

# Cooperation and Accountability in the Cross-border Policing of Southern Africa

Edited by Sean Tait and Elrena van der Spuy



AFRICAN POLICING CIVILIAN OVERSIGHT FORUM



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# 1

## Introduction

*Elrena van der Spuy and Sean Tait*

### **Introduction**

This publication presents seven articles concerning aspects of cross-border police cooperation in the Southern African region, with an emphasis (in part) on the issue of police accountability. As the papers make clear, the policing of crimes and the attempt to further peace in the region by joint action of two or more national police forces has grown apace in recent years. There are now regular joint police operations in a number of the states comprising the South African Development Community (SADC). An institutional structure has likewise been formed that brings together heads of police forces in the region. Numerous international treaties and agreements help regulate this police cooperation, which takes place both on a formal and on an *ad hoc* informal basis. While the emerging system has many flaws, there have also been notable successes, as the contributions demonstrate.

Establishing effective cross-border police cooperation has been a tricky business, complicated by the diversity among the police agencies in the region and their largely under-resourced nature. It is perhaps surprising that in a relatively short space of time it has proceeded so far. This publication examines some of the current events and the extent to which the issue of accountability of police personnel in cross-border activities has been embodied in policing policy and practice.

It is now generally, if not universally, accepted that modern police agencies should strive toward effectiveness while remaining accountable for their actions to the relevant oversight bodies – both internally to the police structures, and externally to civilian and especially legal and political institutions. The intrinsically coercive nature of policing is inescapable, short of utopian societies, but coercion must be subject to limits and its abuse subject to sanctions. How to bring about this accountability is a contentious and difficult matter. This publication documents the halting, imperfect progress of cross-border police accountability in the region, concluding that far more needs to be done in this regard.

## **Police Cooperation and Accountability in a Broader Perspective**

The growth of cross-border police cooperation in the SADC countries mirrors earlier developments elsewhere, and for much the same reasons. Criminal and illegal actions may involve more than one country at any one time. Indeed, much ‘organised’ crime has arisen precisely to circumvent the integrity of national borders. The apprehension of criminals in flight across borders; terrorist activity; money-laundering; the smuggling of drugs, stolen vehicles and livestock; and human trafficking including illegal immigration are only the most notable examples. To combat cross-border crime it is essential that national police agencies evolve effective cross-border cooperation. The creation of Interpol as an international police information sharing body is one of the oldest of such steps.

Perhaps the leading institutional example today of wide-ranging police cooperation is the sophisticated and complex mechanisms put in place among members of the European Union over the past decades. Here an array of Union-wide bodies has been created, with the European Police Office (EUROPOL) as its centrepiece. Specialised units exist to counter illegal drug trafficking (the European Drug Unit), smuggling (the Police and Custom Cooperation Centre), border surveillance (EUROSUR), and finger print (EURODAB) and other information sharing databases. In addition there has been a proliferation of EU-wide training initiatives and multi-jurisdictional investigative teams.

These developments in turn have raised the issue of police accountability. Law enforcement across national boundaries led to fears of an unaccountable international policing brotherhood. The increasing sophistication of technology used by police forces only reinforced the fears of informed commentators about the dangers to civil liberties posed by a shadowy cross-border police presence. As

Monica den Boer<sup>1</sup> has observed:

One of the potential detrimental effects of networked governance is the accountability of legitimacy deficit, which arises from an absence of written rules of process, authorisation, transparency, or judicial review ... Issues of accountability present themselves most acutely in the realm of international informal and intelligence exchange ... The European governance of police cooperation can only become mature if the growth of cross-border police competencies is matched by a professional culture of checks and balances.

## Police Cooperation in the South

The Southern African Development Community (SADC) has played an important role in the post-1990 quest for regional cooperation, including in the sphere of security and between subsidiary organisations such as the police. Compared to European developments, cooperation amongst police agencies in Southern Africa is far less developed. Here police cooperation had to evolve in a region which until recently has been characterised by inter-state conflict and civil strife. Underdevelopment of states and their public police agencies – so characteristic a feature of the African continent – make for institutional weaknesses. Such weaknesses continue to shape the prospects for security cooperation.

The establishment of a multilateral police body in 1995, comprising all police chiefs, the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) is an important structure in the recent trajectory of cooperation. It fulfils the function of a professional association which convenes on an annual basis to discuss issues of mutual importance and plan interventions around regional crime concerns. A variety of challenges confront SARPCCO. Its institutional effectiveness is curtailed by a combination of budgetary constraints, lack of training, limited strategic capacity and a certain lack of political clout.<sup>2</sup>

Limitations notwithstanding, the current picture regarding police cooperation is not altogether bleak. Cooperation between police agencies has over the past decade evolved around a number of issues of concern. Five such issues can be identified: The first relates to the destruction of weapons so common a feature in the first phase of post-conflict reconstruction in the region. Efforts to curb

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1 Den Boer M. (2010). 'The Governance of Police Co-operation in Europe: The Twist Between Networks and Bureaucracies'. In F. Lemieux (ed.), *International Police Co-operation: Emerging issues, theory and practice*. Willan Publishing. pp. 43–44.

2 Van der Spuy E. (2009). 'Police Cooperation in the Southern African Region: Politics and practicalities', *Crime, Law and Social Change* Vol. 51: 243–259.

the trafficking in small arms have been enshrined in a number of bilateral agreements. A second focus of cooperation has been organised crime. Under this broad umbrella the focus of cooperation and exchange has included the cross-border theft in vehicles, drug trafficking, the policing of financial and economic crimes, and anti-terror campaigns. A third area of regional policing concerns the movement of people across borders. It remains to be seen how, in the future, pro-active immigration policies pursued at the regional level will shape law enforcement in the region. Fourthly, peacekeeping provides inspiration for security cooperation in the region. The formation of a SADC Peacekeeping Standby Force and the establishment of a SADC Regional Peacekeeping Training Centre are important developments which are likely to institutionalise cooperation amongst police agencies within the region. More recently there has been talk of creating an African Union Police. How such a structure will impact on the business of police cooperation within the continent remains to be seen. Finally, drawing on international developments, the policing of mega-events (political, cultural or sport) provides an altogether new and challenging impetus for cooperation. Analysis of the demands on security cooperation at the international, regional and national levels so as to provide a safe 2010 FIFA World Cup event, is likely to yield insight into the nature and scope for cooperation between security institutions.

Within the cooperative networks which have emerged in the region, the police agency of South Africa occupies a key position. More often than not it occupies a strategic role in the business of cooperation and the development of sister organisations. This is a role which encounters political sensitivities and requires a degree of diplomacy. Cooperation around the above-mentioned security concerns has paved the way for some legal harmonisation. Cooperation also opens up space to standardise aspects of police training so that operational practices can become aligned. Such processes may contribute to a rhetorical commitment to common (professional) values and standards for police agencies in the region. Whether an increasingly common police language translates into uniformity in actual practices however, remains to be seen. The importance of a certain normative consensus on the values which should underpin police ideas and practices, is not to be discounted in a regional context where police institutions located at the national level are themselves far from embracing the core principles of responsive and effective policing.

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The seven papers included in this publication fall into three categories. Louise Edwards and Leon Kukuk present informative, detailed accounts of the institutional framework for cooperation and accountability regarding cross-border policing and peacekeeping both internationally and with regard to the



evolution of the police component of the African Standby Force. They explicate the myriad of legal and other instruments applicable to both cases, and comment on the challenges faced in the institutionalisation of accountability provisions. The latter are many and complex, but some progress has taken place.

Taking the examples of Lesotho-South Africa policing cooperation and the work of Operation Rachel in small-arms destruction, Amanda Lucey and Chelete Monyane investigate how such cooperation has been functioning in recent years under the aegis of SARPCCO. This is valuable information on how the system of cooperative policing has worked in practice in these two cases. While both authors painstakingly document the deficiencies on the ground, they also reveal how extensive cross-border policing activity has been. They too emphasise the issue of accountability, and how the experience of the last 15 years has brought to the surface both the possibilities and problems of generalising police accountability across borders.

Amanda Dissel writes on the SARPCCO Code of Conduct and its relevance for building standards of acceptable policing in Southern Africa. Reflecting on current African Policing Civilian Oversight Forum (APCOF) work she makes a case for deepening and strengthening the application of the code through the development of appropriate indicators. Sean Tait reflects on the Strategic Indicative Plan of the SADC Organ on Politics Democracy and Security Cooperation and raises issues for consideration regarding policing. Finally, Elrena van der Spuy reflects on the impact of the FIFA World Cup on policing and police cooperation in the region.

APCOF would like to extend its sincere thanks to all who contributed to this publication. The members of the SAPS Special Task Force, the Lesotho Transformation Resource Centre, Breaking the Walls of Silence Namibia, the Centre for Human Rights and Rehabilitation Malawi, the Centre for Forced Migration Studies at Wits and the Institute for Security Studies in South Africa and the Human Rights Implementation Centre at the University of Bristol. Finally we would like to extend our appreciation to the Open Society Foundation for South Africa for its generous support.



# 2

## Accountability in Cross-border Policing

*Louise Edwards*

### Overview

Effective police accountability poses one of the most significant reform challenges to police organisations, governments and their civil society stakeholders.<sup>3</sup> The increase in international and cross-border policing operations, the entry into the policing terrain by intergovernmental actors<sup>4</sup> and the growing international policy responses at the supra-national level to transnational and international crime have brought an international dimension to a debate that was traditionally located within the state.

These developments pose new challenges to accountability as they raise issues of sovereignty, legal jurisdiction and capacity, and geo-political dynamics that cannot necessarily be addressed using traditional thinking about accountability. Moreover, varying standards of policing and accountability between cooperating

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3 Commonwealth Human Rights Initiative (2005). *Police Accountability: Too Important To Neglect, Too Urgent To Delay*. New Delhi.

4 Groups include the United Nations, the African Union, the European Union, the Southern African Police Chiefs Cooperation Organisation and the East African Police Chiefs Coordinating Committee, as well as ad hoc regional efforts such as the Regional Assistance Mission to the Solomon Islands.

states present a significant barrier to harmonising one acceptable accountability standard for international or cross-border policing efforts.

The challenge for accountability in cross-border and international policing operations is evident in an analysis of the United Nations (UN) civilian policing missions. Despite efforts in the past five years to address accountability in UN policing, there remains a significant deficit in this regard, particularly criminal accountability, in cross-border and transnational missions. Likewise accountability for many operational cross-border police missions, including those involving the South African Police Service (SAPS) is somewhat modelled on the UN system.

Over the past decade, cross-border policing operations and the deployment of police in civilian peacekeeping missions has become an increasing feature of policing in Southern Africa. The overwhelming dominance of the SAPS in the region in terms of size, resources and expertise is likely to drive the increasing deployment of its personnel outside South Africa's borders, spurred on by several factors. These include efforts to address South African crime priorities where cross-border issues are viewed as an important factor – such as organised crime, cattle rustling, human and weapon trafficking and terrorism. The SAPS are currently involved in three significant operations on illegal weapons recovery in Mozambique, Namibia and Angola, and are deployed in the Democratic Republic of Congo (DRC) and the Sudan on civilian police missions.

This paper considers the current system of accountability for police personnel deployed on UN peacekeeping missions. It also analyses the models offered by the European Union (EU) the Regional Assistance Mission to the Solomon Islands (RAMSI) for contrast and comparison. It will then examine the current accountability frameworks governing police cooperation between the SAPS and recipient countries to understand how accountability is provided for within these operations.

