South African
CRIME QUARTERLY

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The Centre for Law and Society (CLS) is an innovative multi-disciplinary centre in the Faculty of Law where scholars, students and activists engage critically with, and work together on, the challenges facing contemporary South Africa at the intersection of law and society. Through engaged research, critical teaching and robust exchange, CLS aims to shape a new generation of scholars, practitioners and activists, and to build the field of relevant legal theory, scholarship and practice, that is responsive to our context in South Africa and Africa.

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SA Crime Quarterly
No. 64 | June 2018

Editorial policy

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

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

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

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

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

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

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

Editorial

Governance and justice: Southern edition

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Given *South African Crime Quarterly*'s cross-disciplinary nature, and the fact that we accept article submissions on a rolling basis, we seldom have a collection of articles in a single issue that speaks clearly to a unifying theme. This edition is (happily) an exception. Each of the articles in the volume touches on questions of governance:[1] by addressing how we use and assess evidence-based research aimed at improving policing practice; looking at the role and performance of the Western Cape Police Ombudsman; examining how and where protests focused on weak or absent governance take place; and unpacking the latest version of the Traditional Courts Bill, which is before Parliament (after two previous failed attempts) and which aims to regulate the customary justice environment.

Perhaps the serendipity is the result of the prevailing South African political winds. In the months since Jacob Zuma's much-anticipated departure from the presidency, President Cyril Ramaphosa has raised concerns about the collapse of governance, arguing that the state's institutions are failing to deliver, and have consequently lost credibility and the trust of South Africa's people.[2] Eskom's virtual collapse, the impending revival of load shedding to stabilise the electricity supply grid, the Cape Town water crisis (and the crisis in governance that the water shortage has revealed), hospitals running short of medicine, books that are routinely not delivered at schools, junk ratings status, grounded SA Express flights, and haemorrhaging operating losses at South African Airways: there are certainly plenty of examples to support the president's position.

Political winds aside, I think that the thread that runs through this collection is also reflective of the sustained, and often vocal engagement by civil society and academia on questions of accountability and governance, and (given *SACQ*'s particular focus) how these intersect with criminal justice. To 'do' criminology and public policy in South Africa requires us to engage with how we regulate and hold systems to account, and while these questions are hardly new to the criminology space (having been asked by Northern theorists, for example, in respect of police brutality, corporate crime, corrections, prosecution, and discretion across the board from police to judges), they require, in South Africa, an honest engagement with history, space and justice in a way that is, I think, at once more proximal, but also fractured. We have to confront our own roles in crafting and evaluating policies and practices, think carefully about the ways that we criticise and/or sustain institutions, and own up to the ways in which we have (perhaps uncritically) imported wisdom from 'elsewhere' to try to speak to our own realities. The articles in this edition encourage us to think much more reflexively about what proper governance and accountability mean in the criminal justice environment, and how

we do research, and develop and reform the law and policy in ways that speak to engendering a new normal.

Kicking off with a focus on policing, Gareth Newham and Brian Rappert's article, *Policing for impact: Is South Africa ready for evidence-based policing?,* reflects on the ways in which research aimed at improving operations has realised its potential to shape policing in practice. Based on discussions that took place between the South African Police Service's (SAPS) National Research Division, the Institute for Security Studies, and academic and policing organisations based in the United Kingdom, the article documents a shift towards 'greater engagement and collaboration with partners external to the police on research and data', and argues for dedicated research partnerships that could 'better enrich SAPS exposure to new knowledge and interventions'. Newham and Rappert also underline the importance of establishing clear review standards against which research can be assessed before it is accepted by the SAPS, and for a formal, structured platform for profiling policing research from South Africa and across the African continent.

Moving on to police oversight, Lukas Muntingh reflects on the office of the Western Cape Police Ombudsman, and looks at its powers and performance since its inception. Established as one of a number of initiatives aimed at improving the monitoring and oversight of the police in the province in the wake of the Khayelitsha Commission's findings on the breakdown in the relationship between the SAPS and the community, Muntingh looks at the Ombudsman's somewhat 'modest beginnings' in executing its mandate. The Ombudsman is tasked with investigating complaints of police inefficiency, and must report on the outcome of these investigations and the recommendations it makes to the SAPS in terms of these complaints. Examining the Ombudsman's 2015/16 annual report, Muntingh finds that the body faces a number of challenges, including a 'tiny' budget, small staff, limited capacity to investigate, and low levels of confidence in its independence and effectiveness in addressing the poor policing and police–community relations that are evident in the province. Despite this, he concludes that the Ombudsman has the potential to improve this relationship if it has the political backing and support of the SAPS management to implement its recommendations.

Shifting focus slightly towards the public's pushback against inadequate governance, Lizette Lancaster presents data from the Institute for Security Studies' Protest and Public Violence Monitor (PPVM) in her article, *Unpacking discontent: Where and why protest happens in South Africa*. The PPVM aims to provide 'comprehensive coverage and mapping of all forms of protest, including industrial strike action as well as political and group conflict'. Adding to work on protest published in our two previous editions, Lancaster's piece discusses the frequency of protests between 2013 and 2017, and shows how the levels of protest are sensitive to provincial shifts and efforts to address service delivery concerns, as well as to seasonal shifts. The data shows that, contrary to prevailing public narratives, protests in this period have most often been related to industrial strike action, rather than service delivery concerns, and just over half (55%) have been classified as violent. Taken as a whole, the PPVM data shows how wide-ranging protest grievances are, and how geographically widespread they are. While most protests are indeed aimed at the state (particularly in respect of concerns about safety, education, employment and other broader socio-economic rights), a significant amount of protest is also aimed at the private sector.

Addressing the regulation of customary justice, Fatima Osman's article, *Third time a charm? The Traditional Courts Bill 2017*, looks at the latest version of the Bill and asks whether it sufficiently addresses the fundamental objections to previous versions, and the public outcry and sustained

pressure from civil society organisations that ultimately scuppered its passage. Osman finds that these concerns – largely centred around the gender composition of the courts and women's participation in dispute resolution processes, the centralisation of power in traditional leaders, and the professionalisation of courts – have been attended to in some measure in the new Bill, but that critical issues warrant further attention. She argues that the 2017 Bill still defines traditional courts based on apartheid-era geographical boundaries, and effectively locks claimants into the traditional justice system by preventing them from seeking resolution elsewhere when they fear an unjust outcome. The Bill bars the use of legal representation in an effort to keep proceedings simple and flexible, but Osman points out that this may be 'exploited by powerful parties to achieve a favourable outcome', particularly since the Bill doesn't make it clear that criminal cases are excluded from the traditional courts' jurisdiction. She concludes that with further amendments, the Bill may find support among its key constituencies, 'paving the way for long-awaited legislation that regulates the traditional justice system in South Africa'.

Bill Dixon reviews two books for this issue of *SACQ*: Andrew Faull's ethnography about the working lives and professional identities of the SAPS members entitled *Police work and identity: a South African ethnography*; and Sindiso Mnisi Weeks's in-depth exploration of what she terms 'vernacular dispute management forums' in Msinga in rural KwaZulu-Natal, called *Access to justice and human security: cultural contradictions in rural South Africa*. Admitting at the start of the review that there appears, at first glance, to be little commonality between books on police work and on dispute resolution in rural settings, Dixon goes on to show how the two studies are concerned with similar questions, namely how our society (perhaps more accurately, our societies) deals with troublesome behaviour, how some problems become 'crimes' (while others do not), and how institutions (both formal and informal) respond. Dixon hails both as 'excellent new books' by a 'rising generation of young South African scholars [who are] ready, waiting and more than capable of taking the study of crime, justice and security forward'.

In our 'On the Record' feature I discuss the in-the-field realities of doing a randomised household survey with Ncedo Mngqibisa and Guy Lamb from the Safety and Violence Initiative at the University of Cape Town. Their project, which interviewed young people between the ages of 12 and 18 in Gugulethu and Manenberg about deviance and youth resilience, is an instructive illustration of the difficulties of doing research in complicated spaces. Ncedo and Guy talk honestly in the interview about their experiences with negotiating access in Gugulethu, confronting the complexities of (unexpectedly) divided spaces, the transferability of random household sample selection techniques to informal housing spaces, safety challenges and the difficulties of doing research in over-researched spaces where the benefits of participation are not immediately clear to potential interviewees. Their experience raises important questions about the compromises that we make in trying to research in these kinds of spaces, and the impact of these choices on the quality of the data that results.

To close off this editorial, I would like to draw readers' attention to a call for papers for our December 2018 Special Edition of *SACQ*, entitled 'Decolonising Prison'. The special edition, which will be guest edited by Nontsasa Nako from the University of Johannesburg, will explore the impediments to social justice advancement towards real prison reform globally. In thinking of prison along decolonisation terms, the special edition is interested in questions of how penitentiary systems endure; how they live past colonial independence and survive transitional justice mechanisms. How might societies

like South Africa that have reinvented themselves as democracies reimagine crime and punishment? How can prison conditions be improved in ways that meet some global standards without sacrificing local conditions? How can crime and punishment be de-linked from class and race so that poverty is not criminalised? If decolonisation is centrally about how knowledge is understood and produced, what other knowledges about crime and punishment can be brought to the forefront?

The deadline for submitting abstracts of one page or less is 15 July 2018, and full papers (between 3 000 and 6 000 words, including end notes) will be due on 15 September 2018.

The full call for papers can be viewed on the *SACQ* website (https://journals.assaf.org.za/sacq).

Notes

1   My thanks to Diane Jefthas, who first pointed this commonality out to me and whose conversations on the couch are not only frequently the kernel of boundary-busting ideas but also keep us all honest and on track.

2   Most recently at the Kgalema Motlanthe Foundation's inaugural inclusive growth conference held on 15 June 2018 in the Drakensberg (see, for example, C Manyathela, Ramaphosa concerned about 'collapse of governance, *EWN*, 15 June 2018, http://ewn.co.za/2018/06/16/ramaphosa-concerned-about-collapse-of-governance [accessed 20 June 2018]).

Policing for impact

Is South Africa ready for evidence-based policing?

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For decades, the prospect that research can improve the impact of policing operations and foster internal organisational efficiencies has been a source of promise and frustration. It may seem obvious to many that research should be able to assist with better policing strategies and tactics by providing evidence as to what does or does not work. Realising this potential, however, is not straightforward. This article reflects on evidence-based policing (EBP) and its challenges, as discussed at a workshop between the South African Police Service's first ever National Research Division, the Institute for Security Studies, and academic and policing organisations based in the United Kingdom.

In 2016 the South African Police Service (SAPS) took a bold step in establishing its first ever National Research Division, with the core objective of using research to improve policing in South Africa. While previously a senior officer had been responsible for processing research applications made to the SAPS, this was the first time that dedicated in-house research capacity was established.

It is not the first time that the SAPS has invested its resources in research as part of its efforts to improve internal efficiencies, or to develop policing strategies. The strategic management component of the SAPS has in the past commissioned or undertaken various research projects. These range from enabling more detailed insights into the types of crimes being recorded by the police, based on docket

analysis, to surveys aimed at assessing police service delivery at police stations. Other state agencies such as the national Civilian Secretariat of Police (CSP), some of the larger provincial police secretariats, organisations such as the Public Service Commission (PSC), the Human Sciences Research Council (HSRC) and the Centre for Scientific and Industrial Research (CSIR) have also commissioned or undertaken research on policing.

Moreover, there is a substantial amount of independent research in South Africa. There are a number of academic and research institutions with dedicated policing-focused components that have contributed to a considerable body of work. For example, between the years 2000 and 2012 there were around 500 academic articles published on policing in South Africa.[1]

Despite the large amount of research that has been undertaken, it is not clear how, or if, the findings are used and, if so, under what circumstances. There is also no dedicated

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multi-agency structure through which police officials can regularly engage with academics and other researchers about independent research that is underway and how it may be used effectively. It is also not clear that the research undertaken by the SAPS and some other state entities are subject to the rigours of peer review (as is standard for academic research).

According to the *South African Police Service's research agenda for 2016 to 2020*, the SAPS research component will be dedicated to the following objectives:[2]

- Ensuring institutionalisation and maintenance of research in the SAPS

- Commissioning high quality, independent, and relevant evidence-based research

- Directing and integrating research by, for and about the SAPS

- Influencing the South African policing agenda towards a common vision

- Supporting knowledge exchange between researchers and practitioners

- Improving the research evidence base for policing policy and practice

The research agenda is structured on four key pillars,[3] which are presented as follows:

1. Enabling human resources for policing
2. Enabling assets for policing
3. Better service delivery
4. Building an ideal policing system

Across the four pillars, 18 themes have been formulated, each of which consists of a number of 'research priority areas'. In total there are almost 100 priority areas, many of which are highly ambitious in nature. For example, pillar 1, theme 3 is stated as 'Moral regeneration in SAPS,' which consists of the following four research priority areas:

1. Redefining ethical SAPS sub-culture and rebuilding a culture of integrity in the SAPS, and documentation of SAPS sub-culture

2. Restoration of discipline in the SAPS and development of a strategy that will enhance discipline in the SAPS

3. Analysis of root causes of civil claims and their impact, and development of an integrated plan to reduce civil claims

4. Eradicating corruption within the service, and developing an anti-corruption strategy and incorporating it into the policing model to address corruption in law enforcement[4]

Given the breadth and depth of the agenda, the SAPS research division faces both high expectations and substantial challenges with regard to implementing its agenda. At the time of writing, the only official information on the work of the SAPS research component was contained in the SAPS annual report for the financial year 2016/17.[5] This document states that towards the end of 2016, the division had held roundtable meetings in three provinces with the theme 'Towards the development of an ideal and suitable policing model for South Africa'. From 7 to 9 February 2017 a three-day research colloquium was held to introduce the division to various stakeholders. It also states that six research studies were conducted, five policing innovation hubs were held, five case studies were formulated for the Policing Centre of Excellence, and the *SAPS Subject Matter Expert Concept and Validation Model* was developed and approved by the National Management Forum (NMF). However, no additional details are provided on these achievements, for example, what the focus or outcomes of the six research studies were. These studies are also not published on the SAPS website, where information on the SAPS colloquium can be found.

As a small contribution towards assisting the newly established SAPS research division in contextualising its work globally and broadening its international networks, the Institute for Security Studies (ISS) and the University of Exeter hosted a two-day workshop titled 'Enhancing Evidence-based Policing'. Held at the Pretoria headquarters of the ISS from 8–9 March 2017, the workshop brought together police officers from the Devon and Cornwall Police in the United Kingdom (UK), a representative of the College of Policing for England & Wales, and academics from the University of Exeter, with the head of the SAPS research division, Lieutenant-General Dr Bongiwe Zulu, and seven of her senior police colleagues. The purpose of the workshop was to provide an opportunity for participants to reflect on their attempts to bring research into practice, to exchange information about current activities, as well as to identify barriers and facilitators for change.

This article will briefly explain the origins and evolution of evidence-based policing, before reflecting on the core issues discussed at the workshop,[6] and their implications for promoting evidence-based policing (EBP) in South Africa.

What is evidence-based policing?

A formal attempt to undertake research with the intention of improving policing strategies and tactics is not a recent idea. For example, in 1970, an independent non-profit organisation dedicated to advancing policing through innovation and science, called the Police Foundation, was established in the United States (US).[7] It was responsible for some of the most famous policing experiments undertaken, such as the 'Kansas City Preventative Patrol Experiment'. Between 1972 and 1973, this experiment sought to test the hypothesis that the potential presence of visible police patrols would reduce crime.[8] Interestingly, after assessing the impact of different frequencies

of police patrols in three different geographical locations, it found that routine patrols in marked police cars did not result in lower crime rates or in increased feelings of safety in citizens. This led to the recommendation that random routine patrols could be abandoned for other tactics (for example, targeted patrols) without reducing the impact of policing on community safety. Nevertheless, despite such research findings, random patrols remain a common feature of policing activity around the world.

One of the leading promoters of the concept of EBP has been Lawrence W Sherman, who was the Police Foundation's director of research from 1979 to 1985 and is currently the director of the Institute of Criminology at the University of Cambridge. He was also one of the first academics to undertake a randomised controlled trial into the effects of police arrest on repeat offending.[9] This trial found that arresting individuals suspected of committing domestic violence, as opposed to simply warning them, would reduce the chances that they would commit further violence. One of his later groundbreaking studies with criminologist David Weisburd in 1995 showed that focusing police resources on small geographical areas where reported crime is notably high (often referred to as crime 'hot spots') would significantly prevent crime from occurring at those locations.[10] While these studies took place in particular locations (in the US) and may well not be generally applicable to all policing situations globally, they were good early examples of how scientific research methods could be applied to assess the impact of defined policing tactics in particular contexts.

The basic underlying imperative of EBP is that science can and should be used to drive improvements in the provision of public safety. Accordingly, Sherman argues that, 'in contrast to basing decisions on theory, assumptions, tradition, or convention, an evidence-based

approach continuously tests hypotheses with empirical research findings'.[11] Through this the hope is to improve the police's ability to enhance public safety and, in doing so, promote public confidence in policing.

From the late 1990s there were a number of attempts in the Western world to develop a clear list of programmes that prevent crime, based on scientific evidence. In 1996, a federal law was passed requiring the US Attorney General to provide Congress with an independent review of the effectiveness of crime prevention assistance programmes funded with public money. This resulted in Sherman being commissioned by the National Institute of Justice in the US Department of Justice to undertake a review of these programmes. Over 500 crime prevention programme evaluations that met specified minimum standards were reviewed, following which, Sherman and colleagues presented a report to Congress titled 'Preventing crime. What works, what doesn't, what's promising.'[12] While the report managed to identify a number of programmes where evidence showed crime prevention initiatives to be effective, the number was too small for the establishment, at that time, of a clear provisional list of scientifically proven crime prevention programmes.

In 1998, Sherman published a paper titled 'Ideas in American policing: evidence-based policing', in which he defined evidence-based policing as 'the use of the best available research on the outcomes of police work to implement guidelines and evaluate agencies, units and officers'.[13] The aim was for the police to be guided by evidence in order to ensure overall greater impact on their ability to promote public safety. In 2002, Sherman and colleagues published another book of the same name that reviewed over 600 crime prevention programmes (and was subsequently revised in 2006).[14]

Outside of the US, the evaluation of policing also has a long history in England and Wales. In the late 1990s, for instance, major initiatives such as the 'What works in crime reduction research?' programme, as well as the Home Office Closed Circuit Television Challenge, included evaluation requirements. The evaluations raised concerns about the management and delivery of these initiatives, the training of police personnel, and the importance of greater research collaboration with those outside the police.[15] In recent years, however, there has been renewed effort directed at assessing and communicating effective police practice. The establishment of the College of Policing in 2012 as well as the 'What Works Centre for Crime Reduction' under the college in 2013 were in part justified as a way of drawing on expertise within the police and elsewhere to improve the identification, use, and undertaking of research that supports a reduction in crime.

This specific What Works Centre is one of seven such centres in the UK, each designed to improve decision-making across a wide range of public sector agencies by making them more evidence-based.[16] A central task of the crime reduction centre is to discern what counts as methodologically rigorous knowledge to effect crime reduction. Its freely accessible Crime Reduction Toolkit,[17] for instance, presents the outcomes of systematic reviews on topics associated with crime reduction in a user-friendly format.

Today, much of the international interest in promoting EBP is premised on the need not only for the greater utilisation of systematic research but also to promote new forms of collaboration.[18] Indeed, EBP has grown internationally in the last two decades, following the establishment of the Society for Evidence Based Policing (SEBP) in the UK in 2010.[19] Since then, similar SEBP associations have

been opened in Australia, New Zealand, Canada and the US. International conferences are held at least annually with participants from all over the world attending. In recognition of the difficulties of integrating research into practice, the College of Policing's £10 million Police Knowledge Fund from 2015 to 2017 supported projects that were designed to encourage the utilisation of research in policing.[20]

While a bulk of EBP initiatives have largely taken place in Western developed countries, there appears to be growing interest in the developing world. A systematic review of police interventions aimed at reducing violence in developing countries identified 2 765 records detailing policing interventions of some sort or another.[21] With regard to interventions aimed specifically at interpersonal violence reduction, however, only 54 documents relating to 13 countries in Asia, Africa and Latin America were identified. Moreover, only five studies contained adequate details of sufficient methodological rigour to enable an assessment of the effectiveness of a particular intervention. An additional 37 studies were included that were of sufficient quality to enable an analysis of factors that contribute to the success or failure of policing interventions in developing countries.

This review is important for policymakers in the developing world, as it found, inter alia, that:

• Gender-based interventions can improve access to support services for female victims of violence if coupled with other social services and training.

• Well-articulated police–community partnerships with clearly defined and achievable goals, adequate resourcing and consistent personnel with good communication support are more likely to succeed.

• Training programmes to improve attitudes of police officers towards victims of violence are more likely to succeed if regular refresher courses are provided.

• Community-oriented policing interventions require proper community participation, political commitment, a multiagency approach and police cooperation. But if such programmes do not receive adequate funding and ongoing support, success is unlikely to be sustainable.

• Police crackdown and enforcement interventions aimed at tackling problems such as the illegal selling of alcohol and illegal possession of firearms can have a positive impact if there is sufficient political support and increased police visibility.

