

# Public Security in Federal Polities

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# 7 South Africa

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NICO STEYTLER AND LUKAS MUNTINGH

## Introduction

South Africa is facing a major public safety crisis threatening its constitutional democracy. Personal violent crime (murder,<sup>1</sup> rape and robbery) remains among the highest in the world; corruption in the public service is rife; public protests about poor service delivery are frequent (Powell, O'Donovan, and De Visser 2015), widespread, and often turn violent; xenophobic attacks occur frequently (South African History Online 2015); and industrial strike action has also resulted in violence.<sup>2</sup> Devastating natural disasters have, fortunately, been infrequent.

The state institutions concerned with public safety and corruption are located mainly at the national level, but perform poorly to meet these diverse challenges. Moreover, the national government's response to crime has focused almost exclusively on law enforcement, neglecting primary, secondary and tertiary crime prevention of a socio-economic nature. The South African Police Service (SAPS), despite its size (nearly 194,000) (SAPS 2015, 309), has been demoralized by corruption from the top to the bottom, it has been politicized, and its public order policing is ill-equipped and inadequately trained to deal with frequent public disturbances. The National Prosecuting Authority (NPA), too, has been politicized, and its success rate is declining (Redpath 2012). The national court system has run up huge backlogs in trying cases and the national

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1 According to the World Bank the intentional homicide rate for South Africa and Columbia (2011/12) is the same at 32 per 100,000 population. See World Bank (2017).

2 The Marikana massacre is the worst incident in recent history. It was investigated by the Farlam Commission of Inquiry. See Marikana Commission of Inquiry (n.d.).

Department of Correctional Services does little more than warehousing a large and growing prison population of some 42,000 people awaiting trial.<sup>3</sup> Sentenced prisoners seldom receive the necessary services to reduce the risk of reoffending after release.

Against this backdrop, the provinces play a very limited supervisory role over the SAPS, but metropolitan municipalities are emerging as state institutions that are increasing their complementary role to the SAPS's efforts to combat crime through their own police forces.

However, the public, living in fear and defenceless, has sought protection elsewhere; there are now three private security personnel for every police officer (News24Wire 2015), and for those who cannot afford the privatized security, mob justice is often an attractive option.

It is thus argued that the public safety state apparatus is in crisis, as it is experiencing "a relatively strong decline in (followed by unusually low levels of) legitimacy" (Boin and T'Hart 2000, 13). It will be further argued that, given the crisis in the national public safety institutions, a more decentralized response is emerging from the bottom. The opposition-held Western Cape province and City of Cape Town (but also other metropolitan municipalities) are forging ahead, exploring the limited constitutional space they have with a more independent stance on public safety, initiatives opposed by the national government that seeks to centralize all public safety institutions. However, further decentralization will not by itself provide the answer; the transformation of the central institutions as non-political, professional institutions providing a public service will have the greatest impact, along with a coherent all-of-government approach to addressing the root causes of poverty and inequality.

### *Nomenclature*

A number of terms are used in the broad field of public security. In the first democratic government, the old name of Minister of Police was replaced by the "Minister of Safety and Security," a title that lasted fifteen years, when the name reverted to the old, as a sign of being tough on crime. The provincial ministries responsible for policing oversight are often referred to as "Community Safety." The private "security"

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3 During 2014/15, the department had an annual average of 42,077 unsentenced inmates. See DCS (2015, 9).

sector is also concerned principally with crime. The general trend is thus that references to “public security” or “public safety” (often used interchangeably, or jointly) have a narrow meaning, focusing directly on crime. Disaster management, dealing with natural and man-made disasters, are usually not included in either concept, and in practice are handled exclusively under the national and provincial departments concerned with local government. In this chapter, then, we use the term *public security* to encompass matters that are linked to crime, which is also our main focus.

### *Main Public Safety Risks*

Crime and the fear of crime occupy significant space in the South African discourse, and with good reason. Since 1990 there has been a dramatic increase in violent as well as property crimes. Reflecting on crime levels post-1994 Altbeker (2007, 12) concludes, “Every piece of reliable data we have tells us that South Africa ranks at the very top of the world’s league tables for violent crime ... [It is] an exceptionally, possibly uniquely, violent society.”

From four victimization surveys between 1998 and 2010, perceptions of safety revealed, first, that more than 40 per cent of households surveyed believed that crime had come down in their area from 2008 to 2010, but 32 per cent believed it increased, and 26 per cent that it remained the same. Therefore, even though a notable proportion perceived an improvement in the crime situation in their area of residence, nearly 60 per cent saw no change or deterioration. Second, 63 per cent of South Africans feel unsafe when walking in their neighbourhoods after sunset, primarily for fear of being robbed. Undoubtedly this fear affects people’s behaviour and the extent to which they can enjoy life in the area in which they reside. This reality of fear is recognized by the national government (National Planning Commission 2011a, 245).