## **Models of Cross-border Accountability**

This paper considers four models for cross-border policing accountability: the civilian police component of UN peacekeeping missions, the EU civilian police mission to Bosnia & Herzegovina (BiH), the civilian policing component of RAMSI and the various international and bilateral agreements entered into by the SAPS. In summary, the similarities between the four models are:

- » an agreement between the recipient and contributing states (either individually or through the intergovernmental organisation facilitating the assistance) which sets out the terms of assistance, including the accountability arrangements;

- » functional immunity for contributing states' officers from the criminal law of the recipient state; and
- » on a practical level, responsibility for accountability (particularly for acts that constitute criminal offences) remains with the contributing state.

The UN system provides that the conduct of police personnel is governed by UN disciplinary directives and behavioural guidelines that are enforced by internal reporting, disciplinary and sanction structures at both the mission and UN Secretariat levels. However, UN sanctions for misconduct are limited to administrative measures (including fines, dismissal, repatriation, and blacklisting from future missions) regardless of whether the conduct was criminal.

UN civilian police personnel will only be subject to criminal sanctions in two circumstances. First, if the Secretary General waives functional immunity and the receiving country commences criminal proceedings – however, the process of waiver is frustrated by weak UN investigative capacity and, if granted, receiving states often do not have functioning criminal justice systems capable handling criminal prosecutions. Second, personnel may face criminal sanctions if the contributing country can exercise jurisdiction over acts committed by its nationals extraterritorially, as well as the political will and internal accountability structures to hold personnel to account.

The UN acknowledges that weak criminal accountability has ‘destructive consequences ... for the reputation and credibility of the United Nations as an institution’.<sup>5</sup> In response to allegations of sexual exploitation and abuse by UN peacekeepers in the DRC in 2004, the UN has taken measures to improve internal training, reporting and investigation capacity. However, there is still a vacuum for criminal accountability for all civilian police personnel deployed on UN peacekeeping missions.

Similarly, the RAMSI and EU models provide mission-wide standards for conduct but responsibility for discipline, particularly in respect of criminal conduct, remains with the contributing state. Police personnel deployed under RAMSI remain under the internal command, control, discipline and administration of the contributing state. However, contributing states can consent to a waiver of the immunity and permit the prosecution of their personnel through the Solomon Islands’ courts (see below). Similar to the administrative powers of the UN, the head of RAMSI has the power to order the withdrawal of personnel. The EU system treats police personnel as ‘seconded’ from the contributing states and responsibility for discipline remains with the contributing state.

The accountability structure for SAPS involvement in cross-border operations

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5 Annex B, UN Department of Peacekeeping Operations (2007). Standard Operating Procedure, Public Information Activities on Sexual Exploitation and Abuse, 3 April 2007. <http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=DPKO/MD/03/00994&Lang=E> (Accessed on 1 August 2009).

depends on the nature of their contribution and the institution/state with whom a contribution agreement is made. Responsibility for accountability and discipline for misconduct by SAPS personnel remains with South Africa, which is generally and functionally consistent with the other models considered by this paper.

Across the four models considered, it is clear that effective accountability in cross-border policing operations depends on the strength of the accountability system of contributing states. At the UN level, this has posed a significant hurdle as the top ten contributing states (which include India, Pakistan, Jordan, Bangladesh and Nigeria) represent some of the weaker examples of police oversight structures. For the EU and RAMSI, the situation is somewhat better as the accountability structures in most EU states and the two largest contributors to RAMSI, Australia and New Zealand, generally accord with international best practice for democratic and rights-based police oversight.<sup>6</sup>

## UN Policing

### Introduction to UN peacekeeping

Since 1948, the UN has contributed 63 peacekeeping missions to Africa, the Americas, Asia and the Pacific, Europe and the Middle East.<sup>7</sup> Although the Charter of the UN does not explicitly provide for peacekeeping missions, the UN has a general mandate to take collective measures to maintain peace and security.<sup>8</sup> In practice, peacekeeping missions are generally authorised by a Security Council resolution under Chapter VI of the Charter.<sup>9</sup> Chapter VI provides for the ‘Pacific Settlement of Disputes’ and authorises the Security Council to investigate any dispute or situation that may endanger international peace and security, and to make recommendations for procedures or methods to settle the dispute or situation.<sup>10</sup>

Historically, UN peacekeeping missions were interim military operations

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6 Commonwealth Human Rights Initiative (2005)..

7 Current missions are AFRICA: United Nations Mission to the Central African Republic and Chad (MINURCAT), African Union-United Nations Hybrid Operation in Darfur (UNAMID), United Nations Mission in the Sudan (UNMIS), United Nations Operation in Cote d’Ivoire (UNOCI), United Nations Mission in Liberia (UNMIL), United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC), United Nations Mission for the Referendum in Western Sahara (MINURSO), United Nations Integrated Office in Burundi (BINUB). AMERICAS: United Nations Stabilisation Mission in Haiti (MINUSTAH). ASIA AND THE PACIFIC: United Nations Integrated Mission in Timor-Leste (UNMIT), United Nations Military Observer Group in India and Pakistan (UNMOGIP), United Nations Assistance Mission in Afghanistan (UNAMA). EUROPE: United Nations Peacekeeping Force in Cyprus (UNFICYP), United Nations Interim Administration Mission in Kosovo (UNMIK). MIDDLE EAST: United Nations Disengaged Observer Force (UNDOF), United Nations Interim Force in Lebanon (UNIFIL), United Nations Truce Supervision Organisation (UNTSO). Source: United Nations Department of Peacekeeping Operations, <http://www.un.org/Depts/dpko/dpko/currentops.shtml> (Accessed on 3 August 2009).

8 Article 1, Charter of the United Nations (1945).

9 DPKO, DFS (2008). *United Nations Peacekeeping Operations: Principles and Guidelines*. PBPS/D-PET. p. 13. [http://pbpu.unlb.org/pbps/Library/Capstone\\_Doctrine\\_ENG.pdf](http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf) (Accessed on 3 August 2009).

10 Charter of the United Nations (1945). Articles 11–12 and 34–35.

designed to assist the management of conflict and to create an environment to promote negotiations for sustainable peace. UN peacekeepers did not play a role in political efforts to resolve disputes and their function was limited to ceasefire observation, monitoring and reporting, and acting as a 'buffer and confidence building' presence.<sup>11</sup>

In the 60 years since the first UN peacekeeping mission, the function of peacekeeping has transformed into a multidisciplinary and multidimensional operation that also incorporates elements of peace building and conflict resolution. Activities now include promoting national dialogue and reconciliation, disarmament, demobilisation and reintegration of combatants, organising and supporting elections, and protecting and promoting human rights and the rule of law.<sup>12</sup>

Accordingly, modern peacekeeping missions now have three main objectives:

- » to create a secure and stable environment while strengthening the receiving state's ability to provide security, with full respect for the rule of law and human rights;
- » to facilitate the political process by promoting dialogue and reconciliation and supporting the establishment of legitimate and effective institutions of governance (which includes the police force/service); and
- » to provide a framework for ensuring that all UN and other international actors pursue their activities in a coherent and coordinated manner.<sup>13</sup>

As the mandate of UN peacekeeping operations has expanded, so too has the type of mission personnel engaged. Since the 1960–1963 peacekeeping operation in the Congo, civilian policing units have participated in UN-led peacekeeping efforts. Their initial role was limited to basic monitoring, advising and training but has now expanded to include the broad aims of restoring the rule of law, promoting human rights and restoring the receiving state's capacity to maintain law and order. Modern civilian police components now work to:

- » monitor, advise and train the law enforcement agencies of the host country;
- » assist local police forces to restore civil order (in Kosovo and Timor-Leste, this extended to responsibility for interim law enforcement);
- » train law enforcement personnel in the receiving state;
- » contribute to local police reform;

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11 DPKO, DFS (2008).

12 Ibid.

13 Ibid.

- » build new law enforcement agencies; and
- » undertake executive policing.<sup>14</sup>

In August 2009, approximately 9 500 police officers from 92 contributing countries were serving in 18 UN peacekeeping missions under the auspices of the UN Civilian Police.<sup>15</sup> At 31 July 2009, the top six police contributing countries (PCCs) were Bangladesh (1 370), Jordan (1 197), Nigeria (892), Nepal (759), Pakistan (729) and India (710).<sup>16</sup>

### **The Framework for UN Civilian Police Accountability**

The framework outlined in this section describes the structure for UN Civilian Police personnel in UN-led peacekeeping operations that are authorised by the UN Security Council, conducted under the direction of the UN Secretary General and planned, managed, directed and supported by the UN Department of Peacekeeping Operations (DPKO) and the UN Department of Field Support (DFS). The DPKO Military and Civilian Police Division has established a specific Civilian Policing Unit to support the police contingent of DPKO missions, which are made up of formed units sent by PCCs.<sup>17</sup>

In summary, the conduct of police personnel is governed by UN internal directives and guidelines which are supported by internal systems of reporting, investigation and sanction (which are limited to administrative measures, regardless of whether the conduct constituted a criminal offence).

While police enjoy functional immunity from criminal prosecution, it can be waived by the UN Secretary General to allow for prosecution by the receiving state. In practice, there are significant barriers to effective waiver, including slow UN internal procedures (which mean that officers have usually been rotated out of the mission by the time a waiver is made) and the frequent lack of a properly functioning judicial system in the receiving state. Where the contributing state has jurisdiction over acts committed extraterritorially, coupled with the political will and strong disciplinary structures, they can hold their officers accountable for

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14 Statement of the President of the Security Council, S/PRST/1997/38, 14 July 1997, <http://daccessdds.un.org/doc/UNDOC/GEN/N97/195/10/PDF/N9719510.pdf?OpenElement> (Accessed on 5 August 2009); UNPOL, *United Nations Police in Peacekeeping Operations*, <http://www.un.org/Depts/dpko/police/PK.shtml> (Accessed on 2 August 2009). See also, Mobekk, Eirin, *Identifying Lessons in United Nations International Policing Missions*, [http://dcaf.ch/publications/kms/publications\\_for\\_sale.cfm?nav1=5&nav2=9](http://dcaf.ch/publications/kms/publications_for_sale.cfm?nav1=5&nav2=9) (Accessed on 12 August 2009).

15 The current missions and their authorised strengths are: MINURSO (Western Sahara – 6), UNMIS (Sudan – 715), UNFICYP (Cyprus – 69), UNMIK (Kosovo – 2 065), UNOMIG (Georgia – 20), UNAMA (Afghanistan – 4), UNMIT (Timor-Leste – 1 608), MONUC (D.R. Congo – 1 141), BINUB (Burundi – 15), ONUCI (Cote D'Ivoire – 200 although there are currently 1 157 serving officers), UNIOSIL (Sierra Leone – 20), UNMIL (Liberia – 1 240) and MINUSTAH (Haiti – 1 897). Source: UNPOL, *UN Police Deployment*, <http://www.un.org/Depts/dpko/police/map.pdf> (at 28 August 2009).

16 DPKO, *Contributors to United Nations peacekeeping operations*, Monthly Summary of Contributors (Police, Military Observers and Troops), as of 31 July 2009, [http://www.un.org/Depts/dpko/dpko/contributors/2009/july09\\_1.pdf](http://www.un.org/Depts/dpko/dpko/contributors/2009/july09_1.pdf) (Accessed on 1 September 2009).

17 Secretary General's Bulletin on the Functions and Organisation of the Department of Peacekeeping Operations, 15 May 2000, ST/SGB/2000/9, <http://daccessdds.un.org/doc/UNDOC/GEN/N00/440/95/PDF/N0044095.pdf?OpenElement> (Accessed on 16 August 2009).



acts committed on mission. However, the top contributing police states represent some of the worst examples of police accountability and the UN has noted that beyond diplomatic interventions, there is nothing to compel contributing states to take action against their errant personnel. Overall, the UN system creates a vacuum for criminal accountability which has not been adequately addressed by recent internal accountability reform efforts.

The next section considers what is meant by functional immunity, sets out the framework for 'proper conduct' and examines the existing accountability and reporting structures.