Nevertheless, despite the interest in the developing world for better evidence as to which policing interventions will have a desired impact, the level of investment and resourcing available for rigorous research studies appears to be far from adequate.

What are the challenges to evidence-based policing?

It is easy to make the assumption that once conclusive research findings are available on what may or may not work in policing, these will easily be incorporated into changes by a police agency. It quite quickly became clear to those at the forefront of EBP that this was generally not the case. Indeed, in his groundbreaking article on EBP as a new paradigm Sherman wrote that,

> just doing research is not enough and [that] proactive efforts are required to push accumulated research evidence into practice through national and community guidelines.[22]

Experience to date would suggest that the mere existence of guidelines about how to use research is insufficient for police agencies to obtain the full benefits that research may have to offer. There are a number of reasons

as to why this is the case. For example, police agencies that face funding cuts can turn toward EBP as a way of knowing with greater certainty whether the police are using their resources effectively.[23] However, it may be the very same challenges with regard to funding and other resource-related limitations that stifle both the capacity to undertake research and the implementation of any new interventions based on the research findings.[24]

Despite long-standing efforts to promote EBP,[25] many issues internal and external to the police have meant that much more could have been achieved than materialised in practice.[26] Factors identified for the limited integration of research into police priorities and practice have related to organisational pressures (time, funding, shifting operational demands, political responsiveness),[27] the characteristics of research (its costs, duration), policing culture, as well as the incompatibility between the police and external research organisations such as universities (in their agendas, standards, training, and forms of communication).[28]

Beyond such familiar constraints though, studies have suggested that some research findings can be regarded as uncomfortable or unwanted within the police. When research-based evidence is at odds with officers' experiential knowledge[29] or with pre-existing professional cultures,[30] it can be rejected or downplayed. David Kennedy suggests that policing and criminal justice agencies routinely conduct themselves in ways known to be ineffective.[31] He identifies a central reason for this situation, namely, that those in the criminal justice system perform roles rather than being driven by proven outcomes; a situation portrayed as at odds with professions such as medicine and engineering.

The effort to establish 'what works' in accordance with rigorous standards for evidence is not without its tensions. For instance, how (quasi-)experimental findings should relate to officers' professional experience of 'what works' or 'what matters' is an ongoing matter of debate internationally.[32] Another challenge is the extent of rigorous causal research. The College of Policing's Crime Reduction Toolkit contains only 43 systematic reviews, which means that most of the major sways of policing policy (aimed at improving policing practices, tactics and strategies to address crime, uphold the rule of law and promote public safety) have been undertaken without the benefit of research findings to demonstrate or support that they will have the desired impact.

Moreover, as research techniques improve, initial findings on what works or not might change. For example, Sherman and Berk's field study (mentioned above) on the impact of arrests of police officers involved in domestic violence in the US found that arrested suspects were significantly less likely to commit violence again within six months of the arrest.[33] However, later research found that the issue was more complex than initially thought in that 'the size of the reduction in repeat offending associated with arrest is modest compared with the effect of other factors (such as the batterer's age and prior criminal record) on the likelihood of repeat offending'.[34] Moreover, this later study found that a majority of offenders stopped subsequent assaults after other forms of police intervention (such as through a warning or temporary separation), even if they were not arrested.

Still further challenges for EBP relate to addressing issues that are marginalised, not recognised, or otherwise off the radar. The crime of child sexual exploitation (CSE)[35] in the UK is a salient example. Prior to a number of recent high-profile cases, little was systematically known about the extent of occurrence or the severity of harm of situations in which children are engaged in sexual relations in exchange for something they want or need. There was also little impetus to find out more about this

specific type of child abuse. The age of some victims (legally able to give consent) and the appearance of consent in some cases were among the reasons why both those officers and others in the criminal justice system directly familiar with instances of CSE failed to respond to those cases with due regard.[36] Today, in contrast, CSE has been elevated to the status of a national threat in the Strategic Policing Requirement and is meant to be a priority in every police force in the UK.[37]

The rise in prominence for CSE suggests the importance of questioning the assumptions and practices that delimit what is recognised as a salient issue for policing at any given time. One way to do this is by attending to how what is known becomes known. Within the topic of environmental protection, for instance, forceful arguments have been put forward for the need to devise novel forms of collaboration and consultation that go beyond traditional science-based methods for assessing hazards.[38] By deliberately questioning assumptions, challenging vested agendas, and engaging with diverse stakeholder interests, it is possible to transform the ignorance of unknowns into something more tractable. Doing so requires raising questions about how the public at large and interested groups should shape research agendas.

What are the opportunities for EBP in South Africa?

When compared to the policing situation in the UK, it appears that South Africa has an important advantage. The UK consists of 43 police services, and therefore the governance of the police is highly devolved. This poses specific challenges in terms of the coordination and accessibility of policing research. While organisations such as the Home Office and the National Police Chiefs' Council undertake and coordinate research across forces, individual local forces working in partnership with the

Police & Crime Commissioner largely set their own agendas based on locally orientated requirements. This results in the duplication of efforts, and hinders the ability to set a national agenda and strategically manage interventions based on research across forces. The devolved governance also requires compensatory activities to ensure research is widely shared. For instance, the College of Policing has established a voluntary research map of ongoing policing-related research at Masters level and above to enable the exchange of information, facilitate networking, and reduce duplication.[39]

With the SAPS as a single national police agency, the situation in South Africa differs markedly. To date, the coordination of internal and external research has notably been limited. However, the creation of the *South African Police Service's research agenda for 2016 to 2020* does provide a national elaboration of priorities.[40] This was the result of commendable efforts taken within the SAPS to consult widely through open-ended questionnaires and unstructured interviews about which policing issues could be improved through research. It also serves as a framework for external researchers to contribute to policing knowledge. No such comprehensive mapping could be drawn for England and Wales today, given the devolved governance of police forces.

As noted above, with nearly 100 priority areas named, a pressing task in the SAPS now is to translate this listing into a sequential programme of impactful activities. A danger with the ambition of the current plan is that an absence of research across most of the 100 areas might result in criticism that the SAPS agenda is failing in some respects. On the other hand, undertaking action across all the areas runs the risk of diluting the available resources beyond the point at which meaningful change is possible.

Given the scale of the research agenda it is necessary for the SAPS to ensure that there

is regular and consistent interaction with the various institutions involved in policing research in South Africa and beyond. This would better ensure that the SAPS does not duplicate efforts where research has already been undertaken, is underway or planned for the near future by external partners.

A good start was made early in 2017 with the SAPS National Research Division hosting a research colloquium so as to obtain presentations from a wide variety of partners on various aspects of the research agenda.[41] Over a three-day period, 42 different presentations were delivered by both police officers and independent researchers on a multitude of topics of relevance for policing in South Africa. This set the scene for closer cooperation between the SAPS and the other institutions involved in policing research. A subsequent two-day symposium with the SAPS research division at the end of June 2017, titled 'Moving Towards International Crime Recording Standards through Purified and Standardised Crime Statistics', provided further opportunities for cross-sectoral engagement on police data and how it could be improved and better used.

These events herald a welcome shift towards greater engagement and collaboration with partners external to the police on research and data. However, the events consisted of hundreds of participants engaging in either a single plenary or big breakaway groups. The challenge is now to start developing closer and ongoing relationships between the SAPS research division and research partners on specific projects. This could be achieved by the SAPS presenting its immediate research priorities and hosting a meeting for those who are directly involved or have expertise in the areas prioritised. Smaller and more regular engagement on particular topics could further enable the development of dedicated research

partnerships that could better enrich SAPS exposure to new knowledge and interventions.

It is also important to establish a clear set of standards against which research can be assessed and accepted by the SAPS. While there may be a lot of research taking place, it is critical that results are subject to appropriate standards of review before being utilised by the SAPS to inform operations and other interventions. This highlights another challenge that the SAPS research division may face: ensuring that it is able to influence policing practice across its various programmes, including administration, visible policing, detective services, crime intelligence and VIP protection services. Careful consideration will have to be given as to how the SAPS national management forum could be used to promote the use of evidence in the development of strategic and annual plans, as well as specific interventions for an organisation consisting of around 194 000 employees.

In addition to developing local research partnerships, the SAPS research division should consider tapping into the rich international experience in EBP. During the workshop with the University of Exeter, police officers and a representative from the College of Policing in the UK, participants discussed how this could be achieved. A key option would be for South Africa to establish a Society of Evidence Based Policing (SEBP), which would enable it to formally engage with research developments in policing from other parts of the world. South Africa would also be in a good position to assess policing in a context that could be of interest and use across the continent. Bringing an African perspective could enrich international debates on and insights into policing, particularly from a developing country viewpoint. Ideally, the SAPS research division would be part of driving this initiative, along with key South African institutions involved in

policing research. This would provide a formal, more structured platform for policing research in South Africa to be profiled not only nationally but also across the African continent and beyond.

Research funding

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Modest beginnings, high hopes

The Western Cape Police Ombudsman

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In 2013 the Western Cape legislature passed the Western Cape Community Safety Act (WCCSA) to improve monitoring of and oversight over the police. One creation of the WCCSA is the Western Cape Police Ombudsman, which became operational in 2015. This article reviews its history and context, as well as results from its first year. The Police Ombudsman, the only one in the country, must be seen as one of the results of efforts by the opposition-held province to carve out more powers in the narrowly defined constitutional space, and in so doing to exercise more effective oversight and monitoring of police performance, and improve police–community relations. The Ombudsman must also be seen against the backdrop of poor police–community relations in Cape Town and the subsequent establishment of a provincial commission of inquiry into the problem, a move that was opposed by the national government, contesting its constitutionality. Results from the Ombudsman's first 18 months in operation are modest, but there are promising signs. Nonetheless, the office is small and it did not do itself any favours by not complying with its legally mandated reporting requirements.

In South Africa, the powers that provincial governments hold over the South African Police Service (SAPS), a national competency, were reduced from what was contained in the Interim Constitution (1993) to the Constitution, which was promulgated in 1996.[1] Under the Interim Constitution, the SAPS functioned 'under the direction of the national government as well as the various provincial governments',[2] reflecting a dual responsibility with devolved authority. Provincial authority over the SAPS has now been reduced from provinces being responsible for 'directing' with national government, to the current situation which sees them with 'monitoring, overseeing and liaising' functions set out in section 206(3) of the Constitution. There is therefore a centralisation of authority in national government.

In 2009 the Democratic Alliance (DA) assumed power in the Western Cape, taking over from the African National Congress (ANC), making the Western Cape the only opposition-held province in the country. Since 2011 the

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Western Cape government has commenced with a number of initiatives to address crime and safety, such as provincial safety legislation and monitoring work done by the provincial department of community safety. These initiatives were aimed at improving the monitoring of police performance in order to bring about greater accountability and address the quality of policing. Specifically, these mechanisms have been aimed at exploring and utilising constitutionally mandated powers with reference to 'monitoring, overseeing and liaising functions', limited as they may be, with reference to the SAPS. The appointment of the Khayelitsha Commission in 2012 to investigate the breakdown of police–community relations in that township,[3] and the passing of the Western Cape Community Safety Act[4] (WCCSA) in 2013 were significant developments in this regard, and are seen as attempts to push back the centralised control over police performance.

The Khayelitsha Commission was established by the Premier of the Western Cape to investigate allegations of inefficiency at the three Khayelitsha police stations and allegations that there had been a breakdown in the relationship between the community and the police.[5] The commission found that there were indeed a range of deep-seated problems relating to inefficiencies in the police, under-investigation of reported crimes and poor general management in the police, to name but a few. Dissatisfied with the quality of policing in the province, the provincial legislature passed the WCCSA to strengthen, among others, the provincial government's oversight role over the SAPS. In doing so it explored the limited space offered by the Constitution to strengthen police accountability and improve police performance in respect of crime and safety in the province.

The WCCSA created, among others, the Western Cape Police Ombudsman (Ombudsman), a complaints mechanism accessible to the general public that became operational at the end of 2015. It is the only one of its kind in the country. Evaluated against the history of police oversight in South Africa after 1994, this article investigates the establishment of the Ombudsman and its performance since its inception.

The establishment of an independent police investigative mechanism was a requirement set in the Interim Constitution[6] and subsequently in the Constitution,[7] and was operationalised by the SAPS Act of 1995 with the establishment of the Independent Complaints Directorate (ICD).[8] The ICD was created before the 1996 Constitution was finalised and operational problems soon became evident. A review of the ICD was therefore necessary. An important contextual development occurred at national level in 2012 when the ICD metamorphosed into the Independent Police Investigative Directorate (IPID),[9] with a much more restricted scope. Although endowed with more powers, IPID was closed off as a general complaints mechanism, as it now focuses only on serious crimes implicating the police. Where the ICD could investigate 'any misconduct or offence allegedly committed' by a police official,[10] IPID is restricted to a list of serious offences.[11] Moreover, neither body's mandates dealt with police–community relations, an issue that became increasingly problematic in the Western Cape, as it was unclear where the public would go with less serious complaints. One possibility is the Civilian Secretariat for Police Services (CSPS), but the objects clause of its governing legislation excludes it from functioning as an explicit complaints mechanism, although it does have objects relating to stakeholder engagement and strengthening oversight.[12] Moreover, as an advisory body to the Minister of Police, it cannot be regarded as independent.

The Ombudsman's establishment should be seen as part of the Western Cape government's

efforts to address crime and safety concerns. Crime and safety concerns in the Western Cape were, and continue to be, strongly influenced by the findings of the Khayelitsha Commission, which placed community–police relations and police inefficiency on centre stage. The case currently before the Equality Court, concerning the discrimination in the distribution of police resources against poor and black areas in Cape Town, is illustrative of this continuing focus,[13] as questions around the equitable allocation of police resources were a key finding from the Khayelitsha Commission.[14]

The following section provides more information on the policing context in the Western Cape, followed by a discussion of the legal framework that gave rise to the Ombudsman. This is followed by a description of the power of the Ombudsman and an evaluation of its performance since its establishment. The article concludes with an assessment of its future prospects and challenges.

Context of policing in the province

The Khayelitsha Commission clearly placed the quality of policing in the Western Cape on the political agenda. National government unsuccessfully attempted to block the establishment of the commission, first in the Cape High Court and later in the Constitutional Court.[15] The establishment of the Khayelitsha Commission was preceded by numerous attempts by the Western Cape government, starting in November 2011, to engage the national government on a range of problems with policing in Khayelitsha as identified by a group of non-governmental organisations.[16] These efforts did not have the desired effect and in August 2012 the commission was appointed, although activities were delayed for nearly a year while the constitutional challenge brought by the Minister of Police was finalised.[17] While the litigation around the Khayelitsha Commission attracted significant attention,

the passing, in April 2013, of the WCCSA took place with relatively little attention from the media and national government, although it was rumoured at one stage that this was also heading for the Constitutional Court with then Minister of Police, Nathi Mthethwa, threatening to challenge its constitutionality.[18]

The developments in the opposition-held Western Cape at provincial level as well as metro level must be viewed as an attempt by that provincial government to roll back the highly centralised nature of policing in the country.[19] Seen historically, the centralisation of policing was on the one hand motivated by a need to bring the various homeland police forces and the South African Police under central control, but also by a fear that regional militias and armies might arise out of the transition to democracy.[20] In recent years there have also been calls from the ANC, and proposed as such in the White Paper on Policing, that the metro police services should also come under SAPS control; however, this proposal has met strong resistance.[21]

The Western Cape, and specifically the Cape Metropole, have a particularly serious violent crime problem. For example, from 2010 to 2016 murder increased by 47% and car hijacking by 382%.[22] With the SAPS evidently failing to meet safety and security needs, the Western Cape government embarked on a different strategy by passing its own legislation from which community-based initiatives and new structures flowed, placing the emphasis on greater transparency and accountability through concerted monitoring. It is evident that the Western Cape's DA-led government is not satisfied with the quality of policing, and it has been progressive in exploring the legal avenues available to it in the Constitution. The establishment of the Khayelitsha Commission and the passing of the WCCSA are examples of these efforts. Another unique outflow of this

process of constitutional exploration is the establishment of the Ombudsman.

Western Cape Constitution

The Western Cape Constitution came into effect on 16 January 1998 and granted the provincial government powers derived *verbatim* from the Constitution[23] in respect of oversight over the police, namely:

• To monitor police conduct

• To assess the effectiveness of visible policing

• To oversee the effectiveness and efficiency of the police service, including receiving reports on the police service

• To promote good relations between the police and the community

• To liaise with the national cabinet member responsible for policing with respect to crime and policing in the Western Cape

The Western Cape government may also investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and must make recommendations to the national cabinet member responsible for policing.[24] While the provincial government cannot instruct the police what to do, it can oversee and monitor performance with specific reference to police inefficiency and a breakdown in police–community relations, and bring this to the attention of the Minister of Police. Despite several provisions in the Constitution that facilitate cooperation between the national, provincial and local spheres of government,[25] it was indeed the failings of the relationship between the national and provincial spheres that gave rise to the establishment of the Khayelitsha Commission – a route borne out of frustration with the lack of cooperation between the two levels.

Western Cape Community Safety Act (Act 3 of 2013)

The notion of an Ombudsman is, of course, not new. Post-1994 the Constitution created the Office of the Public Protector, preceded by the Office of the Ombudsman established in 1991.[26] Other forms of this office have also come into being domestically in the private sector (e.g. Short Term Insurance Ombudsman)[27] as well as other cross-cutting spheres (e.g. Health Ombudsman).[28] There is also no universal definition of what an Ombudsman is, but Carl, in her taxonomy of public sector ombudsman institutions, proposes the following:

> An ombudsman is a public sector institution which, for the purpose of the protection of individual rights and the defence of the fundamental rights of democracy such as civil and human rights, is authorized by a parliament, a ministry or a subdivision thereof (legal foundation) to investigate independently both own-motion as well as complaints from citizens about an alleged part of the administration's/executive's acts, omissions, improprieties, and broader systemic problems, and whose only tools – due to not being invested with any executive power – are its own personal authority, recommendations, annual and special reports and the media.[29]

Section 67(1) of the Western Cape Constitution empowers the province to pass any legislation to carry out the functions listed in section 66(1) of the Constitution, which include the police monitoring and related functions. Section 3 of the WCCSA mandates the provincial Minister for Community Safety to exercise a fairly broad range of powers centring on three main foci: monitoring police performance; overseeing the effectiveness and efficiency of the police; and building good relations between the police and other stakeholders. Section 3(l) of the WCCSA mandates the provincial Minister to

'record complaints relating to police inefficiency or a breakdown of relations between the police and the community'. The recording of complaints is understood to fall under the provincial Minister's broader mandate to build good relations between the police and the community, although it may equally be regarded as part of its monitoring function. It is consequently section 3(l) of the WCCSA, read with sections 66(1) and 67(1) of the Western Cape Constitution, that gave rise to the Ombudsman. Even though the creation in law of the Ombudsman preceded the Khayelitsha Commission finalising its work, there was already sufficient information in the public domain on poor police–community relations and police inefficiencies to justify its creation.

The Ombudsman in the WCCSA

The WCCSA mandates the Premier to appoint the Ombudsman after consultation with the provincial Minister, the Provincial Commissioner of Police and the executive heads of municipal police services. The appointment is further subject to approval by the provincial parliament's standing committee responsible for community safety by a resolution adopted in accordance with its rules.[30] The only requirement is that the Ombudsman must be a suitably qualified person with experience in law or policing. Unlike the Public Protector, the Ombudsman does not need a minimum number of years of experience or have specified qualifications.[31] The Ombudsman is further appointed for a non-renewable term of five years. The Premier may remove the Ombudsman from office for good cause after consultation with the provincial Minister, the Provincial Commissioner of Police and the executive heads of municipal police services. Again, this is subject to approval by the provincial parliament's standing committee responsible for community safety by a resolution adopted in accordance with its rules. The committee may recommend the removal of the Ombudsman from office on the grounds of misbehaviour, incapacity or incompetence, after affording him or her a reasonable opportunity to be heard.[32] The Ombudsman and staff members of the office are also obliged to serve independently and impartially, and perform their functions without fear, favour or prejudice.[33] The Ombudsman's budget is voted on by the provincial parliament as part of the budget of the Department of Community Safety.[34] Being part of the departmental budget may impact on the Ombudsman's independence, as has been noted in respect of the Judicial Inspectorate for Correctional Services.[35] The difference is, however, that the Ombudsman does not oversee the department it receives its budget from, but is instead funded through a department that is part of the monitoring and oversight architecture over the SAPS in the province. The Ombudsman may also be assisted by a person whose service the Ombudsman requires for the purpose of a particular investigation.[36] The first Ombudsman, Adv. Vusi Pikoli, was appointed on 1 December 2014 and 2015/16 was its first full financial year, during which it was allocated a budget of just below R7 million.[37]

Powers of the Ombudsman

The central function of the Ombudsman is to 'receive and … investigate complaints submitted in terms of section 16, regarding inefficiency of the police or a breakdown in relations between the police and any community'.[38] It is therefore a reactive mechanism and does not have the power to investigate of its own volition, unlike the Inspecting Judge for Correctional Services[39] or the Public Protector.[40] In order to resolve a complaint, if it is not manifestly frivolous, the Ombudsman has a number of avenues open to him or her. The first, and assuming there is sufficient information, is to refer the complaint to a more appropriate and competent authority,

which may be a national authority, community-policing forum (CPF), a constitutional authority or provincial authority. Second, if the complaint is deemed to be of a serious nature or it may be dealt with more appropriately by a commission of inquiry, a recommendation to this effect may be made to the Premier. Third, the Ombudsman may decide to investigate the complaint.[41] In order to conduct an investigation, the Act affords the Ombudsman two broad powers established under section 18 of the Act:[42]

> 18(1) The Ombudsman may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in that person's possession or under his or her control which has a bearing on the matter being investigated, and may question that person thereon.