The high levels of crime are, no doubt, attributable to South Africa’s socio-economic conditions – not general poverty, but rather one of the highest levels of income disparity (income Gini coefficient 57.8) (UNDP 2014, 170), with nearly half of its 50 million population living in poverty evenly spread across urban and rural areas. Public protests about poor service delivery, as well as a lack of housing and jobs, are almost a weekly occurrence throughout the country, with the trend that they turn increasingly violent (Karamoko 2011). Labour disputes are increasingly accompanied by violence. Adding to the woes of the poor are

the millions of undocumented migrants from neighbouring countries, notably Zimbabwe, who compete for scarce jobs, boiling over in 2008 in widespread violent and often fatal xenophobic attacks, threatening to erupt again following the economic downturn since 2008, which saw the loss of over a million jobs.

With crime rampant and public order ever under threat, the SAPS and other national institutions in the criminal justice system are making slow progress in the battle against crime. The SAPS, reflecting much of the civil service, is riven with corruption from top to bottom. Two national commissioners have lost their positions as the result of corruption, and the last one is being investigated to determine if she is fit to hold office.<sup>4</sup> In 2011/12 more than 600 police officers were arrested in Gauteng province alone on criminal charges (*Legal Briefs* 2012). Not only is the police service marked by corruption, but also with ineptitude and lack of training. Crime detection rates are abysmal, as a fifth of the 25,000 detectives are untrained (Essop 2012, 2), resulting in low conviction rates.<sup>5</sup> Public order policing is also inept, as evidenced by the police killing of thirty-four striking mineworkers on 16 August 2012 at Marikana in the North West province. However, the police arrest some 1.6 million people annually, but the majority of these arrests are for crimes less serious than shoplifting (SAPS 2011, 66) – a practice that suggests that arrest targets are chased to demonstrate impact, rather than tackling major crime problem areas that would show effectiveness. The SAPS is consequently spending significant time and resources on crimes that do not pose a serious threat to public safety.

The NPA does not engender much confidence either. In recent years the performance of the NPA has seen a decline, as measured by the number of prosecutions and the number of offenders sentenced to

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4 The former police commissioner, Jackie Selebi, was given a fifteen-year prison sentence in December 2011 for corruption, because he received cash from a known mobster in exchange for information and protection. He was released on medical parole in early 2012 and died in January 2015. His successor, Bheki Cele, did not fare much better and was dismissed after for maladministration. The appointed head of Crime Intelligence, Richard Mdluli, was suspended and under investigation for using a crime intelligence slush fund to fund his family and girlfriend (apart from a murder charge, which was inexplicably dropped by the NPA). Following the Marikana massacre, the national commissioner, Riah Phiyega, was suspended and was subsequently found not fit to hold office (Khoza 2017).

5 For example, in a number of Cape Town townships, 1,469 murders cases were opened over five years, but only 11.8 per cent resulted in convictions (De Wee 2012, 5).

imprisonment. From 2004/5 to 2010/11 the number of cases finalized by the NPA (obtaining a verdict) declined by 13 per cent, or just more than 50,000 cases. The decline occurred whilst the change in the rate of violent crime showed negligible variations.

Against the backdrop of an ineffective state, the safety needs of communities, individuals, and businesses have created an enormous demand for private security. Armed with guns and flak jackets, private security officers patrol streets, respond to alarms, and provide a sense of security for walled-in communities. The demand for public safety created a high growth sector in the otherwise sluggish economy, and there are now 2.5 private security operatives for every police officer. For the majority of the population who cannot afford privatized police, self-help becomes the only option. Unlike private sector security, which can legally provide only preventive services, community justice includes punishment as well. In a three-month period (May to July 2012) in impoverished Cape Town townships, which are also poorly policed, fourteen suspected criminals were most brutally executed in vigilante actions (Maregele 2012, 3; *Cape Times* editorial 2012b, 10). In this sorry tale of institutional failures, crumbling social cohesion, and the unraveling of the constitutional state, South Africa's constitutional system of devolved government hardly features; provinces have no police force of their own and may only perform a limited role in supervising the SAPS. Most of the metropolitan municipalities have established metropolitan police forces with restricted powers, and even these powers are under the threat of centralization.

It is argued that the roots of the centralized criminal justice system are to be traced to the repressive and ignominious policing practices of the apartheid past. The negotiated "revolution" that led to the creation of the system of multilevel government (national, government, provinces, and local government) established a unique system in which provinces have no policing powers: they have the power to monitor national policing but without any sanctions. This "federal" design has showed no fruit yet and is unlikely to do so. What is of general significance, however, is the response to the failure of centralized policing: first, a victimized population has turned to private security or to vigilantism. Second, there are limited but telling signs that metropolitan police forces are increasingly picking up the slack and going even beyond their constitutional mandate. It is further argued that in a situation of poor performing provinces and the majority of municipalities, the decentralization of policing does not provide the answer to better

public security. Greater effectiveness of the national police force and increasing the role of local police forces may provide a partial solution, but most importantly, a disconnect between combating and preventing crime should be bridged. This would bring provinces into a whole-of-government approach to crime.

