Challenges to Police Reform in Post-Apartheid South Africa

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The South African Police Force (SAP) played a crucial role in the apartheid system in South Africa by using violence to control people and maintain 'racial' segregation. The SAP's work required constant affronts to the dignity of black and 'coloured' or mixed race South Africans. It is estimated that during the apartheid era only ten percent of the police force was actually involved in "crime detection and investigation."[1] The centrality of police to the apartheid system meant that policing in post-apartheid South Africa required major reforms in order to support the country's democratic institutions and represent the interests of the public. In this essay I will argue that the three main challenges to the ongoing process of police reform in South Africa are police culture, emphasis on community policing and the failure of the government to maintain a commitment to the reform process. In the first section of the essay I will examine the way members of the new national police service, the South African Police Service (SAPS), view one another and their jobs. Next, I will compare the level of service afforded by different community policing frameworks. Finally, I will highlight how the South African government broke with the original vision of police reform in the late 1990s in favour of a 'war on crime.'

Police Culture: Discrimination, Short Cuts, and Nostalgia

Understanding police culture is important to understanding how police practices can differ significantly from law and official policies. In this section I will examine how police culture of the SAPS threatens the SAPS's official goals of representation, accountability, and professionalism. By detracting from the

SAPS's official goals, the culture within in the SAP compromises the organization's ability to protect the rights of South Africans. Culture within a police force includes how police rationalize their behaviour and the way they view their work and fellow police members.[2] It also includes the way police treat the people they encounter in the course of their work and the methods they use in carrying out their work.[3] Examination of police culture in the SAPS reveals that it can differ greatly from official policy.

The ability of the SAPS to represent people from different 'races' as well as gender is strongly tied to the way police view their fellow members. Through the transition process, many members have maintained the belief that 'racial' and gender differences are inherent and determine the ability of individual police officers to do police work.[4] Racial categorization by the state is still a part of public life in South Africa. The four racial categories used under apartheid, White, Asian/Indian, African and Coloured (or mixed race) continue to be used in South African public policy and law in the form of "equity legislation and programmes."[5] Sociologist Monique Marks has recorded the persistence of belief in inherent race and gender differences in her fieldwork with the Durban Public Order Police (POP) unit of the SAPS from 1996 to 2001.[6] Marks noted that members of all backgrounds used racial stereotypes and saw difference as inherent rather than socially constructed.[7] Racial stereotyping included the belief, by members of European background, that Indians lacked the courage and physical capability necessary to police work while members of African background where viewed as "warriors" who, along with whites, possessed the courage and masculinity to be successful in their jobs.[8]

In 2000, six years into the transformation process, the Durban POP continued to have few female members with the majority not working in field operations.[9] A female Inspector, who participated in field operations, identified the feeling that she must outperform men in physical challenges and the way she was never

chosen when tasks involved group work as impediments to her integration in the unit and personal fulfillment in being a POP member.[10] Another female recruit described being kept from operational work by others members, who claimed it was for "'her own safety,'" and repeatedly given the task of making tea.[11] Significantly, these obstacles to women's integration in the POP come from the culture within the police service rather than official policy.

Police culture, including the belief in inherent racial difference, has also affected the way members of different 'racial' backgrounds work together. This is evident in the interactions within the Durban POP. The platoons and companies within the unit did not 'racially' integrate until 2001.[12] The beliefs of upper level managers as well as the social preferences of POP members posed a challenge to integration. In the late 1990s, high ranking members of the Durban POP as well as rank and file members seldom socialized with co-workers who were not of the same 'racial' background.[13] This practice demonstrates that simply integrating units does not ensure that members will trust their colleagues or work efficiently together. The fact that self-segregating tendencies reached into management highlights the failure of management to lead by example in reinventing police culture. In the case of the Durban POP, management was not given diversity training to prepare for integration and "felt ill-equipped to deal with racial tensions."[14] This failure to ease the integration process suggests that both the SAPS and government policy makers could have done more to address the effect of police culture on the process of police reform.