> 18(2) The Ombudsman may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on the matter being investigated or to be investigated.

The regulations to the Act bolster these powers further by adding that the Ombudsman may have meetings with affected persons who may have information relevant to the complaint; conduct research; conduct inspections *in loco*; and administer surveys.[43] Further, the regulations also provide that the Ombudsman may engage in negotiations and conciliation if necessary.[44] Unlike a judicial commission of inquiry (e.g. the Khayelitsha Commission) the Ombudsman does not have the explicit power to subpoena, and a number of mechanisms are included to ensure cooperation. The strongest of these is the provision that if a person fails to cooperate, fails to answer questions, provides false information, or hinders or obstructs the Ombudsman's investigation, such a person is guilty of an offence and liable to a fine or

imprisonment for a period of up to three years.[45] Further, failure by a police official or any other state official to cooperate must be reported to the Provincial Commissioner, executive head of the relevant municipal police, as the case may be, and the provincial Minister.[46] If, upon completion of an investigation, the matter cannot be resolved, the Ombudsman must submit his recommendation to the provincial Minister and inform the complainant accordingly. The provincial Minister must make a recommendation to the Minister of Police on any investigated complaints that could not be resolved by the Ombudsman, and inform the complainant accordingly.[47]

It is apparent that the recommendations from the Ombudsman do not have binding power on the provincial commissioner, as there is no constitutional basis for such power and the provincial commissioner takes instruction from the national commissioner and not the provincial government. The Ombudsman also does not have remedial powers, unlike the Public Protector.[48] This is, however, not to say that the recommendations of the Ombudsman are without power or authority. That power is not in a direct relationship with the provincial commissioner, but rather through the provincial Minister and ultimately the provincial parliament. The provincial Minister must make a recommendation to the national Minister on investigated complaints that could not be resolved by the Ombudsman.[49]

The provincial legislature and executive therefore hold considerable authority over the provincial commissioner once it becomes apparent that recommendations from the Ombudsman are ignored or good reasons are not provided for not implementing them. The provincial commissioner must, on a regular basis, report to the provincial parliament on a number of predetermined issues, as well as on any other matter that the provincial parliament may

request.[50] It should further be borne in mind that the provincial commissioner is appointed by the national commissioner with the concurrence of the provincial executive, and a special relationship therefore exists between the two parties.[51] It is therefore indeed possible that the provincial parliament can place significant pressure on the provincial commissioner. Read together, the Constitution, Western Cape Constitution and the WCCSA provide for the provincial parliament, if it has lost confidence in the provincial commissioner, to call him or her to appear before it or any of its committees, prior to starting disciplinary action or proceedings for his or her dismissal or transfer.[52]

In an opposition-held province, the provincial executive and legislature are far more likely to thoroughly utilise this oversight function to bring about an improvement in crime and safety, and the Ombudsman forms part of this dispensation. For example, by 2016 the provincial Department of Community Safety was monitoring 25 courts in order to identify police inefficiencies in criminal investigations and docket management.[53] The Department of Community Safety has also established a police complaints centre to deal with service delivery complaints – a further initiative to deal with poor police community relations and improve accountability.[54] That the Western Cape has moved in this direction and has brought oversight to provincial level through law reform is at least in part motivated by frustration with the current centralised nature of policing, where the Western Cape provincial Minister of Community Safety has to compete with eight other provincial ministers for the national Minister's ear at Ministers and Members of Executive Councils (MINMEC) meetings.[55] Crime and safety in the Western Cape has certain unique features (e.g. gangsterism on the Cape Flats) and requires a more tailored response from the SAPS, but that has not been forthcoming in recent years. The Ombudsman's power and authority is therefore

highly dependent on an effective provincial government taking its oversight responsibilities seriously. A provincial government that is tardy in overseeing the police would probably render the Ombudsman obsolete. Should the Western Cape revert to ANC control, it may hold significant consequences for police oversight and monitoring, including the role and authority of the Ombudsman. The current situation of natural tension between the national government and an opposition-held province, a result of normal democratic processes, is indeed beneficial for police accountability.

Achievements and performance

The WCCSA requires the Ombudsman to report annually to the MEC on the number of complaints investigated; the number of complaints determined to be manifestly frivolous or vexatious; the outcome of investigations into the complaints; and the recommendations regarding the investigated complaints.[56] According to its annual report, from 1 December 2014 until the end of the 2015/16 financial year, the Ombudsman received 399 complaints across seven categories as indicated in Figure 1, with 'unacceptable behaviour' being the highest at 114 complaints. The annual report does not define or give examples of 'unacceptable behaviour'. Figure 2 shows the number of complaints received per month from January 2015 to March 2016, indicating a steady increase in the number of complaints received over the period.

This data points to modest beginnings indeed, if we bear in mind there are 150 police stations in the province, 18 020 police officials,[57] and a population of 6.2 million people.[58]

As noted already, the Ombudsman received 399 complaints in its first year and the actions taken on these are reflected in Table 1.[59] Nearly 80% of complaints were investigated, but only 17% resulted in a report. This may be a result of

Figure 1: Complaints per category
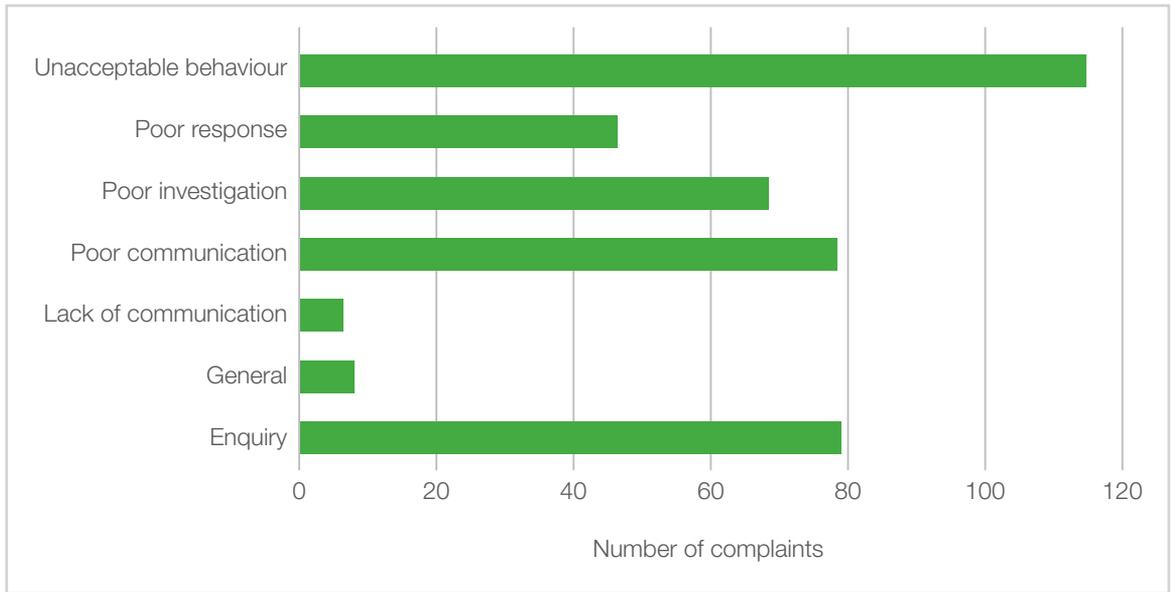
Figure 2: Complaints received per month 2014–2015/6
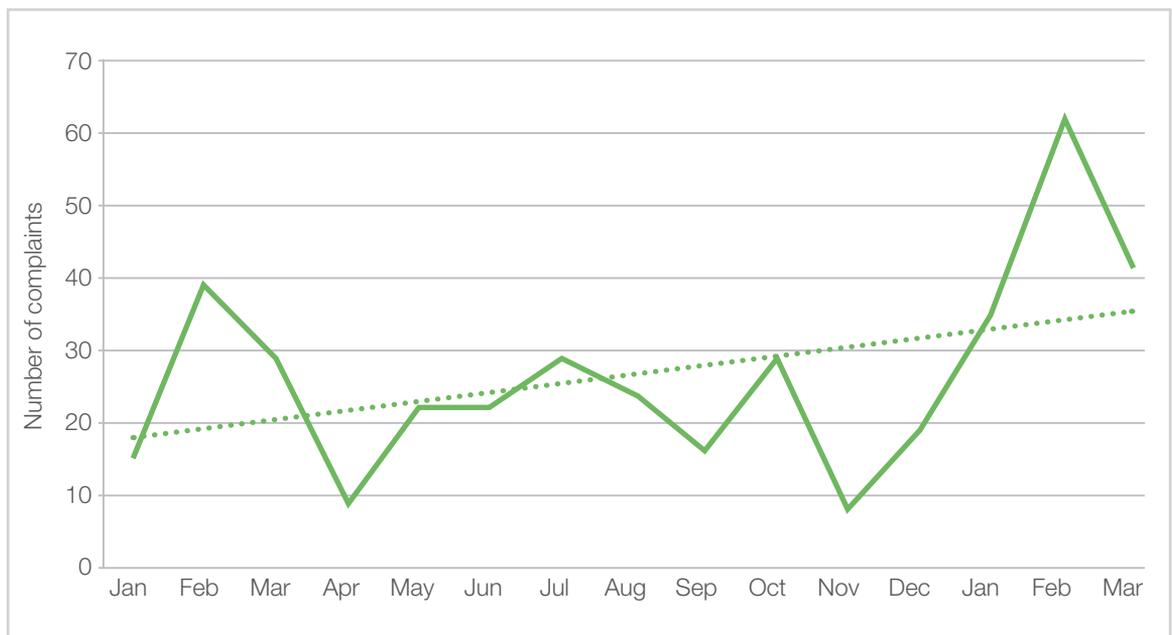
investigations taking unexpectedly long, which may mean that some cases will be carried forward to (and reported on in) the next financial year. The Ombudsman's report notes that some complaints are dealt with in a matter of days but that others require lengthy investigation in order to understand the 'intricacies associated with complex issues'.[60] The Ombudsman's office has a small staff and only four people are dedicated to investigations. This, combined with being a new institution that is in the process of establishing its work methods, may have further contributed to the low proportion of reports produced.

Table 1: Cases investigated and reported on

Category	N	%
Number of cases investigated	316	79.2
Number of reports on cases investigated	69	17.3

Complaints originated from all over the province, but the top five areas of origin are given in Table 2. It should be noted that in 20 complaints the area of origin was unknown. It is nonetheless encouraging that four of the five areas listed in Table 2 are in crime-ridden and impoverished Cape Flats communities, indicating that there is some measure of trust in the Office of the Ombudsman.

Table 2: SAPS stations from most complaints originated

Area	Number
Delft	14
Grassy Park	14
Milnerton	11
Mitchells Plain	12
Ocean View	11

What seems to be lacking from the annual report is data giving insight into the impact of the Ombudsman; information that would reflect in some way whether complaints investigations and reports made by the Ombudsman have improved police–community relations, and if there has been a change in police performance. No information is provided on how complaints were resolved, the nature of recommendations made to the SAPS, and what the SAPS's reaction to these complaints was. This lack of detail is regrettable as such information may give insight into the effectiveness of the Ombudsman. As noted above, the WCCSA requires that the Ombudsman must report in its annual report on the activities under its mandate, including the number of investigations, their outcome, and

the recommendations made to the SAPS.[61] None of these requirements was met in the 2015/2016 annual report. Subsequent annual reports should reflect more closely on steps taken by the Ombudsman to improve police–community relations and, more specifically, on how the police have responded and if the responses had the desired effect.

Conclusion

The Western Cape, through the WCCSA, is pushing for a stronger oversight relationship with the SAPS, even though its powers are significantly curtailed by the Constitution. Nonetheless, it is attempting to make policing more closely aligned to the needs of the Western Cape and to hold the police accountable to the extent possible under the Constitution. National government was resistant to the Western Cape's appointment of a commission of inquiry into police–community relations, and made this very clear in its opposition to the Khayelitsha Commission. While there may have been talk of similar opposition to the WCCSA, this did not materialise and the Constitutional Court has now affirmed that provincial governments have a legitimate interest in improved policing, and that they can engage in a range of functions towards this end, including establishing judicial commissions of inquiry. The Constitutional Court did not deal with the Ombudsman in the Khayelitsha Commission case, as it was not raised by either party, but since national government has not publicly opposed it and the office was established, we can conclude that it is now an accepted part of the Western Cape oversight architecture and the devolution of power.

Whether other provinces will embark on a similar route is probably unlikely as long as they are controlled by the same political party that controls national government. However, it is safe to conclude that policing needs vary

across the provinces and also at local level, and for this reason it is necessary to devolve oversight accordingly. Even if such oversight has a limited mandate, it should contribute to addressing current poor police–community relations and bring about more accountable and responsive policing. The other provinces will therefore be wise to monitor how the Western Cape approach unfolds over the next three to five years.

The Ombudsman faces a number of significant challenges and this should temper expectations as to its impact. The office has a tiny budget at this stage (some R7 million) and this has implications for its capacity to investigate, as well as its accessibility to the province's population. The provincial government may review its allocation if there is evidence of a high demand for its services and that the Ombudsman is effective in fulfilling its mandate when intervening. A further challenge for the Ombudsman is its limited powers regarding police conduct. The Ombudsman's recommendations are not binding, and thus it has to rely on moral authority and the powers of persuasion. Fortunately, the Ombudsman can rely on the provincial executive as well as the provincial legislature to apply pressure on the police to improve performance, although this reliance may be tempered if the political dispensation reverts to an ANC-controlled province.

With only one office in Cape Town, the Ombudsman will have to do a fair amount of promotional work to inform the public of its functions, and also to report on successes in order to build confidence in its independence and effectiveness in addressing poor policing and poor police–community relations. We know very little about how the police regard the Ombudsman and its recommendations, but it is safe to predict that the relationship will likely be strained and that the police will be resistant to implementing its recommendations.

The Ombudsman will need the support of the executive to make headway in this regard. However, if the SAPS can see the benefits of the Ombudsman's interventions, this will surely foster stronger cooperation.

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Notes

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5 Khayelitsha Commission, Towards a safer Khayelitsha: report of Commission of Inquiry into allegations of police inefficiency and a breakdown in relations between SAPS and the community in Khayelitsha, 2014, http://www.khayelitshacommission.org.za/images/towards_khaye_docs/Khayelitsha_Commission_Report_WEB_FULL_TEXT_C.pdf (accessed 13 June 2018).

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10 SAPS Act, section 53(2).

11 Independent Police Investigative Directorate (IPID) Act (Act 1 of 2011), section 28(1): '(a) any deaths in police custody; (b) deaths as a result of police actions; (c) any complaint relating to the discharge of an official firearm by any police officer; (d) rape by a police officer, whether the police officer is on or off duty; (e) rape of any person while that person is in police custody; (f) any complaint of torture or assault against a police officer in the execution of his or her duties; (g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and (h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner. (2) The Directorate may investigate matters relating to systemic corruption involving the police.'

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15 *Minister of Police and Others v Premier of the Western Cape and Others*, para 35–36.

16 Khayelitsha Commission, *Towards a safer Khayelitsha*, 2.

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25 Ibid., section 205 (1): 'The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government. (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces'; ibid., section 206 (1) 1: 'A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives. (2) The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces.'

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Unpacking discontent

Where and why protest happens in South Africa

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High levels of socio-economic dissatisfaction, persistent service delivery issues and increased political contestation necessitate closer monitoring of protest action. This article focuses on where and why protests happen. The findings draw on data collected by the Institute for Security Studies through its Protest and Public Violence Monitor (PPVM). Unlike other reporting systems, which tend to focus on specific types of protest, the PPVM seeks to provide comprehensive coverage and mapping of all forms of protest, including industrial strike action as well as political and group conflict. The findings highlight the wide-ranging nature of protests and illustrate how patterns of protests form over time in specific places. The article concludes by reflecting on how research into protest should not limit itself in scope. The ultimate aim of the research should be to inform the development of more appropriate responses by various role players to prevent violence and to encourage peaceful protests.

A series of protests, demonstrations, strikes and political violence can, if conditions are right, gradually turn into social unrest. Social unrest can take the form of peaceful, disruptive or violent demonstrations, strikes, and acts of political or civil violence.[1] Ultimately, social unrest can be viewed as an expression of collective dissatisfaction with a political system.

Protest is therefore a form of political participation. A society's preference for the use of more conventional forms of political participation (such as democratic processes) can, over time, transform into unconventional political participation like violent protest or political violence. What is considered conventional across the world not only depends on the period in time in which it takes place, but also on the geographic location, and that particular society's definition of what is socially acceptable. Perceptions of what is legitimate political action can change, either as satisfaction with the state changes or as a growing number of citizens believe that peaceful protest or voting in elections are ineffective at raising their issues and achieving their goals.[2]

Recent research by Bohler-Muller et al.[3] into attitudes towards different forms of protest in South Africa suggests that disruptive and

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even violent protest may be becoming more acceptable, given that a growing number of South Africans believe these forms of protest yield more successful results than peaceful protest action. According to this research, perceptions are also linked to when and how authorities react to various forms of protest.[4]

Existing research also illustrates that social unrest can build up over time.[5] The period preceding unrest is characterised by action and inaction on the part of protestors and the authorities, and this may contribute to events escalating from protest activities into violence. For example, groups may express dissatisfaction through petitions and picketing. If satisfactory responses are not forthcoming from authorities, these groups may decide to mobilise and protest. If authorities turn down a request to protest and the police use forceful measures to disperse the group, the peaceful protest may escalate into violence.[6]

The research by Schroeter et al. further suggests that measuring a wide range of protest activities will provide a useful mechanism to monitor changes in the nature and extent of protest. Keidel measures the intensity of social unrest by the number of demonstrations, riots, armed infringements and strikes within a year.[7] This broad definition offered by Keidel provides a useful way to operationalise the measurement of protest in South Africa, which then allows us to quantify whether protest events have increased in intensity over time.

However, while the scale of a protest is important, deploying the appropriate responses to curb escalation will require that we monitor not only the frequency of protests but also the nature of the grievances being expressed and the places where protests are located. This article will focus on the types of grievances that give rise to protest action and describes the location of protests, using data collected as part of the Institute for Security Studies' (ISS) Protest and Public Violence Monitoring Project (PPVM).

Protest and Public Violence Monitoring project

In 2013, the ISS developed a database of crowd-based events that aimed to monitor the frequency, location, nature and extent of collective action activities taking place in South Africa.[8] The database also seeks to track all forms of peaceful protest, crowd-based disruptions and violence occurring in public places. The PPVM collects information on community protest events of various kinds: protests against municipalities and other public sector services, industrial strike action, protests against crime, protests against private sector practices, and party-political protests. The system also monitors forms of violence associated with protest action as well as vigilantism, xenophobia, political conflict and other forms of crowd or inter-group activity.

Collecting better information on protest and related trends and on the nature and extent of this complex phenomena has the potential to contribute to an improved understanding of the nature, scale and patterns of collective action. This in turn can foster the development of more appropriate responses by state and non-state role players, most notably the police, municipalities, community and political leaders, and protest organisers,[9] because they are better able to take into account current political and class struggles.

Methodology

The PPVM's data is collected by scrutinising reports from more than 100 local, national and international online news sources as well as newsletters and notices by trade unions, political parties, and universities.

Incidents that are captured by the database include industrial strike action, vigilantism and

political attacks – activities which normally fall outside the scope of protest analysis. However, the broad scope employed by the PPVM allows for an interesting analysis of the scale of collective action. This scope is aligned with the definition of social unrest by Schroeter et al., which includes events linked not only to civil protest but also to strikes and political and civil violence.[10]

The data capturing instrument collects information on more than 30 grievance types. For the purpose of this analysis, these grievances have been categorised into 13 broad categories, which span the spectrum from private sector services, corruption, housing/land and transport, to xenophobia. The working definitions for each category are available in Appendix 1.

Relying on media reports alone poses substantial limitations. Firstly, not all incidents of public violence are reported in the media. Analysis by the University of Johannesburg estimates that only one in four events are reported in the media.[11] Moreover, media reports tend to contain few facts about the exact nature of the event and its causes, and the extent to which there was violence or not. For instance, community-level protests are often reported as 'service delivery' protests but the exact grievances (that is, whether the protest is over water, electricity, housing, etc.) are not specified. Furthermore, reports may not focus on the primary grievances that led to a protest, but may highlight only the escalation into violence. For example, reports will cover attacks on businesses owned by foreign nationals during protest action, but not the original protest or, in some cases, the fact that local businesses were also targeted.[12]

As media organisations are typically based in metros and large cities, the coverage of events in those areas will be greater than in smaller towns and rural areas. In addition, coverage may differ from province to province, for the same reason.[13] Lastly, media reports in various languages are not necessarily available online.[14]

The PPVM treats events as violent when they are described as such in the media and if, based on the reported facts, an incident may contravene the provisions of the Regulation of Gatherings Act and involve a criminal act of violence. The definition of protest also allows for the inclusion of events where violence is initiated not only by protestors but also by other parties such as law enforcement agencies or other groups.

