

Submission to the Khayelitsha Commission of Enquiry

1. Introduction

1.1 My name is Jonny Steinberg. I am an Associate Professor in African Studies and Criminology at Oxford University. Among my duties here is to design and teach graduate courses on criminal justice institutions in the wake of transitions to democracy.

1.2 I am a long-time observer of policing in South Africa. Much of my work stems from direct observation of ground-level police work. Between 2002 and 2007 I spent several hundred hours with uniformed patrol and crime-prevention officers on regular shifts in various South African locations, urban and rural.

1.3 I have published widely on policing in South Africa. This material includes a book and as well several articles in leading international criminology journals. I have also written several reports and monographs on policing for the Institute for Security Studies. I have recently been commissioned by SAGE publishers to co-edit a new *Handbook of Global Policing* which will bring together the writings of leading policing scholars throughout the world. My writing on South African policing includes:

Steinberg, J. *Thin Blue: The Unwritten Rules of Policing South Africa*, Johannesburg: Jonathan Ball, 2008.

Jonny Steinberg and Monique Marks, 'The Labyrinth of Jewish Security Arrangements in South Africa: Thinking through a paradox about security,' *British Journal of Criminology*, 54 (2), 2014: 161-179.

Steinberg, J. 'Policing, State Power and the Transition from Apartheid to Democracy: A new perspective,' *African Affairs*, 113 (451), 2014, 113 (451).

Steinberg, J. 'Security and Disappointment: Policing, Freedom and Xenophobia in South Africa,' *British Journal of Criminology*, 2012 52(2), pp. 345-360.

Steinberg, J. 'Establishing Police Authority and Civilian Compliance in Post-Apartheid Johannesburg: an argument from the work of Egon Bittner,' *Policing and Society*, 2012, 22(4), pp. 481-495.

Steinberg, J. 'Crime Prevention Goes Abroad: Policy Transfer and Policing in Post-Apartheid South Africa,' *Theoretical Criminology*, 2011, 15(4), pp. 349-364.

Steinberg, J. 'Perpetually Half-Formed? State and Non-State Security in the Work of Wilfried Scharf,' *South African Journal of Criminal Justice*, 22(2), 2009, pp. 162-175.

2. Informal Settlements and Vigilante Actions

2.1 I have read summaries of each day of the Commission's proceedings. I was struck by the various references senior police officers made to informal settlements and to the problem of vigilante justice, both in their submissions to the Commission and in reply to questions. Senior officers stress how difficult informal settlements are to police. They are not easy to navigate, making it hard to find complainants. There are no street names or numbers and few recognisable landmarks, making rapid response well nigh impossible. Residents do not readily come forward with information, making investigative work difficult.

2.2 Beyond these specific practical impediments, senior officers made more general statements about the atmosphere and the milieu of informal settlements, alluding variously to an inhospitable spirit, high levels of domestic and alcohol-related violence and a proneness to bursts of collective emotion. Suggestions were also made that the density of informal settlements and the scarcity of services provided to them meant that these places were prone to produce avalanches of social need, well beyond the capacities of police to handle.

2.3 One also got the sense, at various points during the commission's proceedings, that among some police officials there was a feeling that the residents of informal settlements were social inferiors, especially in the eyes of police officers who consider their family seats in rural Eastern Cape to be home.

2.4 These observations about informal settlements as places of deep-seated social problems and unnavigable, inhospitable spaces, seemed to me the most important aspects of the backdrop to discussions about vigilante actions.

2.5 There is little doubt that informal settlements are very difficult to police. It has also become clear during the hearings how severely the policing of informal settlements is under-resourced. Reading the daily summaries, though, one grows a little frustrated that more was not said, both about the policing of informal settlements, and, more especially, about the policing of vigilante actions. Listening to police officers' testimony, one can be forgiven for thinking that informal settlements are entirely opaque to police officers, the residents mainly anonymous. Yet we know from the meticulous studies of policing in many other urban settings in contemporary South Africa that there is in every case a complicated filigree of personal connections between various informal settlement residents and individual police officers

and that these personal relationships play no small part in shaping how informal settlements are policed.