### Historical Roots of the Centralized Public Safety System

The design of the security state in the 1993 and 1996 Constitutions was firmly embedded in the context of the pre-1994 history of the repressive South African state. During the apartheid era the national security establishment, comprising the South African Police (SAP), the South African Defence Force, and intelligence agencies, supported by the courts, was central to keeping the apartheid state afloat. In the 1980s the main focus of national security was on the low-intensity civil war and uprisings in the black townships. The repressive apartheid security apparatus was complemented and bolstered by black ethnic-based police forces of the four “independent” homelands and ten self-governing territories. Being under the control and in the service of the South African security apparatus, they, too, became targets of the liberation movements and black communities.

Among the principal features of public safety during this period are first, very tight control exercised by the centre over all security matters. This control did not lie with the national cabinet but with an inner group of “securocrats,” the State Security Council – a case of centralizing the centre. Second, within the closed community of securocrats, secrecy and the absence of accountability were the order of the day. The impunity that followed led to the emergence of covert and clandestine operations that mirrored the death squads of Chile and Argentina (Steytler 1990). Third, the role distinctions between the SAP and the Defence Force disappeared. When the police failed to quell internal protest, their efforts were complemented by the Defence Force in patrolling the black townships with white conscripts. At the same time the SAP drifted into a militarized mode of functioning. Fourth, the police and defence forces in the black homelands were an integral part of the apartheid state, and their defence of their meagre spoils of the apartheid system was as repressive as those of their white counterparts. The emergence of local security forces in black townships added to the toxic mix. The illegitimate local councils in black urban townships were allowed and encouraged to employ ill-trained and poorly equipped armed personnel to



suppress popular revolts. The outcome of these features was the narrow construction of public safety, focusing largely on white interest and homeland survival, thereby failing to serve the security concerns of the majority of the population, and ignoring the socio-economic drivers of crime and a lack of safety.

The unbanning of the liberation movements in 1990 saw the negotiations towards an inclusive democratic South Africa. Responding to the apartheid regime that sought to establish a type of ethnic divided-and-rule federalism through “independent” homelands and self-governing territories, the liberation movements (the African National Congress [ANC] in particular) fought for a centrist state that could build national unity and redress the ravages of apartheid. The white minority government, along with some ethnic homeland leaders, sought to retain a grip on some levers of power through a federal system. The outcome of the “negotiated revolution” was a hybrid state, displaying some federal elements within a strong central state structure; nine provincial governments were established with allocated powers, but a strong central supervisory hand was secured. The federal elements in the Constitutions were, paradoxically, the result of a process of devolution. Although, on paper, South Africa was in 1990 a fractured state, comprising a white-dominated state, in addition to fourteen self-governing black territories, the very object of the liberation war was to establish a united, non-racial state. The constitutional settlement of 1994 was thus at one and the same time a unification of ethnic and racial structures into a single non-racial South Africa, and a devolution of limited power to nine provinces. The same scenario also played itself out in the security arrangements.

From 1990 the major policy imperative about the reshaping of public safety was the need to democratize policing, by making the police transparent and accountable to the communities they served. “Community involvement” in decision-making became the mantra of reform during the 1990s. As to suitable methods, opinions differed. On the one hand, there was the fear of a centralized police force that could be abused for narrow political ends. Arguments were thus advanced for the unbundling of the SAP, and mooted the model of the fragmented police force in England and Wales. This model was not, as in England, coupled to a federal state structure. The countervailing argument was the need for central control to ensure stability and peace in a country that was at war with itself. The notion of a provincial police force was out of the question. Given the high level of ongoing conflict at the time

in KwaZulu-Natal (between supporters of the ANC and supporters of the Inkatha Freedom Party, which collaborated with the apartheid regime), the illegitimacy of all the homelands' security forces and the fear of renegade provinces with their own armed forces, one national police institution that exercises direct-line authority over all armed forces was the only real option on the table. The concept of community-based policing suited the overall project of democratizing the state and led, among other things, to changing the name of the SA Police to the SA Police *Service* (SAPS). These policy choices were reflected in the interim Constitution of 1993 as well as the final Constitution of 1996. However, a measure of path-dependency was apparent. The new democratic wine was poured in the old apartheid bottles; the past forms of centralist control and an emphasis on crime combatting at the expense of crime prevention, were never abandoned and shaped the range of changes during the next two decades.

### Constitutional Landscape of Public Safety Institutions

The 1993 interim Constitution was in essence a peace agreement between the ANC and the white minority government. Provinces were established as a compromise, and consequently they received limited powers over the national police force. It provided that the South African Police Service (SAPS) would be "structured at both national and provincial levels" and would function under the direction of both the national and provincial governments (section 214(1) interim Constitution). The powers of provinces included approving the appointment of a provincial police commissioner, passing legislation not inconsistent with national legislation on the functioning of the police in the province, directing the activities of the police commissioner, and approving the establishment of local (municipal) police services, with powers limited to preventing crime and the enforcement of local by-laws.

The 1996 Constitution, adopted by the democratically elected Constitutional Assembly, watered down the provincial policing competency considerably. This was in line with an overall downgrading or hollowing out of provincial competencies, reflecting the ANC's reluctant compromise on provinces, and strengthening the role of local government. The point of departure was that "the security services of the Republic consist of a single defence force, a single police force and any intelligence services established in terms of the Constitution" (section 199(1) Constitution). Furthermore, "security services must be structured and regulated

by national legislation" (section 199(4) Constitution). Responding to a legacy of impunity, a governing principle of national security is that it is "subject to the authority of Parliament and the national executive" (section 198(d) Constitution).

