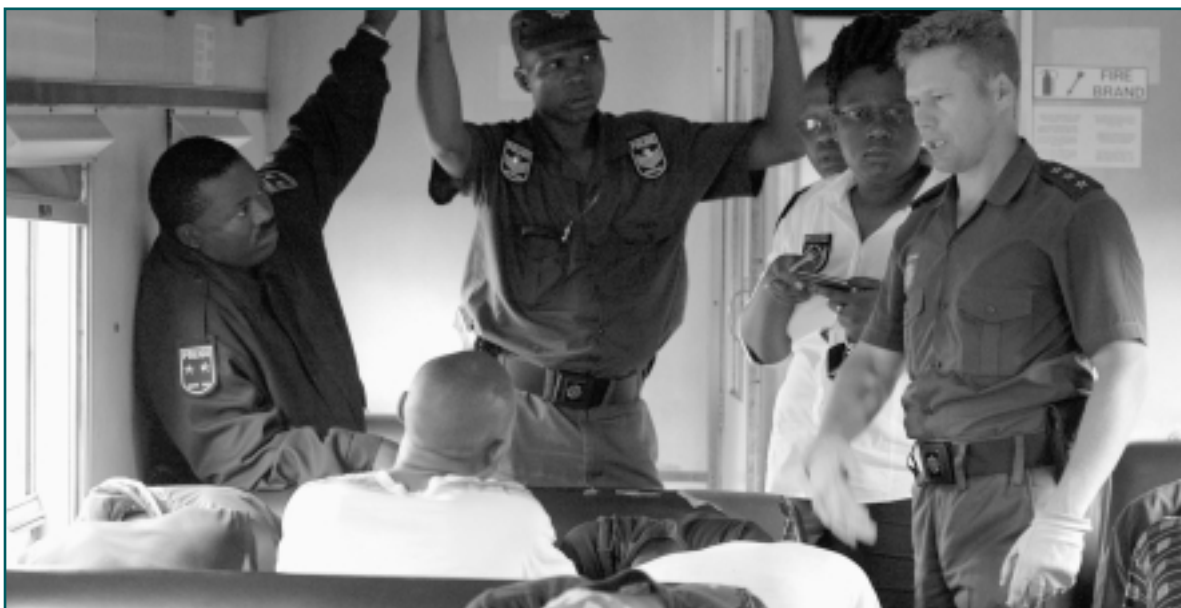


SA

CRIME QUARTERLY

INSTITUTE FOR SECURITY STUDIES • INSTITUT D'ETUDES DE SECURITE
No. 15
Mar 2006



Challenges facing our metro police

1

Can our public order police still deliver?

7

Policing and the sex industry

13

Xenophobia among Johannesburg's police

19

Evaluating the Western Cape community courts

27

CONTENTS

SA Crime Quarterly No. 15 March 2006

GETTING INTO THE CITY BEAT

Challenges facing our metro police

Gareth Newham 1

CROWD CONTROL

Can our public order police still deliver?

Bilkis Omar 7

SEX WORKERS SPEAK OUT

Policing and the sex industry

Nicolé Fick 13

TARGETING FOREIGNERS

Xenophobia among Johannesburg's police

Themba Masuku 19

PETTY CRIMES THAT MATTER

Evaluating the Western Cape community courts

Melanie Lue-Dugmore, Vanja Karth and Jean Redpath 27



This publication is funded by
Hanns Seidel Stiftung

GETTING INTO THE CITY BEAT

Challenges facing our metro police

Gareth Newham
Centre for the Study of Violence and Reconciliation¹
Gareth.Newham@gauteng.gov.za

It has been a little over five years since metropolitan police departments were first established in South Africa. Despite relatively small numbers of operational personnel, they now form a familiar part of the policing landscape. With good reason, metro police officers do better at traffic control than crime prevention, and their relationship with the SAPS needs attention. This article reflects on their achievements over the past years and some of the key challenges confronting these local level police agencies.

Although metropolitan policing is a relatively new phenomenon in South Africa, the metro cars and uniforms have become a familiar sight in the five cities where it has been established. Since 2000 the country has seen five metropolitan councils establish a metropolitan police department (MPD).² These include the Durban City Police (established in July 2000), the Johannesburg Metropolitan Police Department (April 2001), the Cape Town City Police Department (December 2001), and the Tshwane and Ekurhuleni Metropolitan Police Departments (both established in February 2002).

Unlike the South African Police Service (SAPS), which is the country's national police service and has jurisdiction anywhere in South Africa, MPDs only have jurisdiction within the boundaries of a particular local government authority.

With the launch of the National Crime Prevention Strategy (NCPS) in 1996 and the White Paper on Safety and Security in 1998, local governments were expected to play a greater role in reducing crime in their areas. It was therefore with much fanfare and high expectations that metropolitan councils launched their police departments.

Certainly, in the minds of local government officials, it was highly desirable to establish a metropolitan police department. The sense was that with a police department under their control, councils would have a greater impact on safety and security in their jurisdictions.

Getting the MPDs off the ground

However, establishing a police department from scratch is not a simple task. Indeed, at the time there were those who warned that these departments should not be expected to significantly impact on crime in the short term.³ This has been borne out by practical experience. For instance, it took six months after the establishment of the JMPD for the council to finalise the department's terms of reference, policies, and procurement and recruitment procedures.⁴

One of the main challenges of establishing a new police department at local level was securing funds. Local government had to finance these departments, which meant that limited resources had to be spread over the following three core mandates:

- traffic law enforcement;
- municipal by-law enforcement; and
- crime prevention.

Most MPD officials were taken from the previous local traffic authority and other security staff. This meant that there was a pressing need for new training and equipment to ensure that each of the MPDs could start to fulfil their mandates.

Now that these institutions have been operational between three and five years, it is useful to reflect on some of the key challenges and developments that have taken place.

In doing so, it is important to recognise that each MPD was established as a separate police department. This means that there are significant differences in terms of the size of their respective budgets, their uniforms, their organisational and ranking structures, and how they prioritise and use their resources. This article, however, focuses on some of the common overarching challenges confronting MPDs, as opposed to delving into the many differences between each department.

A key constraint confronting the MPDs is the relatively small number of sworn officers that they are able to draw on. Table 1 presents the numbers of operational officers available to each MPD in relation to the size of the population that each agency is expected to police.⁵

The ratios in the table do not indicate how many police officers are actually on duty in relation to the

Table 1: Ratio of operational MPD officers to population

Metro police department	Police officers	Population	MPD officer: population ratio
Johannesburg MPD	2,202	2.8 million	1:1,272
Tshwane MPD	586	1.8 million	1:3,072
Ekurhuleni MPD	457	2.4 million	1:5,252
Durban MPD	1,142	2.8 million	1:2,452
Cape Town MPD	798	3.5 million	1:4,386

population being policed at any given time. The legislative prescription that MPDs are able to provide services 24 hours a day means that these numbers are typically divided between three eight-hour shifts. Moreover, there are always officers on leave or involved in other tasks (such as training, administration, vehicle inspection, etc.) that have no direct bearing to their core mandate.

It is also important to note that available officers are not only going to be focusing on the policing of crime but are also expected to engage in traffic and municipal by-law enforcement. This further reduces their ability to directly tackle the levels of serious crime at local level. To demonstrate the challenge in more concrete terms one can compare the above ratios to the national average SAPS official to civilian ratio, which, according to the SAPS 2004/05 Annual Report, is 1:511. A national picture reveals that there are a little over 5,200 operational MPD officials in the country, compared to around 91,700 SAPS officials.

Focus of metro policing activities

As traffic law enforcement has always been a local government function, this is the easiest of the mandates to fulfil. Indeed, most of the new MPD officers were previously traffic officials.⁶ Given that the legislation specifically states that traffic law enforcement may not be compromised in favour of the other two mandates, that traffic fines generate considerable revenue for the local authorities, and that our road accident fatality rate is among the world's worst, it is not surprising that traffic law enforcement activities make up a significant proportion of the work of most of the MPDs.

The June 2002 activity report for the Tshwane Metropolitan Police Department revealed that, of the 20,476 hours worked that month, 43% were related to traffic policing, 23% to crime prevention and 2% to by-law enforcement, with the remainder attributed to other duties such as administration, court appearances or training.⁷ Similarly, of the 12,828 calls logged by the Johannesburg Metropolitan Police Department in the last quarter of 2003, 80.5% were traffic-related, 10.5% related to by-law enforcement, and 9% to crime.⁸

The enforcement of by-laws is proving a bit trickier. The MPDs found that within their jurisdiction there were a number of different by-laws from the various municipalities that were amalgamated to create each metropolitan area. Consequently, before the MPDs could effectively fulfil this mandate, the metropolitan councils had to undertake the long process of promulgating new by-laws.

Initially, therefore, by-law enforcement only made up a small proportion (10% or less) of the activities of the various MPDs.⁹ As MPD officers get used to the new by-laws and as the municipal courts start having a greater impact, it is expected that the MPDs will be able to fulfil this mandate to a much greater extent.

Can MPDs prevent crime?

Shortly after the establishment of the MPDs it became clear that their crime prevention role and mandate had to be clarified.¹⁰

The term 'crime prevention' is quite ambiguous and often means different things to different people. The 1998 White Paper on Safety and Security broadly defines crime prevention as "all activities which reduce, deter or prevent the occurrence of specific crimes firstly, by altering the environment in which they occur, secondly by changing the conditions which are thought to cause them, and thirdly by providing a strong deterrent in the form of an effective criminal justice system."

When it comes to policing, providing a deterrent forms the crux of the notion of crime prevention. To this end the police focus on tactics that are seen as likely to deter criminal activity, such as visible police patrols, roadblocks, search and seizure operations, and targeted arrests. More indirectly, the police see themselves as contributing to crime prevention when they bring about the successful prosecution of criminal suspects through their investigations.

Previous research has found that there are significant differences in the ways in which MPDs have interpreted their crime prevention mandate.¹¹ Some MPDs have established specialised units to tackle specific crimes (i.e. hijacking). In some cases

activities undertaken in joint operations with the SAPS make up the bulk of the crime prevention work of the MPD. Some MPDs have social crime prevention units that largely focus on public education and awareness activities with schools and other community structures.

These differences are partly a consequence of the ambiguous mandate and partly a result of resource and capacity limitations. Nevertheless, the metropolitan councils have placed particular pressure on MPDs to engage in traditional crime combating activities. This is largely because councillors believe that this approach will have the greatest short-term impact on crime levels in their cities.

However, in both the SAPS and the MPDs, there are people who argue that the agencies are not adequately trained or equipped for the policing of serious crimes. The SAPS is manifestly far better capacitated – not only are SAPS officers specifically trained and equipped to police serious crimes, they also have more personnel and resources in each of the areas where the MPD operates. Moreover, MPDs do not have powers to investigate cases, gather crime intelligence or hold criminal suspects for longer than it takes to hand them over to members of the SAPS.

The 'broken windows' theory suggests that the MPDs should have a different approach to crime prevention than the SAPS.¹² According to this theory, crime thrives in localities where order appears to have broken down. Factors such as broken windows, uncut grass and weeds, graffiti, loud noise, unregulated squatting, hawking or parking and illegal dumping all contribute to an environment that breeds insecurity among its members. This undermines community cohesion, and criminal elements start to gain control, contributing to the likelihood of serious crime.

It has long been recognised that to reduce crime in a sustainable manner, the root causes have to be addressed. Typically, however, police departments are reactive rather than proactive: they respond to crimes only after they have occurred. The MPDs, on the other hand, are well placed to proactively

address a number of the root causes of crime through the rigorous and consistent enforcement of traffic and by-laws, in partnership with other local government departments.¹³ If MPD officers come across criminal activity, they should be trained to respond appropriately and be in a position to summons the SAPS for immediate assistance.

Cooperation between MPDs and SAPS

Given that both the SAPS and MPDs are mandated to engage in crime prevention, it seems obvious that they should work in close cooperation. If these agencies were to coordinate their activities they could undoubtedly have a greater impact on reducing crime. However, effective inter-agency collaboration has proven more difficult than initially imagined.

To some extent it was assumed that effective collaboration would occur through a legal framework contained in the legislation that enables the establishment of the MPDs. In particular, the legislation calls for the establishment of Policing Co-ordinating Committees at either local or area level to coordinate police operations between the various police departments.¹⁴

Very soon after the MPDs were established it became clear that professional rivalry between the MPDs and the SAPS was going to present a substantial challenge to effective inter-agency collaboration. The SAPS reportedly regarded the MPDs as a junior partner in the policing coordinating committees. The MPDs were simply told what to do so as to fall in line with the SAPS operational plans. Out on the streets these attitudes, along with differences in the rank structure between the MPDs and SAPS, sometimes caused confusion or conflict as to who had ultimate authority at a crime scene.

