Community Justice and Community Policing in Post-Apartheid South Africa

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1 Introduction

The focus of this article is on two forms of 'community policing' in an African state, which is both in transition from authoritarian to less authoritarian rule and experiencing a rapidly increasing level of crime. Its purpose is to highlight the difficult choices available to states with limited resources of both a human and infrastructural nature. There have been several forms of community justice in South Africa over the last century. They have usually taken on two shapes: community efforts to perform policing or quasi-policing roles on the one hand, and dispute settlement structures on the other. The focus on policing does not imply, of course, that criminal justice can be separated, in poor communities, from the whole range of informal 'reciprocal dependencies' which poor people create to meet their needs. Maintaining social peace, dispute settlement and economic self-help are linked, forming a social glue in the lives of the poor almost all over the world (Stevens 2000).

2 Tracing the Development of Community Policing in South Africa

Community policing can be divided into two sub-types, defined as follows: *community policing* is any form of sustained partnership/consultation/ liaison between local residents and the local state police (Malawi, Uganda, South Africa and pre-referendum Zimbabwe (2000)). *Community-initiated policing* refers to civilian forms of policing (not for commercial gain) outside of a partnership with the state. Therefore it includes vigilantism, and what became labelled in South Africa as 'urban terror'.

Non-state forms of policing go to the heart of the social contract in each country. They arrogate to themselves the use of force within a framework that is, at worst, of their own making and unaccountable to the state, and at best, within the law. There are huge incentives for such structures to commodify the violence they wield. When they do this, they become a form of organised crime, or, as in the case of Mapogo ma Tamaga[1] in South Africa, they become a form of abusive commercial security (Minnaar 1999). Once the spectrum of civilian policing initiatives is placed next to the spectrum of types of state in Africa – from democracies and

one-party 'democracies' on the one hand to kleptocracies and felonious states on the other (Bayart, Ellis and Hibou 1999) – the notion of policing gets subsumed under the term 'governance', depending on the scale of the operations. The term 'policing' is probably best replaced, therefore, by a term that refers more to the guaranteeing and reproduction of a particular type of order.

2.1 Community policing
The pre-legislation phase of community policing in South Africa

The manner in which community policing was introduced in South Africa was different to the manner in which it happened in Malawi (Chingaru 1999), or any other country for that matter (Brogden 1999). Brogden argues that policing styles are highly context and history specific. Introducing the same 'model' into different historical and cultural contexts results in very different applications of that model.

South Africa's political transformation took place by means of a negotiated settlement, which resulted in agreements by which all the former policemen and women, good and bad, of the apartheid regime were entitled to be part of the new South African Police Service (SAPS). The fact that community policing was introduced almost simultaneously with the advent of democratic rule gave it an added significance. Community policing was regarded by local communities as the style of policing that would replace authoritarian policing. It also implied that local civilian participation in the control of the police would be high, given the rhetoric of politicians during the pre-election period.

From 1990 onwards, a significant concern of the government-in-waiting was that the security forces could stage a coup if the new democratic government won by a significant majority in the 1994 election.[2] It was also considered important to reduce the power of the security police by the time of the installation of the democratic government. Thus it was regarded as necessary to install a form of civilian supervision over the police and, until the Secretariat for Safety and Security was established to carry out that task in 1996, the Ministerial Advisory Group (MAG) played that role from 1994.

The MAG had limited capacity to effect wide-scale policy changes and as a consequence the idea of community policing remained relatively undefined until 1994, when the Interim Constitution established some broad parameters for it. However, the SAPS had already established a community policing division in 1993, and the period from the beginning of 1993 to the end of 1994 became one in which competing images of community policing were brought into the nascent community policing forums. Curiously, the Community Policing Division, which was created at the same time as the Security Police,[3] was reduced to a third of its original size in a pre-election 'taming' strategy. Nearly two thirds of the new Community Policing Division, and almost all of their senior staff, were drawn from the former Security Police.

From a police point of view, community policing took on a post-Cold War intelligence-gathering character in which the community would hopefully become the 'eyes and ears' of the police. Communities venturing into community policing in those early days had a very different view. After all, the police had always been the most tangible and visible form of the state in poor communities, as well as the most hated and mistrusted. The agenda of these communities was therefore to reverse the imbalance of power the police had over them, and make the police accountable to their needs. The stage was thus set in those early days for protracted power battles in the new Community Policing Forums (CPFs). The first and most celebrated CPF was formed in Manenberg, Cape Town, a working-class 'Coloured' township in the classic apartheid style, with high crime levels but also high levels of civic consciousness.