The shift to the centre affected provinces' role in and influence over policing. While policing remained a concurrent function of the national and provincial governments, provincial powers are limited. First, a consultative duty is imposed on the national executive to take into account "the policing needs and priorities of the provinces as determined by the provincial executives" (section 206(1) Constitution). A province has a reciprocal entitlement to liaise with the national minister responsible for police on crime and policing in the province.

Second, the main provincial function is that of oversight. A province is entitled:

- (a) To monitor police conduct;
- (b) To oversee the effectiveness and efficiency of the police service, including receiving reports on the police service; and
- (c) To assess the effectiveness of visible policing (section 206(3) Constitution), which includes the establishment and maintenance of police stations, crime reaction units, and patrolling services (as defined in section 219(2d) interim Constitution).

To effect its oversight role, a province may also investigate complaints of police inefficiency or a breakdown in relations between the police and any community. It cannot act upon any findings with any sanctions, but is limited to making recommendations to the responsible national minister.

Third, on a more proactive level, a province may "promote good relations between the police and the community" (section 206(3) Constitution). The result is thus that the provincial role was designed to be a good, ineffectual, arm's-length away from the "hard side" of policing in South Africa.

In line with local government's enhanced status as a sphere of government alongside the national and provincial governments (section 40(1) Constitution), the Constitution also provides that national legislation must make provision for municipal police services. The South African Police Service Act of 1995 thus mandates any local or metropolitan government to seek the approval of the provincial government to establish a police service. Municipal and metropolitan police

Table 7.1. Competencies of Three Levels of Government

Level of government	Crime prevention: law and practice	Investigation and arrest: law and practice	Public order: law and practice	Oversight: law and practice
National	Policy	SAPS	SAPS	Civilian secretariat; Independent Police Investigations Inspectorate
Provincial	Social services	None	None	Department of Community Safety (limited in practice)
Local	Social Services	Some limited instances	Limited	None

forces are subject *mutatis mutandis* to any regulations that the minister of police may issue in respect of the SAPS under the SA Police Service Act. The functions of a municipal police service are traffic policing, subject to any legislation relating to road traffic; the policing of municipal by-laws and regulations that are the responsibility of the municipality in question; and the prevention of crime. The Act affords municipal police officers the legal powers of arrest, search, and seizure within their area of jurisdiction or with permission of another municipality outside their jurisdiction. They are allowed to make arrests but must hand over any arrested person to the SAPS. They cannot investigate crimes and are required to hand over any case to the SAPS. Table 7.1 sums up the competences of the three levels of government with respect of policing as well as the practice that is discussed below.

While the institutions of armed force reside at the national level, provinces and local government must address the socio-economic conditions that engender crime. The principal functions of provinces are education, health services, social development (including social services), housing, roads, and transport. Municipalities are mandated to provide basic municipal services such as water, sanitation, electricity, and municipal health services. While these levels of government have only their toes in the security waters, they must stem the social tide of crime. Although there is a constitutional disconnect between the two functions, some provinces and metropolitan municipalities (metros) are willing to wade a bit deeper into the muddy and treacherous crime waters, as described below.

## Metrics, Fiscal Dimensions, and Developments

A policy linkage between crime and socio-economic conditions was the point of departure of the first democratic government of Nelson Mandela (Rauch 2001). There were great expectations from the 1996 National Crime Prevention Strategy (NCPS), and government departments and civil society would rally around it. The NCPS articulated a dual approach where more effective law enforcement would be balanced with addressing the social causes of crime. It would unavoidably require a long-term approach, but this long-term view resulted in diminished political support for the NCPS.

The high violent crime rate and public demands for action prompted the government to opt for more visible short-term strategies focusing on priority crimes as described in the National Crime Combating Strategy (NCCS) of 2000 (Du Plessis and Louw 2005). By the late 1990s the initial political support for the balanced approach of the NCPS had fizzled out.

While the NCPS was in substance and approach inclusive of the three spheres of government and non-governmental organizations, and balancing law enforcement with addressing the social causes of crime, the NCCS was exclusive in defining government's response to crime as a SAPS function. In effect, the national government had monopolized the policymaking on crime and safety, defining it as a law enforcement problem and marginalizing crime prevention (Frank 2003, 15).

A further consequence was that the overarching policy framework (the NCPS) to steer responses from the three spheres of government to crime and safety effectively disappeared. If a requirement for effective policymaking is that it should be joined-up by taking a holistic view looking beyond institutional boundaries to the government's strategic objectives and seeks to establish the ethical, moral, and legal base for policy (Bullock, Mountford, and Stanley 2001), the national government's response to crime and safety did not achieve this. Instead of overarching and cohesion-building strategic objectives, the emphasis on law enforcement and the prominence given to SAPS proved to be divisive and unable to guide responses to crime and safety.

