS as stipulated by the DVA. Instead, they had been identified by CSP monitors in the course of their station audits.²⁸ Because the vast majority of stations audited did not maintain the register that recorded police officers' non-compliance with the act (although some stations were recording such misconduct in the general Disciplinary Register), this number also undercounted the extent of misconduct, as comparison with SAPS data shows.²⁹ Where the national office of the CSP collated 49 complaints for the period 1 April 2011 to 30 September 2012, the SAPS reported 280 DVA-related cases of misconduct that came to the attention of SAPS disciplinary forums between 1 July 2011 and 30 September 2012.³⁰ Further, because cases of misconduct are not being referred to the CSP or provincial departments of community safety, the CSP obviously cannot issue recommendations to the SAPS regarding the handling of those cases.

Contributing significantly to this situation is the SAPS's failure to amend *National Instruction 7/1999* to reflect the changes from the ICD to the CSP, which affects cooperation between

the SAPS and provincial offices of community safety.³¹ In a further indication of a lack of will, the SAPS has not issued internal directives compelling cooperation.³² In the absence of amendments to the National Instructions, the CSP and SAPS agreed to Standard Operating Procedures in 2015.³³

In 2012 the CSP instituted a national quarterly compliance forum with the purpose of discussing how to improve the police's implementation of the DVA.³⁴ The forum includes the compliance directorate of the CSP and the following divisions of the SAPS: visible policing, which reports on the status of the DVA's implementation; personnel services, which reports on the status of disciplinary proceedings; the human resources division, which reports on SAPS training around the DVA; the SAPS Inspectorate, responsible for providing information regarding the investigation of cases of non-compliance; and crime intelligence, which provides statistics on the reporting of domestic violence to the SAPS.³⁵ However, the SAPS's attendance at these meetings could not be counted on.³⁶ By September 2016 provincial compliance forums had also been established in the Western Cape, Eastern Cape, Limpopo and the Free State.³⁷

Yet, as the figures cited earlier suggest, even these interventions have proved inadequate to the challenge of demanding information from the SAPS, or recommending consequences based on this information.

The national SAPS has itself struggled to compel provincial offices to provide reports of misconduct. In 2013, for example, three provinces reported no instances of misconduct between July 2011 and March 2012, while the Western Cape recorded 186 cases of misconduct.³⁸ It seemed that this significant difference could more likely be attributed to the province's adoption of zero tolerance for non-

compliance rather than to a particularly parlous standard of policing.³⁹ In 2014/15 four provinces reported no misconduct – but by 2015/16 814 cases of misconduct, emanating from all nine provinces, were reported by the SAPS in its annual report.⁴⁰ The CSP, however, could still only point to 235 cases identified from its station audits.⁴¹

The transfer of oversight from the ICD to the CSP also came at the cost of an independent avenue of complaint, as well as a source of assistance to complainants. ICD reports show how the agency ensured that warrants of arrest were executed, firearms removed, or complainants accompanied to collect their belongings.⁴² However, on 11 November 2016 regulations were finally gazetted to enable provincial departments of community safety to receive complaints directly from the public, and to investigate and respond to these.⁴³ The effects of the reinstatement of an independent avenue of complaint remain to be seen.

Documenting the provision of services

It is seldom possible to observe interactions between police members and complainants of domestic violence *in situ*. Station audits can provide indirect evidence of these through their reports on police members' actions. They thus potentially act as a proxy for the quality of services to complainants – assuming that in an environment where the police are observing their documentary obligations, they are (probably) also performing their service duties. In addition, where complaints lead to the correction of prior conduct, the audits hold the promise of improving both current and future standards of conduct. Finally, they shift the focus from individual members of the SAPS to their management.

The ICD developed a checklist against which to audit the SAPS's fulfilment of its administrative duties. While this initially focused on the duties prescribed by the act, the ICD expanded the

scope of its supervision to assess the training, operational planning and infrastructure (in the form of victim-friendly rooms) required to support the police in the execution of their duties.⁴⁴

In 2001 the ICD also began noting cases of domestic violence perpetrated by the police, and in 2009 it released a study analysing 30 cases of police members killing their female partners between 2004/5 and 2006/7.⁴⁵

Table 1 sets out the percentage of stations visited by the ICD between July 2006, when the ICD first started calculating the proportion of stations visited that were fully compliant with the record-keeping obligations demanded by the DVA and National Instructions, and December 2011. As the table shows, the majority of stations audited did not meet the necessary standard – a state of affairs also noted by the Auditor-General in his 2009 report to Parliament.⁴⁶

When the CSP became responsible for the station audits, it largely maintained the focus established by the ICD. (It did occasionally investigate whether or not stations designated specific officers to deal with domestic violence, or collaborated with other local institutions and organisations.)⁴⁷ The audits themselves were delegated to the provincial offices of community safety, whose ability to monitor the DVA has proved highly variable, as Table 2 shows. While KwaZulu-Natal, Eastern Cape and the Northern Cape monitored 36% or fewer of their stations, Gauteng, Mpumalanga, North West and the Free State are extremely likely to have monitored all their stations at least once. Where this is the case, stations have been counted once to prevent inflating the overall total through double-counting. Using this method, only three of the 725 stations audited (reduced from 915) were found to be fully compliant with the DVA and National Instructions between April 2012 and March 2015.⁴⁸ This significantly reduced proportion is likely also due to the CSP utilising

Table 1: Percentage of stations visited between 2006 and 2009 that were fully compliant with their statutory obligations

Number of stations visited ⁴⁹	Period	% stations fully compliant with the DVA
116 stations visited	July – Dec 2006	30%
395 stations visited for the year	Jan – June 2007	57%
	July – Dec 2007	28%
434 stations visited for the year	Jan – June 2008	14%
	July – Dec 2008	13%
522 stations visited for the year	Jan – June 2009	11%
	July – Dec 2009	8%
208 stations visited for the year	Jan – June 2010	7%
	July – Dec 2010	11%
208 stations visited for the year	Jan – June 2011	12%
	July – Dec 2011	7%

Table 2: Number of stations monitored by provincial offices between April 2012 and March 2015⁵⁰

Province (number of stations) ⁵¹	2012/13	2013/14	2014/15
Gauteng (144 stations)	68 (47%)	88 (61%)	88 (61%)
Mpumalanga (87 stations)	22 (25%)	41 (47%)	41 (47%)
Limpopo (100 stations)	4 (4%)	3 (3%)	38 (38%)
North West (82 stations)	40 (49%)	31 (38%)	40 (49%)
Free State (111 stations)	55 (50%)	49 (44%)	50 (45%)
KwaZulu-Natal (187 stations)	25 (13%)	14 (7%)	20 (11%)
Northern Cape (92 stations)	12 (13%)	16 (17%)	4 (4%)
Eastern Cape (197 stations)	12 (6%)	18 (9%)	38 (19%)
Western Cape (150 stations)	68 (45%)	20 (13%)	16 (11%)
Total (1 150 stations)	300 (26%)	280 (24%)	337 (29%)

tools that are different to those of the ICD, even if their focus has remained very similar.

In 2016 the CSP concluded that its recommendations were resulting in a steady improvement in the police's compliance with

the DVA, the average level of compliance having increased from 71% in 2013/14 to 81% in 2015/16.⁵² Given the unevenness of provinces' monitoring, this is not a particularly convincing claim and only really likely to apply

where monitors had visited stations twice and could show the difference between their first and second visits. CSP reports do not provide such a comparison, however.⁵³ Further, by 2015 the SAPS had also started to undertake station visits to assess compliance with the DVA, which too may be having some effect.⁵⁴

Provinces' uneven ability to monitor police stations also led the portfolio committee in late 2014 to question the validity of the CSP's pronouncements on national levels of compliance.⁵⁵ The committee was even more displeased when the CSP again appeared in front of members in May 2015 without having altered its method of selecting stations in any way.⁵⁶ It took until 2016 for the CSP, in consultation with Statistics South Africa, to devise a revised method of selecting stations (to be introduced in 2017/18).⁵⁷ However, the problem of unrepresentative data is not solely due to provinces' methods of selection. When the legislation was altered provinces did not calculate the costs of the monitoring, and it was consequently treated as an unfunded mandate. The result has been insufficient staff and resources, affecting provinces' monitoring output.⁵⁸ Parliamentary discussions do not say whether or not this limitation has been addressed.

The DVA's accountability mechanisms in action

While the DVA came into operation in December 1999, only the ICD initially exercised its accountability functions. Showing how this changed, and continues to change, reveals accountability to be perpetually evolving rather than permanently secured. Indeed, in relation to the DVA, its practice has been highly contingent upon the composition, strength and responsiveness of the Police Portfolio Committee, and the extent of intervention by women's organisations.

Although the ICD released its first report on the DVA in 2001, the SAPS and Parliament were only roused to their responsibilities in 2007.⁵⁹ This was the result of two processes. In 2006 the Tshwaranang Legal Advocacy Centre (TLAC) served papers on the SAPS, indicating its intention to approach the courts for an order compelling the police to comply with their parliamentary reporting obligations. Subsequent discussion between the SAPS and the TLAC halted legal proceedings on the understanding that these would be resumed should the SAPS not submit its parliamentary reports within a reasonable period.⁶⁰ Research that dealt with budgeting for the act, and compliance with the DVA's prescripts was also circulating in the public domain during this period, alerting a researcher attached to the Police Portfolio Committee to these duties. She then brought these to the attention of the chair of the portfolio committee.⁶¹ From 2007 onwards, minutes for the portfolio committee demonstrate a more consistent engagement by the committee with the SAPS and the ICD around the DVA – and their increasing frustration with the SAPS.⁶²

By 2009 other horizontal accountability mechanisms began training their focus on the SAPS's implementation of the DVA. The auditor-general's report for that year expressed its concerns, and the first case dealing with non-compliance was decided by the courts.⁶³ The Portfolio Committee for Women, Children and People with Disabilities also conducted public hearings around the DVA in the same year, in which critique of the police figured prominently.⁶⁴ A particularly robust set of chairpersons of the Police Portfolio Committee have also been appointed since 2009. They have invited, and shown themselves responsive to, civil society representations. Indeed, the engagement between civil society organisations and the committee provides an all-too-fleeting glimpse of diagonal accountability at work.

In 2011 the Gender, Health and Justice Research Unit, the TLAC and the Limpopo Legal Advice Centre were asked to address the committee on the policing of domestic violence, alongside the ICD. The SAPS was invited to respond to the presentations and was severely criticised by the portfolio committee in the process.⁶⁵ The effects of such a public drubbing were electrifying and served to place domestic violence on the SAPS management agenda in a way that had not been achieved previously. A detailed circular went out to all stations in the country, as well as the provincial office and the SAPS Inspectorate, instructing them on their responsibilities. The extent of provincial compliance with the DVA also became an item against which provincial commissioners' performance was assessed and provincial training targets were set. By November 2011 a workshop had been arranged to examine how to streamline processes, and by 2012 the SAPS was exploring the development of a national strategy around the DVA, where none had previously existed.⁶⁶ But such a strategy still did not seem to have been finalised at the time of writing.

The SAPS Annual Performance Plan for 2013/14 also points to increased attention by the police to training around violence against women. Domestic violence was the fifth-largest training programme for that period, with 460 courses planned to reach 6 500 officers.⁶⁷ A politics of shame had finally embarrassed the police into action, as a 2013 circular, reminding SAPS members of the need to comply with their duties, implied: 'In this regard SAPS top management is constantly being criticised by the various Portfolio Committees and NGOs for poor compliance to (*sic*) the Act.'⁶⁸

New questions about domestic violence and accountability

As the SAPS has increasingly been made to answer for the implementation of the DVA, a

more substantive notion of accountable conduct has come into being, resulting in greater responsiveness, transparency and liability. This has only been to the benefit of domestic violence complainants. Yet this account also raises deeper questions. First, to what extent does the CSP qualify as an accountability mechanism? It may audit police stations, but appears unable to compel the SAPS to provide information about its members' misconduct or to influence the actions taken against them. This effectively renders the CSP an accounting agency, rather than an accountability mechanism. It literally provides a count of things – but these inventories of police inadequacy are of no consequence.

A second set of questions emerges around the extent to which form and structure have come to overshadow substance, for while the police have gotten better at meeting their reporting requirements, this does not represent unambiguous evidence of a high standard of service to complainants. Indeed, it has been suggested that the punitive approach to individual police members' non-compliance may have encouraged the avoidance of domestic violence cases out of fear of the possible personal repercussions. To avoid these, some police members refer women to the magistrates' courts to obtain protection orders, rather than opening criminal matters.⁶⁹

In 2009 approximately one in 20 of the women (4.9%) killed by their intimate partners was in possession of a protection order.⁷⁰ It is deeply concerning that police negligence may have contributed to these and the deaths of other family members, as media reports and court cases suggest. In Johannesburg in 2010, a Mr Nthite killed his two children and committed suicide while his estranged wife, who had been informed of his intentions, begged the police to act on her protection order.⁷¹ Also in Johannesburg, a Ms Masemola was stabbed

to death in 2012 by her ex-boyfriend following a long history of abuse, which included burning her house down prior to the attack. Again, despite Ms Masemola's being in possession of a protection order, the police had failed to arrest her former partner following any of these incidents.⁷² In 2016 the police in Gauteng settled out of court for an undisclosed sum in a matter that had resulted in a woman's murder, again after multiple, unsuccessful attempts to persuade the Sophiatown SAPS to act on a protection order.⁷³ In the same year, police inaction at Delft in the Western Cape was implicated in the kidnapping and rape of a woman estranged from her partner, as well as the murder of the couple's child.⁷⁴

Other violence has followed from the police's disregard of their duties. In 2009 they were successfully sued in the Eastern Cape when their failure to arrest a respondent for breaching a protection order left him free to rape his estranged wife.⁷⁵ A second case in Pretoria in 2011 again found police inaction to have resulted in rape and attempted murder, while in 2015 the police were ordered to pay damages to a woman who was assaulted and arrested by a police member after she had attempted to lay charges of assault against her husband at Lenasia South police station in Gauteng.⁷⁶

Thus, while the SAPS has learnt to better comply with some aspects of the law, it has not necessarily learnt to police domestic violence in ways that better protect complainants. This may be represented as the difference between treating the information generated by the DVA's various forms, statements and registers as nothing more than proof of practice – or approaching these documents as a source of information about how to ensure the safety of domestic violence complainants. For within these records is material that may promote understanding of the circumstances surrounding domestic violence murders, as

well as the needs of repeat victims of domestic violence.⁷⁷ Seen in this way, accountability becomes a source of institutional learning, and not only a site of sanction.

Conclusion

In 1998 legislators crafted a multi-dimensional system of accountability designed to compel both an individual and an organisational response to domestic violence. But as this history demonstrates, legislating accountability was only the minimum condition for its practice, and the mere fact of accountability mechanisms' existence was not sufficient to ensure their effectiveness. Indeed, the workings of these various mechanisms suggest a conceptualisation of accountability as the sum of its parts – as a contingent outcome and practice that emerges through the interaction of an ensemble of institutions and mechanisms, rather than being inherent in the work of any one mechanism.⁷⁸ These interactions have ranged across the domains of the legal, the political, the bureaucratic and the social. But whatever the improvements, ambivalence still marks the exercise of accountability in relation to domestic violence. The police may well be required to answer for their conduct – but this is to an agency possessing limited capacity and only weak institutional authority.



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Notes

- 1 D Kaminer et al., Risk for post-traumatic stress disorder associated with different forms of interpersonal violence in South Africa, *Social Science and Medicine*, 67, 2008, 1589–1595.
- 2 N Abrahams et al., Intimate partner femicide in South Africa in 1999 and 2009, *PLoS Medicine*, 10:4, 2013, 1–8.
- 3 I Olckers, Safety and Security, Justice and Correctional Services, in D Budlender (ed.), *The second women's budget*, Cape Town: IDASA, 1997, 131.
- 4 A Goetz, Women's political effectiveness: a conceptual framework, in AM Goetz and S Hassim (eds), *No shortcuts to power*, London: Zed Books, 2003.

- 5 M Bovens, Two concepts of accountability: accountability as a virtue and as a mechanism, *West European Politics*, 33:5, 2010, 946–967.
- 6 Goetz, Women's political effectiveness.
- 7 A Goetz and R Jenkins, Hybrid forms of accountability: citizen engagement in institutions of public-sector oversight in India, *Public Management Review*, 3:3, 2001, 363–383; see also Bovens, Two concepts of accountability.
- 8 Domestic Violence Act 1998 (Act 116 of 1998), Preamble.
- 9 These provisions are contained in the Domestic Violence Act, sections 3, 7, 8, 9 and 13.
- 10 Ibid., Section 18(4)(a).
- 11 Ibid., Section 18(4), 5(c) and (d).
- 12 The Independent Complaints Directorate (ICD) was established in April 1997 in terms of the South African Police Service (SAPS) Act 1995 (Act 68 of 1995), Section 53.
- 13 ICD, Domestic violence report July to December 2010, Report to Parliament, 4.
- 14 J Burger and C Adonis, South African Police Services' (SAPS) compliance with recommendations by the Independent Complaints Directorate, ICD and Institute for Security Studies (ISS), Research Report, 2007.
- 15 Although the establishment of the CSP was mandated in terms of Section 208 of the 1996 Constitution, only provincial structures in the form of departments of community safety were set up in the 1990s.
- 16 Parliamentary Monitoring Group (PMG), Domestic Violence Act report July to December 2007: Independent Complaints Directorate briefing & ICD Oversight Report: adoption, minutes for meeting, 18 June 2008, <https://pmg.org.za/committee-meeting/9297/> (accessed 16 March 2017).
- 17 Independent Police Investigative Directorate (IPID), *Annual report 2015/16*, Pretoria: IPID, 2016, 58.
- 18 Civilian Secretariat for Police Service Act 2011 (Act 2 of 2011), Section 5(a), (b).
- 19 Ibid., Section 6(c), (d); Civilian Secretariat for Police Service Act (2/2011): Civilian Secretariat for Police Service Regulations, *Government Gazette*, 4014, 11 November 2016, 18–62.
- 20 Department of Justice and Constitutional Development, *Annual report 2015/16*, Pretoria: Department of Justice and Constitutional Development, 2016, 35.
- 21 Ibid., 35.
- 22 See L Vetten et al., Implementing the Domestic Violence Act in Acornhoek, Mpumalanga, Tshwaranang Legal Advocacy Centre, Research Brief, 2, 2009; Khayelitsha Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha, *Towards a safer Khayelitsha*, Cape Town: Khayelitsha Commission of Inquiry, 2014.
- 23 PMG, Domestic Violence Act; Firearms Control Act; Civilian Secretariat Act: implementation; Civilian Secretariat performance: Mid-Year Review, minutes for meeting on 5 November 2014, <https://pmg.org.za/committee-meeting/17830/> (accessed 9 January 2017).
- 24 See the Civilian Secretariat for Police's (CSP) webpage: CSP, Reports, <http://www.policesecretariat.gov.za/publications/reports.php> (accessed 28 February 2017).
- 25 This percentage is based on a convenience sample of 573 complaints lodged between the ICD's inception and 2007. See Burger and Adonis, South African Police Services' (SAPS) compliance.
- 26 CSP, *Report on the implementation of the Domestic Violence Act 01 April – September 2012*, 2012, 20–21; CSP, *DVA monitoring report second bi-annual report*, 2013, 13–14.
- 27 CSP, *DVA monitoring report: no. 3*, 2013.
- 28 CSP, *Second bi-annual report*; CSP, *Report no. 3*.
- 29 CSP, *Report 01 April – September 2012*, 14.
- 30 Ibid.; CSP, *Second bi-annual report*; CSP, *Report no. 3*; PMG, Domestic Violence Act implementation: six-month report by Secretariat on Police and SAPS, minutes for meeting, 13 May 2013, <http://www.pmg.org.za/report/20130514-domestic-violence-act-implementation-six-month-report-secretariat-police-and-saps> (accessed 9 January 2017).
- 31 CSP, *Report 01 April – September 2012*; CSP, *Second bi-annual report*.
- 32 PMG, CSP Domestic Violence Act presentation, 18 August 2015.
- 33 Ibid.
- 34 CSP, *Report 01 April – September 2012*.
- 35 Ibid., 9.
- 36 PMG, Domestic Violence Act implementation: SAPS, CSP & IPID report; SAPS provincial commissioner apology; National Commissioner alleged SMS to MP, minutes for meeting, 18 August 2015, <https://pmg.org.za/committee-meeting/21337/> (accessed 28 February 2017).
- 37 PMG, Domestic Violence Act reports: CSP briefing; CSP Jan–Jun 2016 performance & CSP/IPID Consultative Forum, minutes for meeting, 20 September 2016, <https://pmg.org.za/committee-meeting/23300/> (accessed 9 January 2017).
- 38 PMG, Six-month report.
- 39 Ibid.
- 40 PMG, Domestic Violence Act implementation: SAPS, CSP & IPID report; SAPS provincial commissioner apology; National Commissioner alleged SMS to MP, minutes for meeting on 18 August 2015, <https://pmg.org.za/committee-meeting/21337/> (accessed 9 January 2017); South African Police Service (SAPS), *Annual report 2015/16*, Pretoria: SAPS, 2016, 136.
- 41 PMG, DVA Presentation to the Portfolio Committee on police: key trends 2016, 20 September 2016, <https://pmg.org.za/committee-meeting/23300/> (accessed 28 February 2017).
- 42 See ICD, Domestic violence report to Parliament for the period January – June 2007.
- 43 Government Gazette, Civilian Secretariat for Police Service Act (2/2011).
- 44 ICD, Domestic violence report July to December 2010, Pretoria: ICD, 2011.
- 45 ICD, Femicide: A case study on members of the South African Police Service, 2009, http://www.ipid.gov.za/documents/report_released/research_reports/Femicide%20Report.pdf (accessed 9 January 2017). The ICD also offered its own analysis of SAPS non-compliance with the DVA. As it is based on a small and unrepresentative sample of 33