- 2.6 These relationships between residents and police do not follow precisely same pattern everywhere. I wish to give a couple of examples to give a sense of the sorts of variations we find in the relationships between the residents of informal settlements and police in contemporary South Africa.
- 2.7 In 2007, I accompanied police patrols for several months in the police station precinct of Reiger Park in Ekurhuleni. The precinct included an informal settlement called Jerusalem. On various occasions, the police officers I was accompanying received calls dispatching them to Jerusalem. One was a reported attempted rape, another a theft, another robbery. In each case, the officers were very concerned not to enter Jerusalem until they knew who had made the call to the police. They would make several cell phone calls until they were satisfied, and would only then drive into the settlement.
- 2.8 In each case, we arrived to a crowd beating a crime suspect in the street. And, again, in each case, the crowd quietly parted on our arrival and allowed the police to arrest the suspect. It turned out that what the police wanted to know was whether the call had been made from within the ranks of the crowd itself. If this were the case, they could arrive on the scene in the knowledge that there was consensus in the crowd that the suspect had received sufficient punishment and that a police presence was required to bring the spectacle to a close.
- 2.9 Later in my research, I discovered that most of these public beatings happened under the auspices of a residents' street patrol. The leader of the patrol was a middle-aged woman who participated actively in the Reiger Park Community Policing Forum (CPF). She told me that her participation in the CPF and her personal acquaintance with police officers provided her with the protection she required to administer street justice. 'The tsotsis know that they must not kill me,' she said, 'because I am a member of the CPF and the police will come after them.'¹

¹ Jonny Steinberg, 'Perpetually Half-Formed? State and Non-State Security in the Work of Wilfried Scharf,' *South African Journal of Criminal Justice*, 22(2), 2009, pp. 162-175.

2.10 It is apparent that in this instance the relationship between police officers and street justice was slippery and complicated and very hard for any of the actors involved to control. It would certainly be wrong to claim that there was a simple alliance between the police and those who executed street justice. But it should be equally clear that formal policing and street justice did not happen in sealed off, separate worlds. There were personal and institutional connections between the two worlds.

2.11 As I say, the situation is certainly not the same in every case that has been studied. There have been instances in the recent past where vigilante groups have been much more formally organised, their relationship with state and party structures more open. In what I regard as the most thorough scholarly study of vigilante justice in democratic South Africa, the anthropologist Laars Buur traced the evolution of the relationship between a well-known vigilante group in New Brighton and other Port Elizabeth townships called the Amadlozi and various state and political party structures.² The Amadlozi would convene trials of suspects at a local primary school before a crowd of several hundred people. They were also notorious for their violent interrogation methods, always conducted out of sight. The support the Amadlozi received from official sources was decidedly mixed. On the one hand, the local police station commander and the leadership of the local CPF denounced the Amadlozi. But for some time the Amadlozi received public support from other quarters, in particular, from the African National Congress branch, from the police area commissioner and from various prominent figures in the community. At one point, the Amadlozi worked out of an office at the local police station. This support fell away after several controversial incidents of street justice. The Amadlozi eventually morphed into a commercial security agency, its clientele drawn mainly from white suburbanites.

2.12 In the most recent thorough study of street justice in South Africa, conducted in a section of KwaMashu township in Durban, Sarah-Jane Cooper-Knock found a far more fluid and impersonal relationship between street justice and formal policing.³ In the vast majority of the cases she studied, the person the crowd was punishing was known to many people in the crowd. Street justice was, in this sense, an

² Lars Buur, 'Reordering Society: Vigilantism and Expressions of Sovereignty in Port Elisabeth's Townships', *Development and Change* 37 (4): (2006), pp. 735–757; Lars Buur, Crime and Punishment on the Margins of the Post-Apartheid, in *Anthropology and Humanism*, 28, (1): (2003), pp. 23-42.

³ Sarah-Jane Cooper-Knock, "Your Child is Getting Killed That Side: Moving beyond "the mob" in South Africa,' *African Affairs*, June 2014, forthcoming.

intimate, neighbourhood affair. Cooper-Knock was interested, above all, in the micro-politics of street justice: who joined the crowd and why. She argued that in some instances, middle-aged women would join indignant crowds in order to deflect attention from the involvement of their own sons in crime.

2.13 Cooper-Knock also argued that a crowd was very unlikely to mortally injure its victim if he was local and he and his family were known. Typically, the way in which a crowd would put an end to the punishment it was inflicting was to call the police, much as I saw in Jerusalem. The police would arrive, the crowd would part and its victim would be arrested and taken to the police station. And so the police came to play a familiar and predictable role in street justice, albeit a role not entirely of its own choosing.