With the emphasis on combatting crime, the SAPS has grown significantly over the last decade to nearly 200 000 employees, or 372 officers per 100,000 population. This is well below the recommended UN standard of one police official per 500 persons, but as already noted, there

are serious concerns about their effectiveness and adherence to constitutional requirements for human rights and good governance.

The SAPS budget has grown by leaps and bounds, resulting in a more than four-fold increase since 2002/3, in a trend reflective of government's emphasis on law enforcement as the crime management strategy (National Treasury 2002, 2017). The increase in the SAPS budget was, however, not accompanied by a concomitant increase in provincial safety and security budgets. The centralization of control over safety and security was therefore very much reflected in a centralization of the budget by the national government. Comparatively, the Western Cape budget for public safety does not constitute even 0.5 per cent of the SAPS budget (Western Cape Provincial Legislature 2012).

The increased spending on national crime combatting is no doubt a result of the centralized nature of policing. Consequently, there has been no significant increase in provincial spending. As explained below, with provinces having hardly any of their own revenue, crime levels, which may differ between provinces, also do not feature as an element in determining the equitable share of each province. Although such a block grant is unconditional, the provinces' discretion is very much limited by expenditure constraints imposed by national standards and obligations in the key areas of education and health. The result is that there is hardly any revenue to improve public security significantly.

Oversight structures operate at a number of levels but without much tangible results. First, there are two civilian bodies, the Civilian Secretariat for Police (with a mandate to monitor and evaluate the functioning of the police) and the Independent Police Investigative Directorate (formerly Independent Complaints Directorate) to investigate serious allegations against police officials. Second, political oversight is performed by Parliament. Third, independent constitutional bodies – the auditor-general and the public protector, and the SA Human Rights Commission – perform oversight functions.

### *Provinces*

Given the emphasis on combatting crime and the absence of an overall crime prevention strategy, the scope for provinces to play a meaningful role is minimal. Each province has established a department of public or community safety (often in combination with traffic police), but comprises civilian employees only. Little is publicly visible about how provinces exercise their oversight, and judging from their budgets, this is

not surprising. The budgets of the departments responsible for policing comprise a minuscule item in the provincial budget. The Western Cape Department of Community Safety, perhaps the most active in the country, consumed 0.84 per cent of the 2010/11 provincial budget, of which 53 per cent was spent on traffic officers. These figures have not changed much over time, as little effect is given to the oversight mandate.

This limited budget is sourced from national transfers to provinces. In a case of extreme vertical fiscal imbalance, provinces receive on average 97 per cent of their income from national transfers through both untied block grants (80 per cent) and conditional grants (20 per cent). None of the conditional grants are linked to policing.

### *Local Government*

As the crime combatting door is slightly ajar for local government, most of the metropolitan municipalities have established metro police services, and Cape Town is seeking concertedly to get its foot further through the door. Metropolitan police services were established in Johannesburg (2001), Cape Town (2001), Ethekewini (Durban) (2002), Ekurhuleni (East Rand) (2002), Tshwane (Pretoria) (2002), and Nelson Mandela Bay (Port Elizabeth) (2003). Only one local rural municipality, Swartland, has followed suit. The number of police officers is not insignificant. For example, Johannesburg has in excess of 4,400 officers, Cape Town 1,400, and Nelson Mandela Bay 720. The training of the metropolitan police is effected by the municipalities themselves, but in terms of regulations prescribed by the SAPS. The majority of metro police officials were absorbed from the municipal traffic departments, and concerns have been expressed about the quality of the training they receive. Discipline is at times suspect, illustrated by the temporary police officers of the Ethekewini Metro Police (Durban) who threatened in August 2012 to burn down city hall if their demand of permanent appointment was not met (IOL 2012b).<sup>6</sup>

Given the number of officers, the expenditure on metro policing is considerable. Having real police officers on the beat, the expenditure by the city of Cape Town, for example, on policing and fire protection was 7.8 per cent of their 2008/9 budget, with half of that on policing.

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<sup>6</sup> In 2008, when the Ekurhuleni Metropolitan Police Service went on strike and blockaded roads, a violent confrontation erupted between it and the SAPS with an exchange of fire.

Expenditure on social welfare (which falls outside the constitutional competence) was less at 2.3 per cent. The expenditure is covered by the municipality's own revenue collected mainly from property taxes. An additional expenditure is the employment by the municipality of private security companies to provide security in particular neighbourhoods, so-called city improvement districts. In a partnership with the ratepayers in a particular neighbourhood, who are willing to pay a surcharge on their property rates, the municipality contracts a security firm to provide additional security for that area. These have been popular in inner city districts as well as wealthier suburbs, although their impact has been little more than crime displacement.