## Functional Immunity

The Convention on the Privileges and Immunities of the United Nations was adopted in 1946, at a time when then UN had not yet contemplated armed missions. The Convention expands on the general privileges and immunities clause in the UN Charter and operates to safeguard the independent functioning of the UN and its personnel.<sup>18</sup>

As 'experts on mission', police deployed on UN peacekeeping missions enjoy functional immunity from criminal prosecution for the duration of their time on mission.<sup>19</sup> This immunity is not for personal benefit but is intended to protect UN personnel from arbitrary abuse of power.<sup>20</sup> The immunity extends to personal arrest and detention; seizure of personal baggage; legal process of any kind in respect of actions or words (this immunity continues to operate even if the individual is no longer deployed on a mission with the UN); and inviolability for all papers and documents.<sup>21</sup>

Only the UN Secretary General has the power to waive immunity on the basis that a waiver is necessary for the administration of justice and will not prejudice the interests of the UN.<sup>22</sup> If the waiver is granted, criminal action against the errant officer can be brought by the receiving country in agreement and with the support of UN.

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18 Article VI, section 23, *Convention on the Privileges and Immunities of the United Nations*, adopted by the General Assembly on 13 February 1946, [http://untreaty.un.org/cod/avl/pdf/ha/cpiun-cpisa/cpiun-cpisa\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/cpiun-cpisa/cpiun-cpisa_e.pdf) (at 13 August 2009) and Article 105, Charter of the United Nations 1945.

19 *Ibid.*, section 22.

20 *Ibid.*, article VI, section 22; Section V(8), Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers, DPKO/MD/03/00994, <http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=DPKO/MD/03/00994&Lang=E> (Accessed on 1 August 2009).

21 Article VI, sections 22(a)-(c), *Convention on the Privileges and Immunities of the United Nations*, adopted by the General Assembly on 13 February 1946; Section V(8) Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers, DPKO/MD/03/00994.

22 Article VI, section 23, *Convention on the Privileges and Immunities of the United Nations*, adopted by the General Assembly on 13 February 1946.

## Standards of Conduct

The standard of conduct expected from UN civilian police personnel is found in a number of UN directives, including the Capstone Doctrine, Security Council, the mission mandate and directives on the use of force, international human rights and humanitarian norms, DPKO Directives for Disciplinary Matters involving Civilian Police and the UN Special Measures for the Protection from Sexual Exploitation and Abuse.

### *Capstone Doctrine*

Responsibility for conducting pre-deployment training is with the PCCs, who are expected to select experienced officers with a proven record of efficiency, competency and integrity.<sup>23</sup> To guide this process, the DPKO has published the United Nations Peacekeeping Operations Principles and Guidelines (known as the 'Capstone Doctrine'). The Capstone Doctrine sets out the framework for UN peacekeeping, and all other directives, guidelines, standard operating procedures, manuals and training materials issued by the PCCs and DPKO must conform with its principles and concepts.<sup>24</sup>

Although the Capstone Doctrine does not itself establish an accountability structure, it articulates the need for discipline and accountability in the following terms:

The bearing and behaviour of all personnel must be of the highest order, commensurate with the important responsibilities entrusted to a [UN] peacekeeping operation, and should meet the highest standards of efficiency, competency and integrity. The mission's senior leadership must ensure that all personnel are fully aware of the standards of conduct that are expected of them and that effective measures are in place to prevent misconduct. [P]olice ... personnel should receive mandatory training on sexual exploitation and abuse; and this training should be ongoing, as [police] rotate in and out of peace operations. There must be a zero tolerance for any kind of sexual exploitation and abuse, and any other forms of serious misconduct. Cases of misconduct must be dealt with firmly and fairly, to avoid undermining the legitimacy and moral authority of the mission.<sup>25</sup>

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23 Article 101, Charter of the United Nations (1945). See also, DPKO, DFS, pp. 10 and 77–78.

24 DPKO, DFS (2008), pp 8–9.

25 *Ibid.*, p. 37.

The Capstone Doctrine will be reviewed in 2010 as part of the UN's major reform initiative, *Peace Operations 2010*, which aims to strengthen and professionalise the planning, management and conduct of peacekeeping operations.<sup>26</sup>

*Security Council Mandate and Directives on the Use of Force*

PCCs and mission personnel are also guided by the Security Council mandate for each mission and any accompanying directives on the use of force (DUFs). The mandate provides the framework for each mission's engagement and is based on the agreement reached between the receiving state and the UN on the scope of the task to be undertaken.

When a peacekeeping mission is deployed in a receiving state where there are real and violent threats against the preservation of peace which pose a threat to the civilian population, the Security Council generally allows the use of 'all necessary means' to achieve the mandate.<sup>27</sup>

The DUF then clarifies the permissible use of force for each particular mission, including the level of force that can be used and the authorisations required to use force. Generally, the DUF is framed in the same general terms as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Personnel:<sup>28</sup>

A [UN] peacekeeping operation should only use force as a measure of last resort, when other methods of persuasion have been exhausted, and an operation must always exercise restraint when doing so. The ultimate aim of the use of force is to influence and deter spoilers working against the peace process or seeking to harm civilians; and not to seek their military defeat. The use of force by a [UN] peacekeeping operation should always be calibrated in a precise, proportional and appropriate manner, within the principles of minimum force necessary to achieve the desired effect, while sustaining consent for the mission and its mandate. In its use of force, a [UN] peacekeeping operation should always be mindful of the need for an early de-escalation of violence and a return to non-violent means of persuasion.<sup>29</sup>

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26 Ibid., p. 6.

27 Ibid., p. 34.

28 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 7 September 1990, <http://www2.ohchr.org/english/law/firearms.htm> (Accessed on 1 August 2009).

29 DPKO, DFS (2008). p. 35.

### *International Human Rights and Humanitarian Law*

The Capstone Doctrine provides that the overall framework for peacekeeping is also informed by international human rights norms and that peacekeeping operations must be conducted in a manner that respects, promotes and restores human rights in the receiving country.<sup>30</sup> The Capstone Doctrine specifically notes that when peacekeeping personnel commit human right abuses, they ‘should be held accountable’ – however, as discussed above, the Doctrine does not provide a framework for accountability.<sup>31</sup>

Although directed at military, rather than policing operations, the peacekeeping framework is also subject to international humanitarian law as captured in the four Geneva Conventions of 1949 and the two additional Protocols of 1977.<sup>32</sup> The Secretary General Bulletin on the Observance by United Nations Forces of International Humanitarian Law provides that military personnel who violate humanitarian law will be ‘subject to prosecution in their national courts.’<sup>33</sup> The operationalisation of international humanitarian law in peacekeeping operations is assisted by the Security Council resolutions on children and armed conflict and the protection of civilians in armed conflict.<sup>34</sup>

### *DPKO Directives on Discipline*

In 2003, the DPKO issued directives for disciplinary matters involving civilian police officers. The directives, which build on the general principles of the Capstone Doctrine and human rights norms, require civilian police officers to act impartially, independently, with the highest standards of integrity and in a manner consistent with the mission, mandate, aims and objectives of the UN, local laws and regulations.<sup>35</sup> All police personnel receive a pre-deployment briefing from their PCC and the DPKO on their obligations under these directives.<sup>36</sup>

The directives define ‘serious misconduct’ as:

Any act, omission or negligence, including criminal acts, that is a violation of mission standard operating procedures, directives or any other applicable rules, regulations or administrative

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30 Ibid., p. 14. See, Universal Declaration of Human Rights (1946).

31 Ibid., p. 15.

32 Ibid., The Geneva Conventions and Protocols are available at the International Committee of the Red Cross website, <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions> (Accessed on 1 September 2009).

33 Section 4, Secretary General Bulletin, *Observance by United Nations Forces of International Humanitarian Law*, ST/SGB/1999/13, 6 August 1999, <http://daccessdds.un.org/doc/UNDOC/GEN/N99/230/42/PDF/N9923042.pdf?OpenElement> (Accessed on 6 August 2009).

34 See, Security Council Resolution 1612 (2005). Adopted by the Security Council at its 5235th meeting on 26 July 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/439/59/PDF/N0543959.pdf?OpenElement> (Accessed on 16 August 2009) and Security Council Resolution 1674 (2006), Adopted by the Security Council at its 5613th meeting on 23 December 2006, <http://daccessdds.un.org/doc/UNDOC/GEN/N06/681/60/PDF/N0668160.pdf?OpenElement> (Accessed on 16 August 2009).

35 Sections III(5)-(6), Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers, DPKO/MD/03/00994.

36 Ibid., section IV(7).

instructions, that result in or is likely to result in serious damage or injury to an individual or to the mission. Serious misconduct includes, but is not limited to:

- Sexual abuse and exploitation of any individual, particularly children;
- Harassment, including sexual harassment;
- Abuse of authority;
- Excessive use of force;
- Unlawful discharge of firearms;
- Breach of confidentiality;
- Abuse of UN privileges and immunities;
- Conduct prejudicial to good order and discipline;
- Driving while intoxicated or other grossly negligent driving;
- Intoxication while on duty or in public on repeat occasions;
- Repeatedly absent from duty without permission;
- Use, possession or distribution of illegal narcotics;
- Embezzlement or other financial malfeasance;
- Willful disobedience of lawful orders; and
- Unlawful acts (e.g. theft, fraud, smuggling, bribery) on or off UN premises, with or without the involvement of UN vehicles, and whether or not the individual was officially on duty at the time of the offence.<sup>37</sup>

Minor misconduct is defined as acts, omissions or negligence that violate standard operating procedures but which do not result in major damage or injury to an individual or the mission.<sup>38</sup>

Additional guidance on the standards of conduct is provided in the DPKO publications *Ten Rules: Code of Personal Conduct for Blue Helmets* and *We Are United Nations Peacekeepers*. These standards emphasise the applicability of international humanitarian law and human rights norms to the conduct of personnel on peacekeeping missions, as well as respect for local laws and regulations.<sup>39</sup>

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<sup>37</sup> Ibid., section III(4).

<sup>38</sup> Ibid. Minor misconduct includes 'any act, omission or negligence that is in violation of mission standard operating procedures, directives or any other applicable rules, regulations or administrative instructions, but which does not result in or is not likely to result in major damage or injury to an individual or the mission. Minor misconduct includes, but is not limited to: improper uniform appearance, neglect in performance of duty not amounting to a willful or deliberate act, intoxication while on duty or in public, negligent driving, absence from duty without permission, and malingering'.

<sup>39</sup> DPKO, *Ten Rules: Code of Personal Conduct for Blue Helmets* and DPKO, *We Are United Nations Peacekeepers*, <http://ocha.unog.ch/ProCapOnline/docs/library/UN%20Blue%20Helmets%20Codes%20of%20Conduct.pdf> (Accessed on 1 August 2009).

### *Special Measures on Sexual Exploitation and Sexual Abuse*

One area of misconduct that has received special attention from the UN Secretariat is the zero tolerance policy on sexual exploitation and abuse by UN personnel. In 2003, the Secretary General published the UN *Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, which apply to UN police and military personnel.<sup>40</sup> Police personnel are required to make a written undertaking to abide by the prohibition on sexual exploitation and abuse. The undertaking also provides that failure to take preventative measures, investigate allegations or take 'corrective action' will be grounds for the termination of a UN contract.<sup>41</sup>

The *Bulletin* expressly prohibits sexual exploitation, which is defined as 'any actual or attempted abuse of position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another'. It also prohibits any act of sexual abuse, which is defined as the 'actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.'<sup>42</sup>

In the interests of protecting those most vulnerable to sexual exploitation and abuse (identified as women and children), the *Bulletin* also provides a non-exhaustive list of acts which constitute misconduct and which are subject to disciplinary measures. The prohibited acts include:

- » sexual activity with persons under 18 (regardless of whether the age of consent in the receiving country is less than 18 – except where a staff member is legally married to a person under 18 but over the age of majority in their country of citizenship);
- » exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour; or
- » sexual relationships between UN staff and beneficiaries of assistance unless an exception has been granted by the Head of Department, Office or Mission.<sup>43</sup>

The DPKO Conduct and Discipline Unit has taken a three-pronged approach to addressing sexual abuse and exploitation:

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40 Annex C, UN Department of Peacekeeping Operations, Standard Operating Procedure, Public Information Activities on Sexual Exploitation and Abuse, 3 April 2007, GA/RES/59/300.