Fortunately, over time, pragmatic police commanders in both the MPDs and the SAPS have recognised the benefits of working together, and these problems are increasingly being resolved. The numerous joint crime combating operations involving both the SAPS and MPDs have also resulted in generally improved relationships. Innovative initiatives have been undertaken to

promote cooperation, such as a pilot project in Johannesburg whereby JMPD officials are based at police stations for a period of three months to expose them to the work of the SAPS.

At a policy level, foresight on the part of senior managers from the SAPS, the MPDs and the Independent Complaints Directorate (ICD) saw the formation of the National Forum for Municipal Police Services (NFMPS) in 2001. By 2004 it had developed a formal protocol that sets out objectives for improving collaboration between the various stakeholders.

Some of the issues that this forum has been dealing with include standardising rank structures, training standards, and the sharing of information between the different participants. Unfortunately, however, this forum lacks legal authority, as it is voluntary and therefore cannot bind the various agencies to its decisions or recommendations. Nevertheless, indications are that renewed efforts to strengthen cooperation between the MPDs and SAPS are underway at a senior level.

Who watches over the MPDs?

As is the case with the SAPS, the national and provincial secretariats for Safety and Security and the respective legislatures have a role to play in ensuring MPD accountability. Moreover, the Independent Complaints Directorate (ICD) may investigate complaints against the MPDs, as may any of the Chapter Nine institutions (e.g. the Public Protector, the Human Rights Commissions, etc.). However, the metropolitan councils, which have to approve the budgets for the MPD, perform the most direct and ongoing oversight role. The primary committee in this regard is the Public Safety Committee, consisting solely of elected local councillors from the various political parties represented in the council.¹⁵

These committees are chaired by the member of the Mayoral Committee (MMC) appointed to deal with public safety concerns at local government level. Typically these committees also oversee departments dealing with other safety-related structures, such as the emergency services. They play an executive oversight role and therefore tend

to focus on issues such as the budget expenditure, policies, structures and resources of the MPD.

A common concern about the oversight at this level is that it is not very well defined and that the local councillors have little insight into the craft of policing. Consequently, these committees can find themselves in a situation in which they are trying to promote acceptance of the MPD amongst their constituencies, but are thereby compromising their ability to adequately deal with problems or challenges faced by the agency. Moreover, there is a need to prevent inappropriate political interference from councillors with what should be the operational independence of the MPD command structure. This could be done by requiring that all instructions from council officials to MPD officials be in writing and tabled before open sittings of the council on a regular basis.

The SAPS Amendment Act of 1998 makes further provision for a "civilian oversight committee" to be established for each MPD.¹⁶ The difference between these committees and the public safety committees is that they may consist of members who are not elected councillors.¹⁷ The idea is that representatives of the public and individuals with specialist expertise could be co-opted onto the committees to assist with ensuring transparency and accountability of the MPDs.

However, due to a lack of capacity, and a broad mandate that can be interpreted in a myriad of ways, it has been difficult to ensure that these committees play a meaningful oversight role. Each of the MPDs has established a civilian oversight committee at least once; however, in most cases these committees ceased to exist after a period of time as the challenges they experienced prevented them from playing a meaningful oversight role.¹⁸ This problem has yet to be overcome, but unless there is a change in the legislation that governs the establishment of these structures, and until the councils make available dedicated resources, this seems unlikely.

Conclusion

There can be no doubt that MPDs have become a recognisable feature in each of the metropolitan

areas where they have been established. A huge amount of energy and resources have gone into ensuring that MPDs are highly visible in their jurisdictions and that they are able to fulfil each of their three core mandates to some degree. Indeed, the MPDs are responsible for many traffic fines, by-law enforcement notices and arrests of criminal suspects in the areas where they operate. However, five years is a relatively short time period in which to establish a police department. Therefore there are still a number of key challenges confronting these agencies as they strive to play an effective role in promoting community safety.

Endnotes

- 1 Gareth was with the CSVr at the time of writing, and is now an advisor to the MEC for Safety and Security in Gauteng.
- 2 While the Swartlands municipality has also established a municipal police department in October of 2002, and a number of other municipalities have more recently explored the viability of doing so, this article will limit itself to the existing police departments in metropolitan areas.
- 3 J Rauch, M Shaw and A Louw, *Municipal Policing in South Africa, Development and Challenges*, ISS Monograph No 67, Pretoria, Institute for Security Studies, November 2001.
- 4 G Newham, *Local Level Civilian Oversight of the Metropolitan Police Departments in South Africa*, Centre for the Study of Violence and Reconciliation, Braamfontein, 2004a.
- 5 These figures reflect the number of sworn police officials as presented to the National Assembly's Portfolio Committee on Safety and Security on 14 March 2006.
- 6 The main exception to this was the Cape Town City Police Department. At its inception less than 10% of the CTCP were traffic officers although it later amalgamated the traffic department into the agency.
- 7 G Newham, T Masuku and L Gomomo, *Metropolitan Police Departments in South Africa*, Centre for the Study of Violence and Reconciliation, Johannesburg, 2002 <www.csvr.org.za/publications/policing>
- 8 Taken from the Johannesburg Council's Annual Report for 2002/2003 and available at <www.joburg.gov.za>
- 9 Newham, 2004a, op cit.
- 10 Rauch et al, op cit.
- 11 G Newham, *Towards Improving Collaboration between the South African Police Services and the Metropolitan Police Services*, Research report written as part of the Belgian Technical Assistance to the South African Police Service, 2004b.
- 12 JQ Wilson and GL Kelling, Broken Windows, in Roger G Dunham and Geoffrey P Alpert (eds), *Critical Issues in Policing*, Contemporary Readings, Prospect Heights, Waveland Press Inc, 1997.
- 13 This approach has been argued previously by T Leggett, Why Wait? By-laws and regulations for high

- impact crime prevention, *SA Crime Quarterly* 8, 2004.
- 14 Section 64K of the South African Police Services Amendment Act, No. 80 of 1998.
 - 15 These committees are established in terms of Section 80 of the Local Government Municipal Systems Act number 32 of 2000.
 - 16 Section 64J of the South African Police Services Amendment Act, No. 80 of 1998.
 - 17 These committees are typically referred to as Section 79 committees as they are provided for by this section of the Local Government Municipal Systems Act number 32 of 2000.
 - 18 G Newham, 2004a, op cit.

CROWD CONTROL

Can our public order police still deliver?

Bilkis Omar, Institute for Security Studies
bomar@issafrica.org

From the heavy-handed crowd control under apartheid to the abusive actions of the Internal Stability Division during the early 1990s, public order policing in South Africa has been steeped in controversy. However, things changed after 1994 when this component of the police was radically transformed. With a decline in demand for their specialised services, and a need for more resources, the units have been reorganised into Area Crime Combating Units (ACCUs). While no doubt helping to reduce crime, it is unclear whether the SAPS still has the capacity to manage the increasing number of volatile crowd situations.

South Africa's transition to democracy in 1994 brought about many changes. For policing, this meant transforming from repressive apartheid-style policing to a police service willing to serve the people. Given the role played by the Internal Stability Units (ISUs) under the previous government, these units were in need of a major overhaul. Their central function at that time was "the enforcement of apartheid laws, the suppression of political unrest and the prevention of unrest, intimidation and unrest-related crimes".¹

This article provides a brief update on the status of the public order police units after 1994.² The units have undergone many changes over the years to accommodate the demands of the times. Initially the apartheid stigma needed to be expunged. More recently, the growing number and intensity of service delivery protests and riots, and the poor handling of some of these events, have highlighted the need to reassess the effectiveness of our public order policing capacity.

In their current form – the Area Crime Combating Units (ACCUs) – the key question is whether South Africa has the capacity to manage public events and protest marches, particularly when they are accompanied by violence or the threat of violence.

Pre 1994: Focus on political unrest

The 1960s in South Africa were notable for the absence of riot control units. According to Rauch and Storey this can be attributed to the banning of political parties and the imprisonment of political leaders.³ As a result there were fewer public protests against the apartheid regime, which reduced the need for these units. When problems did arise, local police members, together with the military, were tasked to control the unrest. With no specialised police training or units, the consequences were dire when violence did break out at public events.

The 1970s saw the revival of the resistance movement against the state, necessitating the South African Police (SAP) to develop its riot control capacity. By the 1980s the SAP had formed a somewhat established riot control unit that focused on averting and restraining crowds.

The early 1990s saw an increase in political activity in South Africa, which brought many challenges for the riot control units. The various marches and rallies that characterised the era could not be managed as was done previously. After several incidents, such as those at Sebokeng in 1990 and Daveyton in 1991, the government realised that the

role and function of the riot control units in perpetrating violence had to be addressed.

A National Peace Convention was held on 14 September 1991, resulting in the National Peace Accord, "the purpose of which was to bring an end to political violence in [the] country and to set out the codes of conduct, procedures and mechanisms to achieve this goal".⁴ The signatories to the Accord had to agree to a code of conduct for political parties and organisations, as well as for police officials – something that up to this point was absent in the police. Chapter 6 of the Accord addressed the issue of public gatherings.⁵ It called for a commission of enquiry into the prevention of violence and intimidation.

As established by the Prevention of Public Violence and Intimidation Act of 1991, the purpose of the Commission was "to investigate and expose the background and reasons for violence, thereby reducing the incidence of violence and intimidation".⁶ The Goldstone Commission was tasked with this investigation in October 1991. The objectives of the Commission were to:

- inquire into the phenomenon of public violence and intimidation in the Republic, the nature and causes thereof, and what persons were involved therein;
- inquire into any steps that should be taken in order to prevent public violence and intimidation;
- make recommendations to the State President in respect of public violence or intimidation.⁷

In the interim, the SAP management had decided that the police and the army (which had been providing limited assistance in dealing with public unrest), needed to concentrate on their primary functions, namely crime prevention and defence respectively. This led to the formation of the Internal Stability Division (ISD) in 1992. The ISD's main function was the "policing of unrest through proactive (preventive) and reactive measures and the prevention of crime in unrest-plagued areas".⁸ It comprised 36 Internal Stability Units that were deployed in ten regions.⁹

The Goldstone Commission in the meantime had come up with several recommendations for the President with regard to steps to prevent violence and intimidation:

- deploying an effective police presence in local communities;
- utilising the new division of Internal Security to counter violence;
- taking urgent steps to prohibit the carrying of dangerous weapons in public; and
- improving the relationship between the police and local communities.¹⁰

The Goldstone Commission also recognised the necessity to legislate public gatherings, given the forthcoming democratic elections. The outcome was the Regulations of Gatherings Act 205 of 1993. The Act aims "to regulate the holding of public gatherings and demonstrations at certain places; and to provide for matters connected herewith".¹¹ The basic premise of the Act is that every person has a right to peaceful participation in gatherings – with the protection of the police. This was a significant step for public policing in South Africa.

In the meantime the ISD had become very unpopular and controversial due to its paramilitary manner; to the extent that critics began calling for the demilitarisation of the units.¹² According to Ngubeni and Rakgoadi, the powers and functions of the ISUs were so broad that the police were implicated in cases around the abuse of power (through using their discretionary powers), misconduct, and intimidation of community members.¹³

Post 1994: Public order policing takes shape

After 1994 a new approach was needed to policing in South Africa – one that would serve the new government and the people. Thus began the transformation of the police from a 'force' into a 'service' that would protect the rights of all South Africans to equality, dignity, freedom and security, as entrenched in the Constitution.¹⁴ These were qualities notably lacking in South African policing.

Part of the transformation process entailed bringing the SAPS in line with international policing standards. Fortunately, substantial financial as well as technical assistance was made available from several countries for this purpose. This helped in developing a 'restructuring strategy' for the SAPS, and especially the ISD. In the case of public order policing, the restructuring process was far-reaching and entailed

reselecting and retraining members within a two-year period, shrinking the public order component from 10,000 to 7,000 members, and most challenging of all, attempting a mindset change among members who were accustomed only to repressive methods of policing. The end of 1995 saw the ISD and the Riot Control Units of the so-called homeland police merge under the new SAPS.

In 1997, a SAPS policy document was introduced which emphasised crowd management as opposed to crowd control. The goals of the public order police as set out in the document are precise and simple:

- to establish standardised procedures in the SAPS to manage crowds in such a way that these conform to democratic values and accepted international standards;
- to install an approach in POP, concurrent with SAPS values, of acting at all times in a professional, acceptable and an effective manner, in a way that is community orientated and to be accountable for every action – based on certain constitutional principles;
- to accomplish ideals for crowd management situations – relating to life, property, citizen satisfaction of police and feelings of safety at gatherings, and risks to SAPS personnel;
- to perform all tasks effectively and efficiently.¹⁵

Also detailed in the document are the ‘principles of intervention’ that should govern crowd management. This section deals with the legal aspects, the situational appropriateness of the gathering, the optimisation of equipment and personnel, and the proportionality of the means of force to be used. The document also discusses preparation for operations, command and control, and coordinating and operational committees. Also covered are the use of force, the role of the media, the role of the South African National Defence Force (SANDF), traffic departments and other emergency services.