2.14 My point in relaying these examples is not to suggest that police collude in street justice. On the contrary, in many of these cases it seems as if the role the police play is scripted by the crowd. My point is that there is very often a set of ties or understandings or relationships, some stable, others highly unstable, some explicit, but most implicit, between street justice and formal policing.

2.15 It is a shame that it was not possible for the Commission to learn more about the recent history of this relationship in Khayelitsha. As a result of this paucity of evidence, I can only make general comments.

2.16 I wish to suggest in what follows that informal settlements in South Africa have come to be policed according to certain patterns over the last twenty years. I argue further that these patterns push the police into playing a role in relation to street justice that it does not want to play. To put it another way, the police get caught up in a dynamic in which they lose control of their relationship with street justice. They often end up perpetuating street justice, or, at very least, doing very little to reduce its extent, despite their best intentions. The extent to which this is so in Khayelitsha is unfortunately hard to determine given the paucity of evidence. But there are some telltale signs.

3. The Two Goals of Visible Policing: Crime Reduction and the Maintenance of Order

- 3.1 It is habitually said in the South African context that the single most important function of the police is to reduce crime. But it is often forgotten that the uniformed police play another vital role, namely, the maintenance of order.
- 3.2 Not only are these two goals – crime reduction and order maintenance – not quite the same. Policing scholarship has long recognised that there is in fact a tension between them. At the simplest level, the prevention of crime requires police to be proactive, in other words, to anticipate what might happen in the near future and stop it from ever happening at all. Maintaining order, in contrast, is for the large part reactive. That the problem has already happened triggers police action. Trouble breaks out – be it a street fight, a barroom brawl, a domestic argument. Somebody calls the police. Their role is to respond, to arrive on the scene, to use their authority to mould at least a temporary solution to the problem.
- 3.3 To see why there might be a tension between these two roles, we need to go a step further. Thinking in the paradigm of crime prevention requires police officers to understand their environment as one populated by a host of greater and lesser risks. Risks include aspects of the physical environment, like a street without good lighting, or a secluded section of a pedestrian thoroughfare. It includes places, like bars and shebeens. But, most importantly, it includes people: young men who gather to drink, or who are walking in the street and may or may not be carrying guns or knives; young women who walk home alone after dark; workers coming home on payday with cash in their pockets, and so forth. In this capacity, the police are akin to shepherds. I use the metaphor advisedly, for, in this paradigm, ordinary people tend to be seen as sheep; as beings whose movement and behaviour should be bent to the shepherd's will.
- 3.4 Responding to a complaint, in contrast, requires police to understand people very differently. Police arrive on the scene because their presence has been asked for by somebody in need. In this capacity, police are, in the profoundest sense, service providers. And the service they are called on to give is an especially difficult one. They walk into unstable situations where the people involved have lost control. In short time, they have to think and act in ways that put things right, at least for the moment. They are required to deploy a host of skills and capacities: strong authority, possibly controlled violence, combined with more intangible facilities like emotional intelligence and the talent to read a situation.

- 3.5 These two roles not only require two mindsets; they require police officers to switch fundamentally their attitudes towards civilians each and every day. It is well established in police scholarship that this switching of roles is hard, that police cultures usually favour one role at the expense of the other.
- 3.6 I contend that the way crime prevention is practiced in South Africa makes the police's second function, providing a decent service to people in need, well-nigh impossible at times. Crime prevention in most of the various South African police precincts I have studied consists of a smorgasbord of measures, some borrowed from elsewhere in the world, others borrowed from South Africa's past. From American policing, we have adopted the practice of using crime data to map where and when most crimes are committed and to distribute patrols accordingly. From British policing, we have adopted the practice of sector policing partly on the presumption that police officers who get to know a particular area well will acquire the sorts of textured local knowledge that makes finely calibrated risk policing possible.
- 3.7 But from our own past we have borrowed practices, also performed under the aegis of crime prevention, that are very different in nature. These entail gathering uniformed police in large numbers on weekend evenings and unleashing them, aggressively and in paramilitary fashion, on township populations. The various activities subsumed under this paramilitary policing are all justified in the name of crime prevention. For instance, young men are thrown into the back of police vans in large numbers on the grounds that they are drunk; drunk men in public are considered a prime risk factor. They are charged with public drunkenness for the sake of form, but are almost invariably released before dawn, and charges dropped. Shebeens are raided in paramilitary fashion, patrons thrown out of establishments by armed men, beer poured onto the ground in front of proprietors, and this, too, in the name of crime prevention. Young men walking the streets in pairs are rounded upon, thrown against walls and body searched – the crime prevention activity here is the search for guns. The pinnacle of crime prevention South African style is the 'Operation'. Police obtain a cordon-and-search warrant for an entire neighbourhood or shack settlement, seal it off and move in with armoured cars. Each dwelling is visited by groups of armed officers who search bedrooms and kitchens and other private spaces.
- 3.8 These practices are clearly derived from the apartheid era. Why they persist is a complicated matter. One possible reason is simply that old mentalities die hard, not only among police, but among civilians. Some surveys show that many people approve of this robust form of