41 UN Secretary General (2003). Section 6 of *Secretary General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, 9 October 2003, ST/SGB/2003/13, available at <http://www.unhcr.org/refworld/docid/451bb6764.html> (Accessed on 10 August 2009) and Implementation Guidelines for the Field on the Security General's Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse, ST/SGB/2003/13, available at [www.icva.ch/doc00003490.html](http://www.icva.ch/doc00003490.html) (Accessed on 7 August 2009).

42 UN Secretary General (2003). Sections 1 and 3.1.

43 *Ibid.*, sections 4.4 and 4.5.

- » Preventing misconduct: prevention measures include mandatory training for all personnel, awareness raising measures which target civilians and the media, and efforts to improve the welfare and recreational opportunities for mission personnel.
- » Enforcement measures: these include the appointment of focal points for complaints against sexual exploitation and abuse, and improvements to data collection and reporting.
- » Remedial action: this has included public awareness campaigns on the zero tolerance to sexual exploitation and abuse policy, provision of emergency assistance to victims, and efforts at the Secretariat level to establish a policy statement and comprehensive strategy on assistance to victims.<sup>44</sup>

## Accountability Structure

Since 2004, the DPKO has established a Conduct and Discipline Unit to perform an oversight role for all peacekeeping operations. Mission-level units are also embedded in current peacekeeping operations to advise Heads of Mission on all conduct and discipline matters involving peacekeeping personnel.<sup>45</sup> All personnel on mission are required to report any acts of serious misconduct to the Head of Mission or to the Conduct and Discipline Unit, who must then inform the Head of Mission. The Head of Mission must immediately undertake a preliminary investigation.<sup>46</sup> The directives set out the guidelines for preliminary investigations and require, *inter alia*, that investigations are conducted by authorities with expertise in the area of misconduct and in accordance with principles of due process and fairness. The guidelines also set out the procedures for the conduct of interviews, preservation of confidentiality, collection of evidence and reporting of findings.<sup>47</sup>

If the preliminary investigation substantiates the allegation of serious misconduct, the Head of Mission must make a report to the UN Headquarters who, in turn, must inform the national authorities of the concerned countries. The UN headquarters must also establish a Board of Inquiry to recommend appropriate administrative actions.<sup>48</sup> The Head of Mission must review the final Board of Inquiry report and recommendations, make a determination as to the course of action and transmit the same to the UN Headquarters and supervisors responsible for discipline of the individual(s) concerned.<sup>49</sup>

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44 DPKO, DFS (2008); DPKO, *DPKO's Comprehensive Strategy on Sexual Abuse and Exploitation*, <http://www.un.org/Depts/dpko/CDT/strategy.html> (at 13 August 2009).

45 DPKO, *About the Conduct and Discipline Units*, <http://www.un.org/Depts/dpko/CDT/about.html> (Accessed on 28 August 2009).

46 DPKO, DFS (2008). Parts IV and VIII(11), section III(4).

47 *Ibid.*, Annex B, Guidelines for Preliminary Investigations: Investigation Allegations of Serious Misconduct Involving Military Members of National Contingents, Military Observers and Civilian Officers.

48 *Ibid.*, sections VII(14) and VIII(15)–(16).

49 *Ibid.*, part X(19)–(21).

The decisions and recommendations of the Board of Inquiry and Head of Mission are confidential, internal working documents of the UN and, as a rule, will not be made available to ‘outside entities’.<sup>50</sup>

The only sanctions against errant officers that are available to the UN are administrative in nature and limited to the following: removal from position of command; redeployment to another position/area after retraining, if necessary; suspension of leave/compensatory time off; full or partial recovery from Mission Subsistence Allowance, in case of financial loss to the UN; recommendation to repatriate; and written censure or reprimand, including possible recommendation for non-eligibility for future assignments with the UN.<sup>51</sup>

The directives note that in addition to administrative and disciplinary proceedings at a UN level, individual(s) may also be subject to national disciplinary proceedings.<sup>52</sup> If an individual(s) is repatriated, the UN can request information from the PCC regarding any disciplinary or criminal action taken against the individual(s) at the national level.<sup>53</sup> If no response is forthcoming, the UN can ‘bring the matter to the attention of the government concerned at the highest possible level to underscore the seriousness of the matter and to pursue it with a view to seeing that appropriate disciplinary steps are taken’.<sup>54</sup>

In relation to allegations of sexual abuse and exploitation, UN personnel have a positive obligation to report any concerns or suspicions through the ‘established reporting mechanisms’ of the DPKO’s Discipline and Conduct Units. Personnel are also expected to create and maintain an operating environment that prevents this type of conduct.<sup>55</sup> Heads of Mission must appoint a mission focal point to receive reports and complaints from staff and beneficiaries.<sup>56</sup> Upon receipt of a complaint, the mission headquarters is responsible for taking ‘appropriate action’, including mission-level investigations and referral of the matter to the Secretariat-level independent UN Office of Internal Oversight (OIOS) for investigation.<sup>57</sup> All investigations must be treated confidentially and the release of public information must be weighed against considerations of due process and the public interest.<sup>58</sup>

The mission-level focal points on sexual exploitation and abuse must make

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50 Ibid., part X(22).

51 Ibid., part IX(23).

52 Ibid., part IX(24).

53 Ibid., part XIII(31).

54 Ibid.

55 UN Secretary General (2003). Section 3.2(f).

56 Implementation Guidelines for the Field on the Secretary General’s Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse, ST/SGB/2003/13, [www.icva.ch/doc00003490.html](http://www.icva.ch/doc00003490.html) (Accessed on 7 August 2009).

57 Ibid. See also, Durch, William J, et al (2009) *Improving Criminal Accountability in United Nations Peace Operations*, Stimson Center Report No. 65, Henry Stimson Center, Washington DC. p. 3.

58 DPKO, DFS (2008).



an annual report to the Inter-Agency Standing Committee Working Group (humanitarian issues) and the UN Development Group (development issues) on progress made to prevent and respond to sexual exploitation and abuse.<sup>59</sup>

Finally, if misconduct amounts to an ‘alleged criminal offence’, the Secretary General can waive immunity and the UN and receiving country can agree on whether criminal proceedings should commence.<sup>60</sup>

### **Challenges to Effective UN Police Accountability**

UN peacekeeping missions have a broad mandate to restore security while also promoting, protecting and restoring the rule of law and human rights. However, based on the framework set out above, the structures that govern the actions of UN personnel do not necessarily uphold these principles.

UN sanctions for misconduct are limited to administrative measures (including fines, dismissal, repatriation and blacklisting from future missions) regardless of whether the conduct was criminal. UN civilian police personnel will only be subject to criminal sanctions in two circumstances. First, if the Secretary General waives immunity and the receiving country commences criminal proceedings – however, the process of waiver is frustrated by weak UN investigative capacity and, if granted, receiving states often do not have functioning criminal justice systems capable handling criminal prosecutions. Second, officers may face criminal sanctions if the contributing country can exercise jurisdiction for acts committed by its nationals outside its territory and there is a legal framework for exercising jurisdiction for acts committed extraterritorially as well as the political will and internal accountability structures to hold officers to account.

The reliance on PCCs to take measures has posed a significant hurdle as the top ten contributing states (which include India, Pakistan, Jordan, Bangladesh and Nigeria) represent some of the weaker examples of police oversight structures.<sup>61</sup> The UN Security Council has encouraged states to establish laws to facilitate the prosecution of errant officers but, to date, there is no legal compulsion on states pass such laws.

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59 UN Secretary General (2003).

60 *Ibid.*, section X(28). See also, Article VI, section 22, *Convention on the Privileges and Immunities of the United Nations*, above n18.

61 See, Commonwealth Human Rights Initiative (2008). *Feudal Forces: Reform Delayed – Moving from Force to Service in South Asian Policing*. New Delhi.; Commonwealth Human Rights Initiative (2009). *Complaints Authorities: Police Accountability in Action*. New Delhi.; African Policing Civilian Oversight Forum (2009). *An Audit of Police Oversight in Africa*. Cape Town.

## EU Policing

### Introduction to EU Policing

The European Commission has established a framework for cooperation between the police organisations of the EU, as well as between EU and non-EU police organisations. The primary mechanisms for cooperation are:

- » the European Police Office (EUROPOL), which coordinates information collection and sharing;
- » the European Police College, which provides standardised training; and
- » the European Rapid Reaction Force, which participates in international peacekeeping missions.

### European Cross-border Policing Operations

The Schengen Implementation Convention provides for cross-border pursuits, surveillance, and controlled delivery between police organisations of the EU. Membership to Schengen is premised on police organisations meeting EU policing standards. Schengen does not create a European police force but facilitates cooperation between EU states. Accordingly, operational control and responsibility for oversight and accountability during cross-border operations remains with national authorities.<sup>62</sup>

EUROPOL's mission is to 'improve the effectiveness and cooperation' between EU states and to prevent and combat serious international crime, including organised crime, terrorism, trafficking in persons and drugs.<sup>63</sup> Its primary activities are facilitating the exchange of information and providing operational, strategic and technical analysis and support to EU states.<sup>64</sup> EUROPOL conducts both cross-border operations within the EU as well as entering into cooperative arrangements with non-EU states and international organisations.<sup>65</sup> Europol's activities are supervised by its Management Board, while its content and data use are monitored by the Joint Supervisory Body. The accountability structure focuses on intelligence and data collection and is not relevant for the purposes of this paper.

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62 See, *The Schengen Acquis* (2000). Official Journal of the European Communities, [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l\\_239/l\\_23920000922en00010473.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_239/l_23920000922en00010473.pdf) (Accessed on 1 August 2009).

63 Europol, Fact Sheet on Europol, <http://www.europol.europa.eu/index.asp?page=facts> (Accessed on 16 August 2009).

64 Ibid.

65 EUROPOL, International Relations – Cooperation agreements, <http://www.europol.europa.eu/index.asp?page=agreements> (Accessed on 16 August 2009). At 16 August 2009, Europol had operational agreements with Eurojust, Interpol, Australia, Canada, Croatia, Iceland, Norway, Switzerland and the USA; strategic agreements with the European Central Bank, European Commission, European Monitoring Centre for Drugs and Drug Addiction, European Anti-Fraud Office, Frontex, World Customs Organisation, United Nations Office on Drugs and Crime, Albania, Bosnia and Herzegovina, Columbia, Former Yugoslav Republic of Macedonia, Moldova, Russia and Turkey.

## European Peacekeeping Operations

Since 2003, the EU has conducted two peacekeeping missions involving civilian police components: the EU Police Mission to Bosnia and Herzegovina (BiH) and the EU Police Mission to the former Yugoslav Republic of Macedonia (PROXIMA). Police personnel are specially trained officers contributed by EU member states and prior to deployment, personnel undergo training in crisis management, human rights, rule of law and civil management at the European Police College.<sup>66</sup> This paper considers the mission to BiH as a case study for understanding the framework for police accountability in the context of European cross-border police peacekeeping operations.