- cases, it is not included here. See ICD, A study of the factors contributing to the SAPS non-compliance with the Domestic Violence Act, http://www.gov.za/sites/www.gov.za/files/ICD_DVA%20Non-Compliance%20Report%202009_26062009.pdf (accessed 9 January 2016).
- 46 Auditor-General South Africa, *Report of the Auditor-General on a performance audit of service delivery at police stations and 10111 call centres at the South African Police Service*, 2009, http://www.agsa.co.za/Reports%20Documents/89380_Delivery%20at%20Police%20Stations.pdf (accessed 9 January 2017).
 - 47 CSP, *Second bi-annual report*; CSP, *Report no. 3*.
 - 48 Calculations based on PMG, CSP Domestic Violence Act presentation of 18 August 2015, <https://pmg.org.za/committee-meeting/21337/> (accessed 28 February 2017).
 - 49 All data drawn from ICD reports.
 - 50 PMG, CSP Domestic Violence Act presentation.
 - 51 This list of police stations in each province is available from <https://www.saps.gov.za/services/crimestats.php> (accessed 16 March 2017) Station totals for each province were based on the crime statistics released by the SAPS for 2015/16.
 - 52 PMG, Domestic Violence Act reports.
 - 53 The national office of the CSP also undertook four return visits to stations in 2013, finding two stations to show no change and the other two to have demonstrated some improvement.
 - 54 PMG, CSP Domestic Violence Act presentation.
 - 55 PMG, Domestic Violence Act; Firearms Control Act; Civilian Secretariat Act.
 - 56 PMG, Civilian Secretariat for Police on DVA reports; National & Provincial Community Police Boards on its establishment, mandate & activities, minutes for meeting, 27 May 2015, <https://pmg.org.za/committee-meeting/20966/> (accessed 9 January 2017).
 - 57 PMG, Domestic Violence Act reports.
 - 58 PMG, CSP Domestic Violence Act presentation.
 - 59 ICD, *Domestic violence report to the Parliament*, March 2001.
 - 60 L Vetten, Deserving and undeserving women: a case study of policy and legislation addressing domestic violence, unpublished Master's dissertation, University of the Witwatersrand, 2013.
 - 61 Ibid.
 - 62 PMG, Domestic violence report & SAPS annual report 2006/7 by National Commissioner, minutes for meeting, 31 October 2007, <http://www.pmg.org.za/minutes/20071030-domestic-violence-report-saps-annual-report-20067-national-commissioner> (accessed 9 January 2017); PMG, Domestic Violence Act report July to December 2007: Independent Complaints Directorate briefing & ICD Oversight Report: adoption, minutes for meeting, 18 June 2008, <http://www.pmg.org.za/report/20080618-domestic-violence-act-report-july-december-2007-independent-complaint> (accessed 9 January 2017).
 - 63 Auditor-General South Africa, *Report on a performance audit of service delivery at police stations; Minister of Safety and Security and Others v WH* (2009) (4) SA 213 (E).
 - 64 Parliament of the Republic of South Africa, Report of the Portfolio Committee and Select Committee on Women, Youth, Children and People with Disabilities: public hearings on the implementation of the Domestic Violence Act, 116 of 1998, in *Announcements, Tablings and Committee Reports No. 131–2010*, 2010, 3058–3079, http://parliament.gov.za/live/commonrepository/Processed/20110927/300226_1.pdf (accessed 9 January 2017).
 - 65 PMG, Domestic Violence Act: implementation, recent research and experience of service delivery: six monthly report, minutes for meeting, 22 August 2011, <http://www.pmg.org.za/report/20110823-independent-police-investigative-directorate-ipid-six-monthly-domesti> (accessed 9 January 2017).
 - 66 Ibid.
 - 67 SAPS Strategic Management, *Annual performance plan 2013/2014*, Pretoria: SAPS, 2013, 43–44.
 - 68 MV Phiyega, Policing the Domestic Violence Act, 1998 (Act No. 116 of 1998): improving service delivery to victims of crime: South African Police Service, SAPS circular, 15 June 2013 (in the possession of the author).
 - 69 Vetten, Deserving and undeserving women.
 - 70 Personal communication, Naeema Abrahams, Medical Research Council, Cape Town, 1 September 2014.
 - 71 K van Schie, I killed myself with my kids, *iol*, 28 June 2010, <http://m.iol.co.za/article/view/s/11/a/12652> (accessed 5 October 2014).
 - 72 G Hosken, Stabbed 17 times after cops failed her, *Independent Online*, 26 January 2012, <http://www.iol.co.za/news/crime-courts/stabbed-17-times-after-cops-failed-her-1.1220591?ot=inmsa.ArticlePrintPageLayout.ot> (accessed 9 January 2017).
 - 73 Personal communication, Sushila Dhever, Fasken Martineau, Johannesburg, 17 October 2016.
 - 74 *S v Bennie Adams* (SS 69/2015).
 - 75 *Minister of Safety and Security and Others v WH* (2009) (4) SA 213 (E).
 - 76 *Minister of Safety and Security v Venter* (570/09 [2011] ZASCA 42); *Naidoo v Minister of Police* (20431/2014) [2015] ZASCA 152.
 - 77 B Stanko, Managing performance in the policing of domestic violence, *Policing*, 2:3, 2008, 294–302.
 - 78 C Stone, Tracing police accountability in theory and practice: from Philadelphia to Abuja and Sao Paulo, *Theoretical Criminology*, 11:2, 2007, 245–25

Barnard v Minister of Justice: the minister's verdict

Deciding on parole for offenders serving life sentences

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*Granting parole to offenders serving life sentences has raised questions in public and political discourse. This contribution evaluates the discretion of the minister to decline parole under Section 78(2) of the Correctional Services Amendment Act 25 of 2008 (CSAA). It examines the drafting history of Section 78(2) of the CSAA, evaluates the full extent of the ministerial powers, and reviews its recent application in *Barnard v Minister of Justice, Constitutional Development & Correctional Services and Another*. It argues that ministerial discretion to refuse parole needs to be re-examined in the wake of that decision, and recommends elements for inclusion in the minister's decision to refuse parole.*

According to Section 78(2) of the Correctional Services Amendment Act 25 of 2008 (CSAA), the Minister of Justice and Correctional Services may deny parole to an offender serving life imprisonment. This role was performed by the Minister of the Department of Correctional Services even before the department was merged with the Department of Justice and Constitutional Development.¹ In 2015, Ferdi Barnard applied to the court for a review of the minister's decision denying him parole. The court declined to review the decision because it found it to be reasonable. The applicant only discovered the reasons that informed the minister's decision in the course of hearing his review application. The minister's failure to

give the applicant information regarding the outcome of his parole, and the reasons for his decision before Barnard applied for review, are problematic. This contribution analyses the minister's refusal in light of the drafting history of the section and its application in *Barnard v Minister of Justice, Constitutional Development and Correctional Services and Another (Barnard)*.² It is argued that an offender should know the decision and the reasons that informed it, at the time the decision is passed. The terms applicant, offender and prisoner are used interchangeably to refer to the offender under Section 78 of the CSAA.

Bounds of the minister's discretion to deny parole

After the National Council (NC) has considered the record of proceedings and recommendations

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of the Correctional Supervision and Parole Board (CSPB), it may recommend to the minister that an offender is placed on parole.³ If the minister refuses to grant parole, he recommends the treatment, care, development and support that the offender should undergo to improve his chances of placement on parole.⁴ The NC may advise the minister to reconsider granting parole to an offender within a period of two years from the date of the earlier decision.⁵

Consideration for parole under Section 78 of the CSAA requires that three steps be followed. Firstly, the CSPB considers the merits and the conditions that the offender should follow before he or she is granted parole, and that it makes recommendations to the NC for further scrutiny.⁶ The purpose of scrutinising the recommendations of the CSPB is to establish if the offender, when released on parole, will be able to adhere to the conditions for his release.⁷ Secondly, the NC scrutinises the recommendations of the CSPB with regard to parole of an offender.⁸ The involvement of the NC only occurs in applications for parole under the aforesaid action. Thirdly, the minister makes a decision to grant or deny parole.⁹

Section 78(2) of the CSAA gives the minister the discretion to decline to place an offender on parole, and to make recommendations that relate to the treatment, care, development and support of the offender. These recommendations are aimed at improving the offender's likelihood of being placed on parole. They should be sufficiently stated to enable the offender to make informed decisions. This section, however, does not provide for a review of the minister's decision. The offender has to resort to the Promotion of Administrative Justice Act (PAJA) to review the minister's administrative decision.

Section 6(2) of the PAJA provides for various grounds for a judicial review of an administrative decision. These include lack of authority and unlawful delegation, bias, failure to comply

with the mandatory procedure, procedural fairness, error of law, review of the decision-making process, rationality and reasonability.¹⁰ The offender may plead any of these grounds as evidence in his or her application. The PAJA does not provide for any other kind of procedure that the offender may follow, other than possible reconsideration and recommendation by the NC to the minister within a period of two years. If the minister does not reconsider his decision, the offender may apply for a review of the minister's administrative decision.¹¹

Drafting history of Section 78 of the Correctional Services Amendment Act

The object of the amendment to the Correctional Services Act in 2008 was to bring the act in line with the White Paper on Correctional Services of 2005.¹² The initial bill included Clause 62 [now Section 78], which sought to leave it to the minister to decide which offenders would get parole. The Parliamentary Portfolio Committee on Correctional Services expressed concern that certain parts of the bill gave the minister various powers relating to parole.¹³ The committee required the amendment to embrace the broader role of parole, namely that of rehabilitating the offender.¹⁴ Committee members felt that if the minister had powers to grant or deny parole, the offenders, and persons who were affected by the offender's acts, would commence unnecessary litigation.¹⁵ The two reasons that informed the committee's concern were that firstly, this litigation was perceived to be based on the executive nature of the minister's power, and secondly, that the regulatory powers of the minister under Section 82 were sufficient.¹⁶

The Constitution of the Republic of South Africa and PAJA were enacted to give effect to the principle of administrative justice in a coherent, well-managed, just, uniform and equitable system.¹⁷ However, scholars such as Julia Sloth-Nielsen held the view that the current parole system fell short of these principles, and argued

that the decision to let the minister decide parole terms contravened the rule of law.¹⁸ The South African Human Rights Commission was of the opinion that to give the minister the power to decide on parole in cases of life imprisonment would be problematic, as it was a judicial role.¹⁹ The committee nevertheless adopted the amendment, which gave the minister the discretion to decide parole terms under Section 78 of the CSAA.

The concerns of the committee prior to the adoption of the amendment related to whether the proposed acts of the minister were administrative or executive actions.²⁰ In *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*, an administrative action was defined as the action or function to be done, other than the functionary or the person who carried out the action.²¹ However, it did not reflect the peculiar nature of the executive function under Section 78(2) of the CSAA. In *Abel Zanele Mbonani v Minister of Correctional Services and Others (Mbonani)*, the court stated that organs of state should treat people with dignity, honesty and fairness.²² This position created a fusion of the functionary and the function and, therefore, the administrative act could not be severed from the minister's position as a member of the executive. In essence, the minister's decision affected the offender's right to freedom and security of a person.

Application in *Barnard*

In *Barnard*, the applicant sought to review the minister's refusal to place him on parole. At the time of his application, he had previous convictions on two counts of murder, one count of attempted murder and another count of theft. He applied for parole in 2013 after he had served 16 years and 8 months in prison. At this time the NC recommended that he should not be placed on parole and that it would reconsider his profile after 12 months.²³ The parties agreed

that the NC should submit a recommendation to the minister by 19 December 2014 and that the minister would make a decision by 31 January 2015.²⁴ The NC recommended parole for Barnard from 1 June 2015, upon completion of the pre-release programme.²⁵ He had to be monitored electronically, and adhere to the normal parole conditions of the DSC.²⁶

The minister declined to place Barnard on parole until after 12 months and required that the CSRBA aid Barnard to perform six conditions.²⁷ At this point in the parole process, the minister had on two occasions given his approval that Barnard's profile be re-examined after 12 months. Barnard based his review application on various grounds, including the fact that the decision was unreasonable.²⁸ These grounds provided evidence that there had been a violation of Barnard's right to a just and fair administrative decision. There is no need to repeat how the court dealt with the statutory and policy framework governing parole, because it is out of the scope of this contribution. The minister stated that despite the decision document being headed 'Reasons for decision', it did not contain the reasons for his refusal to grant Barnard parole.²⁹ He claimed that the 'Reasons for decision' simply listed the steps that the department would be required to take in assisting Barnard in the period between the refusal and the fresh consideration of his profile.³⁰

The minister's reply indicates that firstly, the CSPB did not communicate to Barnard the reasons for its recommendations to the NC, to be taken further to the minister. Secondly, the minister did not communicate the reasons for the refusal of parole to the offender.³¹ The drafters of Section 78(2) did not envisage these two scenarios. The minister stated that, firstly, he considered positive factors such as the applicant's behaviour and adjustment during incarceration.³² Secondly, he also considered

negative factors such as the applicant's criminal history.³³ The minister noted that that the applicant was still a danger to the community.³⁴

Only in court was the applicant alerted to the factors that the minister had considered before making the decision. The decision given to the applicant on 25 February 2015 indicated that the applicant had not been placed on parole and that the minister's recommendations had to be followed by the department before reconsidering his parole after 12 months. However, the reasons that led to the minister's decision were lacking, which the applicant did not know prior to submitting his application for review.

The court did not fault the minister for not giving the applicant all the information regarding his parole before the application for review. This was firstly an indication that the minister may deny an offender parole, and make recommendations for a future successful parole application. Secondly, the minister's reasons need not form part of the recommendations communicated to the offender on the day of the decision. In *Barnard*, the court used the reasonableness test in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others*, to evaluate the minister's decision.³⁵ The court looked at the nature of the decision, the identity and expertise of the decision-maker, and the range of factors relevant to the decision.³⁶ Other factors include the reasons for the decision, the nature of competing interests, and the impact of the decision on the lives and wellbeing of those affected.³⁷ With regard to the reasons for the decision, these were not communicated to Barnard before the application for review. The court established that the minister's decision was reasonable, but did not deal with his failure to communicate the reasons that informed his decision before Barnard applied for review. Whether the substantive reasons for the denial of parole should be communicated, and whether these reasons should be given to the

offender at the same time that the decision is communicated to the CSPB, remain unresolved.

A working framework

Parole is an executive function that requires the minister to exercise reasonableness in granting or declining it. With regard to declining parole, a clear framework is key to upholding the roles of the executive, legislature and judiciary in this administrative process. While Parliament may prescribe harsh sentences to show that the country is tough on crime, an unforgiving attitude, contrary to the ubuntu concept of national understanding and forgiveness, should be avoided.³⁸ Parole serves the interests of offenders, victims and government through the encouragement of the use of ubuntu for reconciliation.³⁹ While there is no express policy on the use of ubuntu for parole, reconciliation embraces ubuntu as a tool for punishment.⁴⁰ A working framework that revisits the content and context of the minister's decision under Section 78(2) of the CSAA is important.⁴¹ Ubuntu serves as a transformative tool that creates cohesion in the demographic, cultural and legal diversity of South Africa.⁴² It provides a transition from South Africa's apartheid era to the democratic dispensation. Since respect for human rights is a cornerstone of this democratic dispensation, ubuntu underpins the restoration of relations between offenders and the community, which goes against parliamentary policy decisions to punish offenders.⁴³ Given that ubuntu balances punishment for a crime with restorative measures such as parole, the decision to deny parole should always take cognisance of administrative justice.⁴⁴

Engaging with the definition of administrative law is important in creating this framework. Administrative law applies to public authorities or a branch of law that regulates the activities of bodies that exercise public powers or perform public functions, irrespective of whether those bodies are public authorities in a strict

sense.⁴⁵ Secondly, administrative law is the area of public law that regulates the exercise of public power and the performance of public functions by natural and juristic persons and the organs of state.⁴⁶ Thirdly, administrative law emphasises the effective control of public administration and administrative activities to ensure that the exercise of public powers does not adversely affect the rights of individuals.⁴⁷ It is clear that administrative law effectively regulates what the administration may or may not do, and what remedies are available in the case of maladministration.⁴⁸ The actions of some private institutions or bodies may also qualify as administrative actions, even though these bodies and institutions are not strictly speaking part of the broader public administration domain.⁴⁹

These reflections do not envisage the exercise of a quasi-judicial role in the minister's refusal to grant parole, which affects an offender's right to liberty. This is because the decision is made by the minister in an administrative sense rather than a judicial one.⁵⁰ In *Derby-Lewis v Minister of Justice and Correctional Services* and *S v Makwanyane*, the courts stated that the minister needs to uphold the concept of ubuntu and embrace an individual's inherent human dignity.⁵¹ According to *Van Vuuren v Minister of Correctional Services and Others*, this course of action enables the minister to use parole as a tool of restorative justice between the offender and his community.⁵²

The content of the decision

The decision should include three aspects: the refusal to grant an offender parole, the reasons that inform this decision and the recommendations that follow. Firstly, it is only fair that these three aspects form part of the communication in order to enable an affected party to make an informed decision on the next course of action.⁵³ Secondly, it minimises perceptions of unreasonableness and administrative bias on the part of the

minister.⁵⁴ The importance of these three aspects is underscored by the problematic nature of the minister's decision, which hinges on criminal justice in as far as it determines the liberty of an individual. The non-communication of the reasons for the refusal of parole to an offender exhibits a lack of transparency. A decision communicated with these three aspects enables an offender to make an informed decision, and prepare an informed application for review. An offender who does not apply for review may follow the minister's recommendations based on the reasons that informed his refusal. These three aspects enhance the accountability of the minister to the offender, the victims and the public.⁵⁵

The offender has a right to be considered for placement on parole.⁵⁶ According to Mujuzi, parole is a legitimate expectation of an offender to be considered and placed thereon upon the fulfillment of all required conditions.⁵⁷ This is an indication that placement on parole is a privilege and not a right. However, the Constitutional Court implied the existence of the right to be placed on parole in *Agole Abdi Jimmale and Another v S (Jimmale)* when it stated that a non-parole order should be made only in exceptional circumstances.⁵⁸ The court stated that since the non-parole order was a determination in the present for the future behaviour of the offender, there was a possibility of issuing the order based on inadequate information about the offender.⁵⁹ Although the court did not expressly provide for placement on parole as a right, it implied as much. Since the court implied the granting of parole as a right in *Jimmale*, the minister's finding should therefore include the decision, the reasons that inform it and the recommendations. This conduct upholds the equitable maxim that justice should not only be done but also manifestly be seen to be done.⁶⁰

The context of the decision

The context of the decision to decline parole refers to that time when the three aspects that

form the content of the decision should be communicated. It is based on the requirement of natural justice that a person should know the reasons for a decision passed against him or her, to aid the next course of action.⁶¹ The three aspects of the content of the decision declining parole should inform the communication to the offender on the date that the decision is passed. In *Barnard*, for instance, the decision denying parole, the recommendations and the reasons for the refusal should have been communicated on the same day, before Barnard applied to the court for an administrative review. It may be that an affected party will not seek legal redress if the three aspects of the decision are communicated at once and simultaneously.

Conclusion

These recommendations may be instructive to a minister's decision to allow or deny the placing of an offender on parole. A finding under Section 78(2) of the CSAA should include the decision to refuse parole, the reasons that inform this decision, and the recommendations that should be followed by the offender. A failure to do this should launch a review application on grounds of unreasonableness under the PAJA.⁶² In his decision to decline parole, the minister may make a material departure from the reasons and recommendations of the NC. He ought to give a full explanation why he departed from the reasons and recommendations of the NC. The offender is then able to make an informed decision when deciding on a course of action. This enhances the accountability, transparency and consistency of the decisions made by the minister.