The battles in the CPF in Manenberg, which lasted for more than a year, revolved around issues of control. In the early phase, the police were adamant that they should control the whole process, that the community should automatically forgive and forget the atrocities of the past, and 'turn a new page'. Communities, on the other hand, were determined to let the police know about their past failings, the atrocities, the cover-ups, the fizzled-out investigations of abusive policemen, and the torture of political detainees and non-political suspects (Foster and Davis 1987; Fernandez 1990). At one

level, two years before the Truth and Reconciliation Commission (TRC) came into being in 1995, mini-TRCs were being lived out at each police station, often resulting in policemen being transferred to other stations where their past was not known or not as contentious.

What this early phase boiled down to was the community literally and figuratively wanting to penetrate the space of the hated police agency, in a sense to tame (and shame) them and to make them accountable to the needs of the community. This can also be interpreted as the phase in which a human rights discourse was introduced to police agencies by their local communities. Communities also attempted to use some form of censure on police officers who they considered had performed poorly, or were not listening to the needs of the communities, leading to open confrontations at police stations. Once they had achieved this, to varying degrees, a certain element of de-demonisation of each side took place. It must not be forgotten that during the apartheid years the police had been inculcated with rather strange attitudes towards the communities. In their training colleges the image of the hunter and the hunted became the governing relationship between themselves and the black communities. Community members were referred to as 'hase' (the Afrikaans word for rabbits), the subtext being that these are the people that need to be chased, hunted down (Training Evaluation Group 1996).

Commencement of projects

The second phase in the development of community policing was one that focused on the communities expressing their priorities to the police. There was again a learning curve for the police, seeing that they had expected the hierarchy of needs to coincide with the most serious crimes, such as murder, armed robbery and the likes. But when some communities in poor residential areas expressed the view that rape constituted the crime that worried them most, the police were floored, seeing that rape, and any form of sexual or domestic assault was considered entirely peripheral to the interests of the police. They certainly did not constitute 'real' crimes as far as the police were concerned. It was only the commitment of CPFs and other NGOs that pushed through joint training sessions on how to improve the handling of

sexual crimes, and the provision of facilities such as victim rooms.

Once CPFs got to the stage where they embarked on projects, communities had begun to understand the limitations under which police usually worked. That was a crucial turning point, when the constant barrage of criticism changed to a willingness to help create the conditions which would supposedly enable the police to do their jobs better.[4]

It was then that communities started helping to raise funds for the police, and when that became impossible according to the law, they created private companies to supply the police with the things that had been prioritised. In poor communities that usually translated into more volunteer help rather than funding.

Beginnings of a legislative framework and foreign-funded community policing projects

By May 1994 when the Interim Constitution was adopted, a legislative framework for community policing had begun to fall into place. The Interim Constitution was fairly explicit about what structures should be created, and obliged each police station to create a broadly representative forum in which it could interact with communities about their safety needs and concerns. There was, however, nothing else to guide station commissioners about what to do other than hold meetings and respond to community requests. Many issues were left to the interpretation of both sides and were negotiated, with varying outcomes. It was this gap in knowledge that seemed to prompt some foreign governments to support the creation of projects that would help bring about the wide-scale NGO assistance to CPFs, province by province. The first was in Gauteng Province (1995), followed by the Western Cape (starting April 1997), followed by other selected provinces.

What that in fact meant was that the British and Dutch Governments provided funds for the NGO community to train community members about the notion of community policing and help them develop strategies to decide on their needs, and communicate these needs to the police. Although formal training of the police could not take place

through these schemes[5] they did attend workshops and meetings facilitated by the project teams.

This phase coincided with legislation and training manuals becoming available to both the police and community groups, and a more regulated process of introducing community policing became more widespread. Most of these provincial projects lasted around two years. The funders assumed that the state would have adopted community policing and the police would have begun considering it as a new paradigm for their future approach to local communities.

The assumption was not a valid one. The police were involved in a comprehensive transformation of their entire policing system: staffing, restructuring, coming to grips with an evidence-based form, of investigation rather than a confession-based form were among their priorities. They were experiencing the pains of affirmative action, and a limited degree of lateral entry from the former liberation movements. Moreover, the Truth and Reconciliation Commission was a sword of Damocles hanging over those policemen and women who had committed human rights atrocities or violations. It was a time when their attention was far more focused on their own career needs and travails than on serving the community.