The first EU Police Mission (EUPM) to BiH commenced on 1 January 2003 with participation from all EU member states. The purpose of the EUPM was to pursue the objectives of the Dayton Peace Agreement which had ended the conflict in BiH.<sup>67</sup> The Agreement provided for the establishment of the predecessor to the EUPM, the International Police Task Force, to support BiH law enforcement and to support other EU efforts to promote the rule of law and strengthen democratic structures in BiH.<sup>68</sup>

Under the Agreement, BiH agreed to establish a civilian law enforcement agency that accorded with ‘internationally recognised standards and with respect for internationally recognised human rights and freedoms.’<sup>69</sup> In support of this aim, BiH agreed to the establishment of a UN Security Council operation, known as the UN International Police Task Force (IPTF).<sup>70</sup> The IPTF’s mandate included monitoring, advising and inspecting the BiH police force to support the police reform process, strengthen police accountability and to assist in the fight against organised crime.<sup>71</sup> In support of their mission, the Agreement provided police personnel with functional immunity in accordance with the Convention on Privileges and Immunities of the United Nations.<sup>72</sup>

At the conclusion of the IPTF’s mandate, the EU established the EUPM as a follow-on operation. The EUPM has four main objectives: to develop police independence and accountability, fight organised crime and corruption, promote financial viability and sustainability for local police, and continue institutional and

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66 European Commission (2009). New peacekeeping force staffed by police officers from across the EU, [http://ec.europa.eu/justice\\_home/fsj/police/peacekeeping/fsj\\_police\\_peacekeeping\\_en.htm](http://ec.europa.eu/justice_home/fsj/police/peacekeeping/fsj_police_peacekeeping_en.htm) (Accessed on 16 August 2009).

67 Dayton Peace Agreement (1995). General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 11 Agreement on International Police Force, 14 December 1995, available at [http://www.ohr.int/print/?content\\_id=367](http://www.ohr.int/print/?content_id=367) (Accessed on 16 August 2009).

68 European Commission (2009).

69 Dayton Peace Agreement (1995). Article 1.

70 Ibid.

71 European Union Police Mission in Bosnia and Herzegovina, Overview, <http://www.eupm.org/Overview.aspx> (Accessed on 16 August 2009).

72 Dayton Peace Agreement (1995). Article III(6).

capacity building.<sup>73</sup>

The EUPM has the status of a diplomatic mission and personnel enjoy all the privileges and immunities as granted to diplomatic agents under the Vienna Convention on Diplomatic Relations. In the event of a waiver, the Convention provides that priority jurisdiction will be with EU Member States – which provides the contributing state with priority over criminal prosecution of their errant personnel.<sup>74</sup>

Under the current EUPM mandate, responsibility for discipline over police officers remains with the contributing state or institution. Generally, EUPM Heads of Mission and the Police Commissioner have day to day operational command and management over operations, which includes responsibility for disciplinary control over personnel.<sup>75</sup> However, as EUPM police personnel are ‘seconded’ from contributing states, the responsibility for discipline remains with the contributing state, who are also responsible for bearing the costs related to their personnel’s time on mission (including salaries, allowances and travel expenses to and from BiH).<sup>76</sup>

All seconded personnel are expected to act in accordance with the interest of the EUPM and must formally agree to comply with the European Police Code of Ethics.<sup>77</sup> Contributing states and authorities are ‘responsible for answering any claims linked to the secondment, from or concerning the staff members [and] shall be responsible for bringing any action against the secondees’.<sup>78</sup>

The EUPM has committed itself to mainstreaming a human rights and rule of law approach to its work with the BiH police. To maintain consistency between its mandate and its own operational framework to fulfil that mandate, EUPM has recently established internal disciplinary regulations and an Internal Affairs Department to investigate alleged breaches of discipline by personnel.<sup>79</sup> The EUPM Mission Statement notes that the EUPM can, on recommendation from the EU Police Commissioner to the High Representative for the EU Common and Security Policy, remove ‘non compliant officers’.<sup>80</sup> However, there was no

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73 Collantes Celador G. (2007) ‘The European Union Police Mission: The Beginning of a New Future for Bosnia and Herzegovina?’, IBEI Working Papers. Institute Barcelona d’Estudis Internacionals, Barcelona.

74 Article 4, Agreement between the European Union and Bosnia and Herzegovina on the Activities of the European Police Mission in BiH, EU/BA/en 1, available at <http://www.eupm.org/Documents/4.2.EUPM%20SOFA%20legislative%20act.pdf> (Accessed on 16 August 2009).

75 Article 4, Joint Action of the Council of the European Union, 11 March 2002, on the European Union Police Mission (2002/210/CFSP), available at <http://www.eupm.org/Documents/council1.pdf> (Accessed on 16 August 2009).

76 *Ibid.*, articles 4(4), 5(2) and 8.

77 Letter from High Representative, Javier Solana, to Amnesty International, 3 December 2002, <http://consilium.europa.eu/uedocs/cmsUpload/Letter%20HR%20Amnesty%20International.pdf> (at 17 August 2009). Code of Ethics is available at <http://polis.osce.org/library/f/2687/500/CoE-FRA-RPT-2687-EN-European%20Code%20of%20Police%20Ethics.pdf> (Accessed on 17 August 2009).

78 *Ibid.*, article 6.

79 Solana J., n77.

80 Annex, ‘Mission Statement for EUPM’, Joint Action of the Council of the European Union, 11 March 2002, on the European Union Police Mission (2002/210/CFSP), <http://www.eupm.org/Documents/council1.pdf> (Accessed on 16 August 2009).

public information available about Internal Affairs Department investigations and follow-up sanctions or criminal proceedings by contributing countries.

## **Regional Assistance Mission to the Solomon Islands**

Regional Assistance Mission to the Solomon Islands (RAMSI) is a cooperative agreement between the government of the Solomon Islands and contributing Pacific countries for multidisciplinary assistance to restore stability, peace and development.<sup>81</sup> RAMSI has been in operation since 1993 and consists of military, civilian police and humanitarian assistance.

A key component of RAMSI is the Participating Police Force (PPF). The PPF is comprised of police officers from 15 contributing states on an original mandate to restore law and order to the Solomon Islands. The PPF's focus has now shifted to rebuilding the Solomon Islands Police Force (SIPF) by providing institutional capacity, training and advice on matters of general policing duties, investigations, forensics, traffic, interview procedures, protection of VIPs and property.<sup>82</sup>

The Facilitation of International Assistance Act 2003 was enacted by the National Parliament of the Solomon Islands to make provision for their request for international assistance to restore law and order and is read together with the original Assistance Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga.<sup>83</sup>

Although requiring personnel to respect the laws of Solomon Islands, the Act and Assistance Agreement ultimately confer responsibility for the internal command, control, discipline and administration of personnel on the individual contributing countries,<sup>84</sup> although the head of RAMSI can direct a contributing country to withdraw personnel.<sup>85</sup> If so directed by the head of RAMSI, Solomon Islands authorities can take a member of the PPF into custody (but not make an arrest) in order to immediately deliver them to the 'nearest appropriate authorities' of RAMSI.<sup>86</sup>

Members of the PPF are required to carry out their duties in a manner consistent with the laws, procedures and standards of conduct that apply to them

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81 Townsville Agreement (2003). Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operation and status of police and armed forces and other personnel deployed to Solomon Islands to assist in the restoration of law and order and security, Townsville, 24 July 2003, [2003] ATS 17, ('Townsville Agreement'), [http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/dfat/treaties/2003/17.html?query=title\(solomon%20and%20islands](http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/dfat/treaties/2003/17.html?query=title(solomon%20and%20islands) (at 11 August 2009) and RAMSI, About RAMSI, <http://www.ramsi.org/node/5> (Accessed on 11 August 2009).

82 RAMSI, Participating Police Force, <http://www.ramsi.org/node/42> (Accessed on 11 August 2009).

83 Solomon Islands (2003). Facilitation of International Assistance Act (No. 1 of 2003), available at [http://www.pacii.org/sb/legis/num\\_act/foiaa2003386/](http://www.pacii.org/sb/legis/num_act/foiaa2003386/) (at 11 August 2009).

84 *Ibid.*, section 19; Townsville Agreement (2003). Articles 4(2) and 10(1).

85 Townsville Agreement (2003). Article 4(3).

86 *Ibid.*, article 10(8).

in their home country.<sup>87</sup> Contributing countries agree to ‘take all appropriate measures to ensure the maintenance of discipline and good order among its members’ of the PPF.<sup>88</sup>

Personnel enjoy immunity from legal proceedings in the Solomon Islands courts for actions taken in the course of, or incidental to, their official duties.<sup>89</sup> If personnel commit an act that may attract criminal or disciplinary measures, the Solomon Islands does not have jurisdiction unless the contributing country has expressly consented to the exercise of such jurisdiction over their personnel.<sup>90</sup> The contributing country can also assert its jurisdiction and, in doing so, must ensure that ‘appropriate action is taken against that member consistent with its laws and practices’.<sup>91</sup>

Contributing countries can waive criminal or civil immunity of its personnel by express consent.<sup>92</sup> If this occurs, the contributing country and Solomon Islands authorities must assist each other in any investigation, including the collection and production of evidence.<sup>93</sup>

Members of the PPF are authorised to exercise any powers and privileges of a police officer under the Solomon Islands Police Act.<sup>94</sup> In addition to those powers, the PPF are permitted to use ‘such force as is reasonably necessary to achieve a public purpose’, which is defined as:

- » ensuring the security and safety of persons and property;
- » maintaining supplies and services essential to life;
- » preventing and suppressing violence, intimidation and crime;
- » maintaining law and order;
- » supporting the administration of justice;
- » supporting and developing Solomon Islands institutions; and
- » responding to natural disasters.<sup>95</sup>

The PPF are authorised to carry and use weapons in accordance with their contributing country’s internal orders and rules, to protect themselves, third persons, property or to achieve a public purpose.<sup>96</sup>

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87 *Ibid.*, article 5(6).

88 *Ibid.*, article 11.

89 *Ibid.*, article 10.

90 Solomon Islands (2003). Sections 17(2), (3) and (5).

91 Townsville Agreement (2003). Article 10(5).

92 Solomon Islands (2003). Section 17(6).

93 Townsville Agreement (2003). Articles 10(7) and (9).

94 Solomon Islands (2003). Section 7(1).

95 *Ibid.*, sections 2 and 7(2); Townsville Agreement (2003). Article 5(9).

96 Solomon Islands (2003). Section 9.

## South African Police Service: Cross-border Policing Operations

The accountability structure for SAPS personnel involved in cross-border operations depends on the nature of their contribution and the institution/state with whom a contribution agreement is made. Responsibility for accountability and discipline for misconduct by SAPS personnel remains with South Africa, which reflects the trends in the UN, EU and RAMSI models.

### Agreements with the AU

In its agreements with the African Union (AU), South Africa retains criminal jurisdiction over its personnel and agrees to take actions against errant officers in accordance with South African law.<sup>97</sup> The outcome of any action must be reported to the AU Commission, however the agreement between South Africa and the AU does not provide for an AU enforcement mechanism to ensure that South Africa takes the necessary actions.<sup>98</sup> In the case of death or injury, the AU will convene a Board of Inquiry to investigate.<sup>99</sup> However, the agreement does not establish a framework for sanctions or prosecution if personnel are found to have unlawfully contributed to an injury or death.<sup>100</sup>

Under the agreement, South Africa retains a right to constitute its own Board of Inquiry, but it is not clear from the agreement whether the Boards of Inquiry are mutually exclusive and which will have priority.<sup>101</sup> Civil claims by third parties against SAPS personnel will be dealt with by the AU unless the claim is a result of gross negligence or misconduct, in which case South Africa has responsibility for answering the claim.<sup>102</sup>

### Agreements within SARPCCO

Pursuant to the Agreement in Respect of Cooperation and Mutual Assistance in the Field of Crime Combating between the countries of SARPCCO ('SARPCCO Agreement'), SAPS personnel are only permitted to act while in the company of receiving state personnel (*pro forma* agreement) and in consultation with receiving state personnel (bilateral agreement on Mozambique).<sup>103</sup> Decisions on

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97 Article 6(1), Memorandum of Understanding between the African Union and South African Police Service re: Union of the Comoros (Comoros MOU) ; article 6(1), Memorandum of Understanding between the African Union and the South African Police Service re: Darfur, Sudan (Darfur MOU).