The courts should interpret Section 78(2) of the CSAA in a manner that promotes dignity, equality and freedom.⁶³ The minister's decision should enable the offender to make an informed decision before seeking administrative review of the finding. It is recommended that further research is carried out on how the courts

should do this in light of the past interpretation of Section 78(2). In the interim, the current literal interpretation of the section by the courts, requiring only that the decision and recommendations are communicated to the offender, may be solved by the aforementioned approach. Although the court dealt with the issues of *Barnard* decisively, it is probable that its position would be different if it had considered the information Barnard needed to have at a particular point in the parole process before lodging his application for review.



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Notes

- 1 N Manyathi-Jele, New justice ministry announced, *De Rebus*, 128, July 2014, <http://www.saflii.org/za/journals/DEREBUS/2014/128.pdf> (accessed 22 February 2017).
- 2 *Barnard v Minister of Justice, Constitutional Development and Correctional Services and Another* 2016 (1) SACR 179 (GP).
- 3 Correctional Services Amendment Act 25 of 2008 (CSAA), Section 78(1).
- 4 *Ibid.*, Section 78(2). For all gender pronouns, 'he' may refer to 'she'.
- 5 *Ibid.*, Section 78 (4).
- 6 Correctional Services Act 111 of 1998, Section 75(1) c.
- 7 *Ibid.*, sections 78(1), (3), (4) and 84 (5).
- 8 *Ibid.*, Section 73(1).
- 9 *Ibid.*, Section 78(2).
- 10 *Ibid.*, Section 6(2) (a) (i) and (ii), (b), (c), (d), (e) (i)-(iv), (f) and (h).
- 11 The Promotion of Administrative Justice Act 3 of 2000 (PAJA).
- 12 Parliamentary Monitoring Group (PMG), Correctional Services Amendment Bill [B31-2007]: briefing, 24 August 2007, <https://pmg.org.za/committee-meeting/8228/> (accessed 5 September 2016).
- 13 PMG, Correctional Services Amendment Bill [B31-2007]: deliberations, 31 August 2007, <https://pmg.org.za/committee-meeting/8259/> (accessed 5 September 2016).
- 14 *Ibid.*
- 15 *Ibid.*
- 16 *Ibid.*
- 17 *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC) para 45–48 deals with the interpretation of 'unreasonableness' in an administrative decision. See also *Minister of Defence and Military Veterans v Motau and Others* [2014] ZACC 18 para 33–35 on the nature of an administrative decision.

- 18 See Prof. Julia Sloth-Nielsen's remarks in PMG, Submission to the Parliamentary Portfolio Committee on Correctional Services relating to parole and the proposed amendments concerning parole in the Correctional Services Amendment Bill, 31 August 2007, para 13, <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/2007/070905sloth-nielsen.htm> (accessed 13 March 2017). For other views on reasonability as a ground for review of an administrative decision, see C Hoexter and R Lyster, *The new constitutional and administrative law*, Vol. 2, Cape Town: Juta, 2002, 187.
- 19 PMG, Correctional Services Amendment Bill [B31-2007]: public hearings, 4 September 2008, <https://pmg.org.za/committee-meeting/8274/> (accessed 5 September 2016).
- 20 *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (10) BCLR 1059 para 141.
- 21 *Ibid.*, 141.
- 22 *Abel Zanele Mbonani v Minister of Correctional Services and Others*, Unreported High Court Application 15991/2011 (judgement delivered 5 October 2011) para 12. See C Hoexter, *Administrative law in South Africa*, Cape Town: Juta, 2012, 325, note 485.
- 23 *Barnard v Minister of Justice, Constitutional Development and Correctional Services and Another*, para 10.
- 24 *Ibid.*, para 12.
- 25 *Ibid.*, para 14.1.
- 26 *Ibid.*, para 14.2–14.3.
- 27 *Ibid.*, para 15, 17. The conditions included, first, to aid restorative justice between the offender and the family of the second victim and, second, to obtain a positive address. Third, the department was required to assist the offender to strengthen his relationship with his son and, fourth, to participate in self-development programmes. Fifth, the offender had to receive further supportive therapy, and sixth, the department had to advise on security threats that might exist if the offender were placed on parole.
- 28 *Ibid.*, para 32.1–32.7.
- 29 *Ibid.*, para 34.
- 30 *Ibid.*, para 34.
- 31 The author was unable to establish which scenario was evident in Barnard's case.
- 32 *Ibid.*, para 35.1. For other positive factors, see para 35.2–35.4.
- 33 *Ibid.*, para 36.2. For other positive factors, see para 36.3–36.7.
- 34 *Ibid.*, para 36.7.
- 35 *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC); *Barnard v Minister of Justice, Constitutional Development and Correctional Services and Another*, para 81.
- 36 *Barnard v Minister of Justice, Constitutional Development and Correctional Services and Another*, para 81.1–81.3.
- 37 *Ibid.*, para 81.4–81.5.
- 38 F Hannes, Curb the vengeance: Laws on minimum sentencing and parole spell worsening prison conditions, *South African Crime Quarterly*, 10, 2004, 1–5, 4; L Wolf, Pre and post-trial equality in criminal justice in the context of separation of powers, *Potchefstroom Electronic Law Journal*, 14(5), 2011, 155.
- 39 Hannes, Curb the vengeance, 4.
- 40 DW Nabudere, Ubuntu philosophy: memory and reconciliation, *Texas Scholar Works*, 2005, 1–20, 6;
- 41 Wolf, Pre and post-trial equality in criminal justice, 155.
- 42 C Himonga, M Taylor and A Pope, Reflections on judicial views of ubuntu, *Potchefstroom Electronic Law Journal*, 16:5, 2013, 372–429, 372.
- 43 Constitution of the Republic of South Africa, 1996, Section 7(1); H Keep and R Midgley, The emerging role of ubuntu-botho in developing a consensual South African legal culture, in F Bruinsma and D Nelken (eds), *Recht der werkelijkheid*, Gravenhage: Reed Business BV, 2007, 29–56, 30.
- 44 *S v Makwanyane* 1995(3) SA 391.
- 45 GE Devenish, K Govender and D Hulme, *Administrative law and justice in South Africa*, Durban: Butterworths, 2001; L Kotze, The application of just administrative action in the South African environmental governance sphere: an analysis of some contemporary thoughts and recent jurisprudence, *Potchefstroom Electronic Law Journal*, 7:2, 2004, 58–94, 1.
- 46 Y Burns, *Administrative law under the 1996 constitution* (2nd ed), Durban: LexisNexis, 2003, 7. This category falls within the constitutional right to a just administrative action. See Constitution, Section 33; PAJA, Section 1(i) (a) and (b).
- 47 Hoexter and Lyster, *The new constitutional and administrative law*, 2-4; Kotze, The application of just administrative action in the South African environmental governance sphere, 1.
- 48 Kotze, The application of just administrative action in the South African environmental governance sphere, 1; CRM Dlamini, The right to administrative justice in South Africa: creating an open and accountable democracy (part 2), *Journal of South African Law*, 2000, 53–71, 53.
- 49 Hoexter and Lyster, *The new constitutional and administrative law*.
- 50 For an extensive discussion on review of decisions of the Commission for Conciliation, Mediation and Arbitration, see DJ van Graan, The grounds for review of CCMA awards, unpublished LLM thesis, University of Pretoria, 2014, 38.
- 51 *Derby-Lewis v Minister of Justice and Correctional Services* 2015 (2) SACR 412, para 55; *S v Makwanyane* 1995(3) SA 391, para 307–308.
- 52 *Van Vuuren v Minister of Correctional Services and Others* 2012 (1) SACR 103 (CC), para 51.
- 53 This is in line with the requirement to give a person reasons for an administrative decision under Section 33(2) of the Constitution 1996 and Section 3(2)(b)(iii) of PAJA.
- 54 E Nwauche, Administrative bias in South Africa, *Potchefstroom Electronic Law Journal*, 8:1, 2005, 36–74, 54.
- 55 Wolf, Pre and post-trial equality in criminal justice in the context of separation of powers, 155.
- 56 For a general discussion on the bounds of the right to be considered for parole, see JD Mujuzi, Unpacking the law relating to parole in South Africa, *Potchefstroom Electronic Law Journal*, 14:5, 2011, 205–228.
- 57 *Ibid.*, 209.
- 58 *Agole Abdi Jimmale and Another* 2016 (2) SACR 691 (CC), para 13. See also *Strydom v S* [2015] ZASCA 29 at para 16.

- 59 Ibid., para 13.
- 60 *R v Sussex Justices ex parte McCarthy* [1923] All ER 233; Nwauche, Administrative bias in South Africa, 53.
- 61 *R. v. Northumberland Compensation Appeal Tribunal, ex parte Shaw* [1952] 1 K.B. 338, C.A.
- 62 PAJA, Section 6(2).
- 63 The interpretation should be in line with Section 39(1) (a) of the Constitution.

Location, location, location

The settling of organised crime in Bedfordview

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Why do ‘crime bosses’ settle in one place and not another? It is an intriguing and under-researched question, and not much has been written about it. In South Africa a cluster of individuals associated with organised crime moved into, or were associated with, a particular suburb: Bedfordview, south-east of Johannesburg. The most notorious was Radovan Krejcir, but he plugged into an established network of individuals with links to the underworld. This article, based on interviews with people close to high-level crime figures or in political or civic leadership roles in Bedfordview, explores why this neighbourhood in particular was chosen. Our analysis suggests that a range of factors coalesced to make Bedfordview, an upper-class, predominantly white neighbourhood, attractive to organised crime figures. These include pull factors linked to geography, lifestyle, ethnicity and infrastructure that combined in a way that was unique in Johannesburg. Significantly, these were associated with a set of push factors that reflect changes in wider urban development and the upward (and geographic) mobility of a set of ‘businessmen’ linked to grey or illegal markets in the city.

What happened in Bedfordview?

In 2010, the suburb of Bedfordview in the east of Johannesburg entered the crime headlines.¹ Strip club boss Lolly Jackson had

been murdered and a controversy raged over which of his Bedfordview neighbours – local conman and criminal middleman George Louca or Czech crime boss Radovan Krejcir – had pulled the trigger, and whether they had been helped by a high-ranking police official. Within a few years Bedfordview became known as the stomping ground of some of the city’s most notorious underworld figures and, above all, as Krejcir’s home base. Of the many crimes – including several murders and a bomb attack – that were linked to Krejcir and his associates, a large number took place in Bedfordview itself (See Box 1). Yet Bedfordview is no red-light

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district or hollowed out inner-city area. Rather, it is an affluent suburb with large houses and high walls, a robust network of neighbourhood watches and an active community police forum: the very model of upper-class South African gentility.

In this article we set out to interrogate why Krejcir chose Bedfordview as his home and his operational base, and why this worked so well for him for several years. Curiously, understanding why organised crime figures settle in one place or another is an issue not widely considered in the literature. Klaus von Lampe in his otherwise landmark and comprehensive study of criminal markets points only to 'inner city slums' as the breeding ground for organised crime.² There is not much literature, for example, that examines, beyond passing references, the clustering of British organised crime figures in the south of Spain. One partial exception is Varese, who examined the conditions for the successful criminal transplantation of mafia figures at the global level by exploring the local conditions that allowed some criminal figures to integrate into local societies.³ Criminology's focus is, as has been pointed out before, often on the margins of society (the metaphorical slums) and not enough on places where deviance is apparently unexpected.⁴ That the slum is a spatial and geographic concept associated with criminal activity should not blind us to the fact that organised criminality can also cluster in upmarket areas.

Our study is a highly localised and very South African attempt to understand a single upmarket suburb and the overlapping conditions that made it inviting to organised crime. We explore why, during the height of Krejcir's career, Bedfordview had become, or had been exposed as, a node of externally implanted organised criminal activity. While this topic has been covered in the media, we sought

to bring greater depth to it through 10 in-depth interviews with criminal associates, journalists, private investigators and prominent figures in Bedfordview in November 2016.⁵

Box 1: Serious crimes connected to Krejcir occurring in Bedfordview⁶ (see Figure 1)

- The murder of private investigator Kevin Trytsman, allegedly by his lawyer George Michealides.
- The luring of German car dealer Uwe Gemballa to the country by Jerome Safi, whose family are long-term residents of Bedfordview, on instruction from Krejcir; Gemballa was murdered in Edenvale, which is close to Bedfordview.
- The bombing of Krejcir's Money Point store; Krejcir associates Jan Chavron and Ronny Vuma died in the explosion.
- The Money Point store, ostensibly a pawn shop, was reportedly used as a base for laundering goods, paying bribes to police, and administering criminal deals.
- The assault and torture of Bheki Lukhele in Krejcir's Money Point store.
- The attack against Krejcir by an unknown rival who used guns that fired out of the boot of a car, triggered remotely.
- The murder of Serbian assassin Vaselein Laganin, allegedly by Krejcir's henchmen.
- The murder of the drug dealer Sam Issa, allegedly by Krejcir's henchmen.

This analysis produces an understanding of how place, history and social networks can work together at particular moments in time to produce a 'space' for heightened criminal opportunities; and, in the case of Bedfordview, in ways that subvert typical understandings of 'bad neighbourhoods' and their suitability for

organised crime. In this theory, 'space' goes beyond an understanding of a geographic place where a crime was committed, to encompass the analysis of a space containing a clustering of criminal networking and organisation that had countrywide consequences. (The joking reference to 'Deadfordview' is a reminder that the suburb was a location for actual violence as a result of its criminal fraternity.)

It is also worth saying that the 'criminal space' that we identify in the article fits a particular white subculture. As such, it does not by any means convey the evolution of the wider criminal networks that span Johannesburg; for example, township-based armed robbery gangs, or the hierarchical and often criminalised violence that dominates the taxi industry, although there is on occasion some intersection between these networks. It does, however, have important linkages to the changing nature of policing in the country. Thus, a portal into Bedfordview represents one important segment of the criminal market and the changing nature of criminal actors as they continue to shape life (and death) in the city of gold.

The history of a white picket-fence criminal subculture

Our informants were consistent about what made Bedfordview an attractive node for underworld players. Bedfordview was repeatedly characterised as an excellent 'meeting place' with a distinct and attractive 'Mediterranean' feel, and a 'new money place'. Understanding Bedfordview's urban history illuminates why it so suddenly became a (wealthy) gangster's paradise – and why that should not have been surprising.

Bedfordview began to take shape in the early 1900s when farmland was subdivided into smallholdings, many settled by retired miners from the Rand. By the 1930s a small village had

developed. It retained a peri-urban, village-like character late into the 20th century.

The construction of the major Witwatersrand freeways in the 1960s and 70s was an important turning point in Bedfordview's fortune (see Figure 1). These highways linked Johannesburg's south and its East Rand towns, and the international airport in Kempton Park. Bedfordview sits at the confluence of the highways coming from these directions. For this reason it was chosen as the site for Eastgate shopping centre, Johannesburg's first mega-mall outside the central business district (CBD). Constructed in 1979 with stores from all the major high-end retailers, it drew shoppers away from the CBD. The Bedford Centre, built in 1969, was revamped in the 2000s into a mixed residential, shopping and office development marketed at the wealthy. From the 1960s an exodus of white businesses and residents from the CBD spurred rapid development in hitherto peripheral neighbourhoods. Bedfordview began to densify in earnest, as its undeveloped smallholdings provided spacious plots for large houses, from which residents could easily commute by car.⁷ Although Johannesburg's northern suburbs have traditionally been the preferred location for wealthy whites, by the 1990s Bedfordview too had become a place of walled mansions.⁸

In addition to a commercial centre, Bedfordview became a place shaped by several waves of migration from Europe, the Levant and former colonies to Johannesburg. Bedfordview is divided into six suburbs, some characterised by the settlement of a distinct migrant community. In Senderwood, for instance, Greek migrants and their naturalised descendants have clustered close to SAHETI School. In a Greek restaurant in Senderwood's commercial centre, old men, chatting in Greek, can be found playing backgammon all day. Italian, Portuguese and Lebanese South Africans also have distinct networks in the suburb, built around restaurants,

churches and other sites of sociability.⁹ Bedfordview's 'European' communities take pride in their heritage, and the suburb nurtures a somewhat 'outsider' identity.¹⁰

At the same time as Bedfordview's star was rising, many of the areas nearby went into decline. Areas such as Bezuidenhout (Bez) Valley, suburbs in the south of Johannesburg and East Rand towns were predominantly white working class up until the 1990s.¹¹ These neighbourhoods have particular histories of military conscription, hyper-masculinised identities and social conditions that shaped the outlooks and prospects of the men who gravitated towards opportunities on the border of the licit and illicit in Johannesburg's economy.¹² Many men from the south, Bez Valley, and inner city neighbourhoods such as Hillbrow were key recruits for the bouncer mafias of the 1990s and early 2000s.¹³

Likewise, suburbs close to the CBD that had themselves hosted criminal subcultures, such as Cyrildene and Hillbrow, fell prey to slum-landlording, redlining and urban decay, a result of the complex story of Johannesburg's CBD class transformation over the latter decades of the 20th century.¹⁴ This process reached its peak after 1994 and has not been reversed.¹⁵

A 'new money' place

For many people who grew up in the south and east of Johannesburg over the last several decades, Bedfordview is the object of their ambitions for social mobility. Several of our informants – who had themselves lived in the south and the east – highlighted the fact that Bedfordview was an island of wealth in the midst of a large swathe of white working-class Johannesburg for most of the late 20th century.¹⁶ The men and women who grew up in Bez Valley, Malvern and Alberton aspired to live in Bedfordview. This applied both to those who had graduated from the lower and

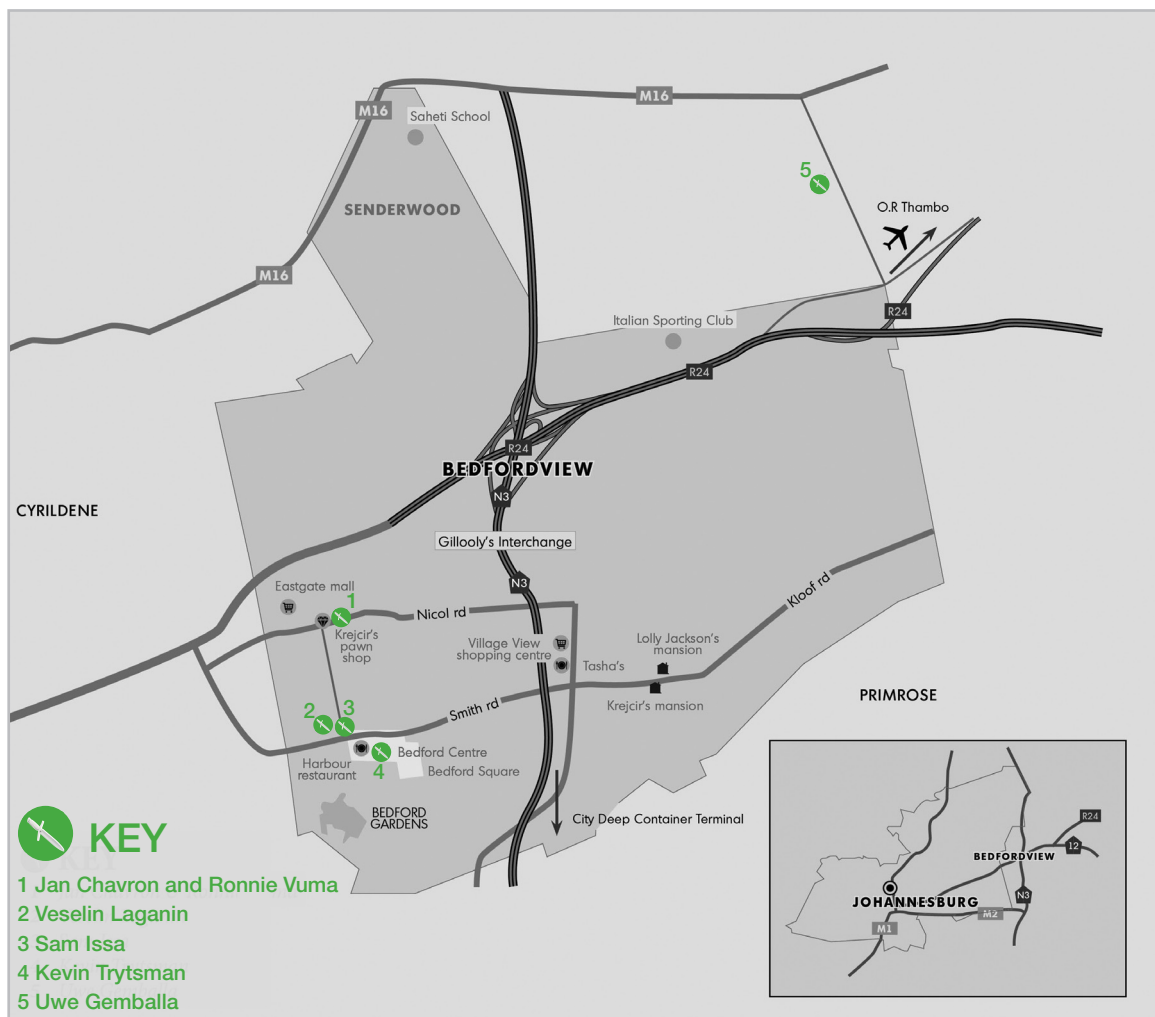
middle class to its upper echelons, and to a group of aspiring underworld figures. For example, Jackson, who was for a time before Krejcir's arrival the underworld lynchpin of the neighbourhood, had grown up in the adjacent suburb of Primrose Heights. As one informant explained:

Primrose is a lower socioeconomic bracket area. I know a few people who came from Danville [High School, in Primrose Heights] and who were like Lolly. They looked down on Bedfordview and thought 'One day I'll be there, one day I'll be there!' And they made their money in clean ways or dirty ways and they got there.¹⁷

Other notorious characters from Johannesburg's white underworld also gravitated to Bedfordview, if not to live, then to socialise. Mikey Schultz, a founder of bouncing mafia 'Elite' and assassin of mining magnate Brett Kebble, was a regular presence at the Bedfordview News Café, as was James Murray, the 'businessman' who had provided the loan for the assassination.¹⁸

Bedfordview was always a popular recreation space for a dwindling number of ex-bouncers, debt collectors, thugs and fixers, who provided muscle and criminal 'piecework' for men higher up in the criminal hierarchy. In their youth they had sold intimidation or exploited transitory criminal markets, such as the selling of drugs in nightclubs.¹⁹ By 2007 many had successfully escaped the poverty of Bertrams, Bez Valley and La Rochelle, and some continued to operate in the grey areas of Johannesburg's economy, often as 'glorified debt collectors' who would 'sort out business disputes, where people didn't have recourse to law, but in an informal way,' and were constantly on the lookout for opportunities, licit and illicit.²⁰ Then there were men who sold information or influence, who often came from similar backgrounds, though some had bypassed the more physical roles of bouncer or VIP protection and had focused their careers

Figure 1: Map of Bedfordview including locations of crimes (see Box 1)



on scams and ‘knocks’, and facilitating dodgy deals.²¹

The reason these men were attracted to Bedfordview, according to our sources, was its ‘new money’ character, which provided a comfortable environment for whites from working-class neighbourhoods to flaunt their new affluence. One informant sketched the way that these men were drawn to certain environments by cultural fit, more than spending power:

[P]eople in Sandton, Saxonwold, Houghton, Inanda – those people are aloof ... Their youngsters are doctors and

accountants. They are old money. These guys in Bedfordview, they are new money. They enjoy jolling. They enjoy having a chat. They look like your gangsters from the Baltic region. They wear tracksuit pants. They wear big gold chains. They sit around and say, ‘howzit my china, howzit my bru’. They’ve got the money for Ferraris and Porches but they all belong to boxing clubs, they all do MMA fighting. Because they are still blue collar.²²

Another informant emphasised that proximity to the haunts of their childhoods and the communities they were nested within continued to be important:

They live in Bedfordview because they've got 'fuck you money' and 'I'm not going to stay in Sandton – because I've got enough money to stay where I grew up.'²³

Schultz, reportedly, likes to hang out in Bedfordview because it is close both to his family in Alberton and to his boxing gym in Edenvale.²⁴

The hold that neighbourhoods of origin or the wealthy suburbs adjacent to them have on criminals is not unique to Bedfordview, though the east and south of Johannesburg have played an outsized role in generating men who have moved in its underworld. For example, a similar situation occurred in the West Rand during the height of Ralph Heyns's gangster career. Heyns, one-time member of a late 1980s and early 1990s criminal gang that included apartheid assassin Ferdi Barnard, was notorious in his own right as a fraudster, blackmailer, smuggler and con-man, and came to be known as the 'Godfather of the West Rand' until his disappearance in 2011. Heyns bought a mansion with his proceeds, not in Sandton or Parktown, where he would have been out of his element, but in Krugersdorp Upper, the wealthiest part of the weary mining town where he had grown up.

A very Mediterranean meeting place

What was unusual about Krejcir's decision to move to Bedfordview was that he was not an East Rand heavy but an international newcomer. Krejcir had no existing connection to Bedfordview, or to Johannesburg for that matter, and there was no sizeable Czech community for him to ingratiate himself with. Yet despite his foreign origins and the lack of a straightforward ethnic milieu, Krejcir quickly became socially embedded in Bedfordview, which was already home to a criminal subculture. Here, the 'Mediterranean' character that residents and observers of Bedfordview attribute to the suburb, a term that was largely interchangeable with 'European', might have helped.

Interviewees pointed not just to the communities of Greek, Italian and Portuguese South Africans who retain an attachment to the cultures of their original homelands, but also to the way of life in the suburb. Its 'European' culture was said to reside in communities with a strong attachment to extended family bonds and the suburb's comparatively high number of outdoor cafés. One informant, who had moved to Bedfordview from the city's northern suburbs, described his neighbourhood in terms of what he perceived as its southern European character:

You go to the fun day and it's 'mama', it's 'papa'. Everyone's here ... it's very family oriented, almost a village. And because there's so many from Europe here, I think it's that safety net, like this is our little space in this world.²⁵

Several informants named Tasha's – a restaurant in the Village View strip mall in Bedfordview – as a meeting place that epitomises the area's community feel. They describe Tasha's in ways that highlight both how malleable the 'European' identity of Bedfordview is and how it relates to its criminal subculture. One informant explained:

It feels a little more like your European suburb because ... it's got the open ended cafés and when you go look at Tasha's, Tasha's is busy every single day here. The problem with Tasha's is you've got the residents, you've got your gangsters and you've got your police. They all go and meet there, you know?²⁶

Another said, 'If you go sit in Tasha's I guarantee you there will be someone there being hit up for a diamond deal.'²⁷

Notably, Tasha's does not face on to a town square or a pedestrianised street (as in the paintings of Greek and Italian villages for sale in the Bedford Square Shopping Centre), but on to a parking lot where all the patrons can observe which type of car you have arrived in, providing

a very South Africanised 'Europeanness'. Our informants often remarked on the fact that Krejcir had used Bedfordview's restaurants in a way reminiscent of a European Mafioso – arranging meetings and introductions at outdoor cafes and restaurants where a personal and proprietorial relationship could develop between regular customers and the management. Perhaps for locals, 'Europeanness' provided a familiar – and malleable – cultural reference point from which to receive him.

Tangibly, the recent European ancestry of Bedfordview residents has facilitated a criminal interface between South Africa and Europe. The Greek community has, allegedly, long been engaged in the evasion of monetary controls to get their assets out of South Africa and into European bank accounts.²⁸ It was this existing system that Krejcir exploited with Alekos Panayi, a banker with an offshore company and a bank account in Cyprus, through which he laundered money for many people, including Jackson and Krejcir.²⁹ Many Bedfordview residents, like Louca, maintained dual citizenship with European countries, which also facilitated the opening of European bank accounts and the ability to send locals on errands to Europe. According to an affidavit taken from Anastasio Vlouchakis, a Greek national who had grown up in Johannesburg, he was introduced to Krejcir at the News Café in Bedfordview in 2008 because 'he has a lot of Greek friends, so he made enquiries about me'. Vlouchakis claimed that Krejcir sent him and Louca on several trips to Europe to do reconnaissance on his enemies and assassinate them.³⁰

Krejcir's suburban crime spree

Krejcir's entry into Bedfordview in 2007 is a well-worn part of his notoriety.³¹ He was introduced to the neighbourhood, and to many of the people he would later have criminal dealings with, by Louca, whom he had met, allegedly, in a jail cell when he was

first arrested on arrival in South Africa. (Krejcir claimed asylum, arguing he was being politically persecuted in the Czech Republic, triggering a legal dispute with the state that continued for years and bought him, for a period, the freedom to settle in South Africa.) Louca was himself already a Bedfordview resident. One of Krejcir's connections was to Jackson, who owned a mansion on one of the suburb's most prestigious streets, Kloof Road, where Krejcir had also bought a mansion.

There are some fairly pragmatic justifications for why Bedfordview is a particularly good location for ambitious criminals. With Johannesburg's suburban sprawl has come a congestion problem, which puts a premium on mobility and proximity. Bedfordview is close both to OR Tambo Airport, for international getaways, and to the City Deep container hub, for smuggling business. An informant who was associated with the illegal cigarette trade described how Bedfordview's proximity to City Deep made it attractive to cigarette smugglers who were falsely declaring their goods as biscuits or as empty containers, and getting a 'heads up' from Kaserne Depot staff about planned customs raids.³² It provides easy access to most of the city's major highways and a quick route to the old CBD, which is a hub of the city's drug distribution and, to an extent, manufacturing.³³ According to our informants, there is both practical advantage and peace of mind in being in such a location:

Bedfordview is central, close to the airport ... You can leave and be missing in any compass direction. Within two or three kilometres of a chase you can be on any exit route.³⁴

Another informant drew on knowledge of Krejcir's business operations to argue that these features were appreciated by the neighbourhood's underworld residents, to

whom it provided easy escape routes and short commutes to smuggling and drug networks:

Radovan's point of entry at Money Point was on [a well located] corner. All he had to do was literally drive one road, do a loop and he was on the highway, probably 300m. So at any given point there's a good flow out of the area from there.³⁵

For new entrants like Krejcir, the 'new money' character of Bedfordview was useful not just because it attracted a pool of recruits but also because money was his calling card. He had to live somewhere he could spend a lot of it, and attract exactly the right kind of attention. As one local government official put it, 'It is a wealthy area, and criminals, successful criminals are wealthy – and they want to be seen to be wealthy.'³⁶

Krejcir's shortcut to influence and leadership within the Johannesburg underworld rested on his ability to immediately demonstrate huge wealth and ambition. Once he had bought an ostentatious mansion in Kloof Road, and identified the Harbour Café as a location for meeting and greasing the local heavies, fixers and opportunists, he built a network in Johannesburg in a remarkably short period of time. He made sure he was known as the 'Czech billionaire' and that people came to him, not the other way around:

When Radovan got here, word got out fast: there's a Czech billionaire here. And he had the things that go with it – the house, the cars. That got a lot of people's attention. They came from near and they came from far. For one reason, for the one reason that anyone does anything in this city: the money ... people came to him. They came with all their plans, and scams, they came with legitimate ideas, and they came with illicit schemes. He set up in Harbour Café so everyone would know where to find him. And they did. Like moths to a flame.³⁷

At his favourite restaurant, Harbour Café, Krejcir set up an impromptu social space from which to hold court:

Here you've got this guy that comes in and starts flashing cash and every guy who does his own thing or who has a connection or who can solve a problem or that sort of thing is going to want a piece of that cash ... These guys start hearing it, they've also got kids, they've also got lives, this makes it a little bit easier. The next hustle or the next debt collection doesn't have to happen. It doesn't need to be as difficult because here it's relatively simple: introduce this one to this one, solve this little problem. And there's this huge stack of cash on the table.³⁸

Also, the degree to which Bedfordview was a good 'meeting place' for Krejcir goes deeper than its geographical location. Krejcir did not run a consistent criminal business but moved around from enterprise to enterprise, and many of his schemes were predatory crimes involving financial illegalities, not ones where specific products were physically sold to middlemen or customers. In Johannesburg there was no one major criminal market to corner, but rather a number of different markets, from illegal tobacco to gold and diamonds to drugs, and many of them conducive only to small groups of operators. He therefore sought to set up many temporary alliances with bit or major players to enact particular crimes, from bank fraud to meth smuggling. These players often comprised a constellation of police, 'muscle' and fellow 'businessmen' who operated in distinctly different spheres in the city. This was in keeping with the character of Johannesburg's underworld, which is fragmented and concentrates power only temporarily and partially, with a large degree of ethnic division.³⁹

The ability to deal with both what we call the 'underworld' and the 'upper world' in

Bedfordview was, for Krejcir, an important feature of its value as a meeting place. Many of the people whom Krejcir wanted to do business with had respectable, legitimate careers or operated in a twilight zone between legality and illegality. They were doctors, lawyers and accountants, who facilitated setting up companies or moving money, or who were party to fraud schemes, and they were also men who might trade in substances such as gold that easily shift between licit and illicit, depending on the nature of their production and transit to market. Lawyer Ian Small Smith introduced Krejcir to senior policeman Joey Mabasa; gold trader Juan Meyer would meet Krejcir at the Harbour Café, and lawyer Manny Witz introduced Krejcir to Jackson.⁴⁰ This gave them a clear interest in presenting an image acceptable to the 'upper world', which Bedfordview, with its upmarket shopping centres, or the acknowledged everybody-meets-here nature of Tasha's, provided.

Into the glitter, not into the grim

There were other key aspects to Krejcir's career – state corruption and prolific violence – in which Bedfordview held no specific value. One of these was the breadth of his corrupt relationships with the police. As we noted at the outset, in the popular imagination, and even in academic literature, organised crime is attracted to run-down and neglected inner city neighbourhoods in part because these are places where criminality is less subject to scrutiny and detection, while in wealthy suburbs the converse applies. Yet Krejcir did not appear to have struggled at all to maintain numerous corrupt relationships with policemen and women at both low and high levels of the South African Police Service.⁴¹ It appears Krejcir rightly judged the weakness of the criminal justice system, and was expert in finding the right individuals to target for corrupt overtures. Within a short period of time he had

set up a network of bribery and established corrupt relationships within the police from the lowest ranks right up to the most senior, such as through his highly controversial relationship with the Gauteng Head of Crime Intelligence, Joey Mabasa. According to an associate of Krejcir's, quoted in a *Mail and Guardian* article, the Bedfordview police station itself was substantially implicated in Krejcir's bribery:

There were many Bedfordview policemen that I paid on instruction from Krejcir ...

One day I saw Krejcir pay Colonel Sambo who is a police officer at the Bedfordview Station. Krejcir paid Sambo for 'little jobs'. He just wanted Sambo to notify him if anything was going to happen that involved Krejcir in the area.⁴²

Yet, our informants, including those closely involved with crime and security issues in Bedfordview, did not regard it to be a particularly corrupt station. Rather, they see the police service to have such weak accountability and low morale that even a relatively functional station, like the one in Bedfordview, is open to corrupt advances.

But Bedfordview was in other ways not 'rough' enough for Krejcir's style of operating, and, in this sense, while the suburb provided Krejcir with a supply of men available for 'knocks' and intimidation, he had to go further afield to hire hitmen. He seemed to draw on assassins in the taxi industry and policemen and women, as demonstrated by the range of Hawks officers and taxi drivers who have stood trial alongside him. The older generation of ex-bouncers and debt collectors came from a diminishing pool, and the younger generation – many of them Bedfordview locals – were unprepared for his style of operating. According to one informant, the men he first met in Bedfordview got involved with him because they underestimated how easily he would turn to violence:

I don't actually think anyone thought he was dangerous, I think everyone thought he was just a man with a lot of money, up until Lolly died. I think even to a degree after the Lolly thing it wasn't taken that seriously because you know his crimes that he was convicted for in absentia weren't that scary. It was tax evasion, bank fraud and things like that. It's not the kind of stuff that makes you quiver in your boots.⁴³

At a certain point, Krejcir's quick recourse to violent retribution began to undermine his ability to recruit from the neighbourhood, and from the networks connected to it. According to our respondent:

The people who were attracted to Krejcir wanted the money. They weren't into murder. They didn't realise if he turned on you he would kill you. When Uwe Gemballa's body was found, he lost a lot of people. A lot of his guys left him. They were into the glitter, they weren't into the grim.⁴⁴

Krejcir's volatility and penchant for retribution eventually made him a dangerous partner for men whose criminality had largely rested in scams and cons.⁴⁵

It is also arguable whether Krejcir would have been as much of a media sensation were his crimes taking place in less salubrious parts of the city. The contrast between his crimes and their setting made them more sensational, and Bedfordview was a safe and pleasant location from which to cover them.

Conclusion

A range of factors coalesced to make Bedfordview attractive to organised crime figures, and to encourage Krejcir to establish his flamboyant if short-lived criminal empire there. These include a combination of pull factors linked to geography, lifestyle, ethnicity and infrastructure that combined in a way that

was unique in Johannesburg. Significantly, these were linked to a set of push factors that reflect changes in wider urban development and the upward (and geographic) mobility of a set of 'businessmen' linked to grey or illegal markets in the city. Krejcir's career demonstrates that organised criminals do not need to be embedded in down-and-out areas of a city, because, under the right conditions, they can tap into those worlds directly from an affluent and comfortable suburb. Likewise, upwardly mobile men operating in a criminal milieu do not necessarily want to move far from home.

We do not argue that Krejcir could not have functioned in another neighbourhood, or that the factors listed above are the only ones attractive to organised crime figures. Johannesburg is a city in which it is easy to display huge wealth and have few questions asked, a city of constant migration and assimilation, and a city whose underworld is fed by many histories. However, we should pay attention to the case of Bedfordview and the Czech mafioso: it provides insight into how international and national criminal transplants can embed themselves socially into one part of a city as opposed to others, determined by established networks, lifestyle opportunities, and an alignment between the aspirations of ordinary citizens and an emergent criminal class.



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Notes

- 1 As part of the transformation of local government structures after 1994, Bedfordview, along with Germiston and other East Rand towns, formally become part of the Ekurhuleni Metro. It is, however, colloquially considered a suburb of Johannesburg, and functionally relates to the wider city, both practically and in symbolic identity.
- 2 K von Lampe, *Organized crime: analyzing illegal activities, criminal structures and extra-legal governance*, New York: Sage, 2016, 227–230.

- 3 F Varese, *Mafias on the move: how organized crime conquers new territories*, Princeton: Princeton University Press, 2011.
- 4 Tim Newburn points out that criminology has been 'regularly, roundly rightly criticized' for this preoccupation. See T Newburn, *Criminology* (2nd ed), London: Routledge, 2013, 382.
- 5 See P de Wet, Where gangsters shop and shoot, *Mail & Guardian*, 18 October 2013, <http://mg.co.za/article/2013-10-17-where-gangsters-shop-and-shoot>; S Naik and K Ajam, Bedfordview 'living in fear' of Krejcir, *iolnews*, 16 November 2013, <http://www.iol.co.za/news/south-africa/gauteng/bedfordview-living-in-fear-of-krejcir-1608112>; *Bedfordview and Edenvale News*, Krejcir: organised crime rumours abound in Bedfordview, 13 November 2013, <http://bedfordviewedenvalenews.co.za/221156/organised-crime-rumours-abound-in-bedfordview-2/>. Informants were identified through previous research into bouncer mafia networks in the South and East Rand, and on the career of Radvan Krejcir. The term 'criminal associates' is used as informants (mostly) did not identify themselves as criminals, but as people who moved within a social milieu populated by people who committed crimes. Some informants referred us to other people within Bedfordview. 'Prominent figures' were people who held leadership positions in formal civic structures. The researcher conducted interviews at social nodes within Bedfordview, including the Village View Shopping Centre, Bedford Centre, the Senderwood cafes, and a CPF meeting held in a church. Informants were asked to address the central question of this article, 'Why do organised crime figures broadly like to live or visit this neighbourhood? Why did Radvan Krejcir settle here?' Some data were also extracted from affidavits from men who had worked for Krejcir, and from an interview with Krejcir himself conducted by a journalist in 2012. Interviews were conducted with: middleman in the underworld, Krejcir associate and Bedfordview resident, Johannesburg, November 2016; TM, private investigator with good knowledge of the underworld, Johannesburg, December 2016; GP, private investigator with good knowledge of Krejcir, Johannesburg, December 2016; lawyer involved in a legal matter related to Krejcir, Johannesburg, November 2016; figure in Bedfordview local government, Johannesburg, November 2016; businessman with underworld links, Johannesburg, November 2016; HI, member of security-centred civic association in Bedfordview, Johannesburg, December 2016; JZ, member of security-centred civic association in Bedfordview, Johannesburg, December 2016; journalist who follows organised crime beat and Krejcir, November 2016; businessmen involved in illegal tobacco, Johannesburg, February 2017. Evidence was also drawn from a transcript of an interview with Krejcir with Julian Rademeyer, Johannesburg, 2012.
- 6 Thabiso Mpye was found guilty of murdering Uwe Gembella after turning state witness. Krejcir was not charged in the matter, but several press reports trace a number of connections between him and the murder, and Mpye's version of events – before he recanted his testimony – corroborated this story. See S Sole, Gembella: focus falls on Krejcir and Co., *AmaBhungane*, 8 October 2010, <http://amabhungane.co.za/article/2010-10-08-gembella-focus-falls-on-krejcir-and-co>. In November 2015 Krejcir and his co-accused were found guilty of kidnapping, torturing and assaulting Bheki Lukhele. The trial in which Krejcir stands accused of murdering Sam Issa has recently begun its hearing. A number of affidavits released by private investigator Paul O'Sullivan record the use of Money Point for criminal business dealings. Johan van Loggerenberg's affidavit for SARS also alleged that Money Point was a front company (See J van Loggerenberg, Affidavit, 1 November 2013; Milosh Potiska, Affidavit, 27 February 2015). Laganin was co-accused with Krejcir on a charge of armed robbery in 2011. Laganin was killed in his home in Bedfordview in 2013. It is not clear if anyone has been arrested, but accusations were made in the press that Laganin was killed because he had talked about Krejcir's crimes (See S Naik, Serbian slain because he had a loose mouth, *iolnews*, 9 November 2013). Krejcir himself is now serving his sentence for Lukhele's kidnapping and assault, and facing the Issa murder charge. While he has seemingly made several attempts to escape, he remains under tight control in prison, and is unlikely to legally leave prison and resume a criminal career in the near future.
- 7 K Beavon, Nearer my mall to thee: the decline of the Johannesburg central business district and the emergence of the neo-apartheid city, Institute for Advanced Social Research, Seminar 442, Wits University, 1998, <http://wiredspace.wits.ac.za/bitstream/handle/10539/8421/ISS-23.pdf?sequence=1>.
- 8 J Beall, O Crankshaw and S Parnell, *Uniting a divided city: governance and social exclusion in Johannesburg*, London: Earthscan, 2002.
- 9 Interview, figure in Bedfordview local government.
- 10 Ibid.; interview, businessman; interview, journalist.
- 11 P Harrison and T Zack, Between the ordinary and the extraordinary: socio-spatial transformations in the 'old south' of Johannesburg, *South African Geographical Journal*, 96:2, 2014.
- 12 See M Shaw and S Haysom, Organised crime in late apartheid and the transition to a new criminal order: the rise and fall of the Johannesburg 'bouncer mafia', *Journal of Southern African Studies*, 42:4, 2016; S Haysom, Lance's last stand, *adda stories*, November 2016, <http://www.addastories.org/lances-last-stand/>.
- 13 Shaw and Haysom, Organised crime in late apartheid and the transition to a new criminal order.
- 14 Redlining, in this case, entailed bank collusion to deny credit or mortgages to all residents within a certain boundary. The term more broadly may refer to the denial of any public or commercial service to a certain geographic area. See A Morris, Tenant-landlord relations, the anti-apartheid struggle and physical de-cline in Hillbrow, an inner-city neighbourhood in Johannesburg', *Urban Studies*, 36:3, 1999.
- 15 T Winkler, Why won't downtown Johannesburg 'regenerate'? Reassessing Hillbrow as a case example, *Urban Forum*, 24:309, 2013.
- 16 Interview, businessman; interview, journalist; interview, GP, private investigator; interview, TM, private investigator.
- 17 Interview, HI, member of security-centred civic association.
- 18 Interview, TM, private investigator.
- 19 M Weiner, *Killing Kebble: an underworld exposed*, Johannesburg: Pan Macmillan, 2011.
- 20 Interview, GP, private investigator.
- 21 Weiner, *Killing Kebble*.
- 22 Interview, GP, private investigator.
- 23 Interview, TM, private investigator.
- 24 Interview, journalist.
- 25 Interview, businessman.