Essentially the police were paralysed, feeling betrayed by the old regime for not taking responsibility for the explicit and implicit instructions of the apartheid era. At the same time they were feeling let down by the new regime for introducing so much uncertainty. They were faced with a confusing barrage of new laws without receiving the necessary training as to how to implement the new procedures. So what they did, in general, was to err on the side of inaction whenever they had the chance.[6] Whether as a result of the policing vacuum or independent of it, the crime rate in the country rose dramatically.[7]

The police had initially taken the view that Community Policing was a communications and liaison strategy only. Consequently, only the station commissioner and the community policing officer considered themselves to be bound by it. All other branches of the police continued their work unconcerned by the hullaballo about community policing. Moreover, there were specialised units such as the public order police or special investigative units (drugs, serious violent crime, visible gang units, child protection units) that considered themselves not accountable to local communities because they were regional units. Their actions in precincts, which they did not communicate to their precinct commanders, compromised the codes of conduct that precinct commanders had agreed to for their staff.

The view of the police had always been that community policing was a soft approach to crime. The greater pressure on the police thus occasioned them to believe that community policing was not suited to the tough conditions experienced in the townships (TEG 1996). In the rural areas the old power balance between the police, the business community and the local government on the one hand, and township populations and farm labourers on the other, remained virtually unchanged from the apartheid days.

The growing pressure on the police to get tough on crime from 1997 onwards resulted in the notion of community policing changing, or rather reverting to an 'eyes-and-ears' approach. Even the national Commissioner Fivaz, who was one of the apostles of community policing, increased the frequency with which he used the 'eyes and ears' approach as the dominant image describing police–community relations. The fact that only a fraction of the police had been trained in community policing by 1998 resulted, therefore, in it being more of a public relations strategy than a new policing style. Police in general had no incentives to adopt community policing as their preferred style, nor did the adoption of community policing affect their promotion opportunities.

On the positive side it has to be admitted that community policing did result in some mutual de-demonisation between communities and their local police. It resulted in their understanding each other better and in some strategic partnerships, and it provided the space for some good officers to come out and prove themselves. There were some successful crime prevention campaigns, and some progress in creating projects, particularly the better treatment of victims.

The shortcomings of CPFs, namely that they existed only between the police and local communities, hampered the development of multi-institutional projects, seeing that the police were singularly unfamiliar with and unskilled at working with other state departments and with communities. The idea of Community Safety Forums was therefore developed and is at the time of writing being piloted in the Western Cape. The idea is that all state departments which are needed to participate in crime reduction or prevention ought to be in a forum that discusses, plans and implements partnership projects. The process is again NGO-driven, but there is a move afoot to try and persuade local government to take responsibility for convening and running the Community Safety Forums. It is still uncertain whether they will, but the pressure on them to do so will be high from both national government and local communities.

2.2 Community-initiated policing and vigilantism in South Africa

As is the case with community dispute-resolution structures, community-initiated policing and vigilantism arise out of a perceived failure of the state to provide citizens with the protection they require. Vigilantism is an international phenomenon, not confined to developing countries (Huggins 1991; Zvekic and Findlay 1993; Abrahams 1998). In some cases the civilian policing initiatives are in favour of an imagined quality of order, which its proponents strive towards. An example in South Africa is People Against Gangs and Drugs (PAGAD). Its members' vision of law and order is more extreme than the constitutional order, and PAGAD is prepared to break the law in order to achieve its vision (Nina 2000).

The South African vigilante phenomenon has also had several phases and different manifestations, all shaped by the political realities of the time. It can be divided into two categories: (i) state-orchestrated vigilantism (death squads) by state operatives on the one hand, and state-orchestrated vigilantism by civilians; (ii) civilian-initiated vigilantism by civilian political movements or by social movements against crime.

Broadly speaking, the apartheid era vigilantism took the form of specialised police or military units trying to destabilise and intimidate the political opposition (Pauw 1991), and by sponsoring civilians with an interest (pecuniary, personal or political) to do the same (Haysom 1986). This form of vigilantism seems to be at a low level at the moment, although there are police investigations in progress which reveal current police complicity in arms trading to gangs, and in restaurant bombings in Cape Town during the last few years (Schärf, forthcoming). At this stage, however, such activities seem to be more in their private than official capacities.