98 Ibid.

99 Comoros MOU, above n97, article 7; Darfur MOU, above n 97, article 7.

100 Ibid.

101 Ibid.

102 Ibid., articles 6(2)–(8).

103 Article 4(4), Memorandum of Understanding between the Southern Africa Police Chiefs Cooperation Organisation and South African Police Force; Article 5(3), Memorandum between the Republic of Mozambique and the South African Police Service.

how to proceed with claims of misconduct against SAPS personnel under both agreements are made by the SAPS, in consultation with the host state.<sup>104</sup>

In terms of legal proceedings against SAPS personnel, the SAPS and the receiving state agree to indemnify each other and responsibility to answer civil legal proceedings against SAPS personnel for acts relating to official duties remains with the SAPS.<sup>105</sup>

### **Other Bilateral Agreements**

In its other bilateral agreements, SAPS personnel enjoy immunity from prosecution under the receiving country's criminal law unless the errant act constituted 'gross negligence or willful misconduct'<sup>106</sup> (DRC) or was outside the ambit of official duties (Uganda).<sup>107</sup>

Under the SAPS agreement with Uganda, the SAPS retains full command over its personnel and if civil or criminal action is taken against its personnel, the SAPS must be notified and determine whether the action is a result of an official duty (in which case the proceedings are discontinued) or outside official duty (in which case the proceedings may continue).<sup>108</sup> The same AU provisions (and concerns) for Boards of Inquiry also apply to the SAPS agreement with Uganda, as do the provisions relating to responsibility for third party claims.<sup>109</sup>

## **Conclusion**

Across the four models considered, it is clear that effective accountability in cross-border policing operations depends on the strength of the accountability system of contributing states. At the UN level, this has posed a significant hurdle as the top ten contributing states represent some of the weaker examples of police oversight structures. For the EU and RAMSI, the situation is somewhat better as the accountability structures in most EU states and the two largest contributors to RAMSI, Australia and New Zealand, generally accord with international best practice for democratic and rights-based police oversight.

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104 *Ibid.*, articles 4(5) and 5(4).

105 *Ibid.*, articles 7(1)–(2) and 8(1)–(2).

106 Article 8(3), Memorandum of Understanding between Democratic Republic of Congo and the South African Police Service (DRC MOU).

107 Articles 3 and 5(2), Memorandum of Understanding between South African Police Service and the Republic of Uganda (Uganda MOU).

108 *Ibid.*, article 5.

109 *Ibid.*



# 3

## The Police Component of the African Standby Force: Challenges for Accountability

*Leon Kukuk*

### **Introduction**

The concept of an African Standby Force<sup>110</sup> was approved in 2003. In a relatively short space of time it has become a key priority for the Peace and Security Commission (PSC) as the primary means of future African Union (AU) peace operations. The African Standby Force (ASF) can now demonstrate some real capacity. With it African police contributions to peacekeeping missions has improved considerably. Proof of this growing capacity, is the deployment of a full-scale African-led police component in the African Union Mission in Sudan (AMIS).<sup>111</sup>

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110 It is also sometimes referred to as the African Standby Capacity, perhaps a more appropriate designation.

111 The African Union Mission in Sudan (AMIS) was active in Darfur from 2004 to late 2007 to perform the following mandate: (i) to monitor and observe compliance with the Humanitarian Ceasefire Agreement of 8 April 2004 and all such agreements in the future; (ii) to assist in the process of confidence building; (iii) to contribute to a secure environment for the delivery of humanitarian relief and, beyond that, the return of Internally Displaced Persons (IDPs) and refugees to their homes, in order to increase the level of compliance of all parties with the Humanitarian Ceasefire Agreement and to contribute to the improvement of the security situation throughout Darfur.

The progress notwithstanding, serious challenges need to be negotiated. Several broad themes within these developments still need to be reflected upon, with specific reference to issues relating to capacity, accountability and the emergence of regional peacekeeping mechanisms.

Individual African-led operations in the past have met with mixed reviews – praised for their efforts to provide security and protection, but criticised for lacking skills and committing human rights abuses. ECOWAS recognises that its ‘peacekeeping activities have mainly been considered commendable’, although they had a ‘few shortcomings’.<sup>112</sup>

The presence of peacekeepers may well keep the peace, but although most of the personnel behave professionally and to the high standards expected of them, incidences of misconduct and abuse do occur. UN peacekeeping operations in Angola, Kosovo, Sierra Leone, Liberia, Democratic Republic of the Congo and Guinea, stretching back more than a decade, all involved sometimes alarming rates of gender-based violence inflicted by peacekeepers on the local population. African-led peacekeeping initiatives may be perceived by local populations to have more credibility, and greater empathy, but may perhaps also engender higher expectations for their conduct. The AU can only benefit from recognising, at the outset, the potential pitfalls that bedevilled past UN operations and take steps to avoid them, mitigate the consequences if wrongdoing does occur and to have functioning mechanisms in place to achieve justice for those affected.

African police capacity, especially, for peacekeeping still lags behind military capabilities. Although accountability is of essence to the ASF concept as a whole, it is important to discuss issues of accountability of the police component separately. Whilst most peacekeeping mandates are framed within the context of International Humanitarian Law and Human Rights Law, with the military component subject and accountable to these laws, the police component is subject to civilian law. Appropriate, robust accountability mechanisms do not appear to have been considered or discussed in the numerous meetings that led to the design and formation of the ASF concept.

A stronger focus on seemingly neglected aspects of capacity and accountability will deepen the understanding of the police component of the ASF. Highlighting some of its operational challenges and efforts to support peace and security will further assist the discussion on these complex issues. This paper will address a number of key questions about African police capacity and accountability: What kind of roles are African police playing in peacekeeping missions? How do African police help fill current needs for peacekeeping police? What sort of training do they receive? What are the capacity and accountability constraints? What challenges do African nations face in contributing police to peacekeeping missions?

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112 ECOWAS (2005). Achievements of ECOWAS. Material posted on ECOWAS website <http://www.sec.ecowas.int/>

## Capacity

The notion of African police ‘capacity’ requires clarification. On the one hand it means the capacity of individual nations to contribute police to international peace operations in terms of numbers, relevant training, and necessary equipment. It also refers to the capacity of Africa, through the African Union (AU) to organise and deploy peace operations with a police component. These two types of capacity are not separate. The mere existence of qualified police does not guarantee their readiness or ability to deploy as part of a peacekeeping mission or their efficiency once deployed.<sup>113</sup>

## Accountability

Much has been spoken about the need for accountability of oversight of national police organisations operating within democratic systems of governance. Less however has been spoken about the need for accountability of security institutions operating in a transnational space.

Maintaining and deepening the accountability of police resources contributed to the ASF to the operational and political authorities involved is essential. It is also important to provide access to external monitoring and accountability. Accountability, in its simplest form, is the process by which organisations and their staff are answerable both for their actions and for the consequences of those actions. However, accountability should be more than a limited *post hoc* activity with an emphasis on control. A broader understanding of accountability recognises the need for ongoing involvement in planning and decision-making processes. Those affected by decisions should especially have a right to be involved in these processes.

Accountability requires, among others, that police respect the rule of law, be under civilian control through democratic institutions, and respect and uphold the international normative human rights framework.

Ultimately accountability lies at the heart of the values a deployed police component would seek to instil in a post-conflict environment. A goal of security sector reform is to create justice and security systems which do not threaten democracy, human rights or undermine development but which are responsible and responsive to the needs of the population. Accountability lies at the centre of this process and can only be championed if those seeking to support the reform share, promote and operate according to the same values.

## Regionalisation

Delegating the responsibility to protect – which the International Commission

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113 Levine D. H. (2008) ‘African Civilian Police Capacity for International Peacekeeping Operations’. Henry L. Stimson Center. [http://www.stimson.org/fopo/pdf/African\\_Civpol\\_08FINAL.pdf](http://www.stimson.org/fopo/pdf/African_Civpol_08FINAL.pdf) (Accessed on 9 February 2010).

on Intervention and State Sovereignty (ICISS) had so meticulously placed upon the shoulders of the UN Security Council – potentially opens up the door to a proliferation of undesirable interventions motivated by regional power politics instead of humanitarian concerns.<sup>114</sup> The idea of regionalising such responsibility must nevertheless be understood as an emancipative and complementary effort. It is not supplementary to the UN and should enable the international community to address more conflicts more comprehensively by building on the strengths and compensating for the weaknesses of both types of organisation.<sup>115</sup> Although the slogan ‘African solutions to African problems’ should not be an excuse for lack of international commitment to peacekeeping, it should also not be an excuse to accept interventions at lower standards. Regional peacekeeping should uphold the highest standards of conduct and discipline in field missions, including the formulating of policies, training, operation and the handling of allegations of misconduct.

## Role of the Police Units

The Common African Defence and Security Policy has been in effect since 2002. A two-phase time schedule provides for the creation of the ASF by 2010, suited to peacekeeping operations. The ASF is not a single African army. Five brigades of about 3 000 to 5 000 personnel each are to be established in five regions – North, East, South, West and Central. In addition to the military component each brigade will have 500 observers; 240 individual civilian police; two companies of stability police; and an unspecified number of civilian experts on human rights and reconstruction tasks.<sup>116</sup>

Policing has been recognised as part of the broader peacekeeping environment for some years. In the Capstone Doctrine, Principles and Guidelines, the UN points out that

The transformation of the international environment has given rise to a new generation of ‘multi-dimensional’ ... peacekeeping operations ... typically deployed in the dangerous aftermath of a violent internal conflict and may employ a mix of military, police and civilian capabilities to support the implementation of a comprehensive peace agreement.<sup>117</sup>

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114 Franke B. F. (2006). ‘In Defense of Regional Peace Operations in Africa’, *Journal of Humanitarian Assistance*. [www.jha.ac/articles/a185.pdf](http://www.jha.ac/articles/a185.pdf) (Accessed on 9 February 2010).

115 Ibid.

116 Levine (2008).

117 The African Standby Force Police Dimension Staffing, Training and Rostering Workshop, Algiers, Algeria 18–20 October 2008, Training for Peace Programme at Institute for Security Studies, October 2008.

Even in the most extreme circumstances, where military force is requested as an intervention to stabilise a failing state or to protect the population from genocide or humanitarian disaster, among other tasks, the police should in the least be available to advise the military, civilian components and humanitarian agencies on the contingency steps for the restoration of civil order.

Police peacekeepers play the role of mentors and trainers to local police situated in a post-conflict society. This can ensure that when peace is firmly established, the host country has adequate police officers to maintain law and order and prevent a resurgence of conflict.<sup>118</sup>

Building on this history, the specific function of the police component in the ASF is:

- » police force preparation, planning, training, deployment, sustenance and redeployment;
- » participating in fact-finding missions;
- » participating in advanced mission teams preparing for deployment of the missions;
- » monitoring the implementation of recommendations regarding police matters;
- » developing and updating police standard operational procedures (SOP), police training policies and standards;
- » coordinating and harmonising police force resource contributions and commitments;
- » developing databases, options and contingency plans;
- » supporting mission headquarters with operational planning;
- » collecting, evaluating and determining best practices (lessons learned) from previous and ongoing missions; and
- » maintaining the police mission roster.<sup>119</sup>

Giving higher priority to police in Police Support Operations (PSOs) helps to create a safer environment, leaves communities better protected from ‘aftermath’ atrocities common in post-conflict environments, and prevents or disrupts criminal activities such as organised crime and smuggling. The need particularly for the civilian dimension to emerge as the most important feature of the ASF, i.e. the ‘civilianising’ of the ASF, is probably an area that did not receive adequate attention among policy makers and analysts in the field.<sup>120</sup>

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118 Mbogo S. (2009). ‘Africa: Police for Peace’, *ISN Security Watch* 14 August 2009 <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?ots591=4888caa0-b3db-1461-98b9-e20e7b9c13d4&lng=en&id=104614> (Accessed 09 February 2010).