- 26 Ibid.
- 27 Interview, GP, private investigator.
- 28 Interview, businessman.
- 29 Alekos Panayi, Affidavit, 1 December 2009
- 30 Anastasio Vlouchakis, Affidavit, 30 May 2011.
- 31 V Vena, Krejcir: a dummy's guide, *Mail & Guardian*, 14 April 2011, <http://mg.co.za/article/2011-04-14-krejcir-a-dummys-guide>.
- 32 Interview, businessmen involved in illegal tobacco.
- 33 P McNally, *The street: exposing a world of cops, bribes and drug dealers*, Johannesburg: Pan Macmillan, 2016.
- 34 Interview, JZ, member of security-centred civic association.
- 35 Interview, businessman.
- 36 Interview, figure in Bedfordview local government.
- 37 Interview, middleman.
- 38 Interview, businessman.
- 39 M Shaw and S Haysom, *A 'mobile mafioso' in Africa: the strange case of Radovan Krejcir*, forthcoming.
- 40 Sole, Gembella; E Thelwel, What are Radovan Krejcir's links to the criminal underworld?, *news24*, 8 April 2015, <http://www.news24.com/SouthAfrica/News/WAIT-FOR-PUBLICATION-Who-are-Radovan-Krejcir-links-in-the-criminal-underworld-20150408>; transcript of an interview of Krejcir with Julian Rademeyer, Johannesburg, 2012.
- 41 M Shaw and S Haysom, *A mobile mafioso: the case of Radovan Krejcir*, book chapter, forthcoming.
- 42 S Evans and S Sole, Krejcir's 'dirty' police network, *Mail & Guardian*, 28 November 2013, <http://mg.co.za/article/2013-11-28-krejcir-dirty-police-network>.
- 43 Interview, businessman.
- 44 Interview, middleman.
- 45 Interview, businessman.

De Vos NO v Minister of Justice and Constitutional Development

The constitutionality of detaining persons unfit to stand trial

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Section 35 of the Constitution protects an accused's right to a fair trial. In order for an accused to make a substantial defence, both his physical and his mental presence is required in court. The incapacity of an accused person to understand criminal proceedings in a court will affect his right to a fair trial. Section 77 of the Criminal Procedure Act 51 of 1977 deals with the treatment of persons who are unable to stand trial because they suffer from a mental illness. In a recent Constitutional Court decision, the constitutionality of Section 77 was challenged by two accused persons who were incapable of understanding trial proceedings as result of the mental illnesses from which they suffered. The section was found to infringe an accused's right to freedom and security of the person. In the note that follows, the Constitutional Court decision of De Vos NO v Minister of Justice and Constitutional Development 2015 (1) SACR 18 (WCC) and (CCT 150/14) [2015] ZACC 21, pertaining to the Section 77 right of an accused, is discussed and analysed.

Section 12(1) of the Constitution of the Republic of South Africa 1996 protects the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause (Section 12(1)(a)), and the right not to be detained without trial (Section 12(1)(b)). The rights of arrested, detained and accused persons are in turn protected by Section 35 of the Constitution, which provides that every

accused person has the right to a fair trial. This requires not only a physical presence in court but also a 'mental presence'. In particular, the person must be able to understand proceedings in order to adequately defend himself.¹ The accused may as a result of insanity, deafness or dumbness be unable to understand the proceedings, to hear them, or to answer them, either by speaking or writing.² In these cases the court has to determine whether the accused is 'fit' to be tried.

Section 77 of the Criminal Procedure Act³ (CPA) deals with the treatment of an accused who is

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unfit to stand trial due to a mental illness or intellectual disability ('mental disability'). While such accused cannot be tried, they are not discharged, since Section 77(6) of the CPA enjoins the court to determine whether they committed the *actus reus* of the offence with which they are charged. If the court finds that the accused committed an act of murder, culpable homicide, rape, compelled rape, or other offence involving serious violence, or if the court considers it in the public interest, Section 77(6)(a)(i) of the CPA further enjoins it to order the accused's detention in a psychiatric hospital or prison, pending release by a judge in chambers, in terms of Section 47 of the Mental Health Care Act (MCHA).⁴ If the court finds that the accused committed some other form of unlawful act, or no unlawful act at all, Section 77(6)(a)(ii) of the CPA enjoins it to commit the accused to an institution as an involuntary mental health care user, as contemplated in Section 37 of the MCHA.

The provisions of the section are peremptory in that, once the court has found the accused unfit to stand trial, it is left with no option but to order his or her detention. The provisions of Section 77(6)(a) differ from those of Section 78(6) of the CPA, which apply when an accused has been tried and found not guilty by reason of pathological criminal incapacity. In terms of Section 78(6)(b), the court, as an alternative to ordering the accused's detention, is empowered to order his or her release, either on appropriate conditions or even unconditionally. These options are not available in terms of Section 77(6)(a)(i) or (ii). Consequently, concern has been expressed regarding the constitutionality of these provisions.

In 2015 the constitutionality of Section 77(6)(a)(i) and (ii) was challenged in *De Vos NO v Minister of Justice and Constitutional Development* (hereafter '*De Vos*').⁵

The facts

The proceedings concerned two individuals, Stuurman and Snyders, who were charged in the magistrate's court with murder and rape, respectively. Both were found to suffer from permanent intellectual disabilities, which rendered them unfit to stand trial. Both accused therefore stood to be detained in terms of Section 77(6)(a) of the CPA. Before their matters could be finalised, however, the accused challenged the constitutional validity of sections 77(6)(a)(i) and (ii) of the CPA, on the grounds that the relevant provisions infringed their constitutionally protected rights to equality, dignity and freedom and security of the person.⁶ Their consolidated applications were brought in the Western Cape Division of the High Court (WCC). The respondents were the Minister of Justice and Constitutional Development, the Minister of Health and the Director of Public Prosecutions for the Western Cape (DPP), all of whom opposed the applications. Two voluntary non-profit organisations, Cape Mental Health and Down Syndrome South Africa, were admitted as *amici curiae*. Both *amici* supported the relief sought by the applicants.

The high court's judgement (*De Vos NO v Minister of Justice and Constitutional Development*)⁷

The WCC held that although valid justification exists for detaining a person with a mental disability, it must be recognised that most people are not necessarily a danger to themselves or to society. The court found that Section 77(6)(a) was flawed because it did not allow a presiding officer to evaluate and determine if an accused is a danger to himself or to society. It further found that it did not allow a presiding officer any discretion in determining whether accused persons ought to be detained, based on whether they were a danger to themselves or to society. Section 78(6) allows for such a discretion. The WCC

reasoned that detention as mandated by Section 77(6)(a) could therefore be arbitrary, and lead to an infringement of an accused's right to freedom and security of the person. The WCC consequently declared the provisions of sections 77(6)(a)(i) and (ii) to be invalid, but suspended the declaration of invalidity for a period of 24 months to give the legislature an opportunity to remedy the defect. In order to provide interim relief to persons affected by the relevant provisions, the WCC exercised its remedial powers of reading in and severance, in terms of Section 172(1)(b) of the Constitution, by amending the wording of Section 77(6)(a) of the CPA so as to mirror that of Section 78(6).

The applicants subsequently applied to the Constitutional Court for confirmation of the WCC's orders, in accordance with Section 167(5) of the Constitution.

The Constitutional Court's judgement (*De Vos NO v Minister of Justice and Constitutional Development*)⁸

The substantive issues to be determined were the same as in the WCC, namely, whether:

- (1) Section 77(6)(a) is peremptory;
- (2) Section 77(6)(a) violates the right to freedom and security of the person and, in particular, whether -
 - a. Section 77(6)(a)(i) is constitutionally valid in respect of (1) hospitalisation; (2) imprisonment; and (3) children's rights;
 - b. Section 77(6)(a)(ii) is constitutionally valid.
- (3) Any infringement of rights is justified in terms of the general limitations clause.

Is Section 77(6)(a) peremptory?

The respondents contended that Section 77(6)(a) provides for compulsory detention, as evidenced by the use of the word 'shall'. They argued that 'shall' meant 'may', thus allowing the court

discretion. The court held that the words in a statute must be given their ordinary grammatical meaning unless this would result in absurdity. It held that the word 'shall' in Section 77(6)(a) was obligatory, and that there was no justification for departing from its ordinary meaning. The section should not be interpreted as meaning 'may'.⁹ It held further that the wording of Section 77(6)(a) clearly precluded the exercise of any discretion by a court.¹⁰ It concluded that its provisions were peremptory.¹¹

Does Section 77(6)(a) infringe the right to freedom and security of the person?

The court referred to the judgement of the European Court of Human Rights (ECHR) in *HL v United Kingdom*.¹² That judgement held that institutionalisation or hospitalisation constituted detention, because the healthcare professionals treating and managing a patient exercise 'complete and effective control over his care and movements'.¹³ It held, consequently, that an order made in terms of Section 77(6)(a) constituted a deprivation of freedom.¹⁴ The court then outlined the elements of the Section 12 constitutional right to freedom and security of the person. Citing the dicta of Justice O'Regan in *Bernstein v Bester NO* and *S v Coetzee*, the court reiterated that the right is aimed at protecting a person against the deprivation of his freedom, both in the absence of appropriate procedures (the procedural component of the right) or for unacceptable reasons (the substantive component).¹⁵

Regarding the substantive component, the court reiterated (citing the majority judgement of Justice Ackerman in *De Lange v Smuts NO*) that it was impossible to define in advance what would constitute 'just cause' for a deprivation of freedom in all cases, and that each case had to be decided on its merits.¹⁶

The court took cognisance of the United Nations Convention on the Rights of Persons with Disabilities, which reinforces the state's

constitutional obligation to promote the rights and freedoms of persons with disabilities.¹⁷ It noted that Article 14 of the convention states that ‘the existence of a disability shall in no case justify a deprivation of liberty’. It held that it was impermissible to remove a person from society purely on account of their mental disability.¹⁸ Consequently, the decisive issue *in casu* was whether detention in terms of Section 77(6)(a) of the CPA is rationally connected with the objective of treating and caring for the accused, as well as securing their safety and/or that of the community, or whether the section mandates detention solely by reason of the accused’s mental disability.¹⁹ In order to determine this issue, the court dealt separately with the provisions of Section 77(6)(a)(i) and (ii).

Constitutional validity of Section 77(6)(a)(i) in respect of hospitalisation

The respondents argued that the objectives of detention in terms of Section 77(6)(a) were fourfold: to (1) protect the public against harm inflicted by the accused; (2) protect the accused against self-harm; (3) prevent stigmatisation of the accused; and (4) provide the accused with treatment, care and rehabilitation.²⁰ The court observed that the MHCA had adopted a community care focus, in that Section 8(2) thereof provides that ‘[e]very mental health care user must be provided with care, treatment and rehabilitation services that improve the mental capacity of the user to develop to their full potential and to facilitate his or her integration into community life’.²¹ It further observed that the purpose of Section 77(6)(a)(i) of the CPA was to ensure that persons unfit to stand trial by reason of mental disability, and who have allegedly committed the serious offences of murder or rape, are placed in a system specifically designed for their care, rehabilitation and treatment, as well as to protect the general public.²² The court noted that procedural safeguards had been built into Section 77(6), in

that a court is required to hold a ‘trial of the facts’ before issuing a detention order. It held that this procedure satisfied the procedural component of the right to freedom and security of the person.²³

The court further noted that the MCHA creates a specific regime for persons hospitalised in terms of Section 77(6)(a)(i) (‘state patients’), in that a state patient may only be discharged upon application to a judge in terms of Section 47 of the MHCA.²⁴ This procedure requires extensive information in order to decide if the patient’s continued detention is necessary for his care, treatment, rehabilitation or safety, or the safety of the public.²⁵ It further held that this regime more than satisfied the substantive requirements for detention laid down by the ECHR in *Winterwerp v Netherlands*, in that an accused may only be hospitalised in terms of Section 77(6)(a)(i) if they are found to have committed a serious offence and are not detained for longer than is necessary.²⁶ The court pointed out that if the trial court believed that a particular accused did not pose a threat to society, it could expedite his release by ordering that a Section 47 application be brought on his behalf within a specified period.²⁷

Constitutional validity of Section 77(6)(a)(i) in respect of imprisonment

The *amicus curiae* urged the court to rule that imprisonment (as opposed to hospitalisation) in terms of Section 77(6)(a)(i) is constitutionally impermissible, since it must inevitably violate the right not to be subjected to cruel, inhuman or degrading punishment (Section 12(e)). The respondents argued that the aim of the provision was to facilitate the accused’s access to therapeutic remedies.²⁸ The court accepted that the provision was not intended to be punitive, but took cognisance of the fact that, in reality, prisons lack the necessary facilities to provide appropriate treatment and care.²⁹ It held that the only apparent reason for imprisonment was the lack of resources in the public health sector.³⁰ However, since Section 12 of the Constitution merely imposes a

negative obligation on the state (not to deprive a person of liberty), the court was not required to take such resource constraints into account in determining the matter.³¹ It further held that accommodating mentally disabled people in prison perpetuates hurtful stereotypes, i.e. that all accused persons are dangerous, despite being cognisant of their mental illness. This reinforces the stigmatisation and marginalisation they are already subjected to and impairs their human dignity.³² It concluded that imprisonment is permissible only when the accused is likely to cause serious harm to himself or herself or others, since this would be justified by the state's obligation to protect the public from harm.³³ The court therefore held that Section 77(6)(a)(i) was unconstitutional to the extent that it mandated the imprisonment of mentally disabled persons who were not dangerous, purely on account of resource constraints.³⁴ It further held that, where such a person could not be hospitalised immediately, the court ought to have the latitude to craft an order for his interim treatment as an outpatient.³⁵ The court accordingly declared Section 77(6) constitutionally invalid to the extent that it mandates imprisonment based on resource considerations alone.³⁶

Constitutional validity of Section 77(6)(a)(ii)

The DPP contended that the detention of mentally disabled people who committed less serious offences, or no offence at all, was justifiable on the grounds that such a person nevertheless requires treatment. The court noted that, in the absence of a court order, Section 9(1)(c) of the MHCA allows the involuntary hospitalisation of mentally disabled persons only if a delay in their admission, care, treatment and rehabilitation could result in (1) their death or irreversible harm to their health; (2) their inflicting serious harm on themselves or others; or (3) their causing serious damage to, or loss of, property. It held that, because of the complexity of mental illness and the variety of types and

degrees of intellectual disability, some of which are untreatable, the objective of providing treatment was on its own insufficient to justify hospitalisation.³⁷

The court accepted the applicant's contention that such a formulaic approach infringes the right to equality and human dignity, since it perpetuates harmful stereotypes and the misperception that all mentally disabled persons are necessarily dangerous. It referred to the state's constitutional obligation to promote equality and to eradicate stereotypes and prejudice, and reiterated that the mere existence of a disability could not justify detention.³⁸ It held that there was insufficient connection between the purported objective of the section (providing treatment) and the means for achieving it (compulsory detention). It accordingly found that Section 77(6)(a)(ii) breaches the substantive component of the right to freedom.³⁹

The court accepted, however, that the provision operates rationally in respect of accused persons who are likely to inflict harm on themselves or others, or who require care, treatment and rehabilitation.⁴⁰ It therefore declined to strike the section down in its entirety.⁴¹ The court declared Section 77(6)(a)(ii) constitutionally invalid in its present form and ordered that, with immediate effect, the wording of the provision be amended to extend the range of orders that a court may make pursuant to a finding that the accused committed an offence other than those contemplated in Section 77(6)(a)(i), or no offence. Moreover, the court found that there was no satisfactory justification for the section's infringement of the right to freedom in the instances previously described. It held that such infringement is not reasonable and justifiable in a democratic society based on human dignity, equality and freedom, in terms of Section 36.

Comment

On the whole, the Constitutional Court's rulings on the constitutionality of Section 77(6)(a) of the CPA are to be welcomed. In as much as the section mandates compulsory detention without trial, its provisions have long been ripe for re-evaluation and reform. Nevertheless, there are certain aspects of the judgement that are not satisfactory, in particular the court's reluctance to extend the range of options available to a trial court when dealing with an adult accused in terms of Section 77(6)(a)(i). With respect, the logic behind the court's reasoning on this point is dubious. While readily acknowledging there are only two valid justifications for the detention of a mentally disabled person who has not been convicted of a crime – (1) providing treatment and care and (2) securing their safety and/or that of society – the court gave insufficient consideration to the fact that there will invariably be cases where these justifications do not apply.

Regarding the need to provide treatment and care, it is acknowledged that not all mental disabilities are susceptible to medical treatment.⁴² Nor can it safely be assumed that a person suffering from such a disability necessarily requires any greater degree of care than he may already be receiving. These points were argued on behalf of the applicants *in casu*, both of whom were suffering from permanent mental disabilities. In such cases, it is impossible to justify compulsory hospitalisation on the grounds of treatment and care.