Given the uneven service provided by the SAPS, metropolitan governments are seeking to fill the vacuum within the available constitutional space (and beyond). The city of Cape Town, under the control of the main opposition party, is at the forefront of such initiatives. It distinguishes between traffic officers, law enforcement officers, and metro police officers both by uniform and job description. While the law enforcement officers are concerned with the enforcement of municipal by-laws (and prevent illegal land invasions) and the traffic police with traffic, the metro police officers have bigger fish to fry. They, according to the city, "work closely with SAPS on serious criminal issues with a strong emphasis on crime prevention," which includes holding roadblocks to search vehicles for illegal firearms and drugs (*City News* 2012, 5). In 2012 it increased its budget for a Gang Task Force to crack down on gangs and the drug trade (Nicholson 2012, 5). The most audacious initiative yet was the establishment of a unit to fight abalone poachers along Cape Town's 300 km coastline, because nature conservation falls squarely in the lap of the provincial and national governments, both of which have shown an ineptness in preventing the decimation of this shellfish delicacy.

Unlike the lack of coordination between combatting and preventing crime, metropolitan governments are better placed to draw the linkages. For example, the city's anti-crime initiatives are broad; through by-laws on inner city dwellings, places of ill repute are closed down. Through the municipality's central strategic planning document, the Integrated Development Plan, anti-crime strategies are forged through proper township planning, the erection of street lighting, and nuisance legislation. A further example is the Violence Prevention through Urban Upgrading Project, initiated in 2006 by the city of Cape Town, which aimed to reduce crime and increase safety levels in designated areas



of Khayelitsha, and to upgrade neighbourhoods, improve social standards, and introduce sustainable community projects to empower the local residents.

Other metropolitan governments also focus on the social side of crime prevention. One aspect has been the need for ex-prisoner reintegration. The city of Johannesburg has, for example, recognized reoffending as a significant threat to public safety. Under its Human Development Program, the city lists numerous services aimed at reducing vulnerability and could also benefit former prisoners, such as the vulnerable households support program, skills development program, and youth development program.

Whereas the national government is likely to resist further local government intrusions in the policing domain, the placement of the metro police forces under national control is in the cards. At the ANC's Policy Conference in 2012, the party resolved that there should be a single police service. The reasons advanced by the ANC Western Cape delegation was that there was no uniform training of officers, and serious crime scenes were botched because there were no prescribed and mutually agreed upon standards between the SAPS and metropolitan police on how to handle such scenes. It therefore called for the municipal, metropolitan, and traffic police to be placed under the command and control of the national commissioner of SAPS (Hartley 2012, 4). The Democratic Alliance (DA), which governs the city of Cape Town and Western Cape province, saw it as yet another attempt to seize powers of a functioning municipality in opposition hands (Ndenze 2012, 5). For commentators it was yet another example of the ruling party wanting to be in control of all law enforcement bodies (Johan Burger, quoted in Hartley 2012, 4).

### Intergovernmental Relations

With no police force of their own, provinces' monitoring role of the SAPS is embedded in intergovernmental relations. This relationship must be played against the constitutional framework of cooperative government between the three spheres of government (see [chapter 3](#), Constitution). More specifically, the Constitution provides for an intergovernmental committee (a MinMEC), consisting of the national minister and the members of the (provincial) Executive Committee (MECs) responsible for policing, with the aim to ensure "effective co-ordination of the police service and effective co-operation among spheres of

governments" (section 206(8) Constitution). Such a committee has been established and meets regularly, but its impact on the functioning of the SAPS is limited. The MinMEC meets two to three times a year, and then nine MECs compete for space on the agenda and the ear of the minister of police. With such limited opportunity and time for discussion, it is unlikely that provincial, let alone local, crime and safety matters will receive adequate analysis and discussion. It is reported that, except for rare instances, there is little evidence that the SAPS has tailored its strategies to local needs (Paremoer, Africa, and Mattes 2012, 137).<sup>7</sup> As with MinMECs in other sectors, the national minister usually dominates his or her ANC colleagues in eight provinces. The Western Cape, the only province under the control of the main opposition party, the DA, has had little impact on strategic decisions. As there are no separate police forces whose coordination and cooperation must be secured, the forum is about the provinces' oversight function. This makes for fraught inter-governmental relations, because it is the only example in the Constitution where the usual hierarchical monitoring relationship is turned on its head – provinces monitoring the national government.

Although oversight includes the fairly intrusive appointment of an investigation or commission of inquiry, a province has few substantive remedies; it can make recommendations to the national police minister and introduce removal proceedings against a provincial commissioner, but it cannot fire the incumbent. A further dampener on vigorous monitoring is that if the province's good efforts pay off in improved policing, the SAPS, rather than the province, will garner the credit for improved performance. No evidence has emerged of any success of this model of reverse supervision.

Even where a province seeks to exploit the constitutional space of oversight, it's a rocky road. In ANC-controlled provinces, exercising this oversight role operates within a strong centralized party system. Even the DA-controlled Western Cape has encountered national resistance to its initiatives, as they are perceived as politically motivated. It

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<sup>7</sup> One example comes from the Western Cape. Nationally, the SAPS decided to abolish a number of specialized crime-fighting units, including one that focused on gang-related violence. While Cape Town has a very high murder rate, the location of these crimes is confined to a few townships where gang violence is rife, as mentioned above. The Western Cape minister for community safety thus decried the national decision to abolish the specialist gang unit, because it would prejudice local policing efforts to combat gang violence (De Wee 2012, 5).