119 The African Standby Force Police Dimension Staffing, Training and Rostering Workshop.

120 ‘The Need for “Civilianising” The African Standby Force’, *Peacekeeping This Month*, 26 March 2009, <http://www.apsta-africa.org/news/article260309.php> 17/02/2010 (Accessed on 9 February 2010).

The PSC Protocol, Art. 13 (3), provides for six ‘mission types’ which include ‘intervention in a Member State in respect of grave circumstances or at the request of a Member State in order to restore peace and security’.<sup>121</sup> When there is a significant collapse of law and order institutions, or where the local police are either nonexistent or ineffective, UN Chapter VII and Article 4(h) of the AU Constitutive Act authorise the substitution of national police with international police. Under such circumstances, the ASF police component may take on some or all of the police responsibilities of the country in question. At the planning phase of such missions the ASF police component will need to conduct assessments of policing capability and capacity; assessment of internal/regional security; drafting of strategic plans for police development; investigation strategies on sensitive enquiries; and contributions to national security infrastructure.<sup>122</sup>

Normally, the military ‘campaign plan’ is the most formal and stylised of the various functional planning components that inform and constitute the integrated plan, and may largely influence the latter.<sup>123</sup> The general functions for the police component must be an integrated part of the ASF, and must work in close coordination with the military component and the civilian component.<sup>124</sup>

Ideally policing should begin in the immediate aftermath of hostilities. Delays in the police deployment should however be foreseen and built into the overall plan. Police and legal advisors should accompany the initial deployment of military forces at least. This will ease the transition when police forces do arrive. It may also be necessary to take into consideration that the police component may have to stay behind after the military has left. The police may need to stay longer until national authorities have successfully retaken control.<sup>125</sup>

The use of militarised (gendarme) police has been advanced as a way to bridge the enforcement gap between the military and the police. Formed Police Units (FPU) or paramilitary police units, although a relatively recent phenomenon in UN missions, are increasingly in demand by peacekeeping missions. FPUs are large (115 to 140 police) and self-contained. These units are trained specifically to secure law and order in unstable situations. They are seen as desirable because they are less expensive than individual police and can be deployed more quickly.<sup>126</sup>

Many peace missions are grey-area operations, where neither war nor peace prevails. Yet ‘grey area’ operations are the *raison d’être* of many gendarme-type forces. Most have been created to enforce the law in a grey area situation in

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121 Draft Policy Framework for the Civilian Dimension of the African Standby Force, 2006.

122 Draft Policy Framework for the Civilian Dimension of the African Standby Force.

123 Engel U. & Porto J. G. (eds) (2010). *Africa's New Peace and Security Architecture: Promoting norms, institutionalizing solutions*. Ashgate.

124 Franke (2006).

125 Lar J. T. (2009). ‘The ECOWAS SSR Agenda in West Africa: Looking Beyond Normative Frameworks’, KAIPTC Occasional Paper No. 24. [http://www.kaiptc.org/\\_upload/general/Occasional%20Paper%20no%202025.pdf](http://www.kaiptc.org/_upload/general/Occasional%20Paper%20no%202025.pdf) (Accessed 09 February 2010).

126 Levine (2008).

their own countries during times of instability or nation-building. These forces additionally have a dual dependency and operability, as they can be deployed under both civilian and military command.<sup>127</sup>

The Economic Community of Central African States (ECCAS), which consists largely of former French colonies, will supply their civilian police with gendarmerie for more robust missions and civilian police where the mission allows.<sup>128</sup>

A special danger regarding FPU's is that their paramilitary structure makes them more disposed to use violence. They are trained more in stability and order-maintaining tasks than as community police. Since their use is still new, operational guidelines must come largely from lessons learned from limited previous experiences, knowledge not yet readily available.

A lack of police specialisation in AMIS<sup>129</sup> forces may have contributed to the difficulty in complying with the tasks they faced. Not all police contributed to AMIS were trained to carry out the police and human rights observation tasks which they were being asked to undertake.<sup>130</sup> Police who were severed from their national command structures were placed in a situation where they did not have a clear understanding of their roles and responsibilities.<sup>131</sup> UNAMID,<sup>132</sup> given its much larger planned police component, may be better able to accomplish these tasks.

## Issues Facing International Police Cooperation in Peace Missions

In the past peacekeeping consisted of monitoring a cease-fire between belligerents.

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127 Lar (2009).

128 Engel & Porto (2010).

129 'Under the terms of the 2005 Darfur Peace Agreement (DPA), AMIS police were charged with heavy responsibilities, including training national police forces, accompanying and observing government and rebel police, patrolling demilitarised zones, and protecting the internally displaced. This would be a tall order for any police force, and may prove a particular strain on the planning, organisational, and personnel capabilities of the AU's first police deployment' (Levine 2008).

130 Levine (2008).

131 In October 2006, the International Peace Academy arranged a seminar in Accra, Ghana where senior military and police officers, currently or formerly serving with AMIS, reflected on what the AMIS experience meant for the continued development of the African Standby forces. The participants found the following to be the most serious shortcomings of AMIS:

- Insufficient planning early on in the mission;
- Lack of clarity in the mission structure, especially with regards to coordination of the military, civilian, and police components;
- Weak strategic command capabilities;
- Weak operational command capabilities;
- Insufficient capacity to deal with external actors, such as the GoS, donor countries, and UN agencies;
- Insufficient logistics resources and logistics management capability;
- Insufficient communications and information systems;
- Slow force generation and weak personnel management;
- Strong financial dependence on partner countries and over-dependence on technical advice from partner countries.

It is notable that these weaknesses all relate to the command and control capabilities of the higher levels of the AMIS hierarchy. This may be a consequence of the fact that the participants had been working in relatively senior positions, but the lack of criticism is consistent with the bulk of the literature on AMIS, which generally gives credit to AMIS's work at the tactical level and below. (The African Union Mission in Sudan (AMIS) Experiences and Lessons Learned FOI, Swedish Defence Research Agency Division of Defence Analysis, 2008).

132 African Union/United Nations Hybrid operation in Darfur.

Yet post-Cold War peace operations are increasingly about protecting civilians, establishing law and order and developing institutions. Many of these tasks demand police rather than soldiers as agents of implementation. Police doctrine rather than military doctrine is more appropriate and useful when the objective is peace and not the suppression of an opponent.

Xavier Ejoyi, a researcher with the Institute of Security Studies (ISS), attributes the growing demand for police peacekeepers to an increasing need to reconstruct criminal justice systems. These are often the first casualties in Africa's internal conflicts.<sup>133</sup>

By 2004, less than 1 000 African police officers charged with peacekeeping duties were deployed within and outside the continent. That number has since grown more than ten-fold. Statistics from the United Nations Police Department show that the number of police officers from Africa serving in peacekeeping missions around the world has increased by 930 per cent, from 348 officers in 2003 to 3 587 by June 2009.<sup>134</sup>

Peace operations have complex mandates that cover the whole range of political, security, humanitarian, development and human rights challenges. Mandates will often include the implementation of a comprehensive peace agreement. This multi-dimensional complexity has created the need for sophisticated management and coordination structures. Civilian components usually include political affairs, public information, planning and coordination, human rights, humanitarian liaison, legal advice, judicial affairs, Disarmament, Demobilisation and Reintegration (DDR), Security Sector Reform (SSR), electoral affairs and gender. Failure of any one component can have profound political consequences. Through monitoring, advice and training, the police, at all levels and in all lines of operations, play an essential role to establish and maintain the underlying law and order conditions required to ensure the success and long term viability of these initiatives.<sup>135</sup>

While police and military components in Peace Support Operations (PSOs) often have similar goals – establishing and maintaining security and stability – it is important to note that their roles and functions are fundamentally different.

The military force is useful in pacifying conflict areas without necessarily creating lasting peace. As it withdraws, it risks a security vacuum that easily degenerates into rape, theft and other human rights abuses. Conflicts on the African continent tend to be more internal in nature, with high civilian casualties. Civilian casualties and lawlessness are especially problematic in the immediate aftermath of conflict. It is here that police could serve as peacekeepers preventing

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133 Mbogo (2009).

134 Figures compiled from data at UN Department of Peacekeeping Operations (DPKO), 'Monthly Summary of Contributors to UN Peacekeeping Operations', [www.un.org/Depts/dpko/dpko/contributors/](http://www.un.org/Depts/dpko/dpko/contributors/) (Accessed 9 February 2010).

135 Draft Policy Framework for The Civilian Dimension of the African Standby Force, discussion document prepared for consideration at the Technical Experts Workshop on the Civilian Dimension of the African Standby Force, scheduled for 28 August to 1 September 2006 at the Kofi Annan International Peacekeeping Training Centre in Accra, Ghana.



‘aftermath’ atrocities in areas where neither peace nor war prevail, as well as helping to rebuild the institutions of law and order.<sup>136</sup>

Dr Steven Kasiima, head of police training and development at the Africa Mission in Somalia (AMISOM), states that ‘This concept, where the police peacekeepers take over as soon as the army peacekeepers pacify an area was first successfully used in Monrovia, Liberia. Since then, the army has demanded [that] the police should take over where missions succeed in stabilising’.<sup>137</sup>

The police functions usually focus on long-term capacity-building through monitoring, mentoring, training and advice. However, more recently police actions, such as crowd control and executive policing, depending on their mandate as they contribute to short-term stabilisation goals, have become more common.<sup>138</sup>

The role of the African Union Police (AUPOL) in peacekeeping is still under construction, so to speak, but it has been proposed that it should be able to:

Ensure compliance with international criminal justice and human rights norms, assist in establishing and maintaining public safety and law and order, to achieve the long-term viability of local law enforcement institutions through monitoring, advice, and training in best practice, and undertaking other Rule of Law duties, including assistance to electoral processes, that contribute to sustainable peace and security.<sup>139</sup>

While the mandate of the police component may change from mission to mission, most of its activities will conform to international police activities, which tend to fall under three broad categories:

- » Monitoring, mentoring and advising of local law and order forces, if they exist, to ensure that they perform their duties in a manner consistent with internationally accepted standards.
- » Reform and restructuring – the development of local police infrastructure, including training of local law and order forces and agencies, as well as recruitment and mentoring functions.
- » Executive functions – typically include powers of arrest, search and seizure, detention, crowd control and investigation. These tasks may be carried

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<sup>136</sup> Mbogo (2009).

<sup>137</sup> Ibid.

<sup>138</sup> Concept Of The Police Component In Eastern Africa Standby Brigade, Adopted by the Council of Ministers of Defence and Security 9–10 March, 2009, 24 February 2009.