Police culture, specifically the way police view their jobs, also affects the accountability of the SAPS. Police accountability is often discussed with reference to an independent body of oversight or as following the law rather than enforcing the interests of the government.[15] I will focus on the way police view their jobs and how this interferes with their duty to uphold the law. This is

evident in Steffen Jensen's fieldwork among the SAPS in the Cape Flats (townships of Cape Town) in the late 1990s. Jensen found that police at all four levels, including administrative officers, street patrols, the specialized Crime Prevention Unit and detectives, thought of their work as coming under one of two categories.[16] These categories were "hopeless cases" referred to as "kak cases" (shit cases) and "real police work."[17] Kak cases were those that were difficult to solve because they involved multiple parties (i.e. domestic disturbances, arguments between neighbours) or cases that were unlikely to be solved. Police avoided dealing with these cases by filing false reports that witnesses had not returned their calls.[18] Two detectives actually employed illegal means to avoid what they saw as kak cases by stamping cases as dismissed with a stolen magistrates' stamp.[19]

Similarly, in her work with the Durban POP, Marks noted examples of police who did not have a problem acting according to their interests rather than seeking to uphold the law in a timely and efficient manner. Police put off investigating a tip until their arrest statistics were low.[20] She also found some police members willing to avoid actively patrolling because they wanted to make their supervisor look bad.[21] Examples like these show how police culture informs the decisions that police make about the urgency or validity of the complaints they receive based on their personal interests. These decisions in turn affect the ability of average citizens to advocate for their own rights and access formal legal justice. The way police culture circumscribes accountability to the law is also significant given that police are very aware that most poor South Africans do not have the resources to pursue formal complaints against the police.[22]

Police culture in South Africa in the transitional period includes a tendency to be nostalgic for the old ways of policing. Nostalgia for apartheid era methods of policing within the SAPS threatens the professionalism of the organization. It has the potential to undermine new training focused on respect for the

rights of the public that members have received since the end of apartheid. Nostalgia means police often measure their current experiences against those of the past. It should be noted that some SAPS members express the sentiment that their actions under the apartheid regime were regrettable. Even so, members also explain the use of extreme force in the past on the grounds that they were responding to violence in the townships or that they did not see black people as worthy of more even handed responses.[23] The presence of nostalgia for the past does not necessarily mean that police will lapse into violent methods especially when they are adequately prepared for their tasks and given clear orders.[24] The fatal shooting of a student protestor by a member of the Durban POP at the University of Durban-Westville in May 2000 is an example of how attachment to former practices can undermine the democratization of the police. Members of the POP who responded to the protest on campus did not follow the planning and crowd assessment procedures they had been trained in and failed to don the proper protective gear.[25]

Apart from threatening the professionalism of the SAPS, memories of the past also provide a way by which members of the police service can measure the success of policing in the post apartheid era. Comparisons to the past were used to question the value of South Africa's constitutional protections of human rights. Jensen found commanders and supervisors in the Cape Flats in the late 1990s who suggested that they had been more productive prior to the Bill of Rights and the Constitution.[26] These high ranking members of the police were overt in stating that legal protections of human rights were undermining their effectiveness by allowing "'criminals to walk free'" and rendering police impotent in the face of "numerous [legal] technicalities."[27] As we will see, important figures within the South African government came to publically denounce the relationship between protecting rights and policing. This shift created a significant parallel between official discourse on policing and the strains of nostalgia and selective memory found within the SAPS.

Community Policing: Unequal Services

Challenges to police reform in South Africa extend beyond the culture of the police and the behaviour and actions of members. The nature of the institutional framework that provides police services has also affected the prospects for democratic policing in South Africa. In this section I will outline how community policing programs have posed significant challenges to the process of police reform in South Africa. Examination of the most universal of community policing programs, Community Policing Forums, suggests that these bodies have not been able to meet the expectations placed upon them early in the transition process. Yet while this somewhat universally applied form of community policing has foundered, the prominence and legitimacy given to the idea of community policing has contributed to the establishment of unequal police services in different neighbourhoods. This is evident in the contrast between Cape Town's Community Improvement Districts (CIDs) and a street committee in the Guguletu township (within in the municipality of Cape Town).[28]