After some debate, the policy was eventually adapted into Standing Order 262 on Crowd Management during Gatherings and Demonstrations, applicable to all operational members of the SAPS.¹⁶ The purpose of the Standing Order, introduced in 2002, is “to regulate crowd management during gatherings and demonstrations in accordance with the democratic

principles of the Constitution and acceptable international standards”.¹⁷ The Order contains much about community partnerships and communication with the public, signifying the police’s move towards a more community-oriented approach.

From ‘public order’ to ‘crime combating’

SAPS management first considered the transformation of the public order units into Area Crime Combating Units (ACCUs) in 2001. This implied a role reversal for the units, with their primary focus becoming crime combating and prevention rather than public order and crowd management.

The decision to review the units’ mandate and form the ACCUs was based on the decrease in the number of public protests with the demise of apartheid and the inception of the new government; and the new Public Finance Management Act 1 of 1999, which demanded ‘value for money’ budgeting.¹⁸ All this came at a time when crime levels were increasing, and the SAPS was in search of more resources in line with its new National Crime Combating Strategy (NCCS).

The NCCS was launched in 2000 as a “high density, cordon, search and seizure operation to combat crime in hot-spots most affected by crime”.¹⁹ Its principal innovation was a rigorous focus of police attention on the 140-odd police stations in which half of all crime in South Africa is recorded. On 13 June 2002 the Minister of Safety and Security, Charles Nqakula, stated:

All POP units are being transformed into ACCUs that will conduct intelligence-driven operations that require high force levels. Examples of these will be parallel roadblocks on highways and secondary routes, and cordon and search operations. This is intended to deal with bank robberies, cash in transit heists and the hijacking of vehicles, as well as taxi and gang violence.²⁰

While on the face of it the formation of the ACCUs appears to have diminished the main purpose of the specialised public order policing unit, a counter argument is that the change makes financial and

operational sense, given the shortage of capacity within the police and the escalating crime problem facing the country at the time.²¹

Roles and responsibilities of ACCUs

The document establishing the ACCUs determines their roles and functions within the various levels of government. Its goal is “to maintain public order by combating serious and violent crime, policing public gatherings, rendering specialised operational support to other units/components/divisions and ensuring effective information management”.²²

Before 1994 the public order units were centralised, with orders and instructions coming from police headquarters in Pretoria. After 1994 the units were decentralised to provincial level. With the establishment of the ACCUs, the units have been decentralised even further to area level, although they can be deployed on an area, cross-area, and provincial basis.

Command and control

Command and control of the units is delegated to area level and is coordinated by the ACCU commander who reports to the deputy area commissioner responsible for operations and uniformed policing. Public order policing responsibilities at area level include:

- ensuring the effective and efficient functioning of the unit in terms of capability, capacity, skills and resources;
- ensuring that ACCU members are deployed in accordance with area priorities;
- ensuring an effective information gathering process that focuses on serious and violent crimes on a continuous basis;
- providing all support services (finance, logistics and human resource management); and
- ensuring that regular evaluations are conducted.

At provincial level, the head of operational response services is responsible for developing ACCU policies, procedures and standards, including the implementation, monitoring and evaluation thereof. While day-to-day deployment is controlled at area level, the provincial commissioner can instruct on any provincial operations relating to public order policing.

At national level, the ACCUs fall under the divisional commissioner of operational response services, who provides national strategic direction to maintain public order. The office also develops, monitors and evaluates national standards, policy and procedures.²³

In essence, this means that SAPS head office provides the strategic direction for public order policing, while the provincial departments deal with policy, standards and monitoring. It is the area level that arguably matters the most because this is where the functioning and day-to-day activities of the ACCUs are handled.

Selection and training of members

ACCU commanders are selected by the responsible officers at national and provincial levels. The members of the units are selected at provincial and area level, together with the area commander of the ACCU. Table 1 illustrates the numbers of ACCU members based in each province.

Gauteng	1,695
Kwazulu-Natal	1,255
Eastern Cape	789
North West	653
Western Cape	610
Free State	537
Limpopo	399
Mpumalanga	275
Northern Cape	114
Head office, Pretoria	3
Total	6,330

Source: SAPS Operational Response Services, Pretoria

Training policies are developed at the national office. In-service training is organised at provincial level and conducted by a trainer allocated to each ACCU at area level. Potential ACCU members have to undergo in-service training in crowd management techniques and tactical intervention to ensure that they have the required skills. All operational members have to undergo in-service

training annually in order to maintain high standards and keep up with current tactical developments.

ACCU members and their equipment also have to be continually assessed by head office to ensure that they are operationally competent. The document establishing the ACCU provides guidelines for the implementation and evaluation of ACCUs. In terms of evaluations, the ACCU commander must conduct at least one inspection every month and at least three detailed inspections annually.²⁵

Key operational issues

Planning for ACCU operations is based on the information gathered by the Area Crime Combating Forum. After relevant crime information has been analysed and requests from police stations for upcoming crime combating operations reviewed, operational plans are drawn up.

Although this process allows for ACCUs to participate in crime combating operations, their function is not to supplement stations with additional personnel for day-to-day activities. The ACCU document is clear on this: "The aim of these units is to participate in planned intelligence-driven, crime-combating operations in support of stations".²⁶

The above discussion has shown that the necessary policies on ACCU training, equipment, and operations are in place. But the key question is whether these policies are being correctly implemented. One of the concerns is that the gradual decentralisation of control over public order policing has resulted in members not being appropriately trained and equipped. Whereas in the past the national division had a hands-on approach to public order policing in the country, the formation of the ACCUs means that police at area level are now responsible for the success of the units.

An even greater concern relates to command and control of members during crowd situations. This has, since the formation of the ACCUs, been complicated by the fact that ACCU members have to execute their functions in cooperation with station-level officials who lack specialised training in public order policing. This is likely to result in injuries and fatalities among members of the public during highly volatile

situations, as evidenced by the Ellis Park soccer disaster of 2002²⁷ and the Harrismith municipal protest of 2005.²⁸

At Ellis Park 43 supporters died and 158 were injured when chaos erupted at a soccer match at the stadium. A commission of inquiry was set up to investigate the reasons behind the disaster. The commission's report listed 14 reasons for the tragedy – among them the "slow reaction" of the public order police, and a "gaseous irritant" teargas used by these police.²⁹

In Harrismith a 17-year-old boy died after police opened fire to disperse a protesting crowd on the N3 highway. Twenty youths were shot with birdshot and buckshot. Video footage shows that the police opened fire indiscriminately on demonstrators as they slowly crossed the N3 highway and then continued firing at them as they fled for cover. No report by the Independent Complaints Directorate (ICD) or the police has yet been released on the incident.³⁰

Can the ACCU deliver?

Great strides have been made with regard to the crowd management unit of the police since 1994. However, whether the more recent changes have been for the benefit of public order policing remains to be seen. The key question now is whether the SAPS can still effectively respond to and manage volatile crowd situations.

While the most recent ACCU document on crowd management may be well intentioned, it is not clear that implementation is going according to plan. Responsibility for the effective functioning of the units ultimately rests with police management at area level. These officers must ensure that ACCU members have regular training in crowd management, that equipment is upgraded and kept relevant, and that morale and fitness levels remain high.

Even if this is achieved, a broader question relates to the fact that crime prevention has become the units' primary activity. Already the effects of neglecting the crowd management function and relying too heavily on ordinary police officials for public order policing, can be seen in the poor handling of recent public events.

One of the reasons cited for making crime prevention the units' primary function was the decrease in the number of public marches and demonstrations. However, this trend is changing. Public protest is on the increase again in South Africa given the problems of poverty and poor service delivery, especially at local government level. In the last few years there has been an upsurge of community dissatisfaction over municipal service delivery, with people protesting shortages of housing, lack of sanitation, and water and electricity. Other issues such as Metrorail's transport problems,³¹ have also led to increased incidences of public protest.

The Harrismith and Metrorail incidents are two among many that indicate the need for interventions by specially trained and experienced public order policing units. Structured as they are currently, there is a danger that the units will be deprived of their specialist abilities. Perhaps the most imminent challenge in this regard is the soccer World Cup in 2010.³² ACCU members will have to be trained to deal with soccer hooliganism and related security issues. A fitness standard for operations has to be established, and given that the current average age of a SAPS ACCU member is 35 years,³³ and that the World Cup is still four years away, the age policy of the units has to be revisited by area commissioners.

The changes to public order policing in South Africa over the past 40 years have been necessary and warranted, given the shift in the country's politics and legal framework. Police management has also responded to the challenges facing the post-1994 society by adjusting the structure and mandate of the public order policing units. However, given the increase in public protest and rioting in the last few years, it is likely that the current capacity and effectiveness of the ACCUs will need to be revisited.

Endnotes

- 1 J Rauch and D Storey, *The Policing of Public Gatherings and Demonstrations in South Africa 1960 – 1994*, Centre for the Study of Violence and Reconciliation, Johannesburg, 1998, <<http://www.csvr.org.za/papers.papjrd>>, p 1.
- 2 The methodology for this paper was mainly desktop research in addition to interviews with a few

stakeholders.

- 3 J Rauch and D Storey, op cit, p 3.
- 4 National Peace Accord, <<http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/sa4.pdf>>, p1.
- 5 Ibid, pp 26-32.
- 6 Ibid, pp 26-27.
- 7 Ibid, pp 27-28.
- 8 D Meyer, The South African experience in dealing with communal violence, *African Security Review 8(1)*, Institute for Security Studies, 1999, <<http://www.iss.org.co.za/pubs/ASR/8no1/TheSouthAfricanexp.html>> p 7.
- 9 Ibid, p 7.
- 10 National Peace Accord, p 6.
- 11 Government of SA, Regulation of Gathering Act 205 of 1993.
- 12 See paper by K Ngubeni and S Rakgoadi, *Transforming the Internal Stability Unit*, 1995, <<http://www.csvr.org.za/articles/artksnr.htm>>, pp 1-2.
- 13 Ibid, p 2.
- 14 The Constitution of the Republic of South Africa, chapter 2, p 7.
- 15 SAPS, Approved Crowd Management Policy: Public Order Police (POP), 1997, p 5.
- 16 Telephonic interview with Supt V Day, 11 November 2005.
- 17 SAPS Standing Order 262 on Crowd Management during Gatherings and Demonstrations, p 1.
- 18 SAPS Policy: Division: Operational Response Service: The Establishment and Functioning of Area Crime Combating Units (ACCU), 2004, p 1.
- 19 *Nedbank ISS Crime Index 2(4)*, 2000, p 7.
- 20 Budget Vote for Safety & Security, 13 June 2002.
- 21 See Criminal Justice Monitor, *Nedbank ISS Crime Index 1(4)*, 2000, p 1.
- 22 SAPS ACCU Policy, op cit.
- 23 Ibid.
- 24 The numbers are not inclusive of civilian and support services personnel.
- 25 SAPS ACCU Policy, op cit.
- 26 Ibid, p 7.
- 27 <http://www.iol.co.za/general/newsview.php?art_id=20020927>.
- 28 <http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_1693754,00.Html.
<http://www.news24.com/News24/South_Africa/News/0,6119,2-7-1442_1584092,00.html>.
- 29 Ibid.
- 30 The trial is still pending according to the National Director: Operational Response Services, Director Gibson, interview on 3 March 2006.
- 31 Commuters set fire to a Metrorail train in Pretoria in 2001 after trains were delayed. <<http://www.numsa.org.za/printpage.php?id=796>>.
- 32 South Africa is the host country of this event in 2010.
- 33 Interview with Supt V Day, 28 February 2005.

SEX WORKERS SPEAK OUT

Policing and the sex industry

Nicolé Fick
Sex Worker Education and Advocacy Taskforce (SWEAT)
nicole.fick@sweat.org.za

South African sex workers, especially those working on the street, have good reason to feel afraid when they are on the job. Not only do they have to contend with the inherent dangers of their profession, but because sex work is a crime, they face frequent abuse and harassment from the police who are ostensibly upholding the law. But the threat of arrest does little to stop sex workers; instead it forces them underground and into situations that are potentially even more dangerous.

The Sexual Offences Act (23 of 1957) criminalises selling sex and all associated activities. SWEAT (Sex Worker Education and Advocacy Taskforce) is an organisation that advocates for the decriminalisation of sex work in South Africa. It believes that criminalising the industry has not resulted in eradicating sex work or reducing the number of people involved in sex work. Instead, it has increased the vulnerability of sex workers to violence and exploitation by forcing sex workers further underground, hindering access to health and legal services and increasing the stigma attached to the work.