makes, of course, political sense for the DA to improve policing in the Western Cape; its national platform for expansion is a record of better service delivery, and achieving more effective policing through its oversight activities could be received well by electorates in other provinces demoralized by ineffective policing. The Western Cape's first initiative was a draft bill in 2012 on community safety, which aimed to formalize the oversight function. On adoption in 2013, the law's constitutionality was questioned by the national minister, but this was overtaken by the province's third initiative described below. The second action was the call by Premier Helen Zille (the national leader of the DA) for President Zuma to deploy Defence Force troops in certain townships where gang warfare raged seemingly beyond the control of SAPS. The request was turned down as being unnecessary. The third initiative was the appointment by Premier Zille in August 2012, contrary to the wishes of the minister of police, of a provincial commission of inquiry into the poor state of policing in Khayelitsha, the largest black township in Cape Town and site of numerous incidents of mob justice. The minister sought unsuccessfully in the Western Cape High Court for an interdict to stop the commission because, among other claims, the province did not follow the appropriate intergovernmental procedures of consultation. The minister then took the matter to the Constitutional Court,<sup>8</sup> but was unsuccessful, and the commission went ahead. The judgment confirmed the powers of a provincial premier to establish a commission of inquiry as is provided for under the Constitution.

### Policy Case Study: Disaster Management

In the field of disaster management, all three spheres of government are drawn into a single system to deal with threats to and breaches of public order. The prime example has been the widespread xenophobic attacks in 2008 against foreigners in black townships. The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism noted in 2007 that South Africa's undocumented immigrant community had grown rapidly since 1994 and could be regarded by some as a threat to security (Schenin 2007). Moreover, there were indeed notable xenophobic

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<sup>8</sup> *Minister of Police and Others v Premier of the Western Cape and Others* [2013] ZACC 33, 2013 (12) BCLR 1365 (CC), 2014 (1) SA 1 (CC) (1 October 2013).

sentiments, posing further threats to security. Six months after the special rapporteur published his report, widespread xenophobic attacks took place in Gauteng and Western Cape provinces in May 2008, and large numbers of immigrants from elsewhere in Africa were killed, injured, and internally displaced. Since 2008 xenophobic attacks have occurred sporadically in various parts of the country.

The xenophobic attacks brought provinces and local government to the foreground. While the restoration of law and order was the responsibility of the SAPS, municipalities, with the assistance of provinces, had to cope with large numbers of displaced foreigners, by providing food and shelter and commencing the long process of reintegrating them in communities. This brought to the fore the role of provinces and municipalities in managing a disaster, which was very different from the usual ones of drought, fire, and flooding.

“Disaster management” is a concurrent national and provincial competency. Some of the associated services such as ambulance services are an exclusive provincial competence, while firefighting services are again a municipal function. The national government has regulated this functional area through the Disaster Management Act of 2002. Coming into operation in 2004, it established a hierarchical system of disaster management centres. At the apex is the National Disaster Management Centre, located in the national department concerned with provincial and local government, responsible for the coordination of the system including provincial and local disaster management centres in metropolitan and district municipalities. The establishment of local centres is thus a result of a legislative assignment that municipalities have experienced as unfunded mandates. The Act also provides for the declaration of national, provincial, and local disasters.

The intergovernmental as well as hierarchical nature of the system is recognized also in the establishment of an Intergovernmental Committee on Disaster Management, which is appointed by the president and comprises the responsible national minister, provincial ministers, and representatives from the municipalities. With the national minister as the chairperson, the committee is accountable and must report to the national cabinet.

When it comes to the funding of the system, the principle established in the Act is that the national, provincial, and local organs may contribute to response efforts (including assisting one another), but repairing damage to public sector infrastructure is the responsibility of the affected organs of state. Requests by provinces and municipalities for

financial assistance are considered by the national government, guided by a number of factors including the magnitude of the disaster and whether the provincial or local resources have been exhausted.

The disaster management system reflects at the same time a strong centralized element of coordination, but also the need for provincial and local involvement. As a national disaster is yet to be declared, the focus has been on provincial and local disasters. With almost no discretionary funding, provinces have become reliant on national financial assistance to cope with provincial disasters. Municipalities are more capable of dealing with disasters, but argue that this function was assigned to them without proper compensation. Again, with limited provincial discretionary funding, municipalities look at the national government for financial support.

Although there has been no declared national disaster, in every case of a provincial or municipal disaster, there is usually a combined response of the three levels of government. Except in cases such as drought relief where only the provincial and national government would be involved mostly through financial aid, disasters affecting human life, such as severe flooding, will draw in the national SAPS, provincial ambulance services, and local rescue services. Operations are managed at a local or provincial level through a coordinating committee comprising the parties involved.