In the transition from apartheid, community policing was seen as a way to improve the relationship between police and the public and to ensure that the police represent the interests of the public in their daily work.[29] The central role envisioned for community policing in dealing with crime in the newly democratized South Africa is underscored by in the inclusion of articles concerning community policing in South Africa's Constitution, *Police Act* and in the SAPS's Strategic Plan.[30] In 1996, the SAPS handbook described community policing as an "equal partnership between the police and the public through which crime and community safety issues can be jointly determined and solutions designed and implemented."[31] What community policing means for different South African communities is especially important for understanding police reform in South Africa given that "community oriented policing" was the basis of official policy in the democratization process.[32]

The most tangible and universal expression of community policing was the creation of constitutionally mandated Community Policing Forums (CPFs).[33] By 1997, CPFs had been established at all but approximately twenty-one of South Africa's 1221 police stations.[34] The state and police emphasis placed on CPFs has been criticized on the grounds that focus on CPF meetings has taken place without the effort to ensure that community policing ideals of public consultation and accountability to the public are incorporated in all aspects of police work.[35] The CPF's have had limited successes and their achievements are often tied to the income level of the community they serve. Ted Legget suggests the CPFs have been most effective in well to do neighbourhoods where people have the "time and resources to empower the police."[36] CPFs have not been as effectual in rural or poor neighbourhoods.[37]

Generally, the effectiveness of CPFs has also been hampered by police members who seek to use them for gathering intelligence and power struggles within neighbourhoods over who will speak for the community.[38] The problem of conflict over who should speak for the community was compounded in Cape Town in the late 1990s where there were few bodies other than the CPF that allowed for individuals to bring their concerns to the state.[39] Concerns raised in CPFs might extend beyond the purview of the police to "street lighting or poor road maintenance" but municipalities were not constitutionally required to be involved in the CPF.[40] The broad range of concerns presented and the inability of the police to resolve them meant both police and the public became frustrated with the CPF model.[41] In the late 1990s both state and police commitment to CPFs waned. At this time, new legislation curbed the powers CPFs had been granted to hold police accountable and limited their function to consultation.[42] In this period, police involvement in CPFs in both affluent neighbourhoods and townships also declined.[43]

The waning of the powers and emphasis placed on CPFs has not been accompanied by a decline in the formal recognition given to 'community policing' initiatives. The ambiguity of the concept of community policing has also meant that a variety of bodies and approaches to policing are categorized as community policing.[44] This is evident in the contrast between Community Improvement Districts (CIDs) and street committees in Cape Town.[45] CIDs are public-private partnerships that provided services within a designated area. Property owners within these areas are required to pay a levy to the municipality with the funds then being administered by a non-profit organization.[46] CIDs are guaranteed a minimum level of services; if services fall below these levels the CID can supplement or provide these services and then charge the municipality the difference.[47] This system means that business owners in CIDs benefit from both publicly and privately funded police and security services. The public-private aspect of the CID arrangement as well as the guaranteed level of service means private security services are given the same legitimacy as the public police force. This raises concerns around accountability as well as the potential for heightened security presence in the CIDs causing crime displacement to areas outside the CID.[48] Cape Town's city council has effectively prohibited CIDs in residential areas and the expense of an added levy means they are not an option for business owners in townships.[49]

Street committees in the Cape Town township of Guguletu stand in stark contrast to the city's CIDs but they also come under the umbrella of 'community policing.'[50] Street committees date to before the mid-1970s and were developed to deal with the lack of policing that met the needs of township neighbourhoods. Their continued existence points to ongoing disparity in the distribution of policing resources in poor black and coloured neighbourhoods compared to more affluent areas, like the CIDs, that benefit from using public funds for private security work.[51] In Guguletu, street committees act like a court for a cluster of streets and deal with "theft, property damage, physical assaults, child welfare concerns

and contractual disagreements." [52] Police are left out of the process as complaints are taken directly to members of the committee.[53] Potential advantages to the street committee system include an emphasis on restorative justice and cultural values and the high level of human rights training that committee members have received from NGOs.[54] Nevertheless, street committees, like Cape Town's CIDs, raise issues around accountability and equality before the law within South Africa's community policing framework. Under each type of community policing, residents find ways to address crime. However, Cape Town's business districts and the city's townships are not receiving equal benefit from a democratic and professional police force.