This, then, leaves only the second ground of justification, the need to secure the safety of the mentally disabled person and/or that of society. Here we are faced with another truism; that not all mentally disabled people are a danger to themselves or to society, as emphasised by the WCC. Even though the Constitutional Court acknowledged that a formulaic approach perpetuates the harmful stereotype that all mentally disabled people are dangerous, it

appears to have fallen into this trap itself when it reasoned that mandatory hospitalisation in terms of Section 77(6)(a)(i) is warranted because the provision applies only to an accused who has 'committed a serious offence'. In other words, the court accepted that all persons falling within the ambit of Section 77(6)(a)(i) are presumptively dangerous. This, with respect, is flawed reasoning. The common thread running through the offences specified in Section 77(6)(a)(i) – murder, culpable homicide, rape and compelled rape – is that they are examples of violent crimes, as confirmed by the phrase 'or some other offence involving serious violence'. It is therefore not the *seriousness* of the offence that is relevant, but rather the *violence* involved in its commission.⁴³ It can thus be concluded that the specified offences represent instances where the legislature considered that, based on a prior record of violence, the accused posed a danger to society. However, there need not be a criminal record for Section 77(6)(a)(i) to operate if one is only considering a current criminal charge. With a current criminal charge only two points are relevant: 1) this violent behaviour has not been proven; and 2) whether one alleged act of criminality makes an accused 'dangerous'. Predicting future risk based on prior behaviour is a matter for debate, but it is probably not inherently objectionable. However, it fails to give regard to expert evidence before the court when an accused does not pose a threat to society. Such evidence would suggest that it is untenable for incarceration in terms of the impugned provision to be warranted, because society must be protected from people who have committed serious crimes. There is no rational connection between the need to ensure certainty and clarity, and the statutory provision that allows for the detention of a person who has committed a serious crime, irrespective of the circumstances of the individual or the nature of the crime.

The result is that the mentally ill accused face incarceration for an indeterminate period. To

mandate that such accused persons be detained because they suffer a mental illness is constitutionally unacceptable.⁴⁴ The failure to grant the presiding officer the discretion to determine whether or not to exercise the power to detain, results in the arbitrary deprivation of freedom.⁴⁵ Similarly, in *R v Swain*, the Supreme Court of Canada found that the duty on a judicial officer to order the detention of a person who had been acquitted on the basis of insanity, to be unconstitutional.⁴⁶ Having a presiding officer determining whether an accused poses a danger to himself or society would be inconsistent with notions of substantive justice or individualised justice. The importance of the discretion afforded to a judicial officer to appoint an intermediary in terms of Section 170 of the CPA was highlighted by Justice Ngcobo in *DPP v Minister of Justice and Constitutional Development*.⁴⁷ However, while it may be difficult to envisage the commission of an act of murder or compelled rape without an element of serious violence, culpable homicide and, to some extent, rape are the odd men out.⁴⁸ Culpable homicide can be committed in a variety of ways that need not involve violence, for example through cases of negligent driving, as demonstrated in the cases of *S v Mkwana* and *S v Maritz*.⁴⁹ A person who is involved in negligent driving where there was no element of violence cannot be said to represent a sufficient threat to society. It would not justify their mandatory hospitalisation on that basis alone, especially where such an accused is guaranteed rights to a fair trial in terms of Section 35 of the Constitution.⁵⁰

The court was evidently aware that there would be cases where hospitalisation could not be justified. It pointed out that if the court making the mandatory order for hospitalisation believed that the accused did not pose a threat to society, it could simultaneously make an order expediting his or her release. It did not explain, however, why the courts should be obliged

to resort to such a circuitous remedy when they could have been granted the discretion to order the accused's release in the first place. It is imperative that the court provide some directive in this respect, as at the heart of the constitutional order is the establishment of a society in which all people are accorded equal dignity and respect, regardless of their membership of groups; as demonstrated in *President of the RSA v Hugo*.⁵¹

The court's finding that a rational basis exists for the different options available in terms of Section 77(6)(a)(i) and Section 78(6)(b), respectively, should also be criticised. It is correct that Section 77(6) and Section 78(6) deal with different enquiries and possible outcomes. It is also correct that Section 78(6) needs to cater for people who lack criminal capacity at the time of the offence, but who are not mentally disabled at the time of trial. It is conceivable that Section 77(6) might be called into question where an accused arguably lacked capacity at the time of the commission of the offence as well as at the time of trial. An example would be a person accused of culpable homicide after causing a motor vehicle accident, but who sustained serious brain damage in that accident. Since such an accused may not benefit from treatment or represent a danger to themselves and/or society, there is no logical reason why the range of options available to the court should be any less extensive than those available to it in terms of Section 78(6).

The most likely response to these criticisms is that, despite the evident deficiencies of Section 77(6)(a)(i), the court considered that none of them gave rise to a sufficiently clear or serious violation of rights to warrant the court's interference. It is therefore hoped that, when the legislature addresses the defects in Section 77(6)(a)(i) in respect of the compulsory imprisonment of adults and the compulsory imprisonment or hospitalisation of children, it will

use the opportunity to revise the provisions of Section 77(6)(a)(i) in their entirety.

Conclusion

Despite the judgement's shortcomings, it is also commendable. The provisions of Section 77 have long been ripe for reassessment, as this section left the courts with no option but to order the detention of those accused who were found unfit to stand trial. It is now up to the legislature to revise the provision of Section 77(6)(a)(i), bearing in mind the constitutional rights of mentally ill accused persons. To allow members of a group to be stigmatised fragments society, and is a grave violation of their constitutional rights.⁵²



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Notes

- 1 E du Toit et al., *Commentary on the Criminal Procedure Act*, Cape Town: Juta Publishers, 2015, ch. 13.
- 2 F Cassim, 'The accused person's competency to stand trial: a comparative perspective', *Codicillus*, 45:1, 2004, 17–27.
- 3 Criminal Procedure Act (CPA) 1977 (Act 51 of 1977).
- 4 Mental Health Care Act 2002 (Act 17 of 2002).
- 5 *De Vos NO v Minister of Justice and Constitutional Development* (CCT 150/14) [2015a] ZACC 21.
- 6 CPA, sections 9, 10, 12.
- 7 *De Vos NO v Minister of Justice and Constitutional Development* 2015b (1) SACR 18 (WCC).
- 8 *De Vos*, 2015a.
- 9 *Ibid.*, para 18.
- 10 *Ibid.*
- 11 *Ibid.*, 2015a, para 18.
- 12 *HL v United Kingdom* No 45508/99 ECHR 2004, para 91.
- 13 *Ibid.*
- 14 *De Vos*, 2015a, para 22.
- 15 *Bernstein v Bester NO* 1996 (2) SA (CC), para 145; *S v Coetzee* 1997 (3) SA 527 (CC), para 159; *De Vos*, 2015a, para 25.
- 16 *De Lange v Smuts NO and Others* (CCT26/97) [1998] ZACC 6; 1998 (3) SA 785; 1998 (7) BCLR 779 (28 May 1998), para 23.
- 17 The United Nations Convention on the Rights of Persons with Disabilities (A/RES/61/106) was adopted on 13 December 2006 and entered into force on 3 May 2008.
- 18 *De Vos*, 2015a, para 29.
- 19 *Ibid.*, para 31.
- 20 *Ibid.*, para 32.
- 21 *Ibid.*, para 34, 39.
- 22 *Ibid.*
- 23 *Ibid.*, para 34, 39.
- 24 *Ibid.*, para 36, 41.
- 25 *Ibid.*, para 36.
- 26 *Winterwerp v Netherlands* 6301/73 [1979] ECHR 4. *De Vos*, 2015a, para 38.
- 27 *Ibid.*, para 38, 43.
- 28 *Ibid.*, para 42.
- 29 *Ibid.*, para 41, 43.
- 30 *Ibid.*, para 44.
- 31 *Ibid.*, para 45.
- 32 *Ibid.*, para 46.
- 33 *Ibid.*, para 47.
- 34 *Ibid.*, para 63.
- 35 *Ibid.*, para 48, 63.
- 36 *Ibid.*, para 65.
- 37 *Ibid.*, para 55.
- 38 *Ibid.*, para 56.
- 39 *Ibid.*, para 57.
- 40 *Ibid.*, para 66.
- 41 *Ibid.*, para 67.
- 42 Although advances in treatment continue to be made with regard to persons who are mentally ill, medical treatment in children who, for example, suffer from a mental illness is not always recommended. Studies have found that developing brains can be very sensitive to medications and have suggested alternate treatment such as family therapy, educational classes and behavioural management techniques be utilised. See WK Silverman and SP Hinshaw, The second special issue on evidence based psychosocial treatments for children and adolescents: a ten-year update, *J Clin Child Adolesc Psychol*, 37:1, 2008. See also National Institute of Mental Health, Treatment of children with mental illness, <http://www.nimh.nih.gov> (accessed 23 February 2016).
- 43 Although not all 'serious offences' are dangerous, it does seem logical that 'violent offences' are dangerous.
- 44 N Steytler, *Constitutional criminal procedure: a commentary on the Constitution of the Republic of South Africa*, Durban: Butterworths, 1996, 58.
- 45 *Ibid.*, 59, para 7.2.
- 46 *R v Swain* 1991 (1) SCR 933.
- 47 *DPP v Minister of Justice and Constitutional Development* 2009 (4) SA 222 (CC), para 120.
- 48 J Burchell, *Principles of criminal law* (5th ed.), Cape Town: Juta Publishers, 2016.
- 49 *S v Mkwazi* 1967 (2) SA 593 (N). *S v Maritz* 1996 (1) SACR 227 (A).
- 50 See also *S v Sithole* 2005 (1) SACR 311 (W).
- 51 *President of the RSA v Hugo* 1997 (4) SA 1 (CC), para 41.
- 52 *Hoffmann v South African Airways* (CCT17/00) [2000] ZACC 17; 2001 (1) SA 1; 2000 (11) BCLR 1235; [2000] 12 BLLR 1365 (CC) (28 September 2000), para 37.

Violence and injury observatories

Reducing the burden of injury in high-risk communities

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Violence has been recognised officially as a global health issue, with the World Health Organization (WHO) reporting that 1.6 million people die annually from violence. South Africa's injury burden is very high, particularly for homicide, which is six times the global average. The idea of an 'observatory' has expanded recently, from its origins in astronomy to that of specialised informational repositories and knowledge-building centres, housing cross-referenced databases with advanced analytic and research capacities. This review essay provides information regarding the conceptual framework, historical background and various components of the violence observatory model, as well as evidence of effect. The intention is to provide information to stakeholders within the safety and security cluster by increasing awareness of the observatory models' application in high violence and injury settings such as South Africa.

Violence is now recognised as an important public health issue across the globe, with the World Health Organization (WHO) reporting that 1,6 million people die annually as a result of violence.¹ The Global Burden of Disease Study predicts that interpersonal violence will remain a top five cause of premature death in sub-Saharan Africa by 2020.² The 2012 National Burden of Disease Study found interpersonal

violence to be the eighth leading cause of overall premature death in South Africa, while being the second leading cause of premature death for males, after HIV/AIDS.³ South Africa's injury burden is very high, particularly for homicide, which is approximately six times the global average.⁴

South Africa is a middle-income country that is burdened with a diverse spectrum of diseases, including infectious diseases, chronic and degenerative diseases, malnutrition and childbirth-related conditions, and a disproportionately large burden of injuries.⁵ Interpersonal violence and road traffic collisions are the leading causes of injury in South Africa.⁶ In 2005 39% of all injury-related deaths resulted from interpersonal violence.⁷ Despite

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the reduction in political conflict in the post-apartheid era, interpersonal violence has continued to plague South Africa, and has in fact increased in the past 20 years.⁸

South Africa is one of the few places in the world where rates of intentional injury exceed the rates of unintentional injury.⁹ Of the 52 493 injury-related deaths recorded in South Africa for 2009, almost half (25 499) were intentionally inflicted.¹⁰ Homicide was the leading apparent manner of death, accounting for 36.2% of all external causes.¹¹ Firearm injuries were a leading cause across several categories, accounting for 6 428 deaths, equivalent to 17.6 firearm-related deaths per day. Of these, 5 513 were attributed to homicides.¹² Other categories included sharp force, blunt force, strangulation, burns, other and unknown.¹³ Homicide rates in the Western Cape were greater than the national average for both males and females. In Cape Town, the province's largest city and home to almost two-thirds of the provincial population, the highest homicide counts for the period 2015 to 2016 were recorded in the relatively impoverished sub-districts of Nyanga (279 homicides) and Khayelitsha (161 homicides).¹⁴

While the criminal justice system remains the primary tool for responding to violence and injury in South Africa, evidence-based interventions for prevention are becoming increasingly influential in the field of public health, assuming a more central role in policymaking.¹⁵ The public health approach to violence and injury prevention consists of three elements: assessing existing conditions; developing interventions; and evaluating programme effectiveness.¹⁶ Key to this approach is a surveillance system capable of providing essential information for the assessment phase in order to develop appropriate interventions and programme evaluation methods.¹⁷

Injury surveillance is widely recognised as a critical prerequisite for effective injury prevention.

Ongoing surveillance can monitor the incidence of injury, identify risk factors and contribute to the planning and evaluation of injury prevention programmes.¹⁸ Furthermore, injury surveillance can comprise a variety of data sources, from mortality and hospital discharge data to emergency department registry data, surveys and police, fire and ambulance records.

This review suggests that violence and injury observatories are key to developing interventions that reduce the burden of injury in high-risk communities. We will use the term 'observatory' to denote a surveillance system that collects data from multiple sources, for example crime, clinical and forensic data, whereas injury surveillance systems almost exclusively focus on the use of injury data alone.

In this article we will substantiate the following claims:

- The observatories model is an internationally accepted tool that can provide a focused understanding of a particular issue or sub theme of violence.
- The integration of violence and injury data may allow a comprehensive view of the existing burden of violence and injury within a community.
- Observatories allow the opportunity to monitor current and prospective violence and injury interventions.
- Observatories are a viable intervention to support the prevention of violence.

We will first review the existing global efforts and examples of observatories, using case studies from Latin America where most of them are to be found, and where the socio-economic setting is comparable with South Africa. We will then review each function of a violence and injury observatory, its place within a national health reporting system, its structure and performance, and conclude with the current evidence of effect.

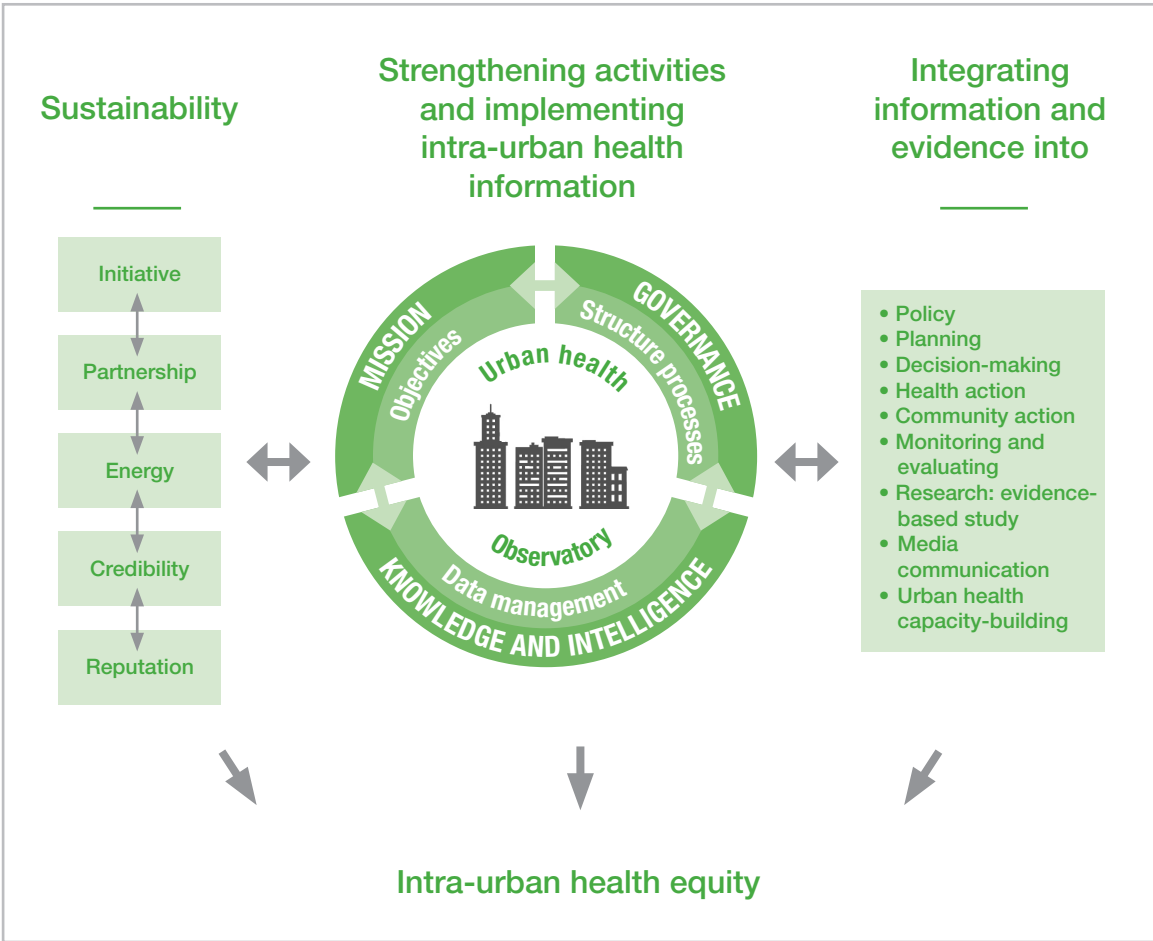
Observatories for violence and injury

The meaning of an observatory has recently expanded from its origins in astronomy to that of a specialised informational repository and knowledge-building centre, housing cross-referenced databases with advanced analytic and research capacities.¹⁹

An observatory is primarily a tool to support authorities in formulating effective responses to citizen safety and security issues.²⁰ It is a centre dedicated to systematising information from different sources to produce periodic analyses or studies that show the development of crime and violence in a given area.²¹ According to

research completed by the International Crime Prevention Centre, an observatory has at least three basic functions: collection of data, analysis of data and public dissemination, which is directed at preventing crime and violence at a local and regional level. The crime and violence observatories developed in Colombia aim to maximise inter-institutional cooperation, information sharing, analysis and security policy development initiatives to enhance governance.²² The model is similar to those proposed on a broader level by the International Scientific and Professional Advisory Council of the United Nations (UN) at the 11th UN Congress on Crime Prevention and Criminal Justice.²³

Figure 1: The observatory framework and contextual dynamics



Source: WT Caiaffa et al.²⁴

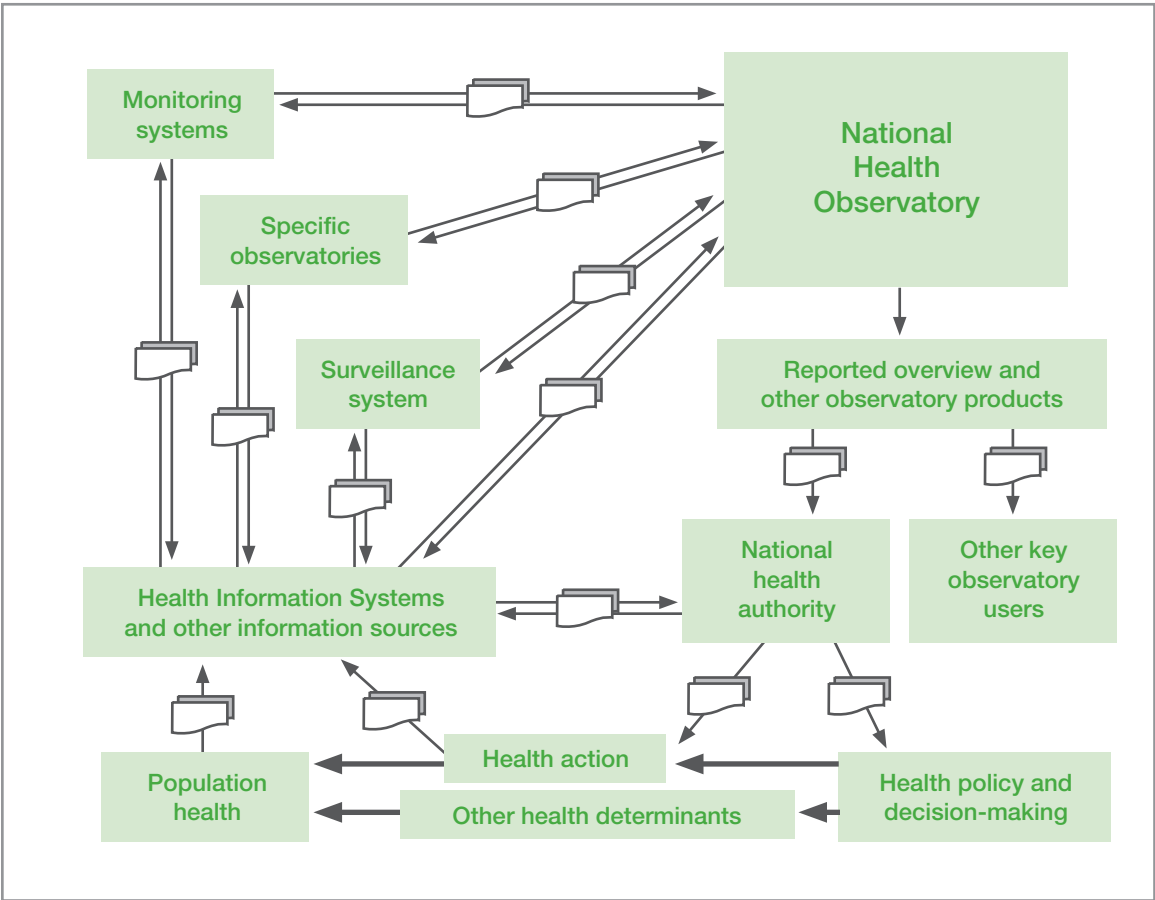
Conceptual framework for the observatory model