The PPVM provides an open source, virtually real-time, geo-referenced record of a comprehensive list of crowd or collective actions that have the potential to escalate into disruptions or violence. An interactive map of all events is displayed online on the ISS's Crime and Justice Information and Analysis Hub at https://issafrica.org/crimehub/.

The PPVM is by no means the only protest database available. The section below examines several other data collection efforts aimed at measuring and understanding protest, and discusses how these differ from the PPVM.

How do other measures of protest differ?

An increase in protests in recent years has sparked new research interest into the topic. Yet, the currently available sources of information vary greatly because of different data collection methodologies, counting rules, scope and variance in the definitions that they apply.

Arguably the most comprehensive source of protest or crowd gathering data in South Africa is that recorded by the South African Police Service's (SAPS) Incident Registration Information System (IRIS). This system is designed to capture crowd management activities and interventions by the Public Order Policing Units (POP units) during all types of crowd events.

A summary of the latest IRIS data is contained in the SAPS annual report. The 2016/17 annual report noted that the SAPS monitored 14 693 'crowd-related incidents' (including sports, recreational, religious and cultural events) between April 2016 and March 2017.[15] Three-quarters of these events (n=10 978) were described as 'peaceful-related' incidents with the remaining 3 715 events (25%) termed as 'unrest-related' incidents.[16] This represents a 10% increase in the percentage of 'unrest-related' incidents since 2013/14.

The Centre for Social Change (CSC) at the University of Johannesburg accessed the IRIS data for the period 1997 to 2013 through a Promotion of Access to Information Act (PAIA) application.[17] After an in-depth analysis of the IRIS data, it concluded that these 'unrest-related' incidents are not necessarily all violent but are labelled as 'unrest-related' because they required 'interventions' by the POP units. These interventions included actions such as directing or dispersing a crowd through the use of various crowd control techniques, including (often controversial) non-lethal crowd management equipment such as tear gas, stun grenades, rubber bullets and water cannons, or making arrests.[18] Any crowd event not requiring intervention is regarded as peaceful.[19]

The 10% increase in the number of 'unrest-related' incidents over the four years since 2013/14 may well require a more nuanced analysis than merely equating this figure to an increase in the frequency of protest. This rise may rather be the result of the re-establishment of more POP units and the acquisition of more equipment in recent years. For example, by 2015/16, the SAPS had 28 POP units consisting of 4 617 operational members and support personnel. In 2016/17, the number increased by almost 9% in a single year to 5 025 members.[20] This represents a 94% increase from the 2 595 members and 23 units

in 2006.[21] Following the closing of many POP units by 2006, the IRIS data showed significant decreases in recorded incidents, attributed to the decreased capacity of the units.[22] The increase in units since 2013 has led to a greater capacity for (and therefore probability of) intervention by the SAPS, which, coupled with improved IRIS record keeping, has increased the frequency of protests on the IRIS database. The increase is therefore not merely a reflection of an increase in the actual number of public assemblies or protests.[23]

IRIS data entry practices remain fairly arbitrary and uneven due to the absence of enforced uniform protocols, definitions and categorisations.[24] Furthermore, transparency in data collection practices is limited because the SAPS only releases the details of the events in instances where PAIA applications are made.

Besides IRIS there are several research organisations that capture protest action through media reporting. For ease of comparison, Table 1 provides a summary of the scope of events covered by these data collection efforts. The table also shows the reported frequency of events estimated by each database over the last six years (2012 to 2017).

There are clear differences in the data. The CSC (in a separate study to its in-depth analysis of the SAPS's IRIS data) collected 3 526 media-reported community protests (MRCPs) between 2005 and 2017, including all types of community protests and not only service delivery protests aimed at municipalities. This database showed 375 incidents for 2017.[25]

In contrast, Municipal IQ, a web-based data and intelligence service, focuses on municipal-level service delivery protests and publishes the Municipal Hotspots Monitor. Since 2004, the Monitor has collected data on 'major protests staged by community members (who can be identified as living in a particular ward) against a municipality, as recorded by the media (or other

Table 1: Protest numbers by various organisations, 2012 to 2017 (media reported)

Organisation	Focus area	2012	2013	2014	2015	2016	2017
Centre for Social Change, University of Johannesburg (CSC)	All 'community' protests	471	322	375	343	377	375
Municipal IQ	Protests against local government	173	155	191	164	137	152
Civic Protest Barometer (CPB), University of the Western Cape	'Civil' protests against local government	150	140	176	126	Not available	Not available
Armed Conflict Location and Event Data Project (ACLED)	'Political violence and protest', including political mass events such as campaign rallies	1 060	1 045	1 084	1 487	1 418	1 026
Social Conflict Analysis Database (SCAD)	'Social and political disorder'	825	617	757	938	979	Not available

Source: CSC (2018), Municipal IQ (2016), CPB (2016), ACLED (2018).

public domain sources such as SAPS press releases)'.[26] Because of the narrow scope, the frequency of events is lower than that captured by the CSC and PPVM. In 2014 the Monitor recorded 191 protests, which decreased to 164 and 137 protests in 2015 and 2016 respectively.[27] It recorded a slight increase in 2017, to 152 protests.[28]

The Civic Protest Barometer has also monitored trends relating to protest action at a municipal level since 2007.[29] The Barometer is a project of the Dullah Omar Institute at the University of the Western Cape.[30] Similar to Municipal IQ's data, the 2016 Barometer analysis shows that the number of 'civil protests' displayed marked increases in 2014 with 176 incidents, before decreasing again in 2015 to 126 incidents. The Barometer recorded the highest number of incidents in a single year in 2009, with 204

incidents.[31] However, overall, it records slightly fewer incidents than Municipal IQ.

With the exception of the IRIS database and the PPVM, none of the local data recording efforts covers a broad definition of protests or incidents of public violence. These organisations measure either community-level protests or those targeting municipalities. Jane Duncan notes that 'the inherent assumption that community protests are largely aimed at local government failure, ignores the service delivery complexities and varying service delivery mandates of different spheres of government'.[32]

International data collection efforts also maintain a wide scope. One example is the Armed Conflict Location and Event Data Project (ACLED). ACLED describes its initiative as 'a disaggregated conflict collection, analysis and crisis mapping project. ACLED collects the

dates, actors, types of violence, locations, and fatalities of all reported political violence and protest events across Africa, South Asia, South East Asia and the Middle East.'[33] The Social Conflict Analysis Database of the Robert S Strauss Center at the University of Texas is affiliated to ACLED.[34] It covers similar incidents in Central and South America, the Caribbean and Africa. The data is available for the period 1990 to 2016.

Similar to the PPVM, the ACLED database covers a wide range of protest action as well as forms of political mobilisation and violence (including police and other state action against civilians or battles for territory, political rallies and other political assemblies) since 1997.[35] However, ACLED differs from the PPVM and most local databases in the way it counts a single event. According to ACLED's counting rules, protracted events are counted multiple times in the database, as each day is counted as a single event for as long as each event continues. So, for example, a three-day #FeesMustFall protest action will be counted as three entries. For this reason, the number of events captured by ACLED is higher than that recorded in the PPVM. In 2017, it recorded 1 026 events of which 935 were described as riots or protests.[36] A growing number of total protest days may well be an indicator of growing social unrest. However, the main aim of the PPVM is to measure the number and nature of distinct geographic events, rather than to produce an estimate of the number of total protest days alone.

Comparatively, the publicly available international data and IRIS cover a wider range of incidents than other databases, but the counting rules vary greatly from other local efforts. The PPVM covers a wide spectrum of events and has similar counting rules to local databases. Except for ACLED and the PPVM, none of the other databases offers freely

available data, has a sufficiently wide scope, or provides the nuanced detail required to undertake an in-depth analysis on the location of protests, the number of protests over time in similar locations, or the socio-economic grievances leading to protests.[37] Furthermore, there is also no agreement across the databases on what actions should be regarded as violent, disruptive or peaceful.

Key findings of the PPVM

Frequency of protest

Between January 2013 and December 2017, 4 391 incidents of protest and collective violence were recorded on the PPVM. Figure 1 provides a breakdown of all recorded events on the database per year since 2013.

Figure 1: PPVM incident trends per year from January 2013 to December 2017 (n=4391)

Source: ISS Protest and Public Violence Monitor (2017) https://issafrica.org/crimehub/maps/public-violence

The figure above shows that most incidents of protest and industrial strike action occurred in 2013, followed closely by 2014, a national election year. Substantial decreases in protest action were recorded in 2015 and 2016, despite the rise of education-related protest, most notably through the #FeesMustFall movement in 2016 and the local government elections.

Further analysis shows that these decreases at the national level were driven mainly by decreases in the levels of protest in Gauteng. This may be due to government interventions in place at the time that may have mitigated the impetus for protest, such as the formation of

task teams to address community grievances. One such initiative, the Ntirhisano community outreach programme in Gauteng, aimed to foster trust and confidence in government by improving service delivery and accountability.[38] To date, the success of this programme is unclear and further research is required to understand the effectiveness of this programme in terms of its implementation and impact.

Between 2016 and 2017 the frequency of protest events increased by 42%. This may be related to the change in government in two of the main metropolitan areas in Gauteng after the 2016 elections, which may have reversed the public's positive view of the initiatives described above, as the effectiveness of these initiatives became strained due to a change in dynamics between the various spheres of government.

Seasonality of protest

The seasonality of protest is clearly depicted in the monthly trends presented in Figure 2. The number of incidents recorded in the first six months of 2017 surpassed the total number of all incidents in 2015. Thereafter, the numbers decreased quite substantially in the second half of the year. Traditionally, events peak around May to September each year and start dropping after October. December typically has the fewest incidents.

There are a number of possible explanations for these patterns. May is widely regarded as the start of 'strike season', as new salary negotiation processes commence across the country, during which wage disputes are declared between employers and their workers. Some of these processes lead to protracted negotiations and sporadic strikes across various industries, which continue for much of the South African winter months.[39]

The data shows that all types of protest peak during this period, not only labour-related industrial strike action. The winter months, which bring with them cold weather and increased vulnerability for many South Africans,

Figure 2: PPVM trends per month between 2013 and December 2017 (n=4391)
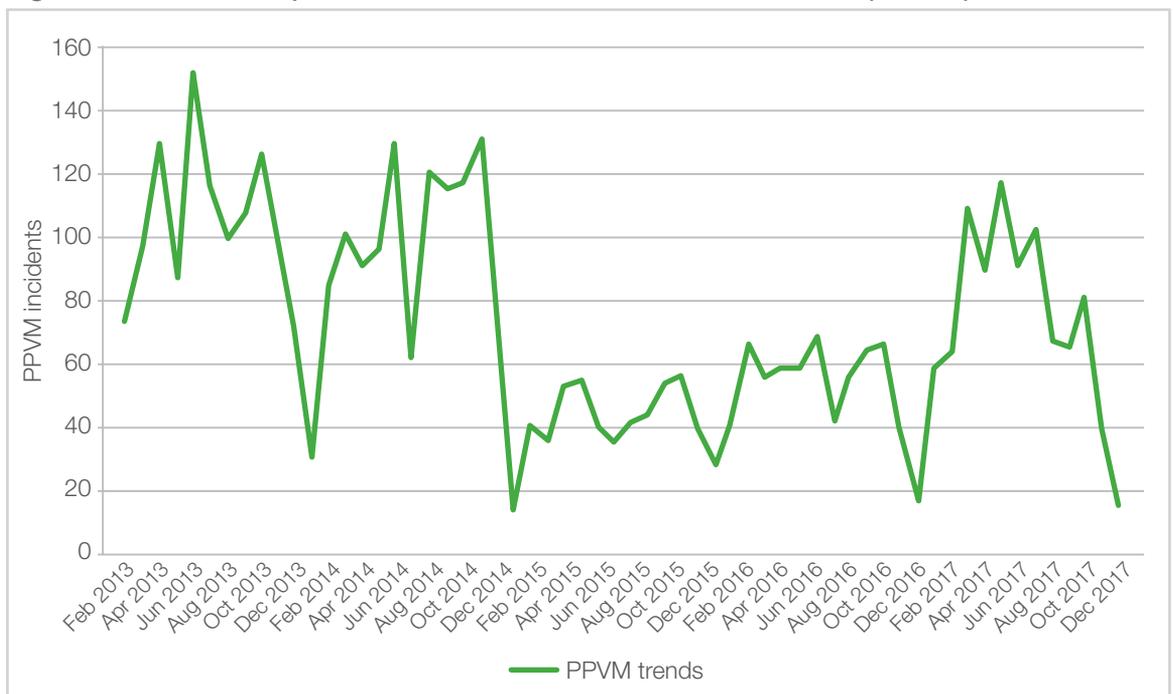
Source: ISS Protest and Public Violence Monitor (2017).

seem to amplify the urgency for the delivery of services such as electricity and housing. These months thus see an increase in the number of protests.

The marked drop in the December period coincides with the closure of industries and schools in South Africa between mid-December and mid-January for the so-called 'festive season', when many potential grievance makers and service delivery agents are on leave and travel for the holidays.

Types of protest

The PPVM classifies each incident of protest action according to the crowd's main grievance, as identified in the media or other online source.[40] A breakdown of these main grievance categories is contained in Figure 3.

Analysis of the data shows that most collective action between 2013 and 2017 has not been focused on highlighting the problems with municipal service delivery, but was more often related to industrial strike action (comprising 19% of all events.)

The second most recorded grievance category (accounting for 16% of incidents) consisted of grievances about the police's inability to reduce crime levels or to solve particular crimes.[41]

Protests around municipal services made up the third most recorded grievance category, contributing a further 16% of protest incidents.

Twelve per cent of the protests recorded by PPVM were education-related, which included grievances concerning basic as well as tertiary education (including #FeesMustFall).

A further 11% of the protests or crowd events related to politics or elections. Other prominent protest concerns related, among others, to housing and/or land, transport, other socio-economic rights, xenophobia and corruption, and unfair business practices.

Further analysis of the data shows that protest incidents are frequently organised to express dissatisfaction with more than one grievance issue. For example, municipal service delivery protests may be focused on water and

Figure 3: Protest types between 2013 and 2017 (n=4391)
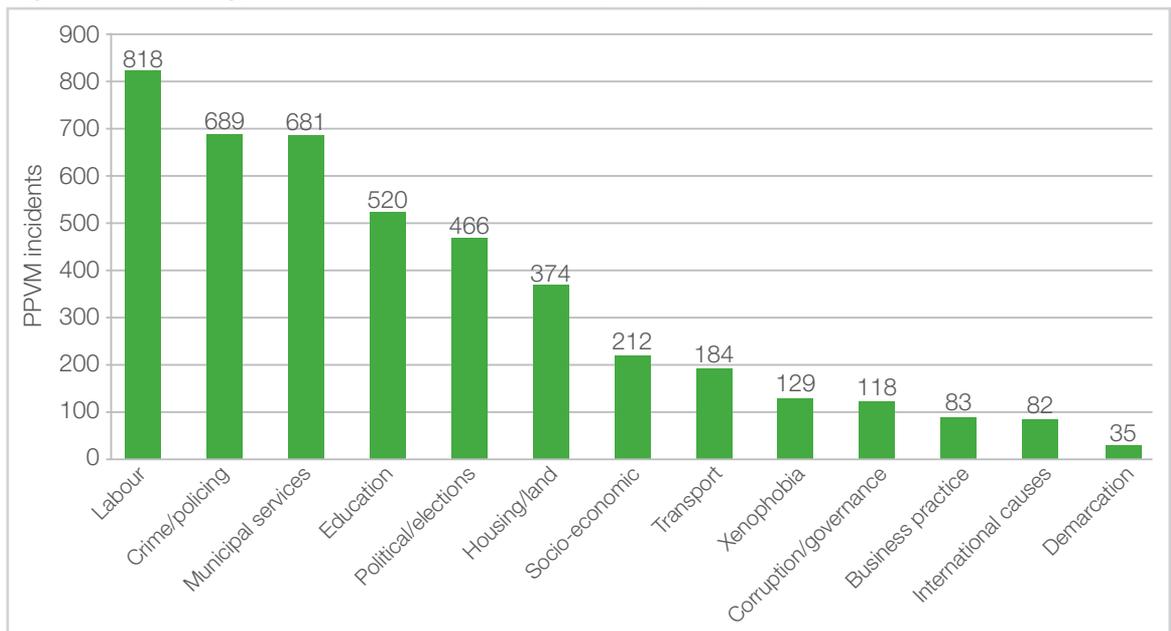
Source: ISS Protest and Public Violence Monitor (2017).

electricity delivery, and may raise problems regarding either terms of quality or quantity of services, or both.

The findings about overall grievance type are important because they illustrate clearly that most grievances do not relate to municipal service delivery specifically, but are rather an indictment of government services in general. Of particular concern is the large proportion of protests against the police and/or crime, and against the departments of basic and higher education.

Beyond basic municipal service delivery, the majority of protests illustrate the daily struggles of ordinary people to access their constitutionally protected socio-economic rights, such as access to jobs, fair wages, safety, decent education and transport. This includes grievances aimed at the private sector, although these were not nearly as prominent as grievances aimed at the state.

The sheer scale of protest aimed at this wide range of issues provides justification for the need to widen the scope of study to include all types of protest away from a narrow focus

on 'service delivery', 'municipal services' and 'community protest'.

Violent protests

More than half (55%) of the incidents captured on the PPVM were termed 'violent' or 'disruptive' in media reports. The proportion of violent or disruptive incidents per year has been increasing year on year from 43% in 2013 to 65% in 2016, as Figure 4 below illustrates. It is interesting to note, however, that the percentage of violent or disruptive incidents recorded in the first six months of 2017 is lower than in 2015 and 2016.

It is often difficult to clearly establish from media reports whether incidents are violent or simply disruptive. It is also difficult to know when the status of an incident may shift from being peaceful or disruptive into one that is violent. Yet, the distinction between what is regarded as violent or disruptive is important. Alexander et al. introduced this distinction to ensure that the popular narrative moves away from viewing protestors as violent unprovoked agitators, in an effort to be 'more sympathetic to protesters and to the history of protest'.[42] International literature

Figure 4: Peaceful and violent/disorderly protests between 2013 and 2017 (n=4391)
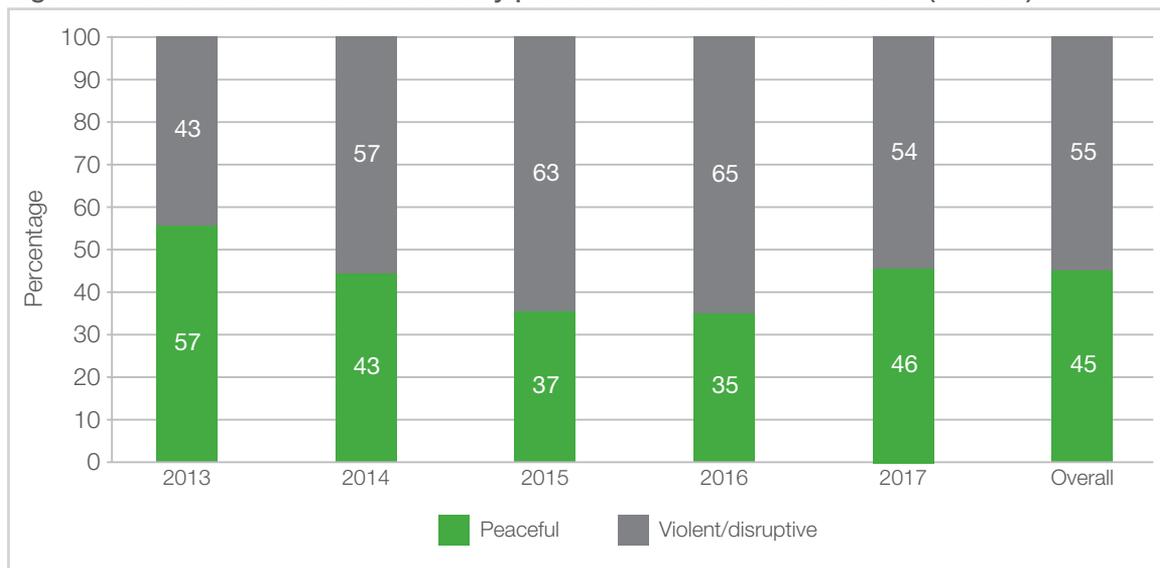
Source: ISS Protest and Public Violence Monitor (2017).

suggests that the likelihood of an event leading to violence is influenced by several factors, including actions or a lack of action on the part of both protestors and other roleplayers (such as the police or the party the protest is aimed at). Examples include heavy-handed policing practices or a lack of responsiveness by the relevant government department.[43]

Location of protests

The events in the PPVM database were analysed by type of location, in other words, whether they took place in metropolitan, urban or rural areas.[44] Two-thirds (67%) of the incidents took place in metro areas, while 17% and 16% took place in urban and rural areas respectively. Metro areas often experience challenges because of rapid urbanisation, higher population density and migration.[45] Exceptional growth of the metros gives rise to increased demand for basic municipal services and other socio-economic rights such as housing, land, healthcare, education, infrastructure, transport, employment and security.