### Overall Assessment

By all accounts, the current, much centralized system to secure public safety is, euphemistically put, not working. A more accurate description is that South Africa is experiencing a public safety crisis. Not only do levels of violent and fear-inducing crime remain unacceptably high (although some declines are noted), the institutions of state responsible for addressing crime and public safety are experiencing rapidly declining levels of legitimacy. In particular, reference is made here to SAPS as the government embodiment of a “law and order” and “get tough on crime” strategy. Apart from this approach being ineffective, there is a growing chasm between the population in general, and specifically disgruntled communities with reference to their socio-economic position, and law enforcement. They have resorted to self-help by enlisting the private security where they can afford it and, on occasion, mob violence where they cannot. Some provincial governments, notably the opposition-held Western Cape, are seeking to take their monitoring mandate

seriously, while metropolitan governments are devoting increasing resources to combatting crime through their metropolitan police services. The national government is contesting the expansive interpretation of the constitutional provisions.

The question then arises whether the very centrist nature of the state's efforts at securing public safety is the root cause of the problem. Does the answer, then, lie in the decentralization of policing?

Centralized policing in a broad sense would appear to be a major cause of the problem. First, there are fundamental problems with the substance of current policies addressing crime and safety, as well as the processes of policymaking. The national response to public security has been to combat crime, a policy conceived and implemented without an all-of-government (and society) approach. Second, there is evidence that the SAPS has been ignoring provincial and local priorities, and therefore has been unable to bring down specific manifestations of crime. Equally important, SAPS has essentially failed to engage constructively with community-based stakeholders, such as community-based organizations and thus aggravated its own legitimacy woes.

Is the decentralization of crime combating and prevention, then, the answer? For the National Planning Commission (NPC) the answer does not lie down this avenue, but rather in the reinvigoration of the national institutions. At a national level the various organs of state that constitute the criminal justice system do not cooperate well by effectively coordinating effort. Moreover, in many respects the SAPS lacks professionalism and is plagued by poor management and corruption. The specific accountability institutions are also failing in their task. In the NPC's analysis, the lack of effective provincial oversight is not a contributing factor. This is not surprising, as the NPC's *Diagnostic Report* decries the lack of capacity and abundance of corruption in provinces to perform even their basic functions of providing effective education and health services. The implicit view is that moves towards decentralizing some policing functions to provinces will exacerbate the problem in most provinces. Thus, in the NPC's *Vision 2030* the provinces feature only in the socio-economic responses to crime. The NPC's five priorities to achieve a crime-free South Africa are:

- Strengthening the national criminal justice system, by ensuring better cooperation between the police, prosecution, judiciary, and correctional services;
- Making the police service more professional;

- Demilitarizing the police service;
- Building safety by using an integrated approach, focusing on the fundamental socio-economic causes of crime; and
- Building community participation in community safety. On this score municipalities are expected to play an important role in establishing community safety centres to build safe and healthy communities.

The NPC's approach of double-tracking state endeavours to secure public safety (policing remaining a central responsibility, while tackling the socio-economic causes of crime is an all-of-government task) resuscitates the inclusive and context-sensitive approach of the 1996 NCPS in terms of which provinces and local government must intervene to deal with the roots of crime within their functional areas. We are in agreement with this approach, but would add the codicil that a modest asymmetrical devolution of policing powers to capable metropolitan governments may add some value to address localized crime conditions. This will also bolster the policing powers already claimed by provinces and cities who are responding to the needs of their fearful and despondent residents.

With respect to the second track of crime prevention, the need for a coordinated approach by all spheres cries out. The first step towards public safety will be to recognize that there is indeed a crisis at hand. Recognizing a crisis, and doing so quickly, would bring a number of advantages, the most important being that it creates the opportunity and the pressure for innovation – for policy decision-makers to consider options that have hitherto fallen outside the prevailing paradigm. The second step is the non-centralization of policy formation – an approach that emphasizes inclusivity of all spheres of government as well as the citizenry, in an effort to build a common vision of a more just South Africa.

The final question that should be addressed is the significance of the South African experience for an international audience, particularly for other developing countries experimenting with federalism. First, it was the correct approach to have adopted a strong centralized police force immediately after democratization of the state in 1994. State authority had to be established, and competing police forces may have contributed to the continuation of instability, which is usually the hallmark of national peace transitions. Furthermore, where constituent units are newly established, weak, and corruption-ridden, it is unlikely that

they will be able to provide adequate public safety at all. Second, it is wrong, however, to exclude provinces from policing decisions altogether. In a large country where social and economic dynamics, manifested in crime rates and crime types, differ from province to province, close cooperation between the provinces and the national police force is essential. The position was appropriately reflected in the interim Constitution where the emphasis fell on the joint direction of the national police force by the national and provincial government. Third, the inclusion of the provincial governments in policing by vesting them with an oversight function (without sanctions) is bound to be largely ineffective. By turning the largely hierarchical relationship between the national government and provinces on its head, it may lead inevitably to a conflictual rather than a cooperative relationship. Fourth, when the national police force has almost the exclusive task of crime combatting, and they fail in that task, it follows that victimized citizens will seek to secure their own safety through private means, which leads to greater inequality (the wealthy buy their security) or greater lawlessness (the poor resort to vigilantism). Fifth, a further, more positive response is local governments can step into the breach to secure their communities. Such a development would, however, depend on breaking the centrist paradigm of the national government. Finally, as public insecurity is a multifaceted phenomenon, entailing political, social, and economic factors, federated states can produce public security only through a whole-of-government approach that deals with both combatting and preventing crime.

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