The concept of an urban observatory (Figure 1) has been developed to address the obstacles presented by the complex network of health determinants in urban settings, and the often dispersed and uncoordinated nature of data at the local level.²⁵ The observatories are intended to act as a focal point for urban monitoring by assembling, analysing and producing information on health outcomes and their broad range of determinants; and mobilising a network of actors or stakeholders to take action on the wider determinants of health through better informed policies.²⁶ Their focus is on generating information and knowledge for evidence-based health policy and decision-making.²⁷ They work to monitor health trends;

identify gaps in health information; provide guidance on appropriate methods; assemble data from different sources; and integrate population-based data (e.g. vital statistics, censuses, and social demographic surveys) and institution-based data from both within and outside the health sector.²⁸

The violence and injury observatory model was also developed within the framework of community-oriented policing and decentralisation.²⁹ Community-oriented policing follows a conceptual and practical shift adopted from earlier European practices and adapted to North America during the early 1970s.³⁰ It refers to systematic support for a more cohesive, responsive, interactive and user-friendly relationship between law enforcement agencies and communities,

Figure 2: The role of a specific observatory within a national health reporting system



Source: Pan American Health Organization (PAHO).³¹

with a strategy that generally seeks to open lines of communication with the community, produce information-sharing initiatives and improve the quality of information obtained.³²

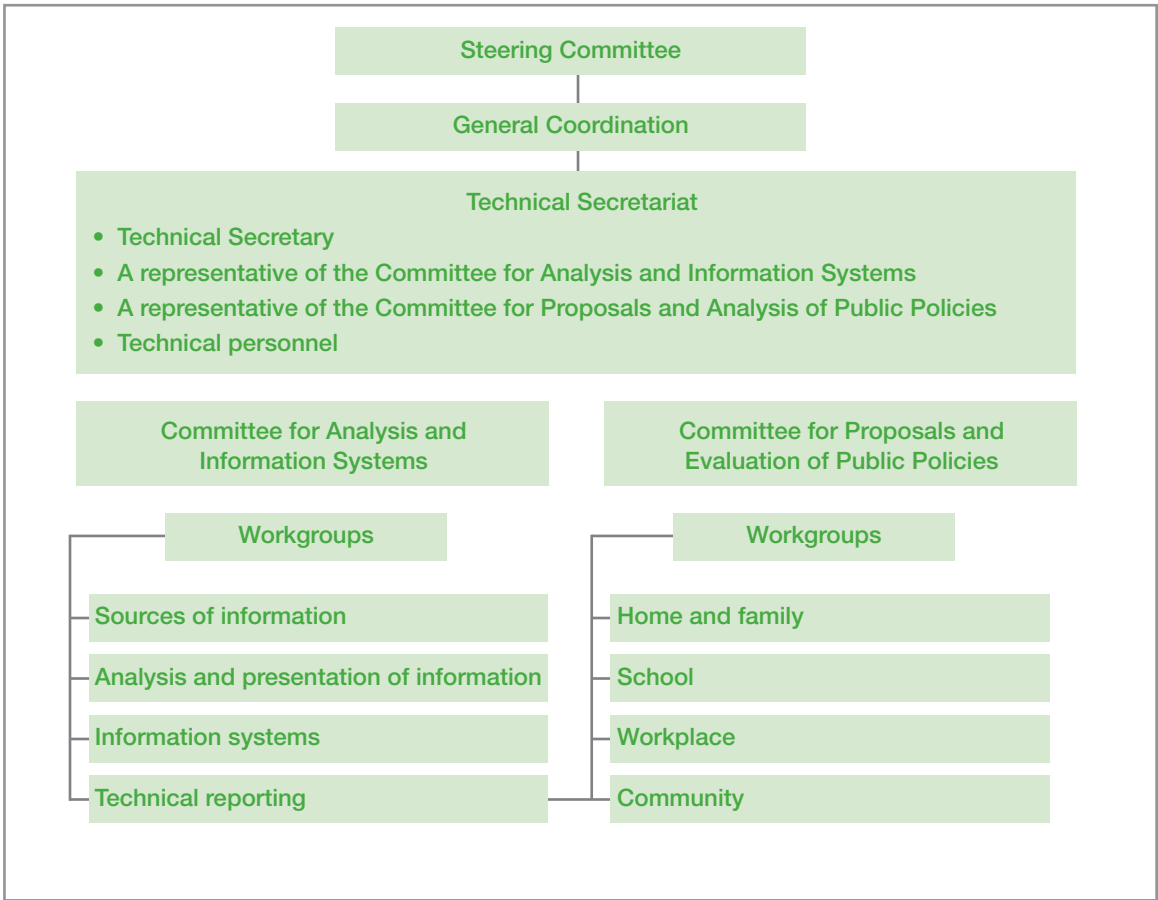
Historical background to the violence and injury observatory model

Between 1993 and 1996 the mayoral administration of Cali, the third most populous city in Colombia, instituted a programme of development, security and peace, referred to as DESEPAZ.³³ This programme applied a public health perspective to issues of violence prevention and intervention, influenced by the mayor's background in epidemiology, and would establish the framework for the first ever observatory dedicated to the theme of

violence and injury.³⁴ The information was subsequently validated, supplemented and utilised in weekly meetings of the city's Security Council, whose primary focus was citizen security issues; additionally, the council also sought to improve coordination and efficiency in the use of resources.³⁵

Following a thorough review of the data, further statistical analysis led to subsequent policy planning and coordinated intervention efforts by civil authorities.³⁶ Concurrently, structural interventions to improve police functioning through the provision of pay increases, educational opportunities and housing construction incentives were implemented.³⁷ These initiatives would provide the initial framework for later developments with the violence and injury observatory model.

Figure 3: The administrative structure of the Juarez Municipal Observatory



Source: LA Gutiérrez et al.³⁸

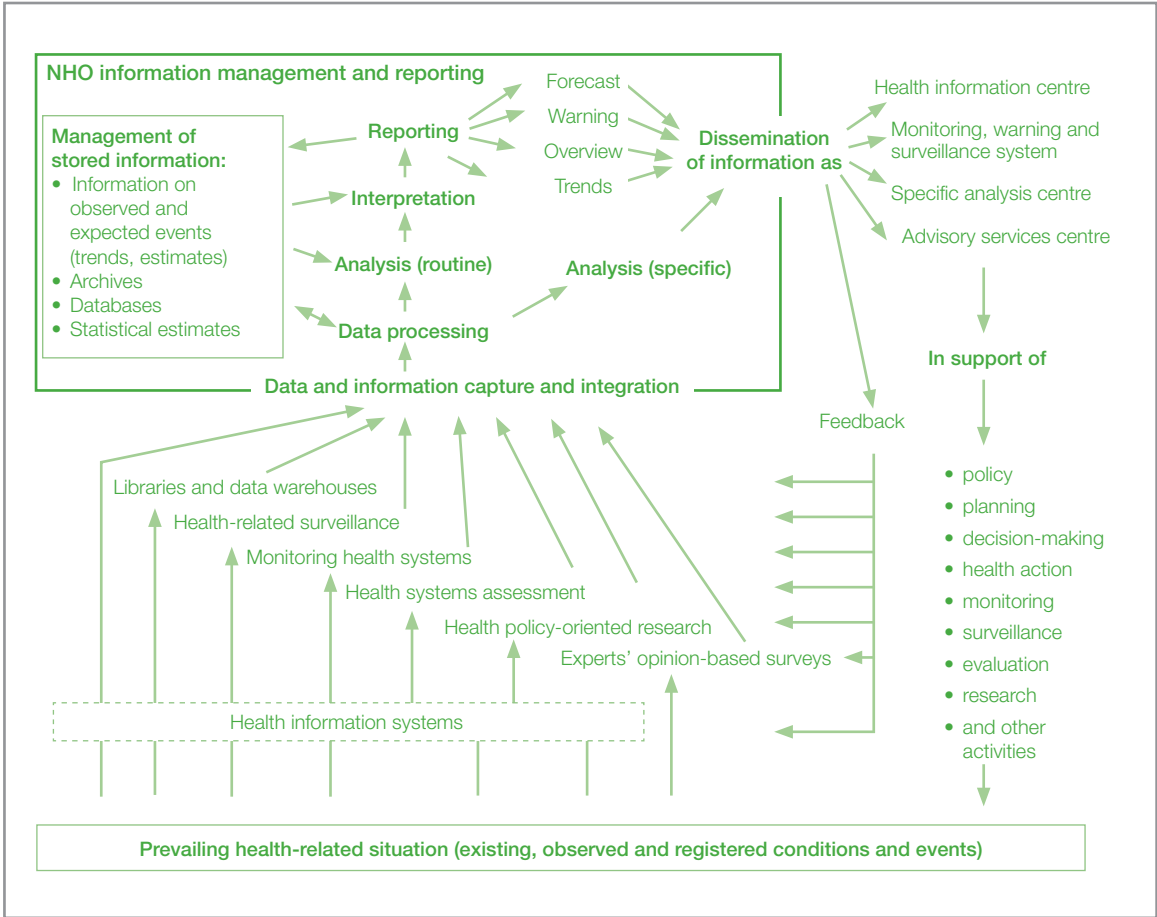
In the area of international violence prevention approaches there has been growing interest on the part of governments, municipalities, research centres, civil society organisations and international organisations in creating observatories or analytical tools for security-related problems, including, but not limited to, school violence, domestic violence, drug use, and social and gender violence.³⁹

Structure and performance of the observatory model

To illustrate the structure and performance of the observatory model, Figure 3 shows the administrative structure of the Juarez municipal violence and injury observatory in Mexico, while Figure 4 describes an observatory’s functions, information sources and management. The

Juarez Observatory is cited as an example, as the city’s population and socio-economic conditions, as well as its homicide rate, are comparable to municipalities within South Africa’s four major cities. Additionally, the formation of the observatory within a resource-limited setting provides a blueprint for the establishment of observatories in similar settings in South Africa. Violence in Juarez, one of the largest cities in Mexico, increased significantly from 2007 to 2010, with the homicide rate increasing from 23 to 224 per 100 000 inhabitants.⁴⁰ This situation triggered the creation of the Juarez Observatory in 2008, in a joint effort between the Juarez Municipal Government, the Autonomous University of Ciudad Juarez and the Pan American Health

Figure 4: Observatory functions, information sources and management



Source: Pan American Health Organization (PAHO).⁴¹

Organization (PAHO).⁴² From 2010 to 2015 the homicide rate dropped from 282 to 18 murders per 100 000 inhabitants.

Observatory function 1: collection, integration and storage of secondary data and information

A predefined list of data and indicators, such as the 22 Citizen Security Indicators agreed to by the Organization of American States (OAS), can be adapted from those used in international initiatives.⁴³ Examples of indicators related to violence include homicide rate per 100 000 inhabitants, prevalence of intra-family/family and domestic violence, rate of criminal victimisation in people older than 18 years, and percentage of perceptions of insecurity in people older than 18 years.⁴⁴ Data quality and completeness could vary between different administrative levels, geographical areas and specific systems, with the quality of information collected at the observatory depending on how the different sources have integrated and consolidated the information.⁴⁵

Agreement on information sharing facilitates the systematic data flow between information sources and the observatory central management unit. A fully functioning observatory will allow for the accumulation of electronically stored data, thereby providing the capacity to build a historical database.⁴⁶ Textual information, databases, historical trends in data and indicators, profiles, reports and other sources may convert the observatory into a powerful information and knowledge management centre.⁴⁷

Observatory function 2: data analysis

A range of multi-sectoral, multidisciplinary sources of information may be analysed, using quantitative and qualitative analysis methods for the purposes of (a) identifying patterns and trends over time in the incidence of violence, (b) monitoring and evaluating

interventions and policies, (c) understanding the causes and determinants of violence, and (d) developing a set of common indicators and standardised definitions.⁴⁸

Advanced data analysis methods for surveillance data include space-time clustering, time-series analysis, geospatial analysis, life tables, logistic regression, trend and small area analysis and methods for the forecast of epidemics based on surveillance data.⁴⁹ Statistical analysis can be performed by the observatory central team or by external groups such as those working in monitoring and surveillance, using user-friendly software such as Epi-Info or SPSS®. A Juarez study, using qualitative methodology, explored how families' economic, social and cultural capital had been disrupted by violence and how it affected children's well-being.⁵⁰ The conclusions of the research was that social and economic capital declined significantly because of the violence and crime that families experienced, that violence made it more difficult to find and maintain employment, and decreased their interactions outside the home, with cultural capital diminishing as a result of the isolation.⁵¹

Observatory function 3: reporting on and disseminating information and knowledge

The objectives of the dissemination of information are to (a) inform stakeholders of important issues and trends, (b) influence public policy, (c) develop evidence-based interventions and policy recommendations, and (d) assist collaborating agencies and other stakeholders to improve their operations and understanding of the issue through provision of an up-to-date, reliable evidence base.⁵²

The communication of information to contributors and users of surveillance data is integral to programme planning and decision-making. Examples of users include public health practitioners, health planners, epidemiologists, clinicians, researchers, policymakers, data

collectors, members of the public, and the media.⁵³ Different communication vehicles exist, including formal surveillance reports or bulletins, annual reports, teleconferences with partners, media conferences, media releases and public advisories.⁵⁴ The experience of the Juarez Observatory has shown that even in complex situations it is possible for academic institutions, international organisations, and diverse governmental and non-governmental institutions and organisations to combine efforts and collaborate.⁵⁵ This high spirit of co-operation and sharing and dissemination of data contributed to the decline of road accidents related to drunk driving over a three-year period from 2009 to 2011, and a decline in the homicide rate over a five-year period from 2010 to 2015.⁵⁶

Observatory types and proliferation of the observatory model globally

There are various types of observatories, such as governmental, university or combined models.⁵⁷ Observatories can operate on different levels, including local, regional, national and international (Figure 2). There are also generalist observatories (for violence, security, crime, etc.) or thematic ones (for school violence, domestic

violence, trafficking in goods, trafficking in persons, organised crime, etc.).⁵⁸ There are also centres that perform the same work as an observatory but are not necessarily called observatories. Currently there are 27 global observatories (Table 1), disseminating research on best practices, policies and programming for democratic governance; numerous public health observatories, including an European Union observatory on health systems and policies; a global urban development observatory sponsored by the UN; as well as numerous local, regional, national and international observatories addressing crime and security measures.⁵⁹

The Geneva Declaration on Armed Violence and Development, endorsed by more than 100 countries, commits signatories to ‘support initiatives intended to measure the human, social and economic costs of armed violence, to assess risks and vulnerabilities, to evaluate the effectiveness of armed violence reduction programmes, and to disseminate knowledge of best practices’. This declaration describes a significant function of violence and injury observatories.⁶⁰ Furthermore, the observatory model has been proposed at a broader level

Table 1: A sample of observatory themes, locations and websites

Observatory theme	Location	Website
EU observatory on health systems and policies	Brussels, Belgium	www.euro.who.int
UN global urban development observatory	Geneva, Switzerland	www.unhabitat.org
Violence prevention	Atlanta, United States	https://www.cdc.gov/violencePrevention/NVDRS/index.html
Center for crime and public safety studies	Belo Horizonte, Brazil	http://www.crisp.ufmg.br/
Violence prevention	Cali, Colombia	http://prevencionviolencia.univalle.edu.co
Observatory for Safety and Peaceful Coexistence of the Juarez Municipality	Juarez, Mexico	www.observatoriodejuarez.org
Trauma and Injury Intelligence Group	Merseyside, United Kingdom	http://www.cph.org.uk/tiig/

by the International Scientific and Professional Advisory Council of the UN at the 11th UN Congress on Crime Prevention and Criminal Justice.⁶¹

Several factors have contributed to the global growth and expansion of this model. One of the global outcomes of the Square Kilometre Array research project in South Africa, which is responsible for collecting and housing the largest database ever recorded in human history, is the reduction in costs of cloud computing when processing and analysing large datasets.⁶² Additionally, the growth of public health surveillance systems globally has been disseminated and supported by organisations such as the WHO, the Centers for Disease Control and Prevention in the US and the International Centre for the Prevention of Crime in Canada.⁶³ Finally, the expansion of information and communications technology (ICT) infrastructure in the developing world has grown, including in South Africa, which, according to the 2013 Global Information Technology Report published by the World Economic Forum (WEF), ranks 50 out of 144 countries when it comes to ICT infrastructure and digital content.

Evidence of effect

Despite the proliferation of various observatory models, there is little published research on their effectiveness in producing or stimulating the production of demonstrable social change and decreasing levels of violence and crime.⁶⁴ In 2012 Gutiérrez and colleagues illustrated that the implementation of a violence and injury observatory based on the Juarez Observatory could effectively reduce violence.⁶⁵ In addition, several observational studies have shown a reduction of violence associated with the implementation of observatory/surveillance systems.⁶⁶

To date, there has been no systematic analysis of the literature to present a succinct review of

the evidence. With other colleagues, in 2015 we published the first systemic review protocol to investigate the effectiveness of observatories in reducing violence, 'Effectiveness of violence and injury observatories in reducing violence in an adult population'.⁶⁷ This systematic review will seek to summarise the evidence from existing studies on the contribution of violence and injury observatories to violence prevention in adult populations.

Conclusions and further work

This article introduces the observatory model as an internationally accepted tool to study and prevent violence as a public health issue. The model can be applied to specific types of violence within different socio-economic settings. Furthermore, the integration of violence-related data from different data sources and stakeholders allows for routine services such as monitoring and evaluation, but also extends to the use of advanced analytical methods employing GIS, epidemiology and database mining. Within high-risk communities, such as those in the cities of Juarez in Mexico and Cali in Colombia, the observatory model serves as a viable intervention and tool to address the burden of injury. Based on these potential benefits and the public health imperative to address the high rate of violence and injury in South Africa, the Cape Town Violence, Injury and Trauma Observatory (VITO) is proposed as the first non-conflict observatory on the African continent.⁶⁸



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Notes

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- 1 M Peden, K McGee and E Krug, *Injury: a leading cause of the global burden of disease*, Geneva: World Health Organization (WHO) Publications, 2002, 1–2.