There are those who would argue that sex work is an inherently violent occupation; however, it is clear that the laws criminalising this work make sex workers easy targets for violence.¹ The physical safety of sex workers is threatened by the criminal sphere in which they are forced to work.² Steve Chapman eloquently explains the association between sex work, crime and violence as follows:

As for criminals, hookers tend to be surrounded by felonious confederates because what they do is illegal. The enterprise attracts violent people because

violence is often useful in a business that can't expect protection from the cops. The retail liquor trade used to be that way too, during Prohibition. Since repeal, it has been about as violent as the dairy industry.³

Sex workers' contact with the police

In a recent exploratory study of sex workers' experiences, SWEAT examined some of the difficulties that sex workers face working in a criminalised environment. The study consisted of one-on-one interviews with 17 sex workers in Cape Town – and looked, among others, at their experiences with the police and their ability to receive protection from violence. Most agency-based sex workers in this study indicated that they had never experienced violence at the hands of the police. In fact the sex workers working at agencies reported very little contact with the police. Members of the police do occasionally raid specific indoor agencies, but for the most part they focus their efforts on policing the more visible sector of the industry: sex workers who are working on the street.

The majority of street-based sex workers are arrested or fined using local municipal by-laws, like

those against loitering, causing a public disturbance, or public indecency (including nudity in public). The police rarely use the Sexual Offences Act to arrest sex workers, as this Act is difficult to enforce. The prosecution would have to prove beyond any reasonable doubt that sexual services had been exchanged for reward and generally the only way to do this would be to make use of police entrapment, which is labour intensive and raises evidentiary difficulties in court.

Street-based sex workers speak of high levels of contact with the police and frequent arrests, sometimes as often as four or five times a month.

It has been SWEAT's experience that while the fear of arrest causes distress, it does not stop people from working. In fact, the fines that sex workers get or the time they spend in jail causes a loss of income for them and means that they have to work harder to make the money they need. One participant described the continuous threat of arrest as a major stressor for her and spoke of feeling "hunted" by the police:

...and even if you go up the streets, like the other day they were driving almost half an hour with, there were five at the back – five girls at the back. They almost drove half an hour just looking beside the streets and the corners for girls. I mean, they even drove up all the streets like hunting us down.

Research has described the impact of the threat of arrest on sex workers' daily lives. Both in New York and Kerala, India, sex workers spoke of how the threat of arrest prevented them from accomplishing daily tasks, like shopping or riding the subway. Respondents reported feeling as if they were confined to their houses by the threat of arrest.⁴ In the SWEAT study, participants who work in the area they live in spoke of similar experiences of feeling trapped in their homes, unable to go to the shop or to buy daily necessities without the threat of being arrested.

And the police then stopped cars... But they didn't even see me; they saw me coming out of the shop. You know what he said; he said

'It's a plan'. He slapped the milk out of my hand that it fly over and out in the street and all the people looking, but he's busy with criminals, and he just pressed and threw me like rubbish into the van.

... but now – now I can't walk, because the police are all over and even if you walk to the chemist, if I take a walk to the chemist and they see you, they will have problems.

Furthermore, in SWEAT's experience, when people engaged in sex work are arrested, they are often mistreated, assaulted or verbally abused by police officers:

They rock up and they like pull the girls from the street and throw them, not ask them, to get in. They will like force them to get into the van... I don't think that is fair, because, they're all here to make a living and that's part of... some people say that they don't see it as a job, but I see it as a job right... It's not fair towards any sex worker to be thrown into a van and kept over two nights in a cold cell. I don't think it's fair.

Seven of the nine street-based sex workers who participated in this research indicated that they had experienced physical violence at the hands of the police.

I have a problem now with the police. We are looking for safety, but they just spray gun us or they beat us up.

Die een polisieman het sy mou opgerol en die ander, die vroue kollega het haar horlosie afgehaal om vir my te slaan en jy kan sien daai man is 'n 'lustige molestor', hoe gaan hy my nou slaan... [The one policeman rolled up his sleeve and the other one, the female colleague, took her watch off to hit me and you can see that man is a vicious one, how he is now going to hit me...]

I know a black girl. She told me she was picked up once by the police... She was thrown when they picked her up and then they actually beat

her in the cells... Yes, eyes, blue eyes and she said she made a case against them and they gave her a court date, but the police, the two policemen didn't show up in court and when she went back there, they told her the case was thrown out.

Studies have shown that transgender sex workers suffer the same abuses and harassment as other sex workers, but are also harassed by officers who check their genitals and make comments about their gender.⁵ SWEAT too has found that transgender sex workers are treated particularly badly by the police, not only because they are sex workers, but also on the basis of their gender identity.

SWEAT has had a number of reports of transgender sex workers who identify as female being kept in police cells with male prisoners. The police then encourage the male prisoners to abuse these sex workers. In this study one of the participants spoke of the brutal abuse of a transgender sex worker by the police:

The police physically abused her and then tramped her on the ground in the stomach. They have to open the stomach, the liver and the bladder and then they kept her in the police cell for two days. I wish I can get her then she can come talk to you, I'm going to try my best. It's a transsexual... How, the doctor said at Tygerberg if it was a day later, she was dead. The whole bladder was open like this, like the police said to her 'I'm going to, I'm going to kick your *naai weg* [genitals away] now'... She's got stitched right up here, to like right down till there. The cop said, 'I'm going to show you now, you want to be a woman, I'll show what I'm doing now'. It's horrible I want to bring that woman to you...

Participants also told of incidents where they were abandoned in remote areas by police officers who did not feel like taking them to the police station. This exposes sex workers to situations that are extremely risky as they have to find a way to get home safely, often late at night:

Hulle laai die meisies ook op hier, dan gaan laai hulle die meisies 'n ander ver plek weg, as hulle nie vir hulle wil toesluit nie... En dit is in die aande, so doen hulle iets... Hulle moet terugstap. As sy afgelaai is miskien verby Stellenbosch, dan gaan hulle huis toe dan gaan los hulle die meisies daar. [They pick the girls up here, then they drop them off far away, when they don't want to lock them up. And it is at night time, that they do these things... They must walk back. If she is dropped past Stellenbosch then the police go home and leave the girls there.]

Police officers also abuse the current system by offering not to arrest sex workers if they provide sexual services to them for free:

They want to come, *ja*, for free and tell you that there will be a warning when they pick the others up. I've been through a lot of that, but it doesn't interest me at all. I'm here to just make my money, you know. Not here to give 'freebies' for anybody. You know, at the end of the day, a whole police station comes to you and say, 'Okay, she's done it for free for you, so all of us here must come for sex now.'

Because a lot of the police were friends of the agencies, and they'd come in and we'd have to sleep with them. And we'd get paid half... Friends of the owners. I think it's a very, you know, they're all in with each other. They're paying, they get paid.

Sex workers in police custody are often refused permission to make a phone call to let their families know where they are. One sex worker also spoke of the bad conditions they are held in when they are arrested:

The police are also a problem, if they arrest you on Friday they will keep you in the cells until Monday and you will be arrested without seeing the magistrate. We don't get food in the cells. We only get two slices of dry bread. You don't even get a chance to wash.

Do the police provide protection to sex workers?

Given the violence sex workers experience at the hands of the police, and their fear of being arrested, it is not surprising that very few sex workers actually approach the police for help if they have been victims of violence. Almost half of the participants in this study said that they had never asked the police for assistance. Some participants indicated that this was because they had not needed to, but others said they did not ask the police for help because of bad experiences, or because they are afraid that the police will not believe them or not take them seriously. One respondent said that when she went to lay a charge, the police, knowing she was a sex worker, "came together and laughed". Another commented that:

I don't think the police will believe anything, if I have to go there and tell them I'm raped now, I'm a sex worker, they're going to think that you then, in the job, you're then doing these things for money, so how can you say you have been raped, that, things like that, that's why I'm very scared, that's why I avoid being raped and stuff like that, but you can't avoid, so if you must get raped you rather keep quiet, because I know the police are not going to believe.

Church et al have described how stigma and the need to remain anonymous often prevent sex workers from reporting incidents of violence.⁶ In this study participants working at an agency explained their reluctance to approach the police and the need to protect their identity as follows:

You see that's probably – that's the first thing people think I'm going to go lay a charge against you, but then I'm going to have to say, besides which circumstance I was in, you understand? I don't want to put that down...So I can't say I was sitting in a brothel (indoor agency), and this is a client who did this to me. No, I can't.

I don't know if I'd actually be going so far as to actually press charges or anything else like that because where would it actually get me? My name would be in a situation where

I'd be associated with being a sex worker. Would I find that really necessary?

There is growing research evidence to suggest that women in street-level prostitution are not likely to report violence to police.⁷ Barnard et al found, for example, that of the 240 sex workers in their study who reported having experienced violence, only 34% had reported these attacks to the police.

Eight participants in SWEAT's research described having been treated badly by the police when they asked for assistance. In three cases the police refused to help, simply because they knew that the person making the complaint was a sex worker. As one person said:

Ek sal nou geen mens aanraai, geen meisie aanraai om insidente by (name of police station) te rapporteer nie, want as jy by (name of police station) iets aankla... gehoor het wat gebeur en hulle sal sommer sê: 'Hoere. Moenie notisie vat nie dis net hoere'. Nou, dis wat hulle nou doen. [I would not advise any person, none of the girls, to report at (name of police station), because when you lay a charge at (name of police station) they will just say: 'Whores. Don't take any notice of them they are just whores'. Now that is what they do.]

It is a well-established fact that police don't take cases involving the rape of sex workers seriously.⁸ There is widespread belief in the myth that sex workers cannot be raped and that by having made themselves sexually available in one way they have given up their right to withhold consent to other sexual advances. Persons engaged in sex work are often traumatised and humiliated by the treatment they receive from the police when they report having been raped.⁹ Two sex workers in this study were trying to report having been raped by a client and they indicated that the police just laughed at them and refused to take their complaint:

And we reported it to the police, they just laughed at us... No. We were made to sit in the waiting room. And I just remember this girl saying she wants to speak to the

detective and then he didn't want to help. So then she wanted to speak to the man in charge, he didn't help. So eventually we left and went back to the agency, told the boss, he wasn't interested.

Positive experiences of the police

There were some reports by sex workers of more positive experiences when approaching the police for help. Four participants spoke of occasions when the police were helpful and treated them with respect and kindness. One participant related that the police took her to hospital after a client attempted to rape her. Another participant related that the police treated her with sympathy and kindness when she went to lay a charge against a client who had shot at her. In two cases participants spoke of the police protecting them from a partner and a client who was harassing them.

Coping with mistreatment from police

There is not a great deal sex workers are able to do about the threat of violence from the police in the current situation where sex work is illegal. Sex workers seldom feel comfortable enough to lay charges against violent police officers with other members of the police service. In most cases they would need to lay a charge at the same police station where the perpetrator works and risk encountering him or her again. In SWEAT's experience sex workers do not want to risk exposing their identity and they are afraid of retaliation by police officers if they complain about police brutality.

Their strategies for coping with police violence are often largely based on trying to avoid contact with the police as much as possible by hiding from them, or working at times when they think the police are less likely to be present. Sex workers in the study expressed a great deal of anger and frustration about their treatment at the hands of the police and how it affects their ability to be able to move around and work. In some instances participants indicated that they come to SWEAT to report violence or mistreatment by the police:

Ons was daar gearresteer. Van die meisies wat weggekom het, het dadelik na SWEAT

toe gebel. SWEAT het dadelik gery mos en polisie stasie toe gekom...SWEAT het 'statements' van ons afgeneem. Dis, een ding moet ek vir jou sê, SWEAT is 100% agter die meisies, 'never mind' wat wie sê, dit het ek deur al die jare geondervind. Hulle het ons altyd bygestaan, 100%. [We were arrested there. Some of the girls that got away immediately phoned SWEAT. SWEAT came immediately to the police station. SWEAT took statements from us. That is one thing I must tell you, SWEAT is behind the girls 100%, never mind who says what, I have experienced it through the years. They have always helped us 100%.]

SWEAT assists sex workers who want to make a complaint about police mistreatment by taking their legal statements and accompanying them to the police station when they make the complaint. The sex workers are informed about the process that needs to be followed when they want to make complaints against the police.

SWEAT staff members remain involved by following up on the progress of these individual complaints – but its main focus is on gathering information and statements from a number of sex workers who are experiencing the same mistreatment, and arranging group litigation that will have a greater impact for sex workers overall.

Finding ways to stop the abuse

Sex workers face significant harassment and abuse at the hands of the police, and are frequently arrested – unlawfully – while going about their daily business. But even when sex workers are arrested lawfully they are often subject to exploitation, sexual harassment and physical or verbal abuse at the hands of police officers.

SWEAT's broad approach to dealing with the issues that have been raised is based within a human rights framework. One of the key arguments in favour of the decriminalisation of sex work is the ongoing human rights infringements that sex workers are exposed to by the very authorities that are supposed to protect them. The ongoing targeting, arrest and release of sex workers is a

waste of police resources and it does not provide long-term solutions. The arrests only succeed in temporarily removing sex workers from the street.