policing; a strong and aggressive police presence makes them feel safe. Another reason is that gathering police into large formations and unleashing them on townships is managerially easy. It does not present serious logistical challenges; it does not require that police be trained in sophisticated policing techniques, and it builds an esprit de corps among rank-and-file officers. The SAPS is a very large and very centralised organisation. Such organisations notoriously survive on simple, mass reproducible series of tasks. There is a third, more complicated question. Part of the reason officers police in this fashion is that they are afraid. At certain time and places, and in certain situations, uniformed officers on patrol feel unsafe. You do not politely ask a young man you encounter late at night whether he is carrying a gun for he may well draw it and shoot you, a South African police officer may well contend, with some justification. You demonstrate to him that your force is overwhelming. Similarly, you do not cheerfully announce to shebeen patrons that you are closing the drinking establishment down; if you do not show your capacity for overwhelming force, they will defend their drinking establishment and round on you. I think, though, that what police officers who say this often fail to realise is that crime prevention as practised in South Africa makes this situation of mutual fear between police and civilians a self-fulfilling prophecy. To end it, somebody has to climb down, and that somebody can only be the police.

3.9 As long as crime prevention is practised in paramilitary fashion, the second aim of visible policing, providing a service to those in need, becomes more and more difficult to accomplish. To invade an area heavily armed at 11pm and return an hour later to manage a sensitive and unstable situation is not compatible.

4. Crime Prevention, Order Maintenance and the Policing of Informal Settlements

4.1 It is my experience that this tension between crime prevention and the maintenance of order is especially acute in the policing of informal settlements. Police officers are only human. Informal settlements are, as the Commission has heard several times, uncomfortable to police. It is easier entering an informal settlement in a large armed group to raid a shebeen, for instance, than to go alone or in pairs in response to an emergency, where the situation one will confront is bound to be unstable and hard to manage.

4.2 Police managers, too, are only human. It is difficult to motivate one's personnel to do a job they find difficult when an easier way is at hand. Moreover, given how severely under-resourced the policing of informal settlements appears to be, it is understandable that police managers would want to gather the large amount of human and material resources that a formal police operation makes possible to tackle the policing of an informal settlement.

4.3 Policing informal settlements in the form of successive, paramilitary style crime prevention actions thus becomes a force of habit. It is the path of least resistance. The consequences are unfortunate. For the residents of informal settlements, the primary experience of the police is one of crime prevention actions. When there is trouble, or instability, or a dispute, arguably the time when a police presence is most urgently required, it is seldom provided. And so residents attempt to resolve matters themselves. Hence the prevalence of vigilante actions. They occur as a result of an absence, that of the second of the two vital functions uniformed police play, the maintenance of order.

4.4 Which is not to say that street justice is perpetuated only because of the role police do *not* play. On the contrary, whether consciously or not, whether as individuals or as a crowd, those who exercise street justice end up using to their own ends the one function police do perform well in informal settlements – the provision of muscle. You see this in the examples from Reiger Park and KwaMashu of the crowds that call the police to bring to a close their own vigilante actions. And you see it in the instance of the leader of the street patrol in Jerusalem who feels safe to dispense street justice because she has personal connections to local police officers. In these instances, the police end up playing a role, against their own choosing, and despite their best intentions, in the perpetuation of street justice. My contention here is that this happens because of the style in which they practice crime prevention and because they neglect their order maintenance function.

4.5 Whether this dynamic is in operation in Khayelitsha's informal settlements is impossible to tell on the evidence the commission has heard. There are some signs, though, that the police in Khayelitsha do enthusiastically practice crime prevention in the manner described above. The commission has heard that a very large number of arrests are made only for the cases soon to be dropped. In my experience in several parts of the country, this is often the result of the police practice, especially on a Friday and Saturday night, of rounding up young men on the streets and funnelling them into police cells for a few hours, primarily to keep them off the streets during the hours when the incidence of contact crimes is especially high. These young men are, in my experience, arrested for offences such as public drunkenness, only to be released in the early hours of the morning.