- 2 C Murray and A Lopez, Alternative projections of mortality and disability by cause 1990–2020: Global Burden of Disease Study, *Lancet*, 349:9064, 1997, 1498–1504.
- 3 Ibid.; R Matzopoulos et al., Injury-related mortality in South Africa: a retrospective descriptive study of postmortem investigations, *Bull World Health Organ*, 93:5, 2015, 303–313.
- 4 Matzopoulos et al., Injury-related mortality in South Africa.
- 5 P Brysiewicz, Trauma in South Africa, *Int J Trauma Nurs*, 7:4, 2001, 129–132; J Goosen and E Al, Trauma care systems in South Africa, *Injury*, 34:9, 2003, 704–708.
- 6 Matzopoulos et al., Injury-related mortality in South Africa; Goosen and Al, Trauma care systems in South Africa; A Brooks, C Macnab and K Boffard, South Africa, *Trauma Q*, 14:3, 1999, 301–310; B Meel, Pre-hospital and hospital traumatic deaths in the former homeland of Transkei, South Africa, *J Clin Forensic Med*, 11:1, 2004, 6–11.
- 7 R Matzopoulos et al., *The Injury Mortality Survey: a national study of injury mortality levels and causes in South Africa in 2009*, Cape Town: WHO Publications, 2013, 303–313.
- 8 Ibid.; R Norman et al., The high burden of injuries in South Africa, *WHO Bull*, 85:9, 2007, 695–701.
- 9 WHO, *World health statistics*, Luxembourg: WHO, 2015, 110.
- 10 Matzopoulos et al., Injury-related mortality in South Africa.
- 11 Ibid.
- 12 Ibid.
- 13 Ibid.
- 14 South African Police Services, South African crime statistics 2015/16, <https://www.saps.gov.za/services/crimestats.php> <<https://protect-za.mimecast.com/s/1pRBnsmw3ZS2>> (accessed 31 March 2017).
- 15 B Holtmann and C Domingo-Swartz, *Current trends and responses to crime in South Africa*, Johannesburg: Medical Research Council (MRC), 2008, 131–159.
- 16 EG Krug et al., *World report on violence and health*, Geneva: WHO Publications, 2002, 7–9.
- 17 Ibid.
- 18 C Macarthur and IB Pless, Sensitivity and representativeness of a childhood injury surveillance system, *Inj Prev*, 5, 1999, 214–216; T Driscoll, J Harrison and J Langley (eds), *The scientific basis of injury prevention and control communications*, Melbourne: IP Communications, 2004, 87–109.
- 19 MI Gutierrez-Martinez et al., The evaluation of a surveillance system for violent and non-intentional injury mortality in Colombian cities, *Int J Inj Contr Saf Promot*, 14:2, 2007, 77–84.
- 20 Organization of American States (OAS), *Manual for the creation of national public security observatories on crime and violence*, Washington DC: OAS, 2009, 21.
- 21 Ibid.
- 22 Gutierrez-Martinez et al., The evaluation of a surveillance system for violent and non-intentional injury mortality in Colombian cities.
- 23 Norwegian Ministry of Foreign Affairs, Measuring and monitoring armed violence: goals, targets and indicators, Oslo Conference on Armed Violence, Background Paper, Geneva: UN Development Programme (UNDP), April 2010, 32.
- 24 WT Caiaffa et al., Developing a conceptual framework of urban health observatories toward integrating research and evidence into urban policy for health and health equity, *J Urban Health*, 91:1, 2014, 1–16.
- 25 Z Ross, T Matte and H Kitson, *Taking the pulse of an urban world: mechanisms for characterizing urban health and urban health equity*, Kobe: WHO, 2011, 4–6.
- 26 Caiaffa et al., Developing a conceptual framework of urban health observatories.
- 27 Ross, Matte and Kitson, *Taking the pulse of an urban world*; Pan American Health Organization (PAHO), *Implementing national health observatories: operational approach and strategic recommendations*, Chile: WHO, 2009, 1; D Vlahov and W Caiaffa, *Healthy urban governance for population health in Belo Horizonte: participatory budgeting*, London: Earthscan, 2012, 63–81.
- 28 Caiaffa et al., Developing a conceptual framework of urban health observatories.
- 29 Gutierrez-Martinez et al., The evaluation of a surveillance system for violent and non-intentional injury mortality in Colombian cities.
- 30 Ibid.
- 31 Pan American Health Organization (PAHO), *Implementing national health observatories: operational approach and strategic recommendations*.
- 32 Ibid.
- 33 Ibid.
- 34 Ibid.
- 35 Ibid.
- 36 Ibid.
- 37 BA Sklaver et al., The establishment of injury surveillance systems in Colombia, El Salvador, and Nicaragua (2000–2006), *Rev Panam Salud Publica*, 24:6, 2008, 379–389.
- 38 LA Gutiérrez et al., Using evidence on violence and injury prevention for policy development and decision making in Ciudad Juarez, Mexico, *Rev Panam Salud Publica*, 31:5, 2012, 365–372.
- 39 Prince, *Crime observatories*.
- 40 LA Gutiérrez et al., Using evidence on violence and injury prevention for policy development and decision making in Ciudad Juarez.
- 41 PAHO, *Implementing national health observatories*.
- 42 Norwegian Ministry of Foreign Affairs, Measuring and monitoring armed violence; Inter-American Development Bank (IADB), Citizen security and justice, <http://www.iadb.org/en/topics/citizen-security/citizen-security-indicators,2666.html> (accessed 6 March 2017).
- 43 IADB, Citizen security and justice.
- 44 PAHO, *Implementing national health observatories*.
- 45 Ibid.
- 46 Ibid.
- 47 Ibid.
- 48 IADB, Citizen security and justice.
- 49 BCK Choi, The past, present, and future of public health surveillance, *Scientifica* (Cairo), 2012, 1–19.
- 50 AA Hernandez and SE Grineski, Disrupted by violence: children's well-being and families' economic, social, and

cultural capital in Ciudad Juarez, Mexico, *Rev Panam Salud Publica*, 31:5, 2012, 373–379.

51 Ibid.

52 Department for International Development, *Tools for measurement, monitoring and evaluation: sources of conflict, crime and violence data*, London: UK Aid, 2013, 22–24.

53 LW Chambers et al., Health surveillance: an essential tool to protect and promote the health of the public, *Can J Public Heal*, 97:3, 2006, 2–8.

54 Ibid.

55 Gutiérrez et al., Using evidence on violence and injury prevention for policy development and decision making in Ciudad Juarez, Mexico.

56 Ibid.

57 OAS, *Manual for the creation of national public security observatories on crime and violence*.

58 Ibid.

59 Gutierrez-Martinez et al., The evaluation of a surveillance system for violent and non-intentional injury mortality in Colombian cities. www.uclg.org; www.euro.who.int; www.unhabitat.org; http://www.unicri.it/in_focus/on/Urban_Security, <http://www.hsrgroup.org/>.

60 E Gilgen and L Tracey, *Contributing evidence to programming: armed violence monitoring systems*, Geneva: UNDP, 2011, 9.

61 United Nations (UN), Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 2005.

62 R Newman and J Tseng, Cloud computing and the Square Kilometre Array, Square Kilometre Array, Memo 1334, May 2011, https://www.skatelescope.org/uploaded/8762_134_Memo_Newman.pdf (accessed 6 March 2017).

63 IIADB, Citizen security and justice.

64 Gutiérrez et al., Using evidence on violence and injury prevention for policy development and decision making in Ciudad Juarez, Mexico.

65 Ibid.

66 Sklaver et al., The establishment of injury surveillance systems in Colombia, El Salvador, and Nicaragua; Gutiérrez et al., Using evidence on violence and injury prevention for policy development and decision making in Ciudad Juarez, Mexico.

67 A Jabar et al., Is the introduction of violence and injury observatories associated with a reduction of violence in adult populations? Rationale and protocol for a systematic review, *BMJ Open*, 5, 2015, 1.

68 A Jabar and R Matzopoulos, Rationale and design of the Violence, Injury and Trauma Observatory (VITO): The Cape Town VITO Study (the manuscript has been submitted and is currently under review at BMJ Open).

On the record

Interview with Lieutenant General Gary Kruser, Deputy National Commissioner, South African Police Service

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In 2016 the South African Police Service announced that it was going 'Back-to-Basics'. To lead this programme, it established a new Management Interventions competency, headed by Lt Gen. Gary Kruser. In February 2017 Dr Johan Burger (ISS) sat down with Kruser to learn more about the new competency.

Johan Burger (JB): Who is Gary Kruser? Where do you come from? What makes you tick?

Gary Kruser (GK): I was born in Athlone, in Cape Town. It's surrounded by a lot of gangsterism and inequality. We grew up under the apartheid system, and we are primarily a coloured community.

What makes me tick is to ensure equality in South Africa, because I grew up around inequality – but also to ensure that basic living standards of people are at an acceptable level. In my youth I was involved with the ANC [African National Congress] and UDF [United Democratic Front] youth movements, where I fought to create a better life for all our people in South Africa. I think that being in the police helps me to continue trying to create a better life for people, because without a good professional police service it would be really difficult for this government to develop a better, equal society.

Once I joined the police I committed to ensuring the transformation and development of the police into a democratic police service. That's the commitment I made to myself and the pledge I signed to the people of South Africa.

And I gave it my everything, long hours, studying, getting a degree in policing to equip myself for the job itself.

When I was younger I told myself I wanted to be a motor mechanic. It was not my dream to become a police officer. So my senior ranks and other achievements in the South African Police Service have all been a bonus for me.

JB: As deputy national commissioner you are responsible for national management interventions. How would you explain 'management interventions'?

GK: I always say that we are an internal consultancy. Normally when you have problems you get someone from outside to come and help. Now we use the expertise of the police to deal with those, we exist to deal with failures. The critical thing is we don't approach a problem on our own. We work with the affected office in finding solutions together. We go through a scientific process to see what we can repair immediately, and then do a bigger analysis and draw up a project plan or 'project intent' with timeframes, designations of responsibility, what to do and how to fix it.

JB: Let's look at the research division, which is under your supervision and something that is long overdue. How do you see its role?

GK: You are correct to say it is long overdue. We have tried through many attempts to get it off the ground. We have now established the structure led by Lt Gen. (Dr) Zulu, who I think is the correct person for the job and will do very well. We have gone through a whole process outlining what we want to do over the first six months. One of the first things we wanted to do is finalise the research agenda, because otherwise every week you are researching something new. So we have a research agenda which is adopted by everyone, including Parliament, setting out what we will do over the next five years, because research cannot be short term. We then prioritise what we have to do on that research agenda.

The second thing for me is to capacitate the research division adequately. I don't think we are where we would like to be, but we have to work with other institutions and universities to compensate where we lack capacity. I think there are sufficient resources outside the police.

One of the key things that we want to develop is a policing model that includes other government departments. We have gone through all the provinces and met with the generals and with all the departments and community members, and we will see where we go from here and what will come out of that.

The other thing that is very critical is the operational model which we established, the OCC. It is one of our highlights.

JB: What does OCC stand for?

GK: Operational Command Centre. We were initially given the job of trying to deal with the issue of gangsterism in Port Elizabeth, and we went in there with a six-month plan and with very clear objectives that we were going to

arrest all the high flyers and reduce the number of murders and remove the use of drugs, and we achieved those things. We had an operation and took down 30-odd high flyers in one weekend. We achieved all the objectives we had set, which was very encouraging. Out of that practice we developed a whole new operational concept.

You don't have the capacity to deal with cross-boundary crime at station level. So we have divided the OCC concept into sections, and the first thing about the OCC concept is the level of accountability. The OCC develops high-level accountability on a daily basis, on a minute-to-minute basis.

Secondly, we will not stop crime but we need the ability to respond to it. With the old [operational] centres, something would happen and they would write a report and in the morning they would tell you what had happened. I've said that if something happens, something must be activated immediately. If it's a robbery, then the streets must be closed. There is a plan for everything, the tactical unit must move in.

The OCC also has an intelligence cell, a grouping that includes the Management Information Officer (MIO). All the people sit with information and it's processed every morning through the MIOs at the cluster level. The MIOs produce a product which is then given to the operational people, who must draw up plans and report back on a daily basis as to what happened in terms of execution.

JB: So in a way this either supports or replaces the crime threat analysis?

GK: No, those guys are still there. The station guys come every morning to the cluster, they sit together at 7 am with intelligence and they put together what happened during the night before. They pin it on the board and they sit as a collective, about 20 people in

a meeting. There they assess the threats, identify patterns, project the risk, and give those findings to the core command system, the operations people from all the stations, as well as the cluster operations commander. They then say, 'Yes, housebreaking from this time to this time,' and they deploy people there; or, 'here is an issue of gangsterism, we need patrols from 6–8 pm'. So they have a plan, and then they give it to the operational commander, who implements that plan.

The station then continues with normal duties. We have taken people from the station because we currently work with five to 10 people per shift. You can't do much with five people, but they are also wasted if they work normal shifts when there is nothing happening in the station area, and the problems are say from 8 pm to 3 am in the morning. But from 6 am they work, so we have taken away those shifts, we group them and now they are working according to the crime threat patterns of the cluster.

Initially there was big resistance from the station commissioners, saying we were taking their people. But what they found was that they went from red to green [in terms of the performance targets], so they are not complaining as much anymore and are quite positive.

We also have a detective desk at the cluster. Every morning all the dockets must be brought there. The detectives there check the A1 [first information of crime] statements and task the station detective heads with what they must fix. If you have a good A1 statement you are in a good place. And if a crime occurs across stations it will go to the cluster detectives to deal with, or they will advise the station detectives how to deal with that crime.

JB: How widespread is this?

GK: We only have it in one cluster.

JB: So it is still experimental?

GK: No, there is an ongoing validation process, and we will gradually expand this concept. We will start in Gauteng province soon.

JB: So this is a good example of what the British are looking at as evidence-based policing?

GK: At every crime scene we apply touch DNA, which is critical. Before, we used, for example, ballistic testing. We have an OCC person full-time, 24 hours a day, so when there is a crime which we think needs a crime scene team they are the first people dispatched. If there is a gun at the crime scene no one touches it. All those technical things are now dealt with at the cluster level so we can respond immediately. When they finish they immediately give packages telling detectives 'this guy shot', 'this person lives there', they give a photograph of the place, they get a Google Earth view and see the house. They put all of that in a package and they give it to the operational people, who must follow up.

JB: So if this works to your satisfaction and it is approved, the idea is to expand this throughout the country?

GK: Absolutely. I am convinced that it's working. And we can have operational command centres at the station, cluster and province, but with different functions. At some stage crimes are beyond a cluster and they must go to a provincial JOC [Joint Operational Centre]. The JOC does the very same thing but at a provincial level.

JB: Now the three regional commissioners, what precisely are they expected to do? And what is your role in this regard?

GK: We have taken a decision to identify the 30 worst performing stations per province. The three regional commissioners are to evaluate them and draw up a project for every station. Things they can repair immediately, for example that there is no electricity, generators are not

working, and there is no water. These are things they can fix. You would be surprised how many simple things they fix.

JB: So they have been successful so far?

GK: On those, yes. Then they have to deal with the internal functions of the police. The key focus initially was to check whether we are doing the things that we were supposed to do and are doing them correctly. How do we ensure that we deal with the issue of crime and operationalise the crime issue? We haven't done a proper analysis yet, but the crime rate has gone down in most places.

We also get a lot of ad hoc cases where the National Commissioner or Parliament or the Provincial Commissioners ask us to do something.

JB: These regional commissioners, are they based here at the head office?

GK: They are all at head office, and they each have a deputy provincial commissioner in the province that reports to them. So they have a team that sits in the provincial meetings, and then they have their own head office teams, which are sometimes sent to assist the provincial teams. Provincial teams normally do inspections regarding the implementation of the recommendations. We don't write reports, we have what we call the CAT (Computer Assessment Tool), and we revise it constantly. So you go to a particular station or office and if they say for example that they have morning meetings, they must obviously produce evidence of the minutes and you can then tick 'yes'. If no minutes of the meeting exist, then tick 'no'. Do they have community forum meetings? Bring your minutes and call the CPFs [Community Policing Forums], ask them how the meeting was. We get the review and give them a mark and an assessment of the state of the organisation. It really gives solutions to the problem.

When the team leaves the station they are able to immediately give a report to the provincial commissioner, the DPC [deputy provincial commissioner], the station commissioner, the regional commissioner and myself. While we wait for the final report, they will sit in and analyse it with the Management Intervention Analysis Centre (MIAC) and other people. They will look at the things they must do immediately, for example ensuring that a commander who requires further training is booked for a relevant course.

JB: Do you and your management group have regular meetings with your regional commissioners?

GK: I meet with them every week. The MIAC reports in terms of where they are, what they are supposed to be doing. They have to account because they give me a project plan of what they are going to do for the year, on a daily basis. Every morning they have to confirm that they were at particular stations. They report to the MIAC so that we can address the issues. If they say that in region C we are going to be at Bishop Lavis station, they must confirm that they are there at the beginning of the week and have a programme, so they have WhatsApp groups. We are developing all the time.

JB: Do you believe that that the regional commissioner system is justified, that it is working?

GK: Based on the feedback I am getting from the provinces, I believe that it's working. We will also do an impact analysis of some of the issues with the MIAC to measure what difference we have made. I think the station evaluation reports already teach the stations a lot. We are also growing and learning at the moment. I think we have made an impact, and crime is looking better in the areas where we intervened. I have no doubt that we must have made some contribution to that, but we won't claim everything. We hold hands, we don't leave

until the problem is solved. We don't write a report and say fix it. If they knew how to fix it, they wouldn't have had problems. So we stay with people sometimes for long periods. It's not always quick and easy, some projects extend over years.

JB: So, just a question again on this regional commissioner issue, obviously it's working. Anything that you think needs to be done to strengthen the system?

GK: We want to find a tool that can measure our impact and assessment better and we want to link it to the efficiency index and to crime, and to how communities respond as well. So the MIAC people are busy designing those things because when we started we knew that we had to go and fix things. But it is how we measure our success and outcomes – I think we are doing it our own way, but we want to improve on that issue itself.

JB: If you look at service delivery protests and at what is happening at universities, this is not a situation that the police created, but they have to go and police it. What do you see as the broad challenges for policing in South Africa at the moment?

GK: I think the key problems in our country are based on our social environment, if we look at the levels of unemployment, of homeless kids without parents, the social ills in the communities, domestic violence, rape in the family, etc. When you fail to prevent crime at a primary level, those things continue. I think the government as a whole needs to look at crime prevention holistically. We need proper housing, schooling, playing fields for communities, etc. While the government tries to do that, we are going to try and keep the lid on the pot; we have to deal with the consequences of these not being there.

Firstly, we have to correctly utilise the resources we have because while we don't have an

abundance, we have enough. A second issue is accountability, for example, of station commissioners or a cluster commander. Thirdly, we need a stronger intelligence capacity to ensure that the operational members police according to a clear threat analysis and not by chance. Fourthly, we need to strengthen our detectives, because good effective detective work ensures prosecution and plays a critical role in crime prevention, and allows us to take out many repeat offenders. Finally, we have to increase our forensic ability. Part of our model is to use forensic evidence in crime scene management, which is going to make policing much easier, because someone always leaves some form of DNA behind. And with DNA we can also link someone to multiple crime scenes and previous crimes.

JB: There has been instability in this institution for almost two decades. It seems like there is, after a promising period, a return to instability, with senior generals on suspension, facing criminal charges, etc. There are also allegations against the acting national commissioner. Is this something that worries you? Something that can impact on the leadership of the police and the work you do?

GK: I think that any organisation needs stable leadership to ensure that we not only develop strategies but we implement them, and reach the target outcomes. We can only do that when we have stable leadership for at least five years. Without that you are constantly redeveloping strategies without implementing any of them. Stable leadership will ensure that you develop a strategy and you agree on it. The good thing about our provincial commissioners is that all of them are fairly new, so we should have stability at the provincial level for the next five years, and I think it will help take us forward. So we have a fairly young leadership, and with the correct guidance they can bring things to a higher level.

JB: If you were appointed national commissioner right now, what would you do to address the concern that you have just explained?

GK: I think that I am at a better place where I am. I think that my skill set and personality better suits the role I play here. I can support any national commissioner in achieving his or her objectives in ensuring that we make the police more professional. But as the collective, I think we need to stabilise the police by ensuring that we finalise our appointments [of commanders] and so forth, which creates a lot of uncertainty and unhappiness, and we let people focus on the work ahead. I think that we have a lot of committed police out there. If they are well led, they will do amazing things.

JB: You have come a long way and proved yourself. You are respected in many quarters, and you have become in many places the face of the police. So if the president calls you and asks you, 'General Kruser, I need you to fill that position,' would you not then consider it?

GK: I come from a culture where I have never applied for a position, and at the moment I have no ambition to be the national commissioner. If I had it my way, I would be retired already. I think that what I want for myself now is that I have given all my life to the country and I want to give something to myself. My son is now a grown-up and at varsity. There is also a lot of stuff that I want to do for myself, and for my mother. And I am not sure if having that job will give me the space to do all of those things, but I'll support anyone who takes it.

JB: Do you have any advice for all of those policemen and women you referred to earlier, who are honest, dedicated and hardworking, but may feel that they are not properly recognised?

GK: I know that things are difficult for members who have 20 to 30 years of service. And as

an organisation I think that we have made a commitment to look into those things. So we have to get our HR [Human Resources] to rectify this, and get a better promotion system. But at the same time I think that most of these hard-working men and women in blue have answered the call of the job. My call to them is, while I know that there are frustrations and challenges in the organisation, the community out there requires them to remain committed and to continue delivering their service. If you keep on doing good work, you will be recognised, but if you really feel that you have been aggrieved, follow the grievance procedure. I think it's there to assist people.

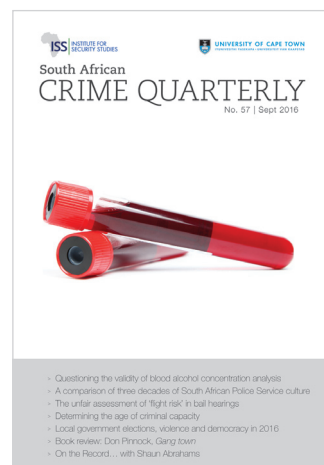
I always say to my staff, we must separate the noise from the music, because sometimes there is a lot of noise. And if you listen to the noise then you lose focus. So it is better to listen to the music, dance to it and keep doing your work.

Previous issues

This year end issue contains three pieces on policing and protest. These include two research articles exploring access to, and analysis of the South African Police Service's protest database, and a review of the book, *The Spirit of Marikana*. Lukas Muntingh provides a detailed review of South Africa's prisons, ten years after the Jali Commission released its report on the subject. The issue is the last for long-time editor, Chandré Gould.



SACQ 58 is crammed with contributions. Research articles explore blood alcohol analysis systems, police organisational culture over time, and the assessment of flight risk in bail hearings. Two commentary and analysis pieces discuss determining the age of criminal capacity, and politically motivated violence and assassinations in KZN. Don Pinnock's book *Gang Town* is reviewed with meticulous comparative detail, and Shaun Abrahams speaks openly about his work as head of the NPA in our *On the Record* interview.



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