To this end, SWEAT recommends the following:

- It is important to consider the cost-effectiveness and impact of local municipal policies that encourage clamping down on sex work and arresting sex workers, to determine whether this is an effective use of resources.
- It would be useful to start looking at the frequency of the unlawful arrests of sex workers. When sex workers who are not violating the law are arrested, police officers must be sanctioned.
- Special attention should be given to police violence against sex workers and a clear message needs to be sent that this will not be tolerated.
- Sex workers need better access to the criminal justice system and they need their complaints of violence to be taken seriously by the police.

Endnotes

- 1 P Alexander, Prostitution: Still a difficult issue for feminists, in F Delacoste & P Alexander (eds), *Sex work: Writings by women in the sex industry*, San Francisco, Cleis Press, 1998, pp 184 – 230. See also K Gilbert, Rape and the Sex Industry, *Criminology Australia*, 3(4), 1992, pp 189 – 196.
- 2 Ishida, *Morals Cost Money...* <http://www.walnet.org/csis/papers/ishida_morals.html> 1994.
- 3 S Chapman, Fighting a futile war on prostitution, *Chicago Tribune*, 2005 <<http://www.chicagotribune.com/news/columnists/chi0507140125jul14,0,220653.column>>
- 4 J Thukral & M Ditmore, *Revolving door: An analysis of street-based prostitution in New York City*, 2003 <<http://www.sexworkersproject.org/reports/BehindClosedDoors.htm>>. AK Jayashree, Searching for justice for body and self in a coercive environment: Sex work in Kerala, India, *Reproductive Health Matters*, 12(23), 58, 2004.
- 5 M Ditmore and C Poulcallec-Gordon, Human rights violations: The acceptance of violence against sex workers in New York, *Research for Sex Work* 6, 2003, pp 20 – 21.
- 6 S Church, M Henderson, M Barnard & G Hart, Violence by clients toward female prostitutes in different work settings: Questionnaire survey, *British Medical Journal* 322 (7258), 2001, pp 524-525.
- 7 M Barnard, G Hart and S Church, *Client violence against prostitute women working from street and off-street locations: A three city comparison*, Royal Holloway, University of London, Violence Research Programme, 2000 <<http://www1.rhbc.ac.uk/>

[sociopolitical-science/vrp/findings/rfbarnard.pdf](http://www1.rhbc.ac.uk/sociopolitical-science/vrp/findings/rfbarnard.pdf)> See also P Whittaker & G Hart, Managing risks: The social organisation of indoor sex work, *Sociology of Health and Illness* 18(3), 1996, pp 399 – 414. Gilbert, op cit, 1992.

- 8 N Romero-Daza, R Weeks & M Singer, Conceptualising the impact of indirect violence on HIV risk among women involved in street level prostitution, *Aggression and Violent Behaviour* 10, 2005, pp 153 – 170.
- 9 JM Wojcicki & J Malala, Condom use, power and HIV/AIDS risk: Sex workers bargain for survival in Hillbrow/Joubert Park/Berea, Johannesburg, *Social Science and Medicine* 53, 2001, pp 99-121.

TARGETING FOREIGNERS

Xenophobia among Johannesburg's police

Themba Masuku
Centre for the Study of Violence and Reconciliation
tmasuku@csvr.org.za

Several media and research studies have reported on police abuse and ill-treatment of undocumented foreigners in South Africa, concluding that xenophobia is a major problem in the SAPS. But how pervasive is xenophobia in the police? Where does it come from and what can be done about it? Based on a survey of police officials in the Johannesburg area, this article examines the phenomenon and attempts to provide some answers.

Xenophobia in the police was given a public face in South Africa in 1999 when six white police officials were shown on national television racially assaulting and abusing two illegal immigrants from Mozambique.¹ Since then, there have been other media and research reports documenting the abuse and ill-treatment of foreign nationals by police officials.² According to Bruce and Newham, the intolerance of foreigners is:

...partly because [foreigners] are generally blamed for problems such as unemployment and crime, but also because of their marginal and vulnerable status; members of the SAPS of all races frequently target black legal and illegal immigrants, for harassment. The extent of this problem is such that South African citizens who appear to be foreign often experience harassment at the hands of the police.³

Xenophobia in the police has become especially relevant considering the enormous influx of immigrants into Johannesburg in the last ten years, many of them undocumented. The large numbers of immigrants makes their treatment by state officials an important issue, particularly since the key

operational strategy of the South African Police Service (SAPS) in the past five years has resulted in the frequent targeting of illegal immigrants for arrest.⁴

The SAPS is certainly aware of the problem, and xenophobia has been placed firmly on the transformation agenda. Yet research suggests that after more than a decade, there "has been a lack of change in the values and attitudes of a significant proportion of police members".⁵ Although no statistics are available to quantify the problem, studies suggest that xenophobia takes different forms and that the problem in the SAPS is not limited merely to attitudes, but often involves violence, abuse, and ill-treatment of foreigners.⁶

Why worry about xenophobia' in the police?

Twelve years into democracy, painful memories of apartheid and the systematic repression of black people are still relatively fresh in people's minds. In 2001 president Thabo Mbeki urged all South Africans "to be vigilant against racism and xenophobia as it will undermine our young democracy".⁸

It is also significant that South Africa has signed several international conventions on the protection of refugees and vulnerable groups, as well as the

International Convention on the Elimination of All Forms of Racial Discrimination.⁹ Moreover, the country's Constitution forbids any unfair discrimination, including discrimination based on people's social origin: "the state may not discriminate directly or indirectly against anyone on one or more grounds, including race, gender... social origin... birth".¹⁰

Furthermore, the SAPS Code of Conduct, which police officials sign on appointment to the Service, commits police officials to uphold the Constitution and protect the fundamental rights of every person. It follows then that any unfair discrimination against foreigners violates the Constitution and the police Code of Conduct.

Survey of SAPS' views

In 2004 the Centre for the Study of Violence and Reconciliation (CSV) conducted research on diversity and transformation in the SAPS based on a case study of the Johannesburg policing area.¹¹ The survey covered a representative sample of 580 uniformed police officials drawn from the 3,660 members in the 21 police stations around Johannesburg (Table 1).¹² Primary qualitative data was collected through 45 semi-structured, in-depth interviews with police officials of all race and gender groups. The results of the qualitative research informed the analysis of the survey data.

Table 1: Survey sample

Race			Number	% within race group
Black	Gender	Male	392	83.9
		Female	75	16.1
	Total		467	100.0
Coloured	Gender	Male	13	76.5
		Female	4	23.5
	Total		17	100.0
Indian	Gender	Male	11	78.6
		Female	3	21.4
	Total		14	100.0
White	Gender	Male	63	76.8
		Female	19	23.2
	Total		82	100.0
Total	Gender	Male	479	82.6
		Female	101	17.4
	Total		580	100.0

Views about diversity training in the SAPS

As shown in Table 2, a minority of SAPS members (35%) indicated that they had received some training on race and discrimination. Although male officials (39%) were slightly more likely than females (32%) to have attended, the difference is small.

Table 2: 'Have you received any type of training that deals with race and discrimination?'

Gender		Black %	Coloured %	Indian %	White %	Total %
Male	Yes	38.4	53.8	27.3	41.3	38.9
	No	61.6	46.2	72.7	58.7	61.1
Total		100.0	100.0	100.0	100.0	100.0
Female	Yes	25.3	50.0	66.7	47.4	31.7
	No	74.7	50.0	33.3	52.6	68.3
Total		100.0	100.0	100.0	100.0	100.0

The decision as to who attends training, workshops or conferences in the police often rests with station commanders. As such, police officials tasked with work that is considered most important, along with those in short-staffed units, are less likely to attend such training. This problem was described as follows by an official involved in diversity training:

Commanders rarely send detectives, members from crime intelligence and crime prevention. Yet these members have the greatest contact with foreigners. The same people are always sent to these workshops just to meet the required numbers, otherwise there is no commitment to ensure that all members attend these types of workshops. (black female captain)

Some respondents acknowledged that the lack of training in cultural diversity was impacting on their ability to provide adequate policing to immigrants:

[I]t is difficult to police foreigners because we do not understand their language or culture. As a result we sometimes do not believe what they say because most police officials believe that foreigners are lying [in order] to remain in the country...Most police officials do not understand that foreigners are human too with human rights. (white male captain)

However, other SAPS members indicated that diversity training was unnecessary for police officials:

We cannot afford to send our members all the time for training and workshops that have nothing to do with policing work. If I had to send members to all these human rights workshops I will be left with few members to deliver services, and communities will be up in arms. (black male superintendent)

Perceptions about illegal immigrants in general no doubt also influence decisions about the need for diversity training in the police. There was a view that the increase in the number of foreigners in the country...

...is as a result of police not being tough [enough] on illegal immigrants. They do what they want and commit crime and when we arrest them they run to human rights groups who then accuse police of being racist. (black male superintendent)

As a result of this approach to who gets selected for training, civilian members are often sent on the courses that are regarded as 'irrelevant' to police work, in order to comply with SAPS management's requirements regarding training.

The literature reveals conflicting views on the impact of diversity training on transforming police organisations. A pro-diversity training view argues that it promotes good relations between different ethnic, ideological, cultural, and racial, class and gender groups.¹³ A more sceptical view suggests that diversity training exacerbates tensions and reinforces prejudices.¹⁴ However, despite the weaknesses that have been identified in diversity training, the changing nature of the role of the police may make diversity training essential. McDonald argues that in the USA for example, "fighting crime is not always the highest priority of the police. Maintaining racial and ethnic peace is seen as outweighing the enforcement of the law."¹⁵

Are illegal immigrants' involved in crime?

The survey asked police officials whether they thought that most illegal immigrants commit crime.

Table 3 shows that the vast majority (87%) of SAPS members do think this is the case.

Table 3: 'Are most undocumented immigrants in Johannesburg involved in crime?' by race

		Agree %	Disagree %	Neutral/ Don't know %	Total %
Race	Black	91.0	7.9	1.1	100.0
	Coloured	64.7	35.3	-	100.0
	Indian	85.7	14.3	-	100.0
	White	69.5	25.6	4.9	100.0
Total		87.1	11.4	1.6	100.0

These perceptions could make undocumented immigrants more vulnerable to police abuse.¹⁶ According to the United Nations Working Group on Arbitrary Detention, "many foreigners are deprived of their liberty, some with legal residence papers, some claiming asylum, who say they have been arrested arbitrarily and are not able to contest the validity of their detention."¹⁷ The view of one respondent below concurs with this assertion:

We do not want illegal foreigners in this country because they cause a lot of serious crimes, don't pay tax and it is often difficult to solve a crime caused by illegal immigrants because of lack of their fingerprints. We can never solve especially serious crimes because of these faceless people who do not even have a physical address where we can find them...whenever we suspect that they are illegal we arrest them and in many instances they try to be clever by producing fake papers...we tear those up in front of them to frustrate their efforts and send them to Lindela. (Indian male captain)

Landau also observed that immigrants are easy targets for police extortion, often due to their tenuous legal status and/or inadequate identity documents.¹⁸ This, coupled with immigrants' need to carry cash, has led a significant number of inner-city police officials to see them as 'mobile ATMs'. From a police perspective, arresting foreigners serves multiple purposes. Most obviously, it helps to meet arrest targets. Police officials privately admit that

they round up ‘the usual suspects’ – refugees, asylum seekers, and other immigrants without proper identification papers – precisely for this purpose. This practice was confirmed by a police official in the survey:

There is pressure on us (police officials) to effect arrests. In the police you are promoted, respected and given accolades if you have many arrests under your name. Often, it is less important that an arrest results in a successful prosecution because that is the job of the prosecutor and investigating officer. As a result we target illegal immigrants for arrest because you cannot afford to have under your name a zero arrest in a month. (black male inspector)

The pressure to make arrests can have many negative consequences on police performance, not least with regard to the mistreatment of immigrants. The South African Human Rights Commission reported in December 2000 that many arrested persons were deliberately prevented from providing documents, and that valid identity documents were destroyed by the police. This resulted in the detention and deportation of legal immigrants as well as South African nationals.¹⁹ According to the report, most police officials interviewed made no distinction between people who have committed crimes, and undocumented immigrants. This explains why, during the SAPS’ ‘Operation Crackdown’ crime combating activities, such a large number of immigrants are arrested by the police.

Despite an overwhelming perception that undocumented immigrants are involved in crime, no statistical evidence is available to substantiate these claims.

Police views according to rank

As unfair discrimination is a disciplinary offence in the SAPS, one might have hoped that this problem would be limited to a few ‘bad apples’. However, the analysis of data according to rank in Table 4 is consistent with the results in Table 3, which indicates that xenophobia in the police may be widespread.