The second form, civilian-initiated vigilantism is mainly against the unacceptably high levels of crime. It has different manifestations: taxi drivers taking it upon themselves to track down and punish alleged criminals in Guguletu and other places (1998), or PAGAD assaults on street gangs and drug dealers, mainly in Cape Town.[8]

The third form consists of a range of vigilante organisations which offer their crime-fighting services for a fee, such as Mapogo a Mathamaga (Minnaar 1999). Whether that makes them a private security company, social movement or a vigilante organisation with a fund-raising bent is not certain. What is certain is that they use extra-legal methods of punishment in a context in which the law is seen to be too liberal and the state too weak (Shaw 1996).

The state's response has been predominantly one of spending limited resources on the crime-fighting vigilante movements, and accepting charges only when there is a complaint. But it has devoted a great deal of its resources to what some perceive as a threat to state security and bad for South Africa's image abroad, and hence bad for tourism and investment. Any new state needs to demonstrate that it is hegemonic in terms of political threats to the regime. Given the skittishness of the international investment community, the regime has chosen not to take chances, vulnerable as the Rand is to investor panics or unease.

I am unaware of any approaches to vigilante movements to harness their enthusiasm into a law-abiding mind-set and code of conduct, in

partnership with the state. Perhaps that is still to be witnessed in future. The regime cannot afford to spend more energy on fighting the crime-fighters than it does on fighting the criminals. That is what happened in the case of PAGAD and it is strategically damaging to the police's own success-trajectory.

3 Research Questions

The above discussion raises a varied set of research challenges. Protecting citizens from harm in the different domains of their lives, in different social settings and geographic locations requires an assessment of not only the activities and agendas of state institutions, but also of the forms of civilian social control and social support that pertain to each domain. What the state police do to prevent crime and react to crime is usually only a small fraction of the total effort.

1. In any country under consideration it is important to get a picture of the range of non-state forms of policing/ordering, which might include the following: crime prevention within the law but without working with the state to achieve the goals; crime prevention partnerships with state institutions; vigilantism for a particular vision of order differing from that of the state; private armies belonging to political parties, religious or ethnic groups, specific organisations such as the South African taxi hit-squads, warlords and shacklords; the state army either in its official capacity or through the private actions of some of its officers; private security on a commercial basis. Not to be omitted in Africa are the secret police (or intelligence agencies), either in their official or private capacities. Arguably organised crime enforcers also enter this list, seeing that they are a growing force in Africa, both inside and outside the state (Bayart, Ellis and Hibou 1999).

2. Once some information about these agencies has been ascertained, the pecking order among them needs to be understood, as well as which structure serves which constituency. This would provide a picture of the different places citizens can either shop for justice, or obtain information on the sources and levels of danger to their safety and livelihood.

3. Research questions about policing cannot be raised without looking at the bigger question of governance. If Bratton and van de Walle (1997) are to be believed, then the predominant form of governance in Africa is neo-patrimonial rule. Its impact on the size of the state police, the policing style, levels of professionalism, the priorities of the police, accountability questions and the rule of law are pivotal. What the 'law-in-the-books' says is often subservient to the 'law-as-the-President says it'.[9] Therefore an issue such as corruption by state officials, including the police, is important, but that research should be designed to test the link between the discourse of neo-patrimonialism and the practice of systematic corruption. Comparative research can show how different forms of interventions impact on different forms of neo-patrimonialism.

4. Fairly necessary to any exploration of policing structures is the importance that the state places on its different policing agencies at different levels of government, their respective juris-dictions and the relationships among them. The recent events in Zimbabwe also highlight the necessity to inquire about the accountability of the state policing agencies. Are they accountable to the law first and foremost, to the president himself, to the ruling party, or which comb-ination of the three?

5. Given the resource constraints facing all criminal justice systems in African countries, it is important to explore the partnership options for the state's policing/governance and crime prevention structures. Are there structures in civil society which may be amenable to an alliance with the state policing agencies? How might they be brought into line with the constitutional dispensation if they are vigilantes or arms-carrying neighbourhood watches who share the goals of the police, but use different means?

6. It is not only policing structures that need to have partnerships with the police in order to achieve effective crime prevention. The different forms of local government, be it through traditional leaders or regional councils, have important roles to play. If state police could get into a crime-prevention strategy mode that relies

not solely on reactive or intimidatory policing styles, then all state departments and commercial enterprises could become partners in crime prevention. Of course, the issue of partnerships is not presented here as unproblematic. But when the state itself has minimal capacity and minimal presence in particular localities, one option is to enter into strategic partnerships with local partners who work more or less within the law. Without such partnerships the state risks the growth and perpetuation of mini-fiefdoms, which could prove to be launching pads for opposition parties and/or larger fiefdoms.