4.6 In his testimony, Major-General Peter Jacobs told the police that the preponderance of illegal shebeens contributed to the high murder rate. He said that the police closed such shebeens as a crime prevention measure only to find that they would re-open.

4.7 Major-General Jacobs is right to express frustration. Recent research conducted in Cape Town has shown that the regular closing of shebeens by police almost certainly has little impact on alcohol consumption. If it has any effect, it is to dissuade shebeen owners from keeping large inventories for fear that they will be confiscated.⁴ But closing shebeens does have other consequences. Shebeens are long-established institutions of neighbourhood sociability in South Africa. Shebeen owners are often respected local businessmen and women. The process of closing shebeens is typically confrontational, triggers deep resentment among shebeen patrons and is considered by many to be a violent intrusion upon everyday life. It is one of the many South African-style crime prevention practices that makes the police's second vital function, the maintenance of order, very difficult to perform. To the extent that shebeen closures are widely practised in this fashion in Khalyelitsha's informal settlements, they probably damage police-civilian relations.

5. The role of police in unstable contexts

5.1 Various police submissions to the Commission have made much of the idea that informal settlements are extraordinary places and that those who advocate normal policing for informal settlements do not understand the hard realities. Some police submissions have suggested that taking inspiration from the policing of more stable contexts abroad is inappropriate.

5.2 It should be said that there has been a lively international debate among leading policing scholars and practitioners over the last decade about this very issue. The debate was triggered by the aftermath of the invasions of Afghanistan and Iraq by allied forces in the early 2000s. Following these invasions, occupying forces were responsible for policing cities, towns and villages while at the same time fighting fierce insurgencies. This situation triggered a series of questions about policing in fragile contexts. Is it possible to conduct normal policing in wartime? Can the police conduct ordinary order-maintenance

⁴ Herrick, C & Charman, A 2013 "Shebeens and crime: The multiple criminalities of South African liquor and its regulation," *South African Crime Quarterly* 45 (2013), pp. 25-33.

functions among a population that might be harbouring insurgents?
Does the population have to be pacified militarily before ordinary
policing can begin?

5.3 The conclusion to this debate has been unusually decisive. From United States Army Generals⁵ to the most respected international policing scholars,⁶ there is a consensus that in these extremely unstable situations, the police's order-maintenance functions not only remain possible but become increasingly vital. For the presence of a neutral police capacity that responds to civilian needs is itself a strong force for the restoration of order. Its absence, in turn, deepens disorder.

5.4 South Africa's informal settlements are a far cry from a state of war. There are no occupying forces or armed insurgents in any settlement within the country's borders. If the world's leading policing experts are at idem in advocating normal policing in extremely unstable situations, normal policing in urban South Africa is surely possible too.

5.5 One of the leading scholars in the aforementioned debate, Prof. David Bayley, who has conducted authoritative studies on policing on every continent, has, for many years, adopted a rule-of-thumb measure for whether police are doing a good job: "Do parents tell their kids before they go away that, if they need help, the first place they should look is the police?" He argues that this is the best measure of the state of a police organisation anywhere, whether in a sprawling shantytown or a well-heeled suburban neighbourhood. He suggests that there are, at best, perhaps 15 countries in the world where the answer to this question is yes.⁷ We should aspire that South Africa – all of South Africa, including its informal settlements – join this select group.

⁵ David Patraeus, 'Learning Counterinsurgency: Observations from Soldiering in Iraq,' *Military Review*, Jan-Feb 2006, pp. 1-12.

⁶ David Bayley and Robert Perito, *The Police in War: Fighting Insurgency, Terrorism and Violent Crime*, Boulder and London, Lynne Rienner, 2010; John Braithwaite and Ali Wardak, 'Crime and War in Afghanistan: Part I, The Hobbesian Solution,' *British Journal of Criminology*, 55, 2013, pp. 179-196; Ali Wardak and John Braithwaite, 'Crime and War in Afghanistan: Part II, A Jeffersonian Alternative?' *British Journal of Criminology*, 55, 2013, pp. 197-214.

⁷ Personal communication, April 2010.