The problem does, however, appear to be more significant among the lower ranks, which could explain why some respondents expressed the view that “senior commanders, although not supportive of abusing foreigners, they do not condone it either”. Nevertheless, there are members who recognise prejudicial attitudes as problematic and unacceptable, and in complete violation of the norms and standards expected from the SAPS:

Cases of ill-treatment of illegal foreigners that get reported to us are taken very seriously. They are investigated and if found to be true, disciplinary measures are taken against that member, which may result in suspensions or a member being expelled from the service. I will not tolerate police abuse of their power because it is those few cases that make headlines and in the process give the police a bad image, and the bulk of the good work we do go unnoticed. (senior Indian male police official)

Consequences of xenophobia among police officials

Professionalism, police conduct, efficiency, respect for the rule of law and the quality of service delivery are fundamentally affected when police officials are racist or xenophobic. These attitudes are often linked to an increase in incidents of corruption, police criminality and abuse of people’s constitutional and human rights – and consequently

Table 4: ‘Are most undocumented immigrants in Johannesburg involved in crime?’ by rank

	Constable	Sergeant	Inspector	Captain	Supt	Senior Supt	Total
Strongly agree	91.6%	91.9%	84.3%	84.2%	61.5%	-	87.1%
Strongly disagree	7.7%	6.3%	13.9%	15.8%	30.8%	100.0%	11.4%
Neutral/Don’t know	0.6%	1.8%	1.8%	-	7.7%	-	1.6%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

people are less confident that police will act impartially.

Landau points out that “non-South Africans living or working in Johannesburg report having been stopped by the police far more frequently than South Africans.”²⁰ His comments are based on a survey conducted by the University of the Witwatersrand which found that 71% of refugees interviewed said they had been stopped by the police, as opposed to 47% of South Africans.²¹

Despite this, even South African citizens have suffered the consequences of xenophobia in the police. Since many locals still do not have identity documents, they too are at risk of being apprehended and deported. The South African Human Rights Commission found that one in five ‘illegal immigrants’ in the Lindela repatriation centre was in fact a South African national who could not produce his or her identity document.²²

Another estimate is that about “30% of people arrested by police on suspicion of being illegal immigrants are in fact South Africans. They are picked up because they are too dark and they happen to be in the wrong place at the wrong time”.²³ Bizarrely, even off-duty police officials who are unable to produce their identification run the risk of being apprehended and detained:

...I was drinking at a tavern when police raided the place. I told them I was a police official...but these guys arrested me for failing to follow instructions from a police official and for being illegal in the country. I was locked up for the whole night until someone I knew at the police station alerted them that they had arrested a police official. (black male captain)

Another consequence of xenophobia in the police is that police strategies to address the problem of corruption in the SAPS may be compromised. As discussed above, immigrants are often targeted for extortion to the extent that in some countries this has been referred to as a ‘street tax’. It is also not unheard of for police to demand money for the release of an undocumented immigrant.²⁴

Improving the situation

Although the SAPS has made tremendous progress since the 1990s in building a professional police service, much still needs to be done to change police attitudes towards foreigners. The central role played by the police in consolidating our young democracy requires vigilance over police conduct and attitudes that may undermine gains already achieved. In this regard, the following should be considered:

Strengthening management and oversight systems

Eradicating xenophobia requires internal and external systems to monitor police conduct. Holdaway argues that addressing the problem of police discrimination requires that “actions that led to discrimination be described and analysed in order to intervene accordingly”.²⁵ Police managers have to strengthen their internal management systems to enable them to quickly identify problematic conduct. This may also involve encouraging police officials to report incidents of police abuse of foreign nationals.

Currently, there are a number of external oversight bodies (the Independent Complaints Directorate, the Human Rights Commission, the Secretariats for Safety and Security, parliamentary portfolio committees, the Gender Commission and the Public Protector) that can receive and investigate cases of police abuse of power reported to them. It may be necessary for a single oversight structure to take responsibility for xenophobia, to ensure that such cases are speedily investigated and culprits are charged and prosecuted.

Diversity training

Given that only about a third of respondents in the survey had attended a workshop, training session or conference dealing with race and diversity, it is unsurprising that not much headway has been made with transformation in the SAPS. Perhaps attention needs to be given to who gets trained as well as the quality of the training. Changing the attitudes and behaviour of individual police officials is crucial to ensure that they accept the transformation agenda and act accordingly.

Changing police culture

According to Chan, "taking the police to the communities and bringing the communities to the police" is critical to changing police culture.²⁶ Since much of the current police culture is 'anti-foreigner', it means that forums and programmes where police officials and foreigners will be exposed to one another, need to be created.

Also, since SAPS policy makes provision for the employment of foreigners, steps need to be taken to ensure they do not enter or work in an environment that is hostile to them. McDonald argues that creating a new value base is essential for creating a new positive culture in the police.²⁷ These values are about integration, equality, mutual respect, and acceptance of diversity. The conduct of police officials should reflect the country's changing cultural norms regarding tolerance for diversity, respect for human rights, and equality.

Clearly, the failure to eradicate xenophobia in the police service undermines transformation, reconciliation, and the image of the SAPS both internally and abroad. Johannesburg is the commercial centre of the country, and with its transport infrastructure, is seen as a gateway to most parts of Africa and the world. It is also a host to national and international events that draw people from diverse cultural and racial backgrounds. South Africa will host the soccer World Cup in 2010 and thousands of soccer supporters will arrive in the country from all over the world. Police officials need to be adequately prepared to do their work in such a diverse environment.

Endnotes

- 1 The 'dog incident', as it is now commonly referred to, was described by journalist Max du Preez as the "worst pornography of racism and violence on another human being ever witnessed", *The Star*, 8 November 2000.
- 2 See B Harris, A Foreign Experience: Violence, Crime and Xenophobia during South Africa's transition, *Violence and Transition*, 2001. Lawyers for Human Rights Roll Back Xenophobia Campaign: A National Plan of Action, 1999. M Nduru, South Africa does not roll out welcome mats for all immigrants, *Mail and Guardian*, 22 August 2005. J Crush and V Williams, Making up the Numbers: Measuring 'Illegal Immigration' to South Africa, *Migration Policy Brief 3*, Southern African Migration Project, 2001.
- 3 D Bruce and G Newham, Racism, brutality and corruption are the key human rights challenges facing the transformation of the SAPS, in Reconstruct, *The Sunday Independent*, 10 December 2000.
- 4 E Pelsler, Operation Crackdown: The New Police Strategy, *Nedbank ISS Crime Index 4(2)*, April and May 2000.
- 5 D Bruce and G Newham, op cit.
- 6 J Crush and V Williams, op cit. B Harris, Xenophobia: A new pathology for a new South Africa?, in D Hook and G Eagle (eds), *Psychopathology and Social Prejudice*, Cape Town, University of Cape Town Press, 2002. B Harris, op cit, 2001. SAHRC *Report into the Arrest and Detention of Unsuspected undocumented Migrants, Final Report*, Johannesburg, 1999. Human Rights Watch, *Prohibited Persons: Abuse of Undocumented Migrants, Asylum Seekers and Refugees in South Africa*, New York, 1998.
- 7 'Xenophobia' is defined as a "hatred or fear of foreigners" (South African Pocket Oxford Dictionary of Current English, 1994).
- 8 T Mbeki, Letter from the president: Statement on Xenophobia, *ANC Today 1(18)*, 25-31 May 2001.
- 9 SA signed the international conventions on the protection of refugees and vulnerable groups in January 1994. In 1995 and 1996 respectively, SA acceded to and ratified the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa as well as the 1951 UN Convention and its 1967 Protocol relating to the Status of Refugees. In December 1998, SA signed the International Convention on the Elimination of All Forms of Racial Discrimination.
- 10 Constitution of the Republic of South Africa, Act 108 of 1996.
- 11 G Newham, T Masuku and J Dlamini, *A decade of transformation of the South African Police Services: A Study of Police Perspectives on Race, Gender and the Community in the Johannesburg*, CSVR, Johannesburg, 2005.
- 12 The survey results can be generalised in terms of gender. However, in terms of race, only results for black and white respondents can be generalised.
- 13 S Holdaway, Police Race Relations in England and Wales: Theory, Policy and Practice, *Police and Society 7*, 2003, pp 49-74.
- 14 LA Gould, Can an old dog be taught new tricks? Teaching cultural diversity to police officers, *International Journal of Police Strategies and Management 20(2)*, 1997, pp 339-356.
- 15 WF McDonald, The Emerging Paradigm for Policing Multiethnic Societies: Glimpses from the American Experience, *Police and Society 7*, 2003, pp 231-253.
- 16 D Bruce & G Newham, op cit.
- 17 Algerian judge Leila Zerrougui quoted in *Too many in*

- SA jails, <www.News24.com>, 19/09/2005.
- 18 Landau, Immigration, Xenophobia and Human Rights in South Africa, *Migration Policy Series 22*, Southern African Migration Project, 2001.
 - 19 E Algotsson, *Getting to the Crossroads of Detention and Repatriation*, SAHRC, December 2000, <www.sahrc.org.za>
 - 20 Landau, op cit.
 - 21 Ibid.
 - 22 South African Human Rights Commission, 1999, op cit.
 - 23 Prof Neocosmos, Foreign Native to Native Foreigners, *Mail and Guardian*, 22 August 2005.
 - 24 D Bruce and G Newham, op cit.
 - 25 S Holdaway, op cit.
 - 26 JBL Chan, *Changing Police Culture: Policing in a Multicultural Society*, Cambridge, Cambridge University Press, 1997.
 - 27 WF McDonald, The Emerging paradigm for Policing Multiethnic Societies: Glimpses from the American Experience, *Police and Society* 7, 2003, pp 231-253.

PETTY CRIMES THAT MATTER

Evaluating the Western Cape community courts

Melanie Lue-Dugmore and Vanja Karth
Law, Race & Gender Research Unit, University of Cape Town
camel3@mweb.co.za

Jean Redpath, Hlakanaphila Analytics
redpath@iafrica.com

By focusing on petty crimes, community courts hope to encourage a 'zero tolerance' approach to criminality, develop integrated and constructive responses to local crime problems, and alleviate case loads in magistrates' courts. Based on an evaluation of three community courts in the Western Cape, this article argues that overall, the courts are functioning satisfactorily. Challenges in the areas of planning, public awareness, police data collection, and the provision of diversion and alternative sentencing options must, however, be addressed.

Community courts were identified as a government priority in 2004, and in December of that year the Western Cape courts were launched at the Fezeka, Guguletu community court by the Deputy Minister of Justice and Constitutional Development, Advocate Johnny de Lange, who outlined the vision for these courts:

For a long time petty criminal activities were not dealt with as vigorously as they ought to be. The establishment of the community courts is therefore a statement of intent that wherever or whatever petty crime is committed, it will be dealt with swiftly. It gives practical meaning to the concept zero tolerance in our fight against crime.

In other words, the community courts are meant to focus on less serious crimes, based on the concept of 'zero tolerance', which envisages that tackling such offences will help reduce serious crime in the long term. At the launch De Lange also described community courts as "district courts that deal with the same cases as normal magistrates' courts. The

difference lies in the way in which services are integrated."

The deputy minister cautioned that these courts are not to be confused with the informal community justice structures or the traditional courts in rural areas, which assist in resolving less serious disputes. To avoid confusion, De Lange noted that the community courts established by directive of the President would be referred to as 'Hatfield-type courts'. The 'Hatfield model' is based on the American approach to petty crimes, which is believed to help reduce crime in general.

Background and methodology

In May 2005, the Open Society Foundation for South Africa, on behalf of the DOJCD, commissioned an evaluation of the impact of the three Western Cape community courts in Mitchells Plain, Fezeka (Guguletu), and Cape Town. The study aimed to assess the performance of these courts against the objectives of community courts in general (as defined by the DOJCD), which are to:

- address area solutions to crime;
- improve access to justice;
- deliver justice effectively and efficiently;
- prevent urban decay; and
- treat youth offenders appropriately.

The study used both quantitative and qualitative methods, including:

- a document review;
- court observations in all three Western Cape courts as well as the Hatfield, Pretoria court;
- interviews with 56 role-players;
- case analysis of a random representative sample of cases from each court;
- review of SAPS crime statistics on offences prosecuted in the community courts.

This article first presents the results of the review of the Hatfield community court, followed by those of each of the three Western Cape courts. Finally, recommendations are provided.

The Hatfield court

The Hatfield court was established in April 2004 as a public-private partnership project between the DOJCD, the University of Pretoria, the National Prosecuting Authority (NPA), the Department of Social Development, Hatfield CID, City of Tshwane Metropolitan Council, the SAPS and the Department of Correctional Services (DCS).

Staff and facilities

The court is staffed by one clerk, three prosecutors, an interpreter, a magistrate, a Correctional Services probation officer, a social worker, two Legal Aid attorneys, a receptionist, and SAPS court orderlies. The new building has two courtrooms, holding cells, and a number of offices. The diversion service providers are not housed on the premises, but social workers and probation officers refer cases to them.