Urbanised provinces are predominantly the location of most protest events. Figure 5 below shows that almost one-third of all events took place in Gauteng (31%), followed by the Western Cape (20%), KwaZulu-Natal (16%) and the Eastern Cape (14%). These provinces are the most highly populated and most urbanised, and therefore contain the largest metro areas. The Northern Cape experienced the lowest percentage of protest and strike action (1%), closely behind the Free State (2%), Mpumalanga (4%), North West (5%) and Limpopo (7%). These proportions remain largely unchanged even where strike action (which favours largely industrialised provinces) is excluded from the analysis to examine whether provincial patterns of non-labour related community protest differ.

Some locations experienced a higher frequency of protest action than others. One of the simplest yet most effective ways to analyse data spatially is through mapping. The frequency of protests at different locations can be measured over time to yield so-called protest 'hotspots'.[46] Hotspot analysis can be done to look at patterns of distribution in protest for a specific moment in time, and can also be used to determine any changes in hotspots over time. For instance, hotspot maps can show changes year-on-year or month-on-month, or can visualise data for a particular election period. The formation of hotspots illustrates that certain areas experience persistent protest action. Hotspot analysis is therefore a useful planning and monitoring tool to facilitate targeted and sustained interventions in areas where protests occur frequently.

Figure 5: Provincial spread of PPVM events, 2013 to 2017 (n=4391)
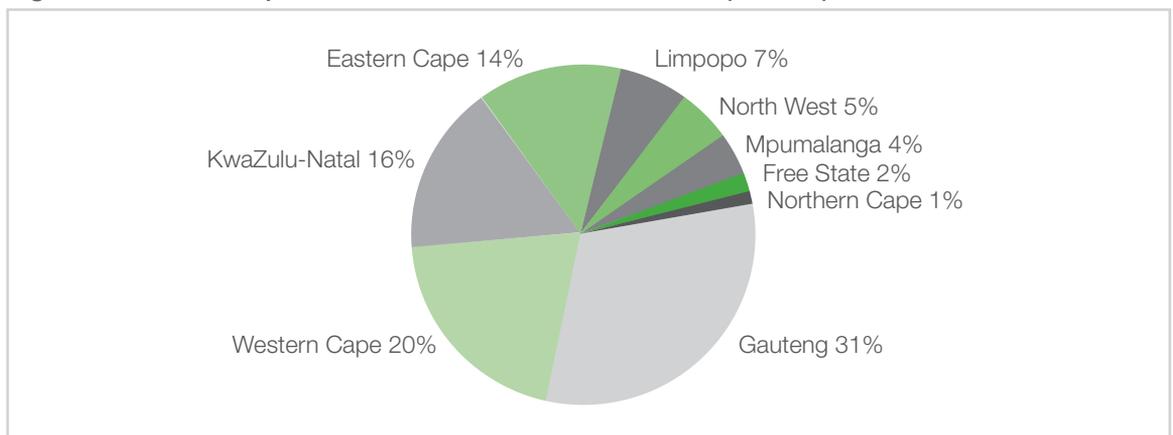
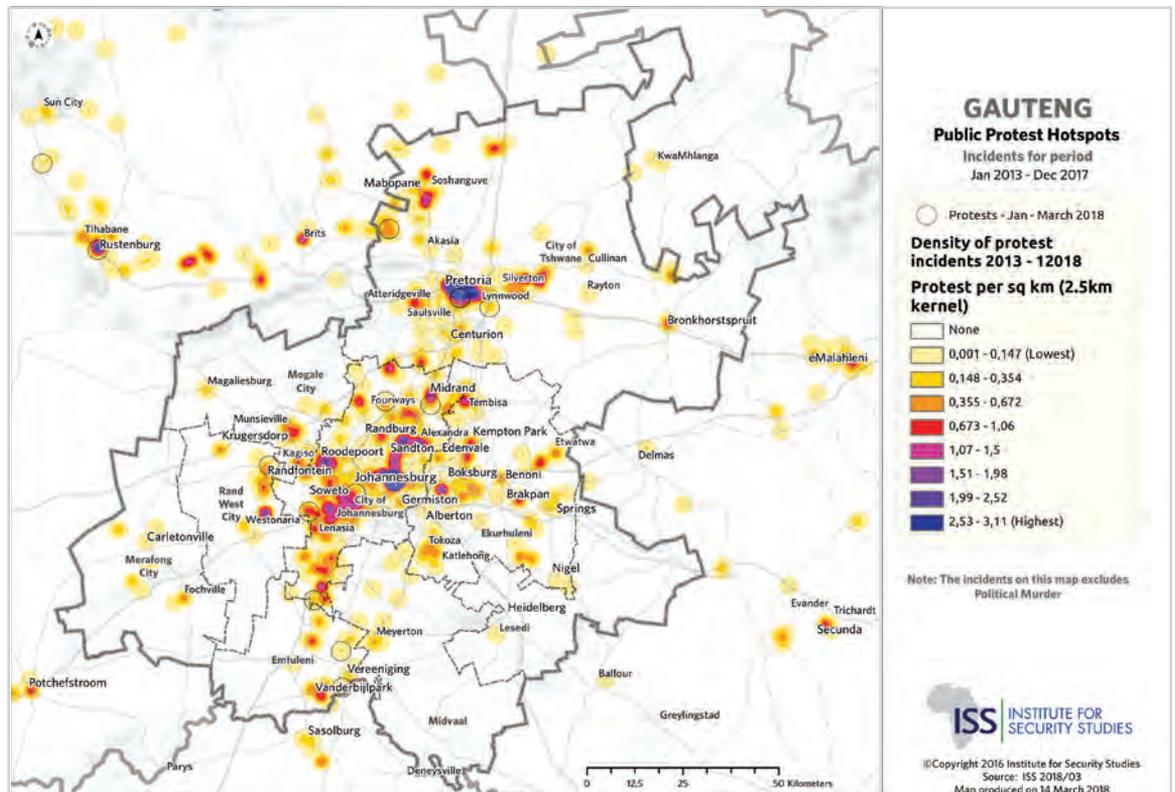Source: ISS Protest and Public Violence Monitor (2017).

The map below shows the Gauteng protest hotspots that were calculated using PPVM data between January 2013 and March 2018.[47] With geographic information system (GIS) software, protests were clustered within a 2.5km radius to estimate where most protest hotspots are located. The intensity of the hotspots was based on the frequency of protests at locations, using statistical calculation methods such as kernel density estimates.[48] Areas on the map coloured in dark blue have the highest proportion of such incidents, while the yellow areas have the lowest. Areas with no colouring presented no such incidents.

The map highlights that the location of a protest matters because social actions occur in some or other location.[49] Most protests take place because of a grievance that persists or arises in a certain locale. For example, a community may protest because of water shortages in a specific area. The location of the protest is often the actual community or it can take place at the location of the delivery agent, e.g. the municipal offices. The protest can also move between locations. All efforts should be made to capture not only the location of the protest but also the nature of the protest and how it advances.

As a result of the importance of the location of protests, one can hypothesise that most political and collective actions centre around 'place-based interests'.[50] Future research should examine why a protest takes place in one location but not in another. Furthermore, it is useful to understand why one group may protest over water shortages but another group not, faced with similar circumstances. These research questions require complex, multi-stage, nuanced, and in-depth analysis.

Map 1: Gauteng spread of events in terms of peaceful and violent, 2013 to 2017

Source: ISS Protest and Public Violence Monitor (2018).

Concluding remarks

A comprehensive understanding of protest action necessitates the study of a wide scope of collective action including, but not limited to, protests aimed at municipalities and other narrow community interests. The PPVM is the only local, publicly accessible information portal that captures all forms of protest, disorder and public violence associated with social and economic discontent. Its findings therefore present an important contribution to what we know about the frequency and nature of protest and discontent.

The findings emerging from the PPVM data illustrate how wide-ranging protest grievances are, and how geographically widespread they are. Contrary to widely held opinion, the majority of grievances resulting in protest action are not about basic municipal-level service delivery issues, but include concerns about safety, education, employment and other broader socio-economic rights. While most protest is aimed at the state, the number of events mounted against the private sector in the form of strikes or business practices is significant.

Preliminary hotspot analysis suggests that the likelihood of escalation of protest action into violence is dependent on the frequency of protests in a place (highlighting the possible lack of resolution of issues) as well as the role played by parties such as the police, leaders or officials. Further research should focus on this.

The PPVM has its share of data challenges, and the project is adapting to address these concerns. For example, the PPVM data sources are being expanded to curb a dependency on media reporting. To this end, the ISS has developed a smartphone application to augment existing data sources. The Protest Reporter app allows members of the public to report incidents directly to the PPVM database, using a smartphone. It is available on both the Android and iPhone app stores, free of charge.

In May and June, this mobile phone application was tested among community activists in selected protest hotspots in Gauteng.[51]

Should the pilot prove to be successful, the application will be rolled out nationwide. The speed and success of the roll-out will depend on available capacity and financial resources, as well as the quality of partnerships with civil society organisations, academic institutions and government agencies.

The complex nature of protest requires more nuanced research into different forms of discontent, their impact, outcomes (whether positive or negative) and their perceived success or failure. A better understanding of protest could and should assist with the development of evidence-based policy to ensure the formulation of more appropriate responses by various role players such as municipalities, law enforcement agencies, political parties and community activists. This approach may reduce and prevent forms of violence associated with certain protests, and may better equip the SAPS to respond to protests, including those that are aimed at the SAPS itself.

Appendix 1: A summary of grievance type working definitions used for PPVM

Business practice	Any protest or gathering aimed mainly at private sector services or costs or access to markets/job opportunities
Corruption/ governance	Any protest or gathering organised to highlight allegations of corruption or mismanagement by any public or private sector entity
Crime/policing	Any protest or gathering aimed mainly at crime-related services or against policing practices/action, including vigilantism
Demarcation	Any protest or gathering aimed mainly at the re-establishment of municipal boundaries
Education	Any protest or gathering aimed mainly at education-related services or costs, whether primary, secondary or tertiary
Political/ elections	Any protest or gathering including internal party political issues, or where a political party protests against another, or where the protest or gathering interferes with usual electoral/IEC practices and processes e.g. during campaigning. This category also includes political attacks (any violent or attempted violent attempt or actual killing of a person of political importance). It can include members of labour organisations since 2016.
Housing/land	Any protest or gathering aimed mainly at housing or land-related services, including evictions from buildings or invasions targeting the issue of access to land, or land disputes
International causes	Any protest or gathering aimed mainly at global issues such as human rights abuses or political causes
Labour	Any strike action, march or gathering organised by workers or trade unions to highlight labour disputes by any public or private sector entity
Municipal services	Any protest or gathering aimed mainly at basic municipal services, including grievances against ward councillors for non-response, but excluding allegations of corruption
Socio- economic	Any protest or gathering aimed at any socio-economic right not specifically mentioned in any other category, focused often at marginalised groups or human rights abuses such as equal rights, or ending abuse, or discrimination campaigns, or jobs campaigns, or healthcare services
Transport	Any protest or gathering aimed mainly at transport-related services, including public transport, tolling of roads but excluding transport issues falling under the Department of Basic Education
Xenophobia	Any protest or gathering, attempt or attack based on any form of discrimination or violence against people due to their ethnic, linguistic or national background. It may be against immigrants or refugees, but it may also be against South Africans from other villages, ethnic groups, religions or languages. Even if such incidents intersect with other forms of crime – violence, looting, threats, or attacks – they are recorded. However, only if this category is the main motivation of the collective action will it be recorded as a main grievance type.

Notes

1 R Schroeter, A Jovanovic and O Renn, Social unrest: a systemic risk perspective, *Planet@ Risk*, 2:2, 2014, 125–134.

2 Ibid.

3 N Bohler-Muller et al., Minding the protest: attitudes towards different forms of protest action in contemporary South Africa, *South African Crime Quarterly*, 62, December 2017, 81–92.

4 Ibid.

5 Schroeter, Jovanovic and Renn, Social unrest; A Jovanovic, O Renn and R Schroeter, Social unrest, in Organisation for Economic Co-operation and Development (OECD), *Reviews of risk management policies*, 2012.

6 Schroeter, Jovanovic and Renn, Social unrest.

7 A Keidel, The economic basis for social unrest in China, Third European-American Dialogue on China, George Washington University, Washington DC, 26–27 May 2005, http://carnegieendowment.org/files/keidel_social_unrest.pdf (accessed 8 January 2018).

8 The ISS Protest and Public Violence Monitor is kindly funded by the Hanns Seidel Foundation.

9 Some of the dynamics associated with these role players are described by Lancaster (2015) but fall outside the scope of this article. See L Lancaster, At the heart of discontent: measuring public violence in South Africa, Institute for Security Studies (ISS), Paper 292, 2016, 8, https://issafrica.org/research/papers/at-the-heart-of-discontent-measuring-public-violence-in-south-africa (accessed 10 June 2018).

10 Schroeter, Jovanovic and Renn, Social unrest, 126.

11 C Runciman et al., *Counting police recorded-protests: based on South African Police Service data*, Johannesburg: Centre for Social Change, University of Johannesburg, 2016, 22.

12 Lancaster, At the heart of discontent, 9.

13 J Duncan, Are South Africa's protests really driven by rising expectations?, South African Civil Society Information Service, 6 October 2014, http://sacsis.org.za/site/article/2156, accessed 10 June 2018.

14 A Nyar and C Wray, Understanding protest action: some data collection challenges for South Africa, *Transformation: Critical Perspectives on Southern Africa*, 80, 2012, 22–43.

15 South African Police Service (SAPS), *Annual report: 2016/17 financial year*, Pretoria: SAPS, 2017, 142.

16 The SAPS does not provide definitions for these categories in any of its documents. The distinction is explained in the next paragraph.

17 P Alexander, C Runciman and B Maruping, *South African Police Service (SAPS) data on crowd incidents: a preliminary analysis*, Johannesburg: Centre for Social Change, University of Johannesburg, 2015, 11.

18 Ibid., 19; Runciman et al., *Counting police-recorded protests*; P Alexander, C Runciman and B Maruping, The use and abuse of police data in protest analysis: South Africa's Incident Registration Information System (IRIS), *South African Crime Quarterly*, 58, December 2016, 9–21.

19 Ibid.

20 SAPS, *Annual report: 2016/17 financial year*, 141.

21 SAPS, Presentation at seminar on Violent Protests: Examining SA's Trends and Responses, ISS, Pretoria, 15 June 2016 (available from ISS).

22 SAPS, *Annual report: 2015/16 financial year*, Pretoria: SAPS, 2016, 152.

23 Alexander, Runciman and Maruping, *South African Police Service (SAPS) data on crowd incidents*, 17.

24 Alexander, Runciman and Maruping, The use and abuse of police data in protest analysis.

25 P Alexander et al., Frequency and turmoil: South Africa's community protests 2005–2017, *South African Crime Quarterly*, 63, March 2018, 27–42.

26 Municipal IQ, Worrying recent uptick in service delivery protests, Press Release, 16 May 2017.

27 Ibid.; Municipal IQ, Gauteng and national service delivery protest figures fall, Press Release, 23 February 2016; Municipal IQ, Briefing 608: Final protest tally for 2015; off 2014 record, 12 January 2016.

28 Municipal IQ, First quarter protests for 2018 show consistent trends with previous years, Press Release, 6 April 2018.

29 TC Chigwata, M O'Donovan and DM Powell, Civic protests and local government in South Africa, in The civic protests barometer 2007–2016, Working Paper Series 2, Cape Town: Applied Constitutional Studies Laboratory (ACSL), University of the Western Cape and Dullah Omar Institute, 2016.

30 Ibid.

31 Ibid., 3.

32 Duncan, Are South Africa's protests really driven by rising expectations?.

33 Armed Conflict Location & Event Data Project (ACLED), About, https://www.acleddata.com/about-acled/ (accessed 13 April 2018).

34 Social Conflict Analysis Database, www.scaddata.org (accessed 13 April 2018).

35 ACLED, ACLED definitions of political violence and protest, https://www.acleddata.com/wp-content/uploads/2017/12/ACLED-Definitions-of-Political-Violence-and-Protest_FINAL.pdf (accessed 13 April 2018).

36 The remainder included 'battle- no change in territory', 'remote violence', 'strategic development' and 'violence against civilians'. The codebook and definitions are available at ACLED, www.acleddata.com (accessed 13 April 2018).

37 Lancaster, At the heart of discontent, 8.

38 South African Government, Premier David Makhura: Gauteng 2016 state of the province address, 22 February 2016, http://www.gov.za/speeches/premier-david-makhura-gauteng-state-prov-state-province-address-2016-22-feb-2016-0000 (accessed 10 June 2018); Gauteng Provincial Government, Ntirhisano, http://www.gauteng.gov.za/Document%20Library/Ntirhisano%20z-card.pdf (accessed 10 June 2018).

39 One such example is a newspaper article by T Niselow, The start of strike season: what to expect, *Mail & Guardian*, 25 April 2018, https://mg.co.za/article/2018-04-25-the-start-of-strike-season-what-to-expect (accessed 23 May 2018).

40 A short definition of each category is contained in Annexure 1.

41 Lancaster, At the heart of discontent, 10.

42 Alexander et al., Frequency and turmoil.

43 Lancaster, At the heart of discontent, 8.

44 The metro areas consist of the six category A metropolitan municipalities constituted in terms of section 155.1.a of the South African Constitution, namely, the cities of Cape Town, Johannesburg, Tshwane, Ekurhuleni, eThekwini, Mangaung, Nelson Mandela Bay and Buffalo City Metropolitan Municipalities. Urban areas consist of non-metropolitan municipalities that contain large urban centres. Rural areas are defined as areas consisting of predominantly farming or traditional authority areas.

45 The metro areas are the eight Category A municipalities, namely the cities of Johannesburg, Cape Town, Tshwane (Pretoria), Ekhuruleni (East Rand), eThekwini (Durban), Nelson Mandela Bay Metro (Port Elizabeth), Buffalo City (East London) and Mangaung (Bloemfontein), as determined by the Municipal Demarcation Board, http://www.demarcation.org.za/ (accessed 10 June 2018).

46 Hotspots are defined as 'an area that has a greater than average number of criminal or disorder events, or an area where people have a higher than average risk of victimization', in J Eck et al., *Mapping crime: understanding hotspots*, Washington DC: National Institute of Justice, 2005, 2. Kernel density estimates is a statistical method used to estimate the location of data – in this case protest hotspots. Eck et al. explain that this method 'creates a smooth surface of the variation in the density of point events across an area'.

47 National, provincial and metro level maps were generated. The Gauteng map is a good example of the hotspot analysis because of the high number of incidents in the province and the shape of the province.

48 Eck et al., *Mapping crime*, 26.

49 A Abbott, Of time and place, *Social Forces*, 75, 1997, 1149–1182.

50 JR Logan and HL Molotch, *Urban fortunes: the political economy of place*, Berkeley: University of California Press, 1987.

51 The process and findings will be documented in a future paper.

Third time a charm?

The Traditional Courts Bill 2017

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This article discusses the latest version of the Traditional Courts Bill introduced by Parliament in 2017. It examines several fundamental objections to previous versions of the Bill to explain the progress that has thus far been made. In a much-welcomed improvement, the 2017 Bill provides a mechanism for individuals to opt out of the traditional justice system. Nonetheless, the recognition of the old apartheid homeland boundaries is perpetuated, as only courts convened by a traditional leader, whose power and jurisdiction are based on the old tribal boundaries, are recognised. A notable change is that there are no longer appeals to the magistrates' courts. Parties may appeal a decision to a higher customary court or apply for a review of a decision to the high court. This calls into question the accessibility and affordability of appeals, and essentially locks people into the traditional justice system after the commencement of proceedings. The bar on legal representation continues under the 2017 Bill, which remains objectionable given that traditional courts may still deal with criminal matters. However, the powers of traditional courts in granting sanctions have been significantly circumscribed and regulated. Thus, while the 2017 Bill represents a significant development of previous versions of the Bill, there is still room for improvement.

Traditional courts are at present still governed by the remaining provisions of the notorious Black Administration Act, which was promulgated in 1927.[1] Unsurprisingly, the provisions are largely regarded as outdated and ignored.[2] In 2008 the legislature introduced the Traditional Courts Bill,[3] which was withdrawn in 2011 due to criticism and public outcry. This criticism was based on the lack of public consultation in the drafting of the Bill, the gender composition of the courts and women's participation in the resolution of

disputes, centralisation of power in traditional leaders and their courts at the expense of lower courts within the customary system, and the professionalisation of courts.[4] The Bill (hereafter 'the 2008/2012 Bill') was, however, re-introduced unchanged in 2012.[5] The determined and fierce opposition to the Bill by, among others, civil society and citizens in rural areas, led to the National Council of Provinces,[6] including ANC-controlled provinces, rejecting the 2012 Bill.[7]

In 2017 the legislature introduced a revised version of the Traditional Courts Bill[8] ('the 2017 Bill') borne out of the public engagement with

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the 2008/2012 Bill and aimed at addressing criticisms that marred previous versions of the Bill. This article examines some of the fundamental criticisms levelled at the 2008/2012 Bill, and looks at whether they are sufficiently addressed by the 2017 Bill. This article focuses on the way that the 2017 Bill entrenches tribal boundaries; the locking in of rural people into the traditional justice system; the lack of legal representation; and the wide discretionary powers of chiefs in imposing sanctions.