Street committees operate without the financial resources of the state funded criminal justice system. In Guguletu, the street committees do not receive financial support from the government, corporations or the community.[55] This lack of resources affects the consistency of committee decisions as they often have to cancel meetings if they cannot secure a meeting place.[56] Moreover, the investment of time in the meeting process can be a considerable burden on those who keep them operating as their 'spare' time is restricted by working and commuting.[57] Township residents involved with street committees do not wish to see a "state monopoly on crime control;" however, they do ask that the SAPS increase staff and resources in their neighbourhoods.[58] This would address the history of consolidating police resources, like station houses, in white neighbourhoods. Moreover, increasing police resources in townships could potentially bring the service levels in these neighbourhoods closer to the contemporary consolidation of public and private police and security services enjoyed by property owners in affluent areas like Cape Town's CIDs.

Government Position on Policing: From Reform to the War on Crime

As we have seen with the restriction of CPFs' powers to hold police accountable, police reform policies have changed over time. In the late 1990s shifts in official discourse and a new law that broadly defined criminality show that incoming government officials did not have the same commitment to protecting human rights as those involved at the outset of the transition process. In 1996, the first National Police Commissioner of the SAPS, J.G. Fivaz, described the goal of police as emphasizing key aspects of democratization. Accordingly, police were to become a:

> professional, representative, efficient and effective, impartial, transparent and accountable service ...[which] upholds and protects the fundamental rights of all people, and which carries out its mission in consultation and co-operation with the needs of the community.[59]

However, in 1999, Steve Tshwete became Minister of Safety and Security and gave voice to a very different expectation of how the police must act. Tshwete's view of how police should treat suspects is clear in what is by no means an isolated statement on his part:

> Criminals must know the South African state possesses the authority, moral and political, to ensure by all means, constitutional or unconstitutional that the people of this country are not deprived of their human rights.[60]

Tshwete's approach to suspects and legal protections for human rights echoed the views of police who maintained the memory of being more effective prior to 1994. Police who felt vilified and left impotent by the post-1994 reforms felt vindicated by Tshwete.[61]

The SAPS website credits Tshwete with improving police morale and "improving their capacity to deal with crime." It also includes a page paying tribute to Tshwete who died in 2002.[62] Marks, Shearing and Wood note that Tshwete alone was not responsible for "the remilitarization of police discourse," but rather it was subsequent police ministers and commissioners and their emphasis on cordon and search operations and increasing arrests.[63]

The shift in government policy from police reform to a war on crime is very evident in the introduction of the *Prevention of Organized Crime Act, 1998*. This legislation makes no distinction between organized crime and street gangs.[64] It also allows for a broad definition of criminality. Under this act police do not need to prove suspects have broken the law. Instead individuals can be arrested and prosecuted for association with particular organizations. According to the act, a "gangster" or criminal can be identified based on the information of a parent or "'reliable informant;'" their place of residence; style of dress and appearance; history of arrests and associations; or through physical evidence.[65] This broad definition of criminality means "poor, young coloured men," who are commonly stereotyped as belonging to street gangs, are at risk of being targeted on the basis of where they live, how they dress and the colour of their skin.[66] *The Prevention of Organized Crime Act, 1998* and stereotypes that collapse distinctions between youth culture and criminal activity both draw on physical appearance and personal associations to identify criminal offenders. It is clear this piece of legislation leaves township residents vulnerable to arrests based on how they look and who they know.[67]

Moreover, enforcing the use of stereotyped knowledge in making arrests through state legislation is likely to help reproduce the stereotyped knowledge of inherent racial and gender difference that is already persistent in police culture. The way this act expands the legal definition of who is a legitimate target for arrest in combination with Tshwete's statements about criminals and

human rights is highly significant to the way police are likely to approach their work and treat the people they encounter. Instead of being required to support the human rights of all South Africans, police are given the message that criminals, defined by race and class, do not have rights and that the police can and should be selective in the attention they pay to the Constitution. Analysis of the wide social impact of South Africa's war on crime as well as the questions of who supports this approach and its likely outcomes is extremely important to understanding the prospects for democratic policing in South Africa; however, these topics are beyond the scope of this paper.