How cases are dealt with

At its inception the court dealt only with cases from the Brooklyn police station area. A dedicated prosecutor receives all new dockets pertaining to district court cases, and assesses whether they are indeed district court cases, or whether they are of such seriousness that they should instead be referred to the Pretoria Regional Court.

Collaboration between service providers

The accused is assessed as soon as possible (usually within 48 hours of arrest) to decide on suitability for diversion from the criminal justice system. Legal Aid attorneys are available on-site and a Department of Correctional Services probation officer deals with the diversions or alternative sentences of all adults. A social worker from the Department of Social Development is available on specified days of the week for referrals of juvenile offenders.

How the Hatfield court measures up

The Hatfield model has several distinguishing, core characteristics:

- it deals with all district court cases;
- its area of jurisdiction is one police precinct;
- the court is housed in a dedicated building with a full-time magistrate;
- there is integrated service delivery, with all government role-players and the Legal Aid Board based at the court;
- non-government (NGO) personnel are not located on the premises;
- the court practices a restorative justice approach and many diversion and alternative sentencing options are available;
- juveniles and adults are dealt with in the courts;
- cases are dealt with immediately and/or quickly; and
- there is some involvement by and practical support from the business and university community.

The court has, however, begun to deviate a little from the original model for community courts envisaged by the DOJCD. A brief summary is provided below:

- Another police precinct is to be added to its intake area, which may result in an increased backlog and slower handling of cases.
- Postponements appear to be becoming more routine, and for long periods (a week), resulting in accused persons who are unable to make bail being incarcerated.
- The majority of cases in this court appear to involve shoplifting. While this type of crime is not one of the 'lifestyle' crimes that the community courts aim to focus on, it is a problem in Hatfield.

Despite these observations, this court did appear to be functioning as envisaged. The Western Cape community courts operate quite differently, however, particularly the one situated in the Cape Town city centre. Interviews with project steering committee members suggest that a different approach to the Hatfield model has been adopted in the Western Cape, based on perceptions about local needs. The overview of the three courts below shows that although there are similarities, none operate exactly like the Hatfield model.

Mitchells Plain community court

The Mitchells Plain community court commenced operations in November 2004.

Staff and facilities

The court is staffed by one clerk, one prosecutor, a magistrate, a Social Development social worker, a NICRO social worker,² and SAPS court orderlies.³ The court is housed in a prefabricated building and 'wendy' houses adjacent to the magistrate's court and police station.

How cases are dealt with

The offences determined by the NPA that can be dealt with in this court are common assault, less

Table 1: Offences dealt with in the Mitchells Plain community court

Offence	%
Shoplifting	35.6
Common assault	27.8
Drinking in public	11.1
Theft	6.7
Crimes in injuria	3.3
Possession of dagga	3.3
Malicious damage to property	3.3
Riotous behaviour	2.2
Trespassing	2.2
Urinating in public	2.2
Possession of illegal weapon	1.1
Child abuse	1.1
Total	100.0

Source: Mitchells Plain community court

serious assault, malicious damage to property, petty theft, petty gambling offences, petty traffic offences, drunkenness, drinking in public, riotous behaviour, failure to comply with a lawful instruction of a police officer, and various train-related offences.

Table 1 shows that the largest offence category handled by the Mitchells Plain court was shoplifting, reflecting a similarity to the Hatfield court. This was followed by assault and drinking in public. Together, these three crimes comprise three quarters of all the matters heard in this court.

Data on the outcome of cases indicate that suspended fines are most common, followed by withdrawals (Table 2). It is likely that diversions are categorised as 'withdrawn'. Community service made up the third most common outcome for cases.

Table 2: Outcome of prosecutions in the Mitchells Plain court

Classification of outcome	%
Fine but suspended	34.5
Withdrawn	29.9
Community service	18.4
Transferred	8.1
Suspended term	4.6
Cautioned	3.5
Dismissed	1.2
Total	100.0

Source: Mitchells Plain community court

Collaboration between service providers

The accused is assessed as soon as possible to decide on suitability for diversion, either by the government social worker or NICRO. When appropriate, pre-court mediation with the complainant and accused takes place. The prosecutor bases her decision on the assessments.

Is the court meeting its objectives?

In terms of its operations, this court is most similar of all the Western Cape community courts to the Hatfield model, in that:

- it deals with a broader range of cases, including common assault and petty theft;

- its area of jurisdiction is the Mitchells Plain precinct;
- it is housed in a dedicated court building and has a dedicated full-time magistrate;
- there is some level of integration with other role-players, except DCS, and although Legal Aid are not on site, their services are available on request;
- the only NGO located on the premises is NICRO;
- it practises a restorative justice approach and has a range of diversion and community service options available;
- cases are dealt with immediately or quickly; and
- involvement of the community is limited.

A key difference to the Hatfield court is that only adults are dealt with, rather than both juveniles and adults.

When measured against the DOJCD's specific aims regarding community courts, the following emerges:

- *Solve the area's crime problems:* The court is beginning to address interpersonal and alcohol-related violence, and the increase in shoplifting is being tackled. The existence of the court has also led the police to re-design their crime prevention strategy with a view to uplifting the community as a whole. It is, however, too soon to assess the impact on crime levels.
- *Improve access to justice:* More cases are being dealt with in Mitchells Plain overall, and interpersonal violence cases are now handled more appropriately through pre-trial mediation and innovative sentencing. The court is also located next to the police station and bus and taxi rank, and there is sufficient signage and seating for the public in the courthouse.
- *Deliver justice effectively and efficiently:* Police report that cases of assault are generally dealt with on the day of reporting. The diversion and alternative sentencing options provided (such as anger management and alcohol and drug rehabilitation) are innovative and restorative.
- *Prevent urban decay:* The key issues in Mitchells Plain are graffiti, shebeens, drunkenness in public and *crimen injuria*. The community court has the potential to impact on the perception of justice, and on behaviour in the community, but it is too soon for the full impact to be assessed.

- *Treat youth offenders appropriately:* This court does not deal with juveniles.

Fezeka community court

The Fezeka court was opened in December 2004.

Staff and facilities

Court staff comprise one clerk, two prosecutors, an interpreter, a magistrate, a NICRO social worker, and SAPS court orderlies. The court is housed in a dedicated building on municipal ground.

How cases are dealt with

The NPA has instructed that the same range of cases be dealt with as in the Mitchells Plain court.

Table 3: Offences dealt with in the Fezeka community court

Offence	%
Drinking in public	31.1
Common assault	23.3
Invalid/no driver's licence	23.3
Dagga	7.8
Malicious damage to property	5.6
Crimen injuria	3.3
Nuisance	2.2
Obstructing police	1.1
Riotous behaviour	1.1
Theft	1.1
Total	100.0

Source: Fezeka community court

Drinking in public, assault, and driver's licence cases are the most frequently prosecuted in this court and together account for more than three-quarters of cases heard (Table 3).

Deferred fines are by far the most frequent outcome in this court, which is of concern given the low socio-economic status of the area. If diversions are included under the 'withdrawn' category, then it is worrying that only roughly a quarter of matters result in diversions. In terms of non-custodial sentences, community service is seldom used as a sentencing option.

Table 4: Outcome of prosecutions in the Fezeka court

Classification of outcome	%
Fine but suspended	47.2
Withdrawn	24.7
Cautioned	14.6
Dismissed	6.7
Community service	2.3
Fined	2.3
Suspended term	2.3
Total	100.0

Source: Fezeka community court

Collaboration between service providers

The accused is assessed as soon as possible by either government or NICRO social workers, to decide on suitability for diversion. The prosecutor bases her decision on these assessments.

Is the court meeting its objectives?

The Fezeka court bears less of a resemblance to the Hatfield model than the Mitchells Plain community court. The following similarities to Hatfield were noted:

- it is housed in a dedicated court building with a full-time magistrate;
- the only NGO located on the premises is NICRO;
- the court deals mostly with adults, although some juveniles were also dealt with; and
- cases are dealt with immediately or quickly.

The differences to the Hatfield model are:

- initially, all district court cases were dealt with, but the court is now limited to a closed list of crime types, predominantly assault and drinking in public;
- it services three police precincts (Manenberg, Guguletu and Nyanga);
- integration with other government role-players is limited to the SAPS; as in the case of Mitchells Plain, Legal Aid are not on site but their services are available on request;
- few diversion and alternative options are used; and
- there is no real community involvement.

When measured against the DOJCD's specific aims regarding community courts, the following emerges:

- *Solve the area's crime problems:* Most of the crimes dealt with are prevalent in the area, but it is unclear at this stage whether the court is having an impact on crime in general.
- *Improve access to justice:* Physical access has improved dramatically with court users in Guguletu and surrounding areas now able to walk to court. Although the court is well sign-posted, there is limited seating for the public. Another positive indicator is that more cases of assault and other contact crimes are being heard than before.
- *Deliver justice effectively and efficiently:* Cases are generally dealt with on the same day. There appear to be few diversion and alternative sentencing options and the court has tended to hand down sentences of deferred fines. An analysis of the November 2005 deferred fines shows that 63% of the deferred fines had not been paid, nor had warrants for arrest been issued for these cases.⁴
- *Prevent urban decay:* Given the lack of basic services in the area, such as public toilets, bus shelters, and adequate and suitable housing, the problem here is the lack of upliftment rather than urban decay.
- *Treat youth offenders appropriately:* This court deals with a negligible number of youth offenders. In general they are immediately transferred to places of safety.

Cape Town community court

The Cape Town court was opened in November 2004 and is the court that differs most markedly from the Hatfield model described above.

Staff and facilities

The court is staffed by: one clerk, one prosecutor, an interpreter, a magistrate, a NICRO social worker, Street People's Ministry (SPM) intake officer, a data capturer, and SAPS court orderlies. The court is housed on two floors of a building that is shared with other businesses.

How cases are dealt with

The offences determined by the NPA for this court are: petty gambling offences, drunkenness, drinking in public, riotous behaviour, failure to comply with a lawful instruction of a police officer, various train-

related offences, pedestrians endangering motorists or themselves, urinating in public, loitering, and trespassing.

*Table 5: Offences dealt with in the Cape Town community court**

Offence	%
Drinking in public	41.1
Public nuisance	26.0
Unrecorded	12.3
Riotous behaviour	11.0
Urinating in public	5.5
Littering	1.4
Obstructing the police	1.4
Trespassing	1.4
Total	100.0

*Excluding Metrorail
Source: Cape Town community court

Table 5 shows that drinking in public is the offence most frequently prosecuted at the court, followed by 'public nuisance'. Unfortunately the next largest category is 'unrecorded', which is concerning in respect of accurate data recording. The types of offences in Table 5 illustrate the extent to which the court is pursuing crimes committed by homeless people – a trend that was confirmed by interviews with a range of stakeholders involved.

*Table 6: Outcome of prosecutions in the Cape Town court**

Classification of outcome	%
Withdrawn	30.4
Cautioned	23.2
Suspended term	15.9
Community service	13.0
Fine but suspended	8.7
Fined	4.4
Transferred	2.9
Dismissed	1.5
Total	100.0

*Excluding Metrorail
Source: Cape Town community court

The most common outcome of cases heard at the Cape Town court is for cases to be withdrawn, followed by offenders being cautioned, receiving a suspended term, and being given community service.

Collaboration between service providers

The accused is assessed at the court to decide on suitability for diversion, either by Department of Social Development social workers, or those provided by SPM or NICRO. The prosecutor bases his/her decision on whether the accused is diverted or prosecuted on the basis of the assessments. If sentencing or diversion involves accommodation at The Haven Shelter, the SAPS provides transport to the offender.

Is the court meeting its objectives?

The following characteristics show that the Cape Town community court differs most markedly from the Hatfield model:

- it deals with a limited range of offences which are primarily by-law related or traffic offences;
- it services three police precincts (Cape Town, Sea Point, Table Bay);
- the building occupied by the court is shared with other businesses;
- integration with other government role-players is limited to the SAPS; as in the case of the other Cape-based courts, Legal Aid are not on site, but their services are available on request;
- a number of non-government organisations, including a religious one, are housed on the premises;
- the restorative approach is not generally followed and a limited number of diversion and alternative sentencing options are available;
- no juveniles are dealt with in the court; and
- most offenders processed through the courts are homeless adults rather than those who have fixed addresses, and most of those arrested appear to spend at least one night in detention.

When measured against the DOJCD's specific aims regarding community courts, the following emerges:

- *Solve the area's crime problems:* The behaviour of homeless persons, which influences perceptions

of safety among residents, tourists and other city users, was raised by the police and the NPA as an ongoing problem. But while homelessness may be a social problem, it does not relate to crime levels in the area.⁵ Thus, unless the Cape Town court measures its success on issues of crime and grime rather than on the most prevalent crime, it is likely to fare poorly on this indicator. On a more positive note, the court is attempting to deal constructively with the problem of homelessness by offering an array of services to assist offenders.