The article argues that while certain important, and very welcome, changes have been made to the 2017 Bill, there is still room for improvement before the Bill comes into force.

Entrenchment of tribal boundaries

Perhaps one of the most significant objections to previous iterations of the Bill was that it entrenched the old apartheid homeland boundaries. During apartheid, the state created tribes and appointed chiefs and tribal authorities, who were accountable to the state, to rule over the newly created tribes.[9] These tribes were confined within artificially fixed boundaries in the homelands, and chiefs and tribal authorities were given territorial jurisdiction over the areas in which they were appointed.[10] This forced territorial jurisdiction distorted the true nature of customary law, which is defined by an individual's voluntary affiliation to a chief.[11]

Mnisi Weeks and others criticised the 2008/2012 Bill for continuing the artifice of territorial jurisdiction under the new framework.[12] Mnisi Weeks argued that the Bill, as read with section 28 of the Traditional Leadership and Governance Framework Act[13] ('the TLGFA'), recognised tribes created during apartheid as traditional communities and conferred territorial jurisdiction over these communities on traditional courts.[14] This perpetuated the artificial tribal authority boundaries created during apartheid, as it bound individuals to attend

the court of the traditional leader in whose jurisdiction they resided, regardless of whether they affiliated with the leader or disputed his legitimacy.[15] This entrenched, and effectively locked people into, the boundaries of the old tribal authorities.

The 2017 Bill does little to change this situation. It provides that a traditional court must be convened by a traditional leader (or his designate)[16] and defines a traditional leader as one who, in terms of the customary law of the community, holds a traditional leadership position in accordance with an Act of Parliament. Under the TLGFA, recognition of traditional leaders is linked to traditional communities, traditional councils and tribal boundaries.[17] The effect is that the only legally recognised courts are those convened by a traditional leader, whose power and jurisdiction are based on the old tribal boundaries.[18]

In a welcome development, however, the 2017 Bill no longer creates a strict territorial jurisdiction for courts. Individuals may institute proceedings in any traditional court and are not bound to attend court in the jurisdiction in which they reside.[19] Many people may nonetheless choose to use their local court due to familiarity, societal pressure and the pragmatic savings in time and costs, but being allowed to have a choice of court remains an important reflection of the voluntary and consensual nature of customary dispute resolution forums.

Opt-out

The 2012 Bill locked rural people into the traditional justice system with no option to refuse to attend a traditional court when summoned. Most controversially, clause 20(c) of the 2008/2012 Bill provided that any person who,

> [h]aving received a notice to attend court proceedings, without sufficient cause fails to attend at the time and place specified in the notice, or fails to remain in attendance

until the conclusion of the proceedings in question or until excused from further attendance by the presiding officer, is guilty of an offence and liable on conviction to a fine.

Locking individuals into the traditional justice system in this way flagrantly contravened its voluntary nature. Mnisi Weeks argued that attendance at customary courts was always elective and this voluntary nature of the courts defined the authority of the court, conferred legitimacy on the leader and was a means to hold the leader accountable.[20] Individuals would not frequent unjust customary courts, resulting in a loss of their credibility.[21] This served as a real incentive for customary courts to rule fairly.[22] Mnisi Weeks further argued that the lack of an opt-out mechanism infringed on individuals' right to choose their culture and associate with the traditional authorities of their choice.[23]

Clause 20(c) has been deleted in the 2017 Bill, which instead affirms the voluntary participation in a traditional court[24] and the consensual nature of customary law.[25] Furthermore, it provides that a traditional court may only hear a matter 'if the party against whom the proceedings are instituted agrees freely and voluntarily to the resolution of the dispute'.[26] A person who elects not to have the matter resolved by the traditional court must inform the clerk of the court of his decision,[27] but need not furnish reasons for the decision. Traditional courts may, however, provide 'counselling' even after a party has elected to opt out of proceedings.[28] What constitutes counselling is not explained in the Bill, and it is problematic that it permits the court's involvement in the dispute when a party may have opted out. The court's power should rather be limited to referring the matter elsewhere.[29]

Once individuals consent to their matter being heard in a traditional court, they cannot withdraw from the proceedings, unless they have 'compelling grounds' to do so and have informed the traditional court.[30] The 2017 Bill does not define compelling grounds and also does not set out who evaluates the reasons for the withdrawal, or how this should be done. It is unlikely to expect that a person's fear of an unjust outcome would be considered sufficient justification for withdrawal from the proceedings, and it therefore appears that consenting to proceedings in a traditional court may bar a person from pursuing the matter in a common law court.[31] The right to opt out and the consequences of failing to do so must be carefully explained to individuals so that they can make a meaningful choice.[32]

The Department of Justice and Constitutional Development (hereafter 'the Department of Justice') explained that the intention of these provisions is to prevent parties from forum shopping.[33] However, this raises one of the most basic objections to legislation on traditional courts: that it changes the nature of traditional dispute resolution forums.[34] These forums are not courts like the high courts and magistrates' courts, and forcing them into court-like moulds destroys not only their essence but also that which makes them such effective dispute resolution mechanisms. The legitimacy, credibility and effectiveness of traditional courts stem from voluntary participation, and locking individuals in at any stage in the proceedings undermines the voluntary and consensual nature of these courts. Allowing individuals to withdraw from proceedings may well result in forum shopping, but it also means that claimants who legitimately fear an unjust outcome can expeditiously move their matter to the magistrates' court for resolution. This is particularly important, given that there are no appeals to the common law courts – a point we shall return to below.

Despite these critiques, recent submissions on the 2017 Bill have seen traditional leaders lobby

for an abandonment of the opt-out clause, on the basis that it undermines their power and the functioning of traditional courts.[35] The National House of Traditional Leaders advocated for a return to the previous position, where all individuals resident within a traditional leader's jurisdictional area are bound to submit to his court.[36] This would be an unfortunate regression and should not be allowed. In reality, existing power dynamics between powerful traditional leaders and vulnerable parties, like women, are likely to make it difficult for parties to opt out after they have been summoned to court, even if the law allows them to do so.[37] The unbalanced power structures within traditional dispute resolution forums may intimidate individuals from opting out,[38] which means that, rather than doing away with this right, we should inform and support individuals to exercise their option to opt out.

Review and appeals

Unlike the 2008/2012 Bill, the 2017 version no longer allows appeals to the magistrates' courts. Instead, it provides that a high court may review an order of the traditional court and allows for appeals only to be made to another customary institution, in accordance with customary law and custom.[39] The high court may examine whether there was misconduct, bias or procedural irregularity in the way the traditional court arrived at its decision, but cannot pronounce on the merits of the case. Notably, the high court cannot review a decision because a party was refused a request to opt out, or was not informed of this right.

Disputes about the substance and merits of a decision must be dealt with in terms of the internal customary law appeal mechanisms, for example with an appeal to a higher customary court. The rationale for removing magistrates' courts' jurisdiction to hear appeals from traditional courts was based on the fact that the process was reminiscent of the apartheid era,[40] where appeals were used as a means of controlling the decision-making of chiefs and undermining their powers. We should certainly not be emulating an era where white judicial officers substituted the decisions of chiefs with their own understandings and pronouncements of the law. Himonga and Manjoo note that, due to their training, magistrates' and superior courts tend to apply customary law rigidly, which emphasises black letter law. Also, they often apply 'norms' of customary law that are not authentic and therefore alien to litigants who live under customary law.[41] Bennett and Nhlapo argue that keeping the appeal within the customary law justice system for as long as possible gives effect to individuals' constitutional right to have their matter decided in a system that is familiar, non-alienating, inexpensive and accessible.[42]

Although Himonga and Manjoo are in favour of an appeal travelling through the customary law internal appeal mechanism before reaching the common law courts, they do not support the 2017 Bill provision that individuals should not have a right to appeal to the common law courts. Instead, they favour the model contained in the first bill proposed by the South African Law Commission ('the Commission Bill').[43] The Commission Bill proposed that a decision of a customary court could be appealed to a higher level customary court or, when there is no higher level or the customary court is at the higher level, to a magistrates' court.[44] This model aims to keep the appeal within the customary justice system as long as possible, but never to altogether preclude an appeal to the common law courts.

Unlike the model proposed above, the 2017 Bill, which will exclude appeals to the common law courts, is untenable. For example, what would happen in a case where procedure has been correctly followed but the substantive outcome is problematic? Claassens shows

how customary courts undermine women's realisation of their rights due to the patriarchal nature of the law.[45] For example, one woman explained that upon the death of her husband she was expected to become the wife of her husband's brother in accordance with custom. It was argued by the police and in the headman's court that this was indeed a customary practice and that the woman therefore had no case.[46] Even where women sit as members of the court or represent themselves, male-dominant outcomes may prevail.[47] Under the proposed Bill, a case like this would have to be examined on the merits of the decision, and there is no reason to believe that an appeal to a higher customary court would yield a better outcome. Furthermore, there is rich variation in the set-up of traditional courts across South Africa and not every community has a higher customary court to hear appeals. The 2017 Bill does not explain what happens in such a situation, but it appears that litigants would be left without an appeal mechanism – which is problematic.

Mnsi Weeks notes that permitting direct appeals to the magistrates' court allows individuals to avoid challenging the chief directly where they believe his judgment is unfair.[48] People are thus allowed to clearly convey their dissatisfaction with the decision of a traditional leader, but without having to directly confront him. This is exceptionally important in rural areas where the unequal power relations between men and women, and between those with means and influence and those without, may stop people from lodging appeals.[49] People should have the choice of where to lodge an appeal. Those who have faith in customary law institutions and want to benefit from their accessibility, affordability and efficiency will do so, while those who do not trust that these institutions will yield a satisfactory outcome will have another avenue to realise their rights.

It is also unclear why the 2017 Bill shifts review powers from the magistrates' court to the high court. There are 15 high courts in South Africa, all situated in the major towns, whereas there are almost 2 000 magistrates' courts scattered across the country in closer proximity to rural areas. To make access to justice easier for people in these areas, magistrates' courts should retain the power to hear reviews and appeals from traditional courts.[50]

Legal representation

The 2008/2012 Bill precluded parties from having legal representation in court on the basis that it would increase the costs of using the courts, complicate procedure in courts, hamper their efficiency and change the nature of court proceedings.[51] The exclusion of legal representation in criminal matters was a contentious issue and Mnsi Weeks argued that it conflicted with the constitutional right of criminally accused persons to legal representation.[52] She argued that the exclusion could only be permissible if attendance at a customary court was voluntary, and individuals chose to waive the right to legal representation.[53]

The 2017 Bill still precludes legal representation.[54] The Department of Justice justified the exclusion on the basis that traditional courts no longer have criminal jurisdiction.[55] The various references to criminal jurisdiction have been removed and where the matter is being investigated by the South African Police Service (SAPS), traditional courts have no jurisdiction to hear the matter.[56] In contradiction to this, however, schedule 2 provides a list of crimes that 'traditional courts are competent to deal with', including theft, malicious damage to property, assault where no grievous bodily harm is inflicted, breaking and entering any premises, receiving stolen property or *crimen injuria*. The Department of Justice explained that traditional courts would deal with disputes

around such matters where formal charges had not been instituted.[57] It thus appears that traditional courts have criminal jurisdiction even though the proceedings may not result in a criminal conviction. Parties should be entitled to legal representation, since (despite technically not being an accused, given that there are no criminal charges) there is a risk of self-incrimination. In order to avoid prejudice to parties, the criminal jurisdiction of traditional courts must therefore explicitly be excluded and schedule 2 of the proposed Bill deleted.[58] Alternatively, parties must be allowed legal representation in such matters.

The exclusion of legal representation in civil matters is more nuanced than mere questions of jurisdiction. Bennett argues that there is no constitutional right to representation in civil disputes, where parties are more likely to be familiar with the procedure for pleading the case than in criminal matters, and therefore suffer no prejudice from the exclusion of legal representation.[59] Indeed, the court in *Chrish v Commissioner Small Claims Court Butterworth*[60] upheld the constitutionality of the exclusion of legal representation in the small claims court.

However, we should be cautious in likening traditional courts to the small claims court and, in doing so, assume that there is no prejudice to parties in these cases. Small claims courts are presided over by legal practitioners who act as independent and impartial adjudicators. Traditional courts, on the other hand, tend not to be impartial, as the convenor often knows the parties and confidential information about the parties is regarded as advantageous in reaching a fully informed decision.[61] A real risk therefore exists that influential parties may abuse their influence and the system to resolve a dispute in their favour. Traditional courts' ability to impose fines compounds this risk, and may severely prejudice the poor and most vulnerable in a community.

The exclusion of legal representation and the simplicity and flexibility this provides must thus be carefully balanced against potential prejudice to parties. Creating an expeditious dispute resolution system is critically important, and the exclusion of legal representation in civil disputes may be justifiable, provided parties can opt out of proceedings and appeal the decision to a common law court. These mechanisms would protect against coercion and provide a degree of oversight that would hopefully combat any prejudice to parties.

Sanctions

One of the most pressing reasons for legislation on customary courts is to regulate what many consider to be the unbridled powers of traditional leaders. King Dalindyebo, the king of the abaThembu in the Eastern Cape, provides a brutal example of the kind of abuse of power the Bill aims to curb. Dalindyebo made headlines when the Supreme Court of Appeal found him guilty of arson, kidnapping, defeating the ends of justice and assault.[62] Most disappointing was the fact that he argued in his defence that he was acting in the best interests of his people and upholding customary law.[63]

The 2008/2012 Bill did very little to regulate the powers of traditional leaders acting as presiding officers. The wide powers contained in the Bill allowed, among others, traditional courts to order a person who is not party to a dispute to perform labour without remuneration for the benefit of the community;[64] the deprivation of customary entitlements;[65] an order of banishment in civil matters;[66] and any other order that the traditional court may deem appropriate.[67]

These proposed sanctions were problematic, as individuals could be exploited for labour or stripped of their land and membership in a community.[68] The broad provisions failed to provide any parameters for the exercise of power. In contrast, the sanctions that may be

imposed by a traditional leader in terms of the 2017 Bill have been significantly circumscribed. Community service orders can no longer be imposed on individuals not party to the proceedings, nor for the benefit of the traditional leader.[69] A traditional leader is also precluded from making any order benefitting himself, a family member or official at the traditional court.[70] Furthermore, the 2017 Bill does not empower courts to order corporal punishment or banishment, and the broad provision empowering the court to make any order it deems appropriate has been deleted.

This regulation of traditional courts' powers is a much-welcomed change aimed at preventing the blatant abuse of power exemplified by King Dalindyebo. The exercise of the courts' powers will have to be closely monitored, as much depends on the implementation of the provisions. For example, the court is still empowered to order labour without remuneration,[71] and where a party is ordered to repair property they damaged, it is completely unobjectionable. However, if parties, especially vulnerable women, find themselves exploited to work without pay, it would be problematic.[72]

Conclusion

Millions of people living in rural areas in South Africa use traditional courts as a first port of call for justice. Unfortunately, there is currently no real regulation of these courts, which has left them open to abuse and has meant that they function sub-optimally. The 2008/2012 Bill drew a myriad of criticism, which the 2017 Bill seeks to address. Unfortunately, the 2017 Bill continues to define traditional courts with reference to traditional leaders whose authority is determined by the old apartheid boundaries. This perpetuation of the tribal boundaries is only slightly ameliorated by the fact that individuals can institute proceedings in any traditional court. Individuals are also no longer compelled to attend a traditional

court and may refuse if summoned to do so. These amendments reflect the voluntary and consensual nature of customary law and are critical to ensuring the legitimacy and credibility of traditional dispute resolution forums. However, the changes in the proposed law should not be overstated. The 2017 Bill provides that once parties consent to proceedings in a traditional court, they cannot withdraw without compelling reasons to do so. This, coupled with the fact that the proposed law prevents appeals to the common law system, effectively locks claimants into the traditional justice system after the commencement of proceedings. Given some of the unjust experiences of people who take their disputes to these courts, especially women, this is not desirable. While it prevents an exploitation of the system, it also restricts the ability to navigate forums for the best realisation of rights, and precludes individuals from taking the dispute elsewhere when there is fear of an unjust outcome. Moreover, the distinctive nature of customary law as voluntary and consensual is lost, which may undermine the legitimacy of these forums.

The 2017 Bill still precludes legal representation in traditional courts, based on the argument that traditional courts no longer have criminal jurisdiction. However, schedule 2 of the 2017 Bill provides that traditional courts may deal with certain criminal matters listed therein. This introduces ambiguity into the Bill, which is best clarified by the explicit exclusion of criminal jurisdiction and the deletion of schedule 2.

Barring legal representation in civil disputes may be key to simplicity and flexibility in proceedings, but in circumstances where there may be unequal power relations and no impartial convenor, this may be exploited by powerful parties to achieve a favourable outcome. Nonetheless, the exclusion may be justified if individuals have a right to opt out of proceedings and to appeal decisions to a common law

court. These rights may function as a safeguard against coercion and a check on the decisions of the traditional court. Finally, in one of the most significant changes, the 2017 Bill regulates the sanctions that may be granted by a traditional court, and purports to protect the vulnerable from exploitative orders.

The 2017 Bill makes welcome changes to the 2008/2012 Bill. With some clarifications and improvements, the Bill will hopefully find support from all stakeholders, paving the way for long-awaited legislation that regulates the traditional justice system in South Africa.

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Notes

1   Black Administration Act 1928 (Act 38 of 1927), sections 12, 20.

2   For example, traditional courts often exceed their jurisdiction and the limit of fines they may impose. See South African Law Commission, The harmonisation of the common law and indigenous law: traditional courts and the judicial function of traditional leaders, Project 90, Discussion Paper 82, 1999, 27–28, 30.

3   Traditional Courts Bill, B15-2008.

4   See some of the submissions on the Bill: South African Human Rights Commission (SAHRC), Traditional Courts Bill [B1-2012]: submission to the National Council of Provinces, 15 February 2012, https://www.sahrc.org.za/home/21/files/SAHRC%20Submission%20Traditional%20Courts%20Bill%20NCOP%2015%202%2012.pdf (accessed 21 May 2018); Legal Resources Centre (LRC), Submission to the Portfolio Committee on Justice and Constitutional Development re Traditional Courts Bill 15 of 2008, 6 May 2008, http://lrc.org.za/lrcarchive/images/pdf_downloads/Law_Policy_Reform/2012_02_16_LRC_Submissions_on_Traditional_Courts_Bill_2008.pdf (accessed 21 May 2018); Law, Race and Gender Research Unit, Submission on the Traditional Courts Bill (B1-2012), 15 February 2012. Submissions on the 2008 Bill can be found at Parliamentary Monitoring Group (PMG), Traditional Courts Bill (B15-2008), https://pmg.org.za/bill/409/ (accessed 11 June 2018), while those for the 2012 Bill can be found at PMG, Traditional Courts Bill (B1-2012), www.pmg.org.za/bill/159/ (accessed 11 June 2018). Also see T Thipe, Defining boundaries: gender and property rights in South Africa's Traditional Courts Bill, *Laws*, 2, 2013, 483; N Gasa, The Traditional Courts Bill: a silent coup?, *South African Crime Quarterly*, 35, 2011, 23; S Mnisi Weeks, Beyond the Traditional Courts Bill: regulating customary courts in line with living customary law and the constitution, *South African Crime Quarterly*, 35, 2011, 31; A Claassens, Who told them we want this Bill? The Traditional Courts Bill and rural women, *Agenda*, 2009, 9;

T Thipe, M de Souza and N Luwaya, 'The advert was put up yesterday': public participation in the Traditional Courts Bill legislative process, *New York Law School Law Review*, 60, 2015–2016, 519.

5   Traditional Courts Bill, B1-2012. The 2008/2012 Bill was the state's second attempt at legislation in this area. In 2003, the South African Law Commission proposed a draft bill annexed to its Report on Traditional Courts and the Judicial Function of Traditional Leaders (Project 90: Customary Law) 2003, hereafter referred to as the 'Commission Bill'. For a discussion of the Commission Bill see C Himonga and R Manjoo, The challenges of formalisation, regulation, and reform of traditional courts in South Africa, *Malawi Law Journal*, 3, 2009, 157. There is no explanation of why this Bill, which entailed extensive public consultation, was not tabled before Parliament.

6   The National Council of Provinces and the National Assembly are the two houses of Parliament responsible for passing legislation. A bill that affects the provinces, such as the Traditional Courts Bill, must be approved by both the National Assembly and the National Council of Provinces. See Constitution of the Republic of South Africa, 1996, sections 42, 76.

7   T Thipe, Voices in the legislative process: a report on the public submissions on the Traditional Courts Bill (2008 and 2012), *Issues in Law and Society*, 2013, 3. Due to space constraints the article does not canvass the extensive critiques or process that led to the withdrawal of the 2012 Bill.