7. What is a reasonable time within which to expect criminal justice systems to transform themselves, and what level of support from foreign donors is necessary to ensure successful transformation? What are the measures of success? South Africa is in its sixth year of transforming its police agency and there are *very few* signs of improvement for the better.[10] In part that is not the fault of the South African Police alone, the pace of change throughout the world is increasing, and the state was ill-prepared for managing such dramatic and large-scale changes as were needed. Moreover, the crime rate rose substantially after liberalisation yet the bureaucracy shrank, draining it of capacity to deal with a growing workload. South Africa could learn from other transformations such as Malawi or Namibia (Schärf 1999b).

8. The South African experience of community policing has been substantially greater than that of other countries and a great deal of foreign aid had encouraged the state to buy into the notions of community policing and NGO-based community empowerment. Nevertheless, from 1998 onwards, it has become evident that the initial enthusiasm for community policing is fading and is being replaced by the old 'eyes and ears' notion of partnership. A number of questions specific to the South African situation arise:

9. How can poor communities become active and sustained partners with the police in crime prevention if their participation is voluntary, if they get minimal training and support, if the resources for the crime prevention projects are in the hands of the state or, worse, have to be raised by the community itself?

10. How do communities tackle local crimes when power relationships remain in favour of the perpetrators and the police cannot relate to the problem? Communities in South Africa have proved to be better at keeping 'perpetrator-as-other' out of their communities than they have at dealing with 'us-as-perpetrator' crimes, such as domestic violence and sexual assaults, most of which are committed by people known to the victim. The police have to date shown little commitment and creativity in dealing with gender crimes.

11. How can vigilantes be brought into a more productive, legal and mutually beneficial relation with state forces? The South African experience of trying to negotiate with PAGAD was singularly unsuccessful, despite the national minister of justice being personally involved in its orchestration. The security forces were opposed to discussions and sabotaged them with enforcement efforts (Nina 2000:25–6). A pointer might be a type of 'amnesty for truth', akin to the National Peace Accord phase of 1991–94, followed by a negotiated partnership led by a multi-departmental team, with mediators on call in case of breakdown in the execution of the agreement.

4 Conclusions

The South African experiences of community policing have provided rich insights into the shape of civil society and the nature of a state in transition. They have also provided opportunities for sober reflections on the pace of change, the degree to which large state bureaucracies can transform for the better, and the difficulty of cross-departmental cooperation within the state along both vertical and horizontal axes. Even more difficult for the state is taking on partnerships on anything like equal terms with local residents on issues of justice, crime prevention and safety.

Community justice and community policing are important areas to research if one is working

towards good governance, human rights and safety/security in the countries of Africa. But they cannot be either analysed or researched in isolation from the bigger political issues at both a global and country-level scale. The state in Africa is an enigmatic and problematic entity, yet it remains the power to which, for better or worse, civil society initiatives in quasi-state functions (justice and policing, to name just two) must relate.

Notes

1. The most rapidly growing social/commercial movement against crime in the country. Its response to crime is whipping suspects.

2. Deliberations of the ANC Policing Policy Group, 1991, personal observations.

3. South Africa's equivalent of the East German Stasi.

4. This was taken to an extreme in South Africa's wealthiest suburb, Sandton, where the community provided the police with everything they said they lacked to be more effective and efficient: fast cars, bullet-proof vests, torches, radios, good pension schemes, secretarial and administrative assistance, in short all the toys that were requested, and they ended up with complacent rather than angry and demoralised cops. But the service and effectiveness had not improved! Personal communication, Sandton CPF chairperson, Johannesburg, November 1998.

5. A legislative restriction prevents the state from accepting monies for any particular purpose – thus the monies allocated for police training. (Minutes of joint steering committee meeting, Western Cape Community Policing Project, Mowbray, Cape Town, May 1996.)

6. Detectives' workshop, June 1997, Nyanga police station, Cape Town.

7. Crime Information Management Centre, South African Police Service, *Quarterly Report* 1/97, p.18.

8. PAGAD has also made utterances about the world 'demon-isation of Islamic groups' and wishes to bring about a Muslim state in South Africa (Nina 2000; Johns 1999). Whether the bombs aimed at public buildings (police stations, courts) and restaurants between 1997 and 1999 are attributable to PAGAD is not yet clear, but the general suspicion is high.

9. Interview with Professor Jean Marie Kamatali, Dean of the Faculty of Law, University of Rwanda, March 2000.

10. The Former Warsaw Pact countries are ten years into the transformation of their policing systems, and it looks as if Germany is the only one in which there is some sign of success

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