Conclusion

Police culture, the framework of community policing and the government's break with the original vision of police reform all present major challenges to police reform in South Africa. The significance of these challenges is heightened by the complex ways in which they are intertwined. Police culture can prevent police practice from following official policy or slow the implementation of policy as is the case with racial integration and gender representation in the SAPS. If South African police culture were more attuned to upholding the Constitution, rather than following personal rationalizations or the demands of the government of the day, the SAPS would be in a better position to stay on track with police reform in the face of a dramatic shift in the government's approach to policing.

Similarly, the shape that community policing takes is tied to the government's stance on crime as well as police culture. The shift to a 'war on crime' approach to policing supports the privatization of security services manifest in cases like Cape Town's CIDs. The tactics employed in fighting crime support the differentiation of treatment for affluent profit generating business districts and poor areas deemed to harbour criminals. When residents in areas, like Guguletu, ask for increased police presence

in their neighbourhoods they are not asking to be treated according to stereotypes or to have their complaints buried in an 'unresolved' file. This kind of treatment underscores the profound effects of police culture and government policy on the prospects for poor neighbourhoods to realize their aspirations for policing that reflects their needs.

On a more optimistic note, community organizations can make significant contributions to the resiliency of police reform in South Africa. Scholars have noted that the SAPS should expand 'lateral entry' of civilians formerly involved in NGO work and civil society organizing into the police service especially at a managerial level. [68] This is a way to combat the reproduction of discrimination and racial and gender stereotyping within police culture and make police more cognizant of their responsibility to uphold the Constitution. This approach also has the potential to make police more responsive to community needs without perpetuating the community policing model that requires communities with few material resources to police themselves. Maintaining the status quo of prejudice in police culture with little emphasis on accountability in combination with privatized community policing and a lack of government commitment to police reform amounts to 'poor justice for poor people' rather than a democratized police service.[69]

Notes

1 Mark Shaw, *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire*, (Bloomington: University of Indiana Press), 1.

2 Monique Marks, *Transforming the Robocops: Changing Police in South Africa*, (Scotsville, South Africa: University of KwaZulu-Natal Press, 2005), 9.

3 Marks, *Transforming the Robocops,* 9.

4 Monique Marks, "Looking Different, Acting Different: Struggles for Equality within the South African Police Service," *Public Administration* 86, no. 3 (Sept. 2008): 654.

5 Marks, "Looking Different, Acting Different," 644-46.

[6] Ibid., 644.

[7] Ibid., 654.

[8] Ibid., 653-654.

[9] Ibid., 648.

[10] Ibid., 649.

[11] Ibid.

[12] Ibid., 652.

[13] Ibid., 653.

[14] Ibid.

[15] David H. Bayley, *Changing the Guard: Developing Democratic Police Abroad*, (Oxford: Oxford University Press, 2006), 20, 19.

[16] Steffen Jensen, *Gangs, Politics & Dignity in Cape Town* (Chicago: University of Chicago, 2008), 132, 125.

[17] Ibid., 131.

[18] Ibid.

[19] Ibid.

[20] Marks, *Transforming the Robocops*, 164.

[21] Ibid., 204.

[22] Ibid., 248.

[23] Ibid., 150.

[24] Ibid., 152, 155.

[25] Ibid., 161-162.

[26] Jensen, *Gangs, Politics & Dignity in Cape Town*, 133, 135.

[27] Ibid., 135, 133.

[28] Benit-Gbaffou, Claire, Sophie Didier and Marianne Morange, "Communities, the Private Sector, and the State: Contested Forms of Security Governance in Cape Town and Johannesburg," *Urban Affairs Review* 43, no. 5 (May 2008): 701, 710. Anne-Marie Singh, *Policing and Crime Control in Post-Apartheid South Africa*, (Aldershot, England; Burlington, VT: Ashgate, 2008), 93.

[29] Ruteere and Pommerolle, "Democratizing Security or Decentralizing Repression? The Ambiguitities of Community Policing in Kenya," 590. Legget, "Just Another Miracle: A Decade of Crime and Justice in Democratic South Africa," *Social Research* 72, iss.3 (Fall 2005): 588-589.