8   Traditional Courts Bill, B1-2017.

9   TW Bennett, *Customary law in South Africa*, Cape Town: Juta and Co, 2004, 106–111.

10   Ibid., 106–111.

11   C Himonga and T Nhlapo, *African customary law in South Africa: post-apartheid and living law perspectives*, Cape Town: Oxford University Press, 2014, 229–230.

12   S Mnisi Weeks, The Traditional Courts Bill: controversy around process, substance and implications, *South African Crime Quarterly*, 35, 2011, 2, 7; Himonga and Manjoo, The challenges of formalisation, regulation, and reform of traditional courts in South Africa, 175; LRC, Submission to the Portfolio Committee on Justice and Constitutional Development re Traditional Courts Bill 15 of 2008, 3–5.

13   Traditional Leadership and Governance Framework Act 2003 (Act 41 of 2003).

14   Mnisi Weeks, The Traditional Courts Bill, 7.

15   Ibid.

16   Traditional Courts Bill, B1-2017, clause 4(1)(b).

17   Land and Accountability Research Centre (LARC), Submission on Traditional Courts Bill, 2017, 15 March 2017, 7, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180314Land_and_Accountability.pdf (accessed 21 May 2018); LRC, Submissions to the Portfolio Committee on Justice Correctional Services re Traditional Courts Bill, B1 of 2017, 15 March 2017, 9–14, 19–20, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180314LRC.pdf (accessed 21 May 2018).

18   LARC, Submission on Traditional Courts Bill, 2017, 7.

19   Traditional Courts Bill, B1-2017, clause 4(1)(a).

20   Mnisi Weeks, Beyond the Traditional Courts Bill, 33.

21 Ibid., 33–34.

22 Ibid.

23 Ibid., 33.

24 Traditional Courts Bill, B1-2017, clauses 2(b)(ii); 2(c)(ii); 2(c)(iii), 2(f).

25 Ibid., clause 2(c)(i).

26 Ibid., clause 4(2)(a)(iii).

27 Ibid., clause 4(3)(a).

28 Ibid., clause 4(3)(d)(i).

29 LARC, Submission on Traditional Courts Bill, 2017, 9. The Royal Bafokeng Nation also recommends the deletion of this clause: see Royal Bafokeng Nation, Comments on the Traditional Courts Bill, 2017, 14 March 2017, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180314Royal_Bafokeng.pdf (accessed 21 May 2018).

30 Traditional Courts Bill, B1-2017, clause 4(3)(e).

31 A traditional court may order that the matter be referred to the National Prosecuting Authority for the institution of criminal proceedings: see Traditional Courts Bill, B1-2017, clause 8(1)(j).

32 This is supported by the LRC, Submissions to the Portfolio Committee on Justice Correctional Services re Traditional Courts Bill, B1 of 2017, 24.

33 PMG, Traditional Courts Bill: Department of Justice and Constitutional Development media briefing, https://pmg.org.za/page/Traditional%20Courts%20Media%20Briefing?via=homepage-feature-card (accessed 31 March 2018).

34 Mnisi Weeks, Beyond the Traditional Courts Bill, 31.

35 PMG, The Traditional Courts Bill: public hearings day 3, Congress of Traditional Leaders of South Africa, 20 March 2018, https://pmg.org.za/committee-meeting/26029/ (accessed 21 May 2018); PMG, Inputs by the National House of Traditional Leaders to the Traditional Courts Bill, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180314NHTL.pdf (accessed 21 May 2018); Royal Bafokeng Nation, Comments on the Traditional Courts Bill, 2017.

36 PMG, Inputs by the National House of Traditional Leaders to the Traditional Courts Bill.

37 LARC, Submission on Traditional Courts Bill, 2017, 9.

38 Ibid., 9.

39 Traditional Courts Bill, B1-2017, clauses 11, 12.

40 PMG, Traditional Courts Bill: Department of Justice and Constitutional Development media briefing.

41 Himonga and Manjoo, The challenges of formalisation, regulation, and reform of traditional courts in South Africa, 178.

42 TW Bennett and RT Nhlapo, Submission in respect of the Traditional Courts Bill, LARC, 6 May 2008, http://www.larc.uct.ac.za/sites/default/files/image_tool/images/347/Submissions/legal_submission_nhlapo_bennett_2008.pdf (accessed 21 May 2018).

43 For a discussion of this Bill see South African Law Reform Commission, Customary law report on traditional courts and the judicial function of traditional leaders; Himonga and Manjoo, The challenges of formalisation, regulation, and reform of traditional courts in South Africa, 164–165.

44 Commission Bill, clause 27.

45 Claassens, Who told them we want this Bill?, 9. Also see Thipe, Defining boundaries, 497–499 for a discussion of women's unsuccessful experiences in court.

46 Claassens, Who told them we want this Bill?, 11, 12.

47 Ibid., 12.

48 Mnisi Weeks, Beyond the Traditional Courts Bill, 39.

49 Ibid; also see Claassens, Who told them we want this Bill?, 9.

50 Concerns about the costs and accessibility of the high court were also raised by LARC, Submission on Traditional Courts Bill, 2017, 11; PMG, The Traditional Courts Bill: Commission for Gender Equality submission; CGE submissions to Parliament, 20 March 2018, https://pmg.org.za/committee-meeting/26031/ (accessed 21 May 2018); PMG, Traditional Courts Bill: public hearings day 1, submission by l Madondo Deputy Judge President, KwaZulu-Natal Division, Memorandum of Traditional Courts Bill, https://pmg.org.za/committee-meeting/25972/ (accessed 21 May 2018).

51 Mnisi Weeks, The Traditional Courts Bill, 2, 6; South African Law Commission, The harmonisation of the common law and indigenous law, 36–37.

52 Mnisi Weeks, Beyond the Traditional Courts Bill, 34.

53 Ibid., 35.

54 Traditional Courts Bill, B1-2017, clause 7(4)(b).

55 PMG, Traditional Courts Bill: Department of Justice and Constitutional Development media briefing.

56 Traditional Courts Bill, B1-2017, clause 4(2)(b)(i).

57 PMG, Traditional Courts Bill: Department of Justice and Constitutional Development media briefing.

58 This was also the submission of the CGE on the Traditional Courts Bill and selected submissions by the CGE that seek to strengthen gender equality.

59 Bennett, *Customary law in South Africa*, 176.

60 *Chrish v Commissioner Small Claims Court Butterworth* (774/2005) [2007] ZAECHC 114 (26 July 2007).

61 Bennett, *Customary law in South Africa*, 170. The convenor may even be related to a party.

62 *Dalindyebo v S* (090/2015) [2015] ZASCA 144 (1 October 2015).

63 Ibid., para 77.

64 Traditional Courts Bill, B15-2018,, clause 10(2)(g).

65 Ibid., clause 10(2)(i).

66 While the court could not impose banishment in criminal matters (Traditional Courts Bill, B15-2008, clause 10), it was not excluded in civil matters.

67 Traditional Courts Bill, B15-2008, clause 10(2)(l).

68 LRC, Submission to the Portfolio Committee on Justice and Constitutional Development re Traditional Courts Bill 15 of 2008, 9–10; SAHRC, Traditional Courts Bill [B1-2012]: submission to the National Council of Provinces, 21–27.

69 Traditional Courts Bill, B1-2017, clauses 8(1)(a)(iv), 8(1)(c).

70 Ibid., clause 8.

71 Ibid., clause 8(1)(b)(c).

72 This is supported by LARC, which suggests that both parties are required to consent before any order to perform services in lieu of compensation is made. See LARC, Submission on Traditional Courts Bill, 2017, 5.

Book review

Andrew Faull and Sindiso
Mnisi Weeks

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'Don't judge a book by its cover,' as the saying goes. At first glance, a book about the working lives and professional identities of members of the South African Police Service (SAPS) might seem to have little in common with a study of the role of 'traditional' forums in securing access to justice and human security. What does a conventional ethnography of the police – constitutionally mandated state agents and gatekeepers to the criminal justice system – share with groundbreaking work on informal bodies with uncertain legal status and only loose connections with mainstream institutions? A more careful reading of these two fascinating new books suggests that, on closer inspection, they are concerned with similar questions, albeit posed and answered in rather different ways. Both books have much to tell us not just about how individuals and institutions respond to troublesome behaviour but also about why some problems and disputes (but not others) come to be defined as crime and dealt with by the state, its police and the formal structures of criminal justice.

Andrew Faull's book *Police work and identity: a South African ethnography* (*Police work* hereafter) is in some ways the more conventional of the two, standing, as it does, in a distinguished tradition of post-apartheid police ethnography.[1] It is based on eight months of fieldwork carried out across four police stations that reflect the diversity of the environments in which the South African Police Service (SAPS) has to operate. Faull's main interest is in the work that individual police members have to do in maintaining a coherent narrative of self and a sense of what he, following the British sociologist Anthony Giddens, calls ontological security. Although he acknowledges that personal identity overlaps and is entangled with the organisational culture of the SAPS (including the stories that it tells about itself as an institution) and the political economy of contemporary South Africa, Faull's primary focus is the police men and women he observed and talked to as they went about

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their work and, to a lesser extent, took their leisure.

Most of the SAPS personnel Faull encountered were 'accidental' police officers. Lacking the sense of mission observed in the classic American and British police ethnographies reviewed by Robert Reiner,[2] they had come to policing only when other ambitions, other means of escaping poverty and insecurity, had been closed off. What the SAPS offered was not an opportunity to serve their fellow South Africans but a route out of precarity (to use Faull's term), and a means of securing a better future for their children, if not for themselves. This is not to say that, having joined the SAPS, they did not believe that what they, their colleagues and the organisation of which they were part, had to do was unimportant. On the contrary, as Faull is at pains to demonstrate, they had bought into the myths and deceptions on which the SAPS depends, primarily as a means of establishing a viable identity as a police official, maintaining a sustainable narrative of self and achieving a measure of ontological security.

The extent to which the SAPS as an organisation, and the people who make it up, rely on myths is one of the most striking features of the book. It is the subject matter of an entire chapter in which Faull dissects the deceptions, internal and external, in respect of public performance and the creation and presentation of data, on which the SAPS depends. What emerges from his account is an overwhelming sense of unreality, of the SAPS as a confection of smoke and mirrors, of front and backstage performances that bear little relation to one another.[3] While the SAPS tries to present itself as a rational, rule-governed bureaucracy taking the lead in the 'war on crime', Faull's research reveals it to be an often anarchic, anomic collection of mutually suspicious individuals making their own way in life under conditions of radical uncertainty.

Equally remarkable, if not surprising in the light of events at the Marikana platinum mine in August 2012, and regular stories in the media about police brutality, is the extent to which SAPS personnel treat the laws which they, and others, are supposed to enforce with a degree of indifference that borders on contempt. Whether they were littering or drinking in public, driving without seat belts, speeding or running traffic lights, Faull's subjects seemed oblivious to a whole raft of rules and regulations. Perhaps even more worryingly, many of them saw the use of extra-legal violence, up to and including fatal violence, as a resource in resolving both professional and personal problems.

The picture Faull paints of the SAPS is, to put it mildly, unflattering. Shocked though he seems to be by the banality of the law-breaking he witnessed, Faull is painfully aware of his privileged position as a white, male, ontologically secure researcher observing the work of mainly black ('African' and 'coloured' in SAPS terminology) police officials from precarious backgrounds, many of whom (in the two Cape Town stations in the study) continue to live in townships where being a police officer is at best a social disability, at worst a continuous source of danger. They do this, Faull explains, so that they can use their relatively generous police salaries to support large extended families in the city as well as 'back home' in the rural Eastern Cape. With this awareness, and as a former police reservist himself, his attitude to his subjects is one of appreciation, not condemnation, his aim to speak for as much as about them.[4] His book is all the better for the generosity of the spirit in which it is written.

Unlike *Police work*, Sindiso Mnisi Weeks's book *Access to justice and human security: cultural contradictions in rural South Africa* (*Access* hereafter) has no obvious roots in the conventional canon of criminology, rather

she draws on a wide range of sources in rural and agrarian studies, conflict resolution and legal anthropology. The research on which it is based was undertaken in the Msinga local municipality to the north-east of Durban in KwaZulu-Natal. Msinga is a deeply rural area. Most of its residents live in grinding poverty. The real unemployment rate in the district was close to 80% at the time of the research. Lifestyles and values remain traditional and what Mnisi Weeks calls 'vernacular dispute management forums' were active throughout the extended period of fieldwork between October 2009 and December 2014. Data was collected by a team of field researchers who observed proceedings in forums at different points in the complex networks of bodies and individuals responsible for managing disputes. They also conducted interviews and focus groups with participants and received regular reports from headmen on disputes reported to them.

The book opens with an account of a case (a term Mnisi Weeks uses with some caution) involving a woman pseudonymously identified as MaThembile. Apart from drawing the reader into the book, MaThembile's story illustrates many of the themes that emerge from what is to follow: the significance of alcohol and firearms in a context in which gossip and rumour play an important part in sparking and fuelling disputes, and violence in resolving them; the feelings of insecurity and helplessness shared by many people in Msinga but experienced particularly acutely by women like MaThembile bringing up children on their own; the complexity of family and communal relations and the primacy of the collective over the individual; the shifting nature and form of disputes and the status of parties to them (the unfortunate MaThembile began as what, in more conventional proceedings, would be the complainant in a shooting only to end up facing accusations that she was responsible for killing her neighbours' livestock); the connections between current, past and future

disputes involving the same or similar parties over a number of years; and, finally, the intricacy of the relationships between different elements in vernacular structures, the state justice system generally, and the SAPS in particular.

Mnisi Weeks's research began life as a study of how ordinary people in rural South Africa get access to justice (in the sense of being able to approach bodies that follow due process and deliver fair outcomes) against the background of a Bill to reform 'traditional courts' first introduced in Parliament in 2008.[5] But her book is about much more than this and, as she argues in the final chapter, under the conditions of extreme social and economic precarity (as Faull would have it) prevailing in Msinga, the most pressing need of its residents is for human security:

> [T]he conflicts that come to the vernacular forums in Msinga are the product of severe material, social and physical insecurity as well as weak (and sometimes corrupt) social services. The consequence is that of wider systemic failure that these vernacular forums cannot single-handedly address.[6]

In short, Mnisi Weeks argues, access to justice is a chimera. In the absence of human security the question of whether the Traditional Courts Bills of 2008/2012 and 2017 establish an effective framework for the regulation of vernacular forums, and are capable of providing people in places like Msinga with access to justice, simply does not arise.

Another closely related failing of these Bills, and of popular perceptions of 'traditional' rural communities, is that they adhere to what Mnisi Weeks calls the 'harmony model'. This assumes that vernacular forums exist to restore the natural state of peace that is supposed to prevail in places like Msinga and permit individual residents to continue living in harmony with each other. Mnisi Weeks suggests that such notions are fanciful. Msinga

is no prelapsarian idyll. On the contrary, she argues, it is rife with (mainly gendered) violence, its social fabric torn by desperate economic conditions, perhaps irreparably so.

Having exposed the aspirations of the Traditional Courts Bills as so much wishful thinking, at least in the absence of a degree of human security vernacular forums are quite incapable of providing, Mnisi Weeks puts forward a more modest agenda for their development. Lacking the capacity to manage violence and social conflict on the scale to be found in Msinga, she suggests that forums should concentrate on providing local people with affordable, and relatively accessible, 'mediated discursive spaces' where they can vent their frustrations and work towards improving relationships.[7]

What, then, do *Police work* and *Access* have in common? And what do they tell us about how crime is defined and responded to in South Africa in the third decade after the end of apartheid? Two things should be clear from what has already been said. The first is the emphasis given in both books to the social and economic structure of post-apartheid South Africa. Thus, for Faull, the lives and behaviour of the police officials he studied are only comprehensible in the context of their feelings of precarity and ontological insecurity. Similarly, Mnisi Weeks is clear that the difficulties experienced by the vernacular forums in Msinga in meeting the justice needs of the disputants who approach them are a consequence of a wider failure to provide the inhabitants of poor, rural areas with a basic level of human security. The second is that violence, fatal and non-fatal, legal and extra-legal, continues to be seen, used and rationalised as a resource in settling disputes and responding to troublesome behaviour by ordinary citizens, as well as by the police and other security providers.

A third point suggested by both books is the malleability of crime as a concept and a prompt for action. For Faull's police officials, fighting crime is their raison d'être, at once a burden insofar as crime rates are immune to police action and an asset to be used in justifying the use of force, or in the process of leveraging resources. It follows that (self) deceptions involving crime and crime figures, what is counted as crime and stands to be dealt with by the police, are widespread in Faull's SAPS. Meanwhile, in Msinga, the lines between criminal violations (referred to as 'blood matters' or *izindaba zegazi*), minor disagreements (*imibango nje*), and private, commercial and public wrongs become blurred as disputes shade into each other, traversing the boundaries between crime and non-crime, business for the police and the criminal courts, or a matter for a vernacular forum.

This leads on to a fourth point: the extent to which policing and the provision of safety and security are not matters for the state and its police (the SAPS) alone, but for an array of actors paid and unpaid, public and private, regulated and unregulated, with varying degrees of commitment to legality, constitutionalism and human rights. This is not to say that the SAPS does not retain a certain pre-eminence. Alternative providers merit no more than the occasional mention in *Police work*, though the frequency with which SAPS personnel act beyond their constitutional mandate makes the distinction between them and the vigilantes who mete out 'street justice' in Mthonjeni (Faull's township site), in Khayelitsha,[8] and elsewhere across peri-urban South Africa, hard to maintain. Contrast this with *Access* where the SAPS – remote and inaccessible when it comes to responding to requests for service, brutal and uncontrollable when acting on their own initiative – are ever-present in Msinga, using and being used by headmen and others in the vernacular forums, though more in their own interests as

they struggle to manage difficult caseloads than out of any great concern for the well-being of the individual complainant or disputant.

Important though they are as contributions to the research literature on crime and responses to it, they also have something more intangible in common, a sense of how criminology can and should be done in South Africa, a country of the global South with a long history of colonial and neo-colonial oppression. Faull's reflections on his position as a privileged, relatively secure, white researcher, and how they inform his attitudes towards his subjects, have already been referred to. He is equally open about the implications of his mono-lingualism for his research and his ability to make sense of conversations conducted in isiXhosa (and, to a lesser extent, in Afrikaans). Implicit in Faull's musings on his privilege and admission of his own shortcomings as an investigator are serious questions about what gets researched in South African criminology, how and by whom.[9]

As luck would have it, Mnisi Weeks may provide some answers. Apart from the fact that most of the research team in Msinga were locally recruited and spoke fluent isiZulu, what marks her work is her refusal to start with a fixed idea of what a 'traditional court' should or should not be and do, based on what a 'non-traditional', mainstream court is and does. Her primary concern is not with whether the norms and values applied by vernacular forums conform to 'the law' or not. The state, its courts and its police are not at the centre of the stories she tells about vernacular forums in action. Her empirical inquiry is gloriously uninhibited and their work is seen for what it is, not as refracted through the normative lens of constitutional legality, criminal law and criminal procedure 'in the books'. When she talks about vernacular dispute management she avoids the distorting effects that follow from interpreting the present in terms of 'tradition' and 'custom', and

brings local practices in Msinga into focus for what they are, recognising the extent to which connections with pre-colonial ordering mechanisms have been fractured. If Faull hints at the need for a decolonised, Southern criminology,[10] Mnisi Weeks shows us what one might look like.

Whatever the future of criminology in South Africa may hold, one thing is clear: these excellent new books show that a rising generation of young South African scholars is ready, waiting and more than capable of taking the study of crime, justice and security forward. Well-written, engaged with South African realities, informed by international and domestic scholarship, they deserve to be as widely read abroad as they should be in South Africa.

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Notes

1   See A Altbeker, *The dirty work of democracy: a year on the streets with the SAPS*, Johannesburg: Jonathan Ball, 2005; M Marks, *Transforming the robocops: changing police in South Africa*, Durban: University of KwaZulu-Natal Press, 2005; J Steinberg, *Thin blue: the unwritten rules of policing South Africa*, Johannesburg: Jonathan Ball, 2008; J Hornberger, *Policing and human rights: the meaning of violence and justice in the everyday policing of Johannesburg*, Abingdon: Routledge, 2011.

2   R Reiner, *The politics of the police*, 4th edition, Oxford: Oxford University Press, 2010.

3   The idea of front and backstage performances comes from E Goffman, *The presentation of self in everyday life*, New York: Doubleday, 1959.

4   Compare with PAJ Waddington, Police (canteen) sub-culture: an appreciation, *British Journal of Criminology*, 39:2, 1999, 287–309.

5   The 2008 Traditional Courts Bill was re-introduced in 2012. A revised Bill emerged in 2017.

6   S Mnisi Weeks, *Access to justice and human security: cultural contradictions in rural South Africa*, Abingdon: Routledge, 2018, 234.

7   Ibid., 224.

8   In the case of Khayelitsha, see Khayelitsha Commission, *Towards a safer Khayelitsha: report of the Commission of Inquiry into allegations of police inefficiency and a breakdown in relations between SAPS and the community of Khayelitsha*, Cape Town: Khayelitsha Commission, 2014.

9   Compare with B Dixon, Understanding 'pointy face': what is criminology for?, *South African Crime Quarterly*, 41, 2012,

3–10; S Henkeman, Pale face/pointy face: SA criminology in denial, *South African Crime Quarterly*, 45, 2013, 5–11.