- *Improve access to justice:* In terms of physical access, the court is close to all modes of public transport, and has clear signage but limited seating for the public. In terms of other access issues, the court does not appear to be improving access to victims, because most of the cases heard are 'victimless', such as drinking or urinating in public. While those who live in and use the city for work, business and entertainment may benefit from this approach, the homeless are now being targeted, and have faced more injustices since the court opened.
- *Deliver justice effectively and efficiently:* Cases are processed more quickly here than in the normal courts. This court has virtually no backlog and, based on a court roll analysis, is efficient and effective. However, many accused spend at least one night in detention before being processed – something which may not be cost-effective in the case of petty offences. Another negative factor is that recidivism rates among offenders tried in this court are high. NGOs providing sentencing and diversion options also note a high rate of non-compliance with court orders.⁶
- *Prevent urban decay:* The community court is the first attempt to deal with 'lifestyle crimes' that contribute to urban decay. Given its limited operation and the fact that a public opinion survey was not part of this evaluation, it is difficult to establish the court's performance in this regard. Uplifting the homeless requires support services and prospects for employment and shelter. Programmes to deal with substance abuse are also needed.

- *Treat youth offenders appropriately:* The proximity of the juvenile court to the community court means that youth offenders are dealt with in the former, as it has the resources and infrastructure to deal with juveniles.

Overall, a positive rating

The evaluation has shown that some community courts in the Western Cape are not operating in the way that the DOJCD originally envisaged. This is not necessarily a problem if the courts meet the department's objectives. Furthermore, local conditions and crime problems may necessitate a departure from the prototype model.

Despite problems in several areas (which the recommendations below address), all the courts showed a dramatic growth in understanding of alternative approaches to dealing with petty offences, along with notions of restorative justice. There is also a commitment to the increased use of diversion and alternative sentencing options. However, this is limited by the lack of alternative sentencing and diversion options and the limited involvement of DCS in the project.

Recommendations

The following recommendations were made for the Western Cape community courts in general:⁷

Planning

- Community courts need to be more clearly defined.
- The types of crimes that the courts will deal with need to be more thoroughly identified and analysed.
- All role-players could benefit from an improved understanding of restorative justice, and of the difference between diversion and alternative sentencing options.
- All role-players could benefit from a common understanding of the goals of the community court in their area.
- The DOJCD should explore the feasibility of limiting intake per community court to one police precinct, and for the courts to be located within the precinct they serve. This would ensure the building of relationships, improved communication and integration, and facilitate the effective and

localised handling of cases. It would also ensure that caseloads remain manageable.

- The commitment and participation of key role-players must be secured.

Public education and awareness

- Public awareness campaigns are needed to highlight that certain activities do in fact constitute a crime. Mock trials, like those held regularly by the Hatfield Court, could be held at each court.
- An independent survey of public opinion would be beneficial to gauge the impact of the courts.
- Adequate facilities for public observation of court proceedings should be provided.

Police services

- More feedback from the courts to the police is necessary, especially to ensure that diversion is recorded on the case dockets.
- Case outcomes, as recorded by the SAPS, need to reflect diversion as a 'completion' rather than simply as a 'withdrawal', as is currently the case. Diversions are a positive performance indicator for the police and courts, and need to be recorded to reflect this fact.
- The role of the City Police in the community courts needs to be addressed.

Diversion and alternative sentencing options

- Diversion and alternative sentencing options need to be expanded. They also need to be monitored and evaluated.
- The role of NGOs needs to be defined and accountability mechanisms put in place.
- The provision of community service and other forms of alternative sentencing should be explored with the DCS.
- The problem of homelessness needs to be addressed holistically to avoid that the Cape Town court (in this case) is seen as targeting the poor.

Data collection and processing

- The collection of statistics in all three courts is inaccurate and problematic. A standardised system is needed that includes information about the following for each case:

- date of arrest, and diversion or sentence;
- clarity on what is meant by a 'recycled case';
- the type of crime;
- more detail about case outcomes.

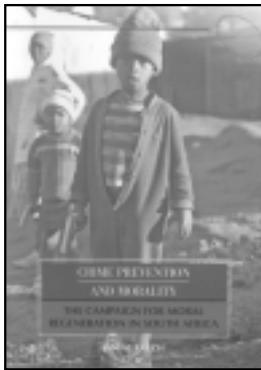
Acknowledgements

This article is based on a report prepared by the authors for the Open Society Foundation for South Africa in July 2005 on behalf of the Department of Justice and Constitutional Development in the Western Cape. The authors acknowledge the assistance of Anthony Sardien, Karam Singh, Hilary Burricks and Nolusindiso Gejengane (LRG), and Michael 'O Donovan (Hlakanaphila Analytics). The co-operation of all those interviewed is also appreciated.

Endnotes

- 1 Lifestyle crimes are those which are usually victimless in nature (such as drinking in public) but may include offences such as *crimen injuria*, and affect quality of life perceptions.
- 2 NICRO stands for The National Institute for Crime and the Rehabilitation of Offenders.
- 3 When the courts opened in 2004, LAB attorneys were not available. UCT and UWC legal aid lawyers volunteered at all three courts for a period of about six weeks. Legal Aid lawyers were thereafter available at the courts until the end of April 2005. Currently, LAB lawyers are not on site but will come to the court on request. This applies to all three courts at present.
- 4 The fact that deferred fines are the main form of sentence is often cited as a reason for NICRO not establishing more diversion options in the area.
- 5 According to the SAPS, the most prevalent crimes are not committed by the homeless.
- 6 For example, a report from the District 6 Shelter indicates that of the 89 people referred by the court to this shelter between December 2004 and May 2005, 67 of them absconded.
- 7 Specific recommendations were also made for each of the three courts, and these can be accessed in the full evaluation report.

RECENT ISS PUBLICATIONS



CRIME PREVENTION AND MORALITY: THE CAMPAIGN FOR MORAL REGENERATION IN SOUTH AFRICA

Janine Rauch, ISS Monograph 114, April 2005

Politicians, religious leaders and social commentators have all spoken about a breakdown in morality in South Africa, with crime as the most commonly cited evidence. The moral regeneration initiative is one response to this crisis, emerging in parallel to countless other initiatives aimed at reducing crime, some of which have themselves contained explicit appeals to morals, values or ethics. This monograph traces the origins and development of the moral regeneration initiative in South Africa, and illustrates that the initiative has suffered from a lack of clarity about both its mission and its strategy. The movement's attempts to build meaningful civil society participation in the campaign have also been a key challenge. The monograph also considers whether a largely ideological campaign of this type will deliver any meaningful results in terms of strengthening social fabric and reducing crime.

TRADITIONAL JUSTICE IN PRACTICE: A LIMPOPO CASE STUDY

Boyane Tshehla, ISS Monograph 115, April 2005

Traditional leadership is an entrenched attribute of governance in African countries. Even with its entrenched status, however the system of traditional leadership presents a challenge to many countries as they try to create a harmonious relationship between this system and the post-colonial dispensations. In South Africa – although legislation exists to govern the incorporation of traditional leadership into the post-1994 democratic dispensation – there remains an intense debate on the issue. As this monograph argues, traditional leaders contribute to several spheres of governance, but their role and potential in crime prevention and the administration of justice is more pronounced. The key question that faces us today must not be whether traditional leaders should perform such functions, but how they can participate in the delivery of local safety.



A MIXED RECEPTION: MOZAMBIKAN AND CONGOLESE REFUGEES IN SOUTH AFRICA

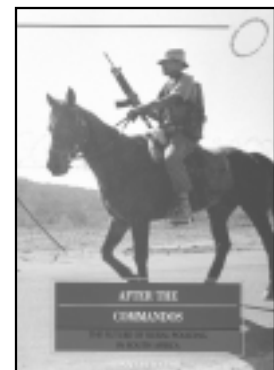
Jonny Steinberg, ISS Monograph 117, June 2005

This monograph reviews existing literature on two episodes of forced migration to South Africa. The first is the reception of between 250,000 and 350,000 Mozambicans during that country's civil war in the 1980s. The second is an influx of people from what is now the Democratic Republic of Congo beginning in the early 1990s and continuing to this day. These two migratory episodes are very different. The Mozambican war refugees were predominantly peasants and arrived during the late apartheid years. Congolese force migrants, by contrast, are largely urban and middle class, and have arrived to a constitutional democracy. There is, nonetheless, a disturbing continuity between the two migrations: in both, migrants' *de jure* status has meant little in regard to how they are received by state institutions and South African citizens alike.

AFTER THE COMMANDOS: THE FUTURE OF RURAL POLICING IN SOUTH AFRICA

Jonny Steinberg, ISS Monograph 120, October 2005

The SANDF's Territorial Reserve, popularly known as the Commandos, is currently being phased out. Its role in rural crime fighting is to be taken over by the SAPS. Using three case studies – Ladybrand in the Free State, the West Rand in Gauteng, and Uitenhage in the Eastern Cape – this monograph assesses the rural crime-fighting capacity that will be lost with the closure of the Commandos, and discusses the manner in which the SAPS will replace that capacity. The central argument is that the SAPS will probably absorb much of the capacity currently contained in the Commandos, but will increasingly use it to police contact crimes in rural town. Resources will be thus shifted, partially and incrementally, away from the policing of agricultural crimes.



SUBSCRIPTIONS TO ISS PUBLICATIONS

If you would like to subscribe to ISS publications, please complete the form below and return it to the ISS with a cheque, or a postal/money order for the correct amount, made payable to the Institute for Security Studies (marked not transferable). Please note that credit card payments are also welcome. You can also deposit your payment into the following bank account, quoting the invoice number and the following reference : **PUBSPAY**.

ISS bank details: ABSA, Brooklyn Court, Branch Code: 634156, Account number: 405 749 8921

Please mail or fax this form to:
 ISS Publication Subscriptions, PO Box 1787, Brooklyn Square, 0075, Pretoria, South Africa.
 ISS contact details: (Tel) +27 12 346 9500, (Fax) +27 12 460 0998, Email: iss@issafrica.org
 Website: www.issafrica.org

▶ PERSONAL DETAILS Title: Surname: Initials:

Organisation: Position:

Postal Address:

..... Postal Code:

Country:

Tel: Fax: Email:

Method of Payment: Visa Master Card Other Specify:

Card Number: Expiry Date:/...../.....

Cardholder Name:

Signature:

▶ PERSONAL DETAILS	SOUTH AFRICA	AFRICAN COUNTRIES*	INTERNATIONAL
African Security Review (4 issues per year)	R 200.00	US\$ 40.00	US\$ 55.00
ISS Monographs (Approx. 15 per year)	R 370.00	US\$ 75.00	US\$ 95.00
ISS Papers (Approx. 12 per year)	R 150.00	US\$ 30.00	US\$ 40.00
SA Crime Quarterly (4 issues per year)	R 115.00	US\$ 25.00	US\$ 35.00
Comprehensive subscription (African Security Review, Monographs Papers and SA Crime Quarterly)	R 800.00	US\$ 160.00	US\$ 210.00

▶ PERSONAL DETAILS	INDICATE COST
African Security Review only	
ISS Monographs only	
ISS Papers only	
Comprehensive subscription (African Security Review, Monographs, Papers and SA Crime Quarterly)	
TOTAL	

▶ **The mission of the ISS is to conceptualise, inform and enhance the security debate in Africa.**

* Angola; Botswana; Burundi; Congo-Brazzaville; Democratic Rep. of the Congo; Gabon; Kenya; Lesotho; Madagascar; Malawi; Mauritius; Mozambique; Namibia; Reunion; Rwanda; Seychelles; Swaziland; Tanzania; Uganda; Zambia; Zimbabwe (formerly African Postal Union countries).



© Institute for Security Studies, 2006

Cover photograph

By Naashon Zalk/PictureNET Africa

Policemen and immigration officials question an illegal immigrant at a border railway station in Komatipoort, South Africa before the illegals onboard are repatriated across the border to Mozambique. Thousands of Mozambican illegal immigrants cross the border into South Africa each year in search of better opportunities.

Copyright in this volume as a whole is vested in the Institute for Security Studies, and no part may be reproduced in whole or in part without the express permission, in writing, of the ISS.

It should be noted that any opinions expressed are the responsibility of the authors and not of the ISS, its Advisory Board, the Trustees, or any funder or sponsor of the ISS.

ISSN: 1-919913-17-3

First published by the
Institute for Security Studies

Pretoria office:

P O Box 1787, Brooklyn Square, Pretoria 0075
SOUTH AFRICA

Tel: + 27 12 346 9500/2 Fax: +27 12 460 0998

Email: iss@issafrica.org

www.issafrica.org

Editors: Antoinette Louw email: alouw@issafrica.org

Bea Roberts email: bea@wisenet.co.za

Design and production: Image Design

Repro and print: Remata iNathi

www.issafrica.org

Price: R30-00

1-919913-17-3



9 781919 913704



**Hanns
Seidel
Stiftung**