[30] Mutuma Ruteere and Marie-Emmanuelle Pommerolle, "Democratizing Security or Decentralizing Repression? The Ambiguitities of Community Policing in Kenya," *African Affairs* 102 (October): 590.

[31] Malan, "Peacebuilding in Southern Africa: Police Reform in Mozambique and South Africa," *International Peacekeeping* 6, Issue 4 (Winter 1999): 181.

[32] Legget, "Just Another Miracle," 589. Malan, "Peacebuilding in Southern Africa: Police Reform in Mozambique and South Africa," 181.

[33] Ibid., 590.

[34] Malan, "Peacebuilding in Southern Africa: Police Reform in Mozambique and South Africa," 181.

[35] Legget, "Just Another Miracle," 590. Malan, "Peacebuilding in Southern Africa," 182.

[36] Ibid.

[37] Malan, "Peacebuilding in Southern Africa," 182.

[38] Ruteere and Pommerolle, "Democratizing Security or Decentralizing Repression? The Ambiguitities of Community Policing in Kenya," 181. Jensen, *Gangs, Politics & Dignity in Cape Town*, 144.

[39] Jensen, *Gangs, Politics & Dignity in Cape Town*, 144.

[40] Benit-Gbaffou, Claire, Sophie Didier and Marianne Morange, "Communities, the Private Sector, and the State: Contested Forms of Security Governance in Cape Town and Johannesburg," *Urban Affairs Review* 43, no. 5 (May 2008): 694-695.

[41] Benit-Gbaffou, Didier and Morange, "Communities, the Private Sector, and the State," 694. Monique Marks, Clifford Shearing and Jennifer Wood. "Who Should the Police Be? Finding a New Narrative for Community Policing in South Africa," *Police Practice and Research* 10 no. 2 (April 2009): 151.

[42] Benit-Gbaffou, Didier and Morange, "Communities, the Private Sector, and the State," 694.

[43] Ibid.

[44] Ruteere and Pommerolle, "Democratizing Security or Decentralizing Repression?," 588.

[45] Benit-Gbaffou, Didier and Morange, "Communities, the Private Sector, and the State," 701, 710. Singh, *Policing and Crime Control in Post-Apartheid South Africa*, 93.

[46] Benit-Gbaffou, Didier and Morange, "Communities, the Private Sector, and the State," 695.

[47] Ibid., 710.

[48] Ibid., 703.

[49] Ibid., 699, 701.

[50] The SAPS website lists street committees as "Structures for Community involvement in Policing." South African Police Service, "Sector Policing," South African Police Service http://www.saps.gov.za/comm_pol/sector_policing/sector_policing.htm

[51] Singh, *Policing and Crime Control in Post-Apartheid South Africa*, 93.

[52] Ibid., 97, 104.

[53] Ibid., 104.

[54] Ibid., 105, 107, 108-115.

[55] Ibid., 116.

[56] Ibid., 116.

[57] Ibid..

[58] Ibid., 119.

[59] Malan, "Peacebuilding in Southern Africa: Police Reform in Mozambique and South Africa," 180.

[60] Jensen, *Gangs, Politics & Dignity in Cape Town*, 142.

[61] Ibid.

[62] South African Police Service, "SAPS Profile: History since 1994," South African Police Service, http://www.saps.gov.za/saps_profile/history/ history.htm. South African Police Service, "Tribute to Steve Tshwete" South African Police Service, http://www.saps.gov.za/saps_profile/ tribtshwe.htm.

[63] Marks, Shearing and Wood, "Who Should the Police Be?" 147.

[64] Jensen, *Gangs, Politics & Dignity in Cape Town*, 142.

[65] Jensen, *Gangs, Politics & Dignity in Cape Town*, 143.

[66] Jensen, *Gangs, Politics & Dignity in Cape Town*, 143.

[67] Jensen, *Gangs, Politics & Dignity in Cape Town*, 143.

[68] Marks, *Transforming the Robocops*, 254-255. Mike Brogden, "The Indigenisation of Policing in South African," in *Policing Change, Changing Police: International Perspectives*, ed. Otwin Marenin (New York: Garland Publishing, 1996), 236

[69] Brogden, "The Indigenisation of Policing in South African," 227.