10 For more on 'Southern criminology', see K Carrington, R Hogg and M Sozzo, Southern criminology, *British Journal of Criminology*, 56, 2016, 1–20.

On the record

Randomised household surveys: challenges and considerations

Kelley Moult

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As anyone with empirical fieldwork experience knows, even best laid data collection plans rarely go off without a hitch. There is often rich learning from these challenges, although we seldom reflect on them in the literature. This interview asks the University of Cape Town's (UCT) Safety and Violence Initiative (SaVI) director, Guy Lamb, and study coordinator Ncedo Ntsasa Mngqibisa about their experiences carrying out the Gugulethu component of a randomised household survey project that took place in Gugulethu and Manenberg in Cape Town in 2017. Young people between the ages of 12 and 18 years old, and one of their caregivers, were interviewed using a detailed (structured) questionnaire. This project was a partnership between SaVI, Amandla EduFootball and Dr Ian Edelstein from the Human Sciences Research Council (HSRC), and focused on youth resilience, deviance and development. The project was funded by the Department of Cultural Affairs and Sport in the Western Cape Provincial Government.

Kelley Moult (KM): Can you give us some background to the project and what it aimed to do?

Guy Lamb (GL): The project aimed to do a longitudinal survey – following a population in Gugulethu and Manenberg for 10 years – focusing in on a very specific area with a radius of 1 000 km². Because we were interested in the dynamics of violence and violence prevention, we wanted to interview a representative sample of youth (both men and women) from that area, but weighting the sample towards young men because violence particularly affects men both as perpetrators and as victims. We were modelling a project by Ian Edelstein from the HSRC that has been successfully carried out in Khayelitsha and so we used a similar method, up-scaling it in Gugulethu and Manenberg.

KM: So you set off with your project model, and almost immediately hit implementation challenges. Can you tell me a little about what happened?

GL: After piloting the questionnaire in the area about a year before, we uncovered some problems with the data that had been collected by the data collection service provider that we had contracted to do the work, including possible fieldworker fraud. The service provider eventually pulled out of the contract, which led us to establish our own team for the Gugulethu data collection, while we engaged another service provider to cover Manenberg. We pulled together a group of experienced field researchers – people with survey experience – to go into Gugulethu to conduct the research. After our fieldworker fraud experience we decided not to

go with our original plan of using a paper-based questionnaire, but instead we acquired tablets and software developed through the HSRC to take into the field.

We used a very strict sampling methodology, which was linked to GPS coordinates where households were preselected in both informal and formal housing neighbourhoods. Households in the formal area were preselected using addresses, and GPS points were selected in the informal settlements as a starting point for the fieldworkers. We had anticipated that this might be tricky, and so we had a very specific strategy that the surveyor needed to follow if they came to a household or to a GPS co-ordinate point, and found that there was no house there, or the household didn't have any family members that conformed to our population sample.

Ncedo Ntsasa Mngqibisa (NM): What this translates into in practical terms is that if you go to a household and you do not find somebody who is between the ages of 13 and 18, you are given another household to visit as a substitute. This is easy among the formal houses, but in neighbourhoods of informal houses, it is much more of a challenge. The substitution plan was that the fieldworker should turn right and go three houses from that household where you didn't find someone to interview. But in some of these neighbourhoods 'three houses' may actually be three shacks which can belong to the same family, which doesn't strictly work in terms of the sampling strategy. So these are some of the things that ordinarily you don't think about when you are planning research in these spaces. You just assume that each shack belongs to each household, but sometimes it doesn't work out like that.

KM: How easy was it to negotiate access to communities and survey participants?

NM: Before you get into these communities you need to negotiate access, and that is not always an easy thing to do. The community in

question may have been over-researched, in part because of its proximity to universities. In our case, there are at least two universities very close by the community we had selected. And so having some background knowledge about their access to universities becomes relevant as you start asking questions in this community. If the people there come from an area that has little or no exposure to university research their understanding of what research is may differ, and so you may need to take longer explaining to them what research *is*, even before you get on to explaining what the research is *about*. If someone has taken part in research before, they already know what you are talking about. So, on the one hand you may run the risk of making them feel like you think very little of them by trying to explain too much or, on the other hand, you may not do enough to secure their participation.

Also, these communities, rightfully so in my view, want to see benefits from all of this research. Interested parties within the community will confront you from the start about how they are going to benefit from the project, and it's a very difficult question because 'building the literature' may not be something that is construed as a benefit to them. One of the ways that this problem can be overcome is to make sure that the research that you do in the community is going to be translated in a way that they are able to use it to further whatever they may demand from government, and which may relate to the subject of the research. The community also asked us where we got our fieldworkers, because one of the major demands from the community was that we needed to ensure that local people got jobs with the project.

It is also very difficult to know who specifically to negotiate access with, who the gatekeeper for the community is. You may meet with a ward councillor and the councillor is not concerned about the project and gives you an easy go-ahead. But as you are meandering about you

meet street committees, or you meet another body that exists in that community, who know nothing about your project, and also need to be consulted. It is therefore critically important to go into the community long before you are actually going to be doing your study. You need a lot of skill to negotiate this access and make them understand that you are only able to commit in the short term.

A challenge here, though, is that projects already come with timeframes that determine when you need to start and finish a project. But we set these timelines without doing a background check to understand who is actually going to be a stumbling block to the project, who to negotiate access with. If I must meet all of these bodies, who do I meet first? What is the protocol here? Sometimes you may even think that because you have met a street committee in one neighbourhood or block, and you are still working in the same geographical area, that the people you have access permission from represent the entire area. But then you come to another street and they say 'you didn't speak to us, you only spoke to those people'. Now you must stop, and you must renegotiate. But now you are negotiating with people who already view you with suspicion simply because they feel that you have ignored them. But you actually didn't – you just did not know that in a small area like that you would have so many interested groups, just to access the community.

KM: Your fieldwork team had a number of other challenges that really make the 'pitfalls' of survey research that are in the literature come to life, for example around language and non-response. Can you tell us a little about those?

NM: These kinds of challenges are not always easily anticipated, and we had to sometimes think on our feet, while at other times we would have to come back to the office and rethink our strategy, and regroup. To face the myriad of challenges we had to retrain our fieldworkers a couple of times.

We thought of the survey as a comparison between two communities: Gugulethu being one community, and Manenberg the other. But we were actually dealing with three communities, because in Gugulethu there are at least two communities that differ very much ideologically, even though they are just a street apart from each other. They even see themselves very differently, split very much along the lines of those who come from the Eastern Cape, and those who are born in the Western Cape. Their language, the isiXhosa that they speak, is different and so they don't all understand your questions, even though you are speaking isiXhosa yourself. So there are problems with translation because you have made an incorrect assumption that because all these people come from the same area they all speak isiXhosa, and so everyone is going to understand your questionnaire.

You cannot assume that because something works in Khayelitsha it should work in Gugulethu. We were perhaps a little bit too relaxed in terms of our preparation because we thought that since the project has worked in one informal settlement it must work in the other informal settlement. Actually these are two different informal settlements. There are people in the neighbourhood who have been chased away from other areas, they do not want to belong here, and so they are not as organised as others. Their mindset about being researched may differ from people in rural areas who may have not experienced research at all. There are small details that can change every day within a particular context: informality within that space, people's senses of belonging and who actually resides here, whether the neighbourhood is made up of people who come from the Eastern Cape. We assume that people are the same everywhere because this is an informal settlement.

We had a lot of challenges enrolling households. In the formal housing community, you don't find anyone at home during the day, because they work and they don't send their children to school in the same community, which poses one kind of access challenge. In the informal community you do find people at home during the day, but these people are also very mobile, which means that today you might find this household member, but tomorrow you cannot find them, they've moved, or their houses have burned down. People also get home late [from work], and their children also only come back around 7 o'clock [in the evening], and then everyone is cooking or preparing for tomorrow. It is not easy for a researcher to come into their home and say 'I'm asking to do research.' People would say 'come back another day', but another day turned into yet another day. From the project's point of view, the plan was only to collect data in the area for a specific amount of time, and going back to households so many times would waste a lot of resources.

KM: It must have been an enormous challenge managing this in the field.

GL: Ncedo was at the coalface of managing the fieldworkers and troubleshooting day to day. But we were constrained by the fact that there was a parallel study happening in Manenberg, and we therefore couldn't stray too far from the sampling strategy that had been devised. We had to negotiate with partners, and sometimes there was a lack of clear understanding or appreciation for the context in which we were operating.

From a management point of view, we had a set budget, which also determined what was possible. Based on models of other survey research projects, we estimated that a field worker would be able to do, on average, three questionnaires a day. Our fieldworkers started feeling guilty and panicking because

they were going to households and not finding respondents, and so they were worried that they wouldn't be paid. We really struggled with what to do. On the one hand, you have a finite amount of money, and you want to get a certain number of completed questionnaires per day, and you want it to be done properly. But the challenges we encountered in the field meant that we didn't hit our targets because it was practically not possible to do so. It wasn't fair to exploit the field workers, and we recognised they needed to be paid fairly, and so we made adjustments in how we paid them. But it was a particularly tricky issue for our project.

KM: You used cell phones as a key part of your strategy – getting people's cell phone numbers as a way to maintaining contact with them. But in South Africa that's a lot more complicated because of cell phone churn. Even though we have among the highest levels of cell phone coverage – in other words, most people have phones – we also know that people don't keep the numbers for very long, or frequently switch between numbers.

NM: Because this is a longitudinal study, we needed to be able to contact the same participants over time. In the formal housing neighbourhoods, you can return to a house, and if that structure looks the same, you can be almost certain that these are the same people that you interviewed three years ago, or if they have moved, that the person who lives here now may actually tell you where they have moved to. But in informal settlements this may not be possible – you may be talking to someone who does not know where these people moved to. That is why it is dangerous for researchers to just copy these things from other countries and paste them into our context. Because our context differs a lot.

Our plan was to enrol participants, and then use cell phone numbers to keep in contact. We realised quickly that particularly among young people, expecting that a 13-year-old would

have the same cell phone number six months down the line is unrealistic. It is very easy to get access to new phone numbers – it costs R1 to get a SIM card – and the cell phone companies offer deals to induce people to use their networks. From our project's point of view that is a problem, because some of our potential participants come from a community where there is a lot of mobility, where people move in and out of a particular space. We hoped to use cell phones as something that we could use to track down our participants over time, but we quickly realised this was going to be impossible because of these challenges that are peculiar to South Africa.

GL: We assumed that by accumulating as many cell phone numbers as possible of the people who are related to the respondent – family members, grandparents and the like – we would be able to stay in touch in one way or another. We didn't anticipate, for example (even after our pilot study), that people would give us fake cell phone numbers because they were concerned about sharing sensitive information with us. Some of our questions were about whether the respondents had committed acts of violence, acts of crime, or done things that they are not supposed to, and people were concerned about the consequences of reporting to us. There was therefore no incentive (from their perspective) to share their numbers with us.

We decided to address this by providing participants with a cell phone voucher for airtime, both as an inducement to participate, but also as a way to verify the cell phone number. This worked in the short term because we could verify the number in that way. But in a longitudinal study, by the time you want to phone the person back for a follow-up interview two years later they may have changed numbers five, six, seven, eight times.

KM: You purchased tablets and software to assist with the data collection. How did this work in the field?

NM: Although we had a number of tech challenges in using the tablets, the technology was helpful in some critical ways. When you went to a household, you pulled up your [survey] tab, and you could report immediately [on what you encountered], for example, you could let the project staff know that you were at a particular household and there was no-one home. Fieldworkers could send the reports right as they happened, which was a real benefit of using technology. To complement this, we also used debrief sessions. Every day we would meet and talk about the day, so that if something happened – for example, a participant had difficulty in an interview – we were able to log it so that when we analysed the data, that information was tagged on to that interview record to give background information to the analyst.

But of course, technology only takes you so far. We didn't always have good data coverage, and even though the tablet might tell us where we are on the map, in terms of safety there are a lot of things happening around us that we do not actually know. You have to balance these very carefully so that the study's data is not compromised, while at the same time you try to ensure that everyone you meet understands the project, and is supportive. You need someone who can tell you 'we don't go down that street', and somebody who is going to know where your fieldworkers are. Luckily, we were able to negotiate such that we even identified (and hired) people who walked around with us to help protect us. But this meant that the science of the study had to be flexible. When you are told by someone that you can't go down a particular street, you need to listen. Even if your sampling plan says you should be going down that street, in reality you can't do so when you are told not to. You don't even try to verify that information because

if somebody says that, it is enough. You don't want to risk people's lives and then end up feeling guilty about it because you were warned and you chose not to heed the warning. But science wants to stick with the sampling rules because you want to cover a particular radius. Sometimes we were told we could not go into whole sections of Gugulethu, and we had to be OK with me calling the team and saying 'we are not going to be covering area B, C and A'. And then we just had to move on to areas where we were able to go. That is how tricky the safety situation was out in the field.

KM: You raise an important issue of safety: safety for researchers and safety for participants in these spaces. Ncedo, when I've heard you talking about this project before you've talked about how your role as project manager changed as you tried to address questions of safety in executing the data collection.

NM: Generally in South Africa, we know that we have a problem with crime. Nyanga is said to be the so-called 'crime capital' and here we were working in Gugulethu, which is within walking distance from Nyanga. In fact, at times you might be thinking that you are in Nyanga, but you are in Gugulethu. So this is the context we were working in. You might also find that while we were doing research in July it was still safe enough to go into a particular area, but by May of the following year it might be totally different. This means that you need to have a cosy relationship with the community, which requires nurturing because your safety depends on it. The community members must actually feel that they want to protect you, that they want to give you the information about the environment that will protect you. You therefore do not compromise on that relationship because to do so means compromising on the safety needs of the study.

In addition, you have to be very mindful of issues like confidentiality because participants'

disclosures of violence perpetration and victimisation can compromise their safety. So this gives you other challenges – for example, when you are talking to a child, the parent must not be present to protect confidentiality. When we talk to the parent, the child must not be present. This may be possible in other spaces, but where the home is just a one-room shack, it is very difficult to say to somebody 'leave your house because we want to conduct this research', especially when the parties may not even see the research as beneficial to them. And so you have to think about the other options that you might have for interview spaces. We thought of using our research vehicle, but now you are seen taking a 17-year-old into the car when you are a male who's 30-something. That doesn't look right in the community and may distract people from your purpose. The community thinks 'we thought these guys were coming here for research, look now what he's doing to young girls'. We are also asking about hard questions – for example, asking about violence and drugs – which make it very difficult to negotiate safety in that environment.

So we decided to work in groups to address safety concerns. If we had to sample two households in Street A, instead of being scattered around, trying to chase participants, we worked in one area. The person who is inside the house knows that someone will be there to pick them up immediately when they come out after the interview. Because otherwise they stand at the gate waiting for their ride with these tablets and cell phones, which makes them targets for being robbed, particularly in winter where nobody is actually outside. So safety was a challenge for us. Instead of being a researcher, I found myself also being a security person who had to drive to each and every house so that when a fieldworker reported that they were finished, I was there with the car as soon as they came out of the household.

GL: We set up safety protocols from the outset of the project, and we had arranged, for example, that the fieldworkers would be wearing clothing that

made them identifiable as part of the project. We had high visibility vests, an identity card, and a letter to show to people whom they were approaching as potential interviewees to vouch for the project. We also spoke to all of the various security stakeholders and gatekeepers within the area. But we still had to really adapt on the fly, developing strategies based on what we encountered. The Gugulethu team was very successful in doing this, whereas the service provider in Manenberg had major difficulties in terms of security and access. This is a community that is just on the other side of the railway line, but it had completely different community dynamics, very high levels of violence, gang violence and suspicion.

NM: Our safety was in many ways related to the project that we were evaluating. Where the project didn't always have a good relationship with the community, and people didn't care about it, the fieldworkers' safety was compromised because the community was less invested in the study's outcomes. This had nothing to do with anything that we could control as fieldworkers. So yes, it does help to have things that will make you identifiable as part of the project, but only when the community actually wants to identify and protect you.

KM: These kinds of challenges are (at least in some measure) acknowledged in the literature on research methods, and in this case, you were working from a model that has previously worked in another community. So, what do you think made the difference?

GL: I think that part of it is about the timing of the research. The study that we modelled, which was done by Ian Edelstein for his PhD research in Khayelitsha, was specifically focused on a programme that was already established there. The key objective of his study (and later also ours) was to identify what impact an intervention run by Amandla EduFootball had on youth violence in the area. Amandla

EduFootball had already built their facility, and it was well known in the radius he was surveying. He was interested in the impact that it had on children who were taking the programme. In Gugulethu, where we were working, they had built the facility as part of the secondary school near Nyanga Junction Station, but I don't think it was that well known to the surrounding communities. We wanted to start the Gugulethu and Manenberg studies with baseline data collected prior to the intervention being run so that we could gauge awareness of Amandla EduFootball, as well as how many young people took the programmes at the Safe Hub, and how it affected their behaviour over time.

NM: It is also important to add that the accessibility of the facilities is not the same. If you just look at them, there is a fence around the fields in Gugulethu, whereas there is no fence in Khayelitsha. Anybody who passes through the area can easily go there, and so kids just get given balls and they can start to become involved. I think that this is one of the success stories of youth-focused projects that have been done in Khayelitsha because its open accessibility has meant that everyone 'owns' the project and are the ones that actually protect it. You cannot steal a ball from there, because everybody in the community knows how this project benefits them. On the other hand, at the Gugulethu facility you feel like you are in someone else's territory or their yard. And so the community feels that it is OK to steal from there because it is not yours. So there is also that ideological difference.

KM: What is so interesting about that last point is that programme design, which is not within your control at all, actually impacts on research design and execution by putting up barriers in much the same way. I suppose the number of challenges you have experienced in the project means that it requires real reflection on what conclusions can be reached from your data.

GL: One thing that this study has exposed is how difficult it is to do this particular type of research in a place like South Africa. Our experience has raised a number of worrying questions for us about studies that have been done before, particularly about the quality of data. Our study has shown just how difficult it actually is to get reliable data in large-scale randomised household surveys. We used two different service providers through this project and experienced very high levels of fraud on the part of the companies and/or unreliable fieldworkers – for example, fieldworkers were filling out questionnaires themselves, making up data and not following the sampling strategy. I think that this is a key issue that no one really wants to talk about. Studies publish and discuss their methods, but they gloss over the detail because this is really where the weak underbelly is. And the risk is that discussing it can undermine the findings.

KM: I suppose, then, that my last question may be an obvious one: would you do it again?

GL: I think we would do it differently – with the correct resources, the correct research strategy, and a lot more money, which would allow us to have the requisite infrastructure. The most successful longitudinal study in South Africa currently is the National Income Dynamics Study (NIDS), and they receive a large amount of funding from the Presidency, and have an entire organisation devoted to keeping the study running. They are also focusing specifically on households and not on individuals, and it is an ongoing project where they continue to incentivise participation. For us, the learning is that you can't do this on the cheap, and you also can't only fund the project partially – in other words, having enough money to only do a baseline, with the aim of getting additional funds for follow-up phases based on those results. So certainly it would mean a lot more planning, and if we did it ourselves, we would do the

project ourselves completely. We would hire our own people, we would have them on proper contracts, and see the effort as a multi-year study where they are hired for the duration as far as possible so that the fieldworkers get to know the families as well. I think that's the only way of doing it. Trying to do it in the way we have done this project is highly risky and we encountered problems because of that. There's no cheap way of doing longitudinal studies – I think that's what we've really discovered out of this.

NM: You have to invest in making sure that your fieldworkers actually understand the data that they are generating. They should not only know about the findings, but they should understand what happens when the data is being processed, so that you reduce the likelihood of them compromising on data collection. The problem with hiring people in the way we did before is that they just want to do the job. And unfortunately research like this can't just be 'a job'. Little things that a fieldworker does may make or break an entire study, so you therefore need to invest in these people such that they actually understand their role and what it means for the larger project and its findings. We need to let them understand that disclosing any issues that may have compromised the data is as important as reporting that you have completed your tasks towards finishing the entire study. We need to incentivise fieldworkers to tell you what actually happened in the field, especially what went wrong. And if we do it again, we need to start from scratch again with planning, even if we were to go back to the same area. We almost need to forget some of the things we already know, so that we can avoid making assumptions through the process, and instead recheck everything from scratch.

GL: It's been a particularly valuable learning experience for our team. The learnings for us are that if we were to ever do it again we would need to raise the necessary money for it and have the necessary resources and support for the project.

Previous issues

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

Issue 62 focuses on the ways that academics, activists, lawyers and practitioners are engaging with protest. Two articles address the law on protest: through the experience of Right2Protest and the Social Justice Coalition's challenge to the Regulation of Gatherings Act (RGA). Two further articles focus on protest related to the right to basic education, and another uses Promotion of Access to Information Act (PAIA) requests to test resistance by government to enabling the right to protest. Two research articles look at public opinion data: first on public support for protest, and for the police's handling of protests. A case note analyses *Rhodes University v Student Representative Council of Rhodes University*, and Bond reviews Jane Duncan's *The rise of the securocrats* and *Protest nation*.

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