<sup>139</sup> The African Standby Force Police Dimension Staffing, Training and Rostering Workshop, Algiers, Algeria 18–20 October 2008 Training for Peace Programme at Institute for Security Studies.

out by individual police officers, specialised units or Police Formed Units (PFUs). In many missions, PFUs are a very useful primary intervention tool.<sup>140</sup>

## Command and Control

The ASF borrows from the design of the UN Standby High Readiness Brigade (SHIRBRIG), which emphasises the importance of headquarters capacity. The AU expects to develop a headquarters component with a robust planning cell and strategic planning unit to coordinate development of the five regional brigades. The planning elements within AU headquarters (and each of the subregional groups, known as Regional Economic Communities, or RECs) would include staff focused on training, doctrine and management. This means that African organisations, such as the Southern African Development Community (SADC) and the Intergovernmental Authority on Development (IGAD), that traditionally focused on development and economic agendas have started to address peace and security issues.<sup>141</sup>

Even though the ASF is not a state force in the strict sense of the word, its involvement inside a member state is governed by the rules applicable to international armed conflicts.<sup>142</sup>

The Chairperson of the AU Commission initiates any implementation process by establishing the command and control line of the ASF intervention force. The chain of command has the following ranks appointed by the Chairperson of the AU Commission: Special Representative or Head of Mission, a Force Commander, Commissioner of police, Heads of civilian components and a Head of Mission Support.<sup>143</sup>

The overall control of the activities of the heads of the military, police and civilian components of the ASF in a mission is undertaken by the Special Representative or Head of Mission, who reports to the Peace and Security Commissioner. The Peace and Security Commissioner is directly accountable to the chairperson of the AU Commission. However, the Special Representative or Head of Mission can directly

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140 Concept of the Police Component in Eastern Africa Standby Brigade.

141 Holt V. K. & Shanahan M. K. (2005). 'African Capacity-Building for Peace Operations: UN Collaboration with the African Union and ECOWAS', Henry L. Stimson Center February. [http://www.stimson.org/fopo/pdf/African\\_Capacity-building.pdf](http://www.stimson.org/fopo/pdf/African_Capacity-building.pdf) (Accessed on 9 February 2010).

142 Aneme, G. A. (2008). 'The African Standby Force: major issues under "Mission Scenario Six"', *Political Perspectives* Vol. 2 (1). [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1315786](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1315786) (Accessed on 9 February 2010).

143 *Ibid.*; African Union (2002). Article 13(6) and (7); African Union (2006). pp. 29–30.

access the Chairperson of the AU Commission if necessary.<sup>144</sup>

The direct command and control of the ASF intervention mission by the AU helps to avoid many of the problems of accountability and management that arise because of the ‘split personality’ common in many peacekeeping and peace enforcement operations where contributing states and international organisations such as the UN have coordinated command and control. The fact that the ASF intervention mission is under full civilian operational command and control of the AU means that the AU is responsible for any violations of humanitarian and human rights laws by the ASF civilian and military personnel.<sup>145</sup>

The law of occupation under international humanitarian law applies in a situation where the ASF military forces control and administer a territory for the purpose of protecting the civilian population against genocide, crimes against humanity or war crimes. The ASF military forces are bound by the obligations under the 1907 Hague Regulations and the Fourth Geneva Convention (1977). The obligations include the respect for the sovereignty of the occupied territory, the duty to restore and ensure public order, the duty to limit the occupation and the duty to allow access to international humanitarian organisations. While humanitarian law and human rights law contain different sets of rules, there are areas of convergence between the two. This convergence is stronger in such matters as ‘the right to life; the prohibition of torture and cruel, inhuman, or degrading treatment or punishment; arbitrary arrest or detention; discrimination on grounds of race, sex, language, or religion; and due process of law’.<sup>146</sup>

While in the mission area, all AU Police personnel are under the command of the Commissioner of Police (COMPOL) and are directly answerable to the Commissioner for their conduct and the performance of their duties.<sup>147</sup> Purely internal reporting mechanisms are unfortunately often inadequate in the satisfactory identification and resolution of cases of misconduct. Police officers, being subject to civilian laws, frequently operate in a functional vacuum as to exactly which laws and which jurisdictions apply to them, leaving accountability gaps and loopholes, especially with regards to the investigation and prosecution of wrongdoing.

In East Africa, IGAD has served as a coordinating body, including calling meetings of the Eastern African Chiefs of Defence Staff (EACDS), and has made the Eastern African Standby Brigade (EASBRIG) a core component of the peace support aspect of its peace and security strategy.<sup>148</sup>

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144 African Union (2004c), p. 28.

145 Ibid.

146 Ibid.

147 Ibid.

148 Levine (2008).

## Training

At national level, member states contributing contingents to the sub-regional brigade are expected to train the individuals and units that form part of the standby brigade in basic military tasks as well as in standardised doctrine based on the AU and UN operating procedures.<sup>149</sup>

The minimum requirements for police to serve in UN missions are: five years of policing experience; proficiency in the mission's official language (usually English or French); ability to drive a 4x4 vehicle; and (if the police are to be armed) proficiency with personal firearms.<sup>150</sup>

The Mission Statement Application for the Police Component in Eastern Africa Standby Brigade states that: 'Police will act according to the four guiding principles, impartiality, integrity, loyalty and independence when carrying out its tasks.'<sup>151</sup>

AU police personnel will inevitably be drawn from a wide variety of policing cultures. They may be general patrol officers, managers, or police specialists. They will be accustomed to different policing methods in their home countries. Familiarity with the democratic standards of Western policing is not well established, as the following observation makes clear:

In Sierra Leone, for example, a UN-led assessment found that most United Nations Mission in Sierra Leone (UNAMSIL) police advisers were ignorant of international democratic policing standards and UN procedures, and some were less experienced than the Sierra Leonean police they were advising.<sup>152</sup>

In the past more than 80 per cent of police on UN missions failed to demonstrate basic skills. More recently UN Standards Assessment Teams (SATs) worked with African contributors to pre-screen police before deployment. While more than half of all prospective African police still fail, the pass rate has increased dramatically.<sup>153</sup>

It is therefore essential that common AU police standard and procedures be developed and followed. The police training curriculum 'United Nations Police Temporary Pre-deployment Training Curriculum', dated 22 February 2008 is followed. An integrated training system able to provide individual and collective

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149 'The Need for "Civilianising" The African Standby Force', *Peacekeeping This Month*, 26 March 2009; African Union (2004c). p. 23.

150 Levine (2008).

151 Concept of the Police Component in Eastern Africa Standby Brigade, Adopted by the Council of Ministers of Defence and Security 9–10 March, 2009 24 February 2009.

152 Levine (2008).

153 Ibid.

training for regional forces is required by the end of 2010.<sup>154</sup>

Centres such as the Kofi Annan International Peacekeeping Training Centre (KA IPTC)<sup>155</sup> in Ghana can play a role in doctrine and training requirements and harmonising standards. In 2006, a draft policy framework was developed for the ASF civilian component, including a police component, in coordination with the KA IPTC and the ACCORD/Training for Peace (TfP) programme.<sup>156</sup>

Specifically, the ASF Evaluation and Validation and Centres of Excellence document (3 October 2006) provides that Centres of Excellence conduct courses.<sup>157</sup> The areas covered in these courses range quite widely. ‘Train-the-trainer’ courses cover four types of training areas (individual, collective, command and staff, and specialist). At a managerial level, courses cover: Public Information and Media Operations; Joint Operational Planning for staff; Senior Management and Leadership; Civilian Police in PSO; Crisis Management and Contingency Planning; Intelligence Analysis and Management and Negotiation as well as Stress Management.

Operational type training include Disarmament, Demobilisation and Reintegration (DDR); Civilian Military Coordination (CIMIC); and Military Observers (MILOBs). Training in tactical aspects include election monitoring/observers as well as land-mine awareness and de-mining.

Traditional police tasks such as crime prevention, detection and investigation of crime and community relations do not appear to be covered, especially in the context of conflict and post-conflict countries where the police are likely to be deployed.

The police do receive preparation in a number of important aspects of policing that they may encounter in unique or more acute circumstances in the course of their deployment, through training in Humanitarian and International Human Rights law and Child Protection; Sexual Exploitation and Abuse; Cultural Awareness; Gender Awareness and HIV/AIDS.

While implementing the ASF training during 2009, the AUPSOD did identify additional gaps in the area of civilian and police training, which should be followed up upon and included in future training.

In 2009, the UN for example, introduced new Core Pre-deployment Training materials to reinforce the UN’s strategy to combat sexual exploitation and abuse. A Core Induction Training Module was developed by the Conduct and Discipline Unit (CDU) to ensure UN personnel in the field understand and adhere to the

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154 The African Standby Force Training Support and Coordination Workshop, Addis Ababa, Ethiopia, 24–26 April 2007, Revision of 2 March 2007.

155 As of beginning 2010, the Peacekeeping Support Department (PKS) is composed only of an international military staff but to be augmented by a policeman as a Course Director. <http://www.kaiptc.org/peacekeeping/default.asp> (Accessed on 15 March 2010).

156 Levine (2008).

157 The African Standby Force Training Support and Coordination Workshop Addis Ababa, Ethiopia, 24–26 April 2007, Revision of 2 March 2007.

Secretary General's 'zero tolerance' policy on sexual exploitation and abuse.<sup>158</sup>

Few African countries have dedicated staff or structures within their police institutions to select and train police for peace operations; ensure that their needs are met on missions; or arrange for the logistics of their deployment and return. In addition, this lack of institutionalised attention to peace-operations police resulted in the absence of smooth procedures to manage turnover and replacement of police in the field, meaning that even the police available for peace operations were not used in an efficient manner.<sup>159</sup> On the other hand, governments may well analyse their own peace operations capacity, but often do not publish it<sup>160</sup> or share this information with regional police bodies or at regional meetings.

Screening and a proper selection process remain both a challenge and a priority. When comparing national training programmes and national civilian police management, huge gaps are evident between countries. This is particularly so with regard to their selection/screening processes, training programmes, deployment programmes, and amount of support given by the contributing country to the police in the field. Neither the training courses nor deployment on missions should be a dumping ground for unmotivated or substandard national officers.<sup>161</sup>

The process of reintegration of police back into regular forces also varies, with some countries having extensive programmes, whilst others have none.<sup>162</sup>

Training should be balanced by including units from smaller countries so as to reduce the perception that the force is dominated by only a few relatively powerful and large countries that contribute the most troops.

Western nations, NGOs, and international institutions have a number of training programmes in place. Police training is a relatively recent addition, but has been getting attention. Competing efforts to train and equip African forces can lack coordination, duplicate one another, and create confusion about where strengths and weaknesses lie. A mechanism to track training programmes and new initiatives in Africa by various bilateral, regional and member states, will make a significant contribution to increased ability to support peacekeeping operations.

Being materially dependent upon the West puts Africa's peace and security policy at risk of being politically compromised. The AU should nevertheless ensure that they retain ownership of the process and drive donor support. AMIS was dependent on donors, especially the EU. The design of the support made long-term planning difficult. For future international support to African peace

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158 UN Communications Centre (2010). Press Releases and Statements, 5 February 2010. <http://cdu.unlb.org/CommunicationsCentre/PressReleasesandStatements.aspx>.

159 Levine (2008).

160 Holt & Shanahan (2005).

161 Ibid.

162 The 10th annual IAPTC conference was hosted by the Kofi Annan International Peacekeeping Training Centre (KAIPTC) in Accra, Ghana from 23–29 October, 2004, [www.iaptc.org/IAPTC%20AC%20Final%20Report%202004.doc](http://www.iaptc.org/IAPTC%20AC%20Final%20Report%202004.doc) (Accessed 9 February 2010).

operations, donors should both increase strategic command capabilities at the AU level and support individual African militaries.<sup>163</sup>

‘Whether Africa moves towards a freestanding ASF or continues to pursue integration with the UN and Western militaries will strongly influence the shape of African police capacity, and the challenges African police will face.’<sup>164</sup> It may also conceivably move to closer security cooperation with China, or perhaps more likely, with AFRICOM.<sup>165</sup> This would not only risk the police component becoming militarised but may well have the effect of seeking military solutions to all political and security challenges.

### **Domestic and Regional Interaction**

The overall purpose of the ‘Police Points of Contact’ is to enhance and strengthen the police component in PSO. The Police Point of Contact will enhance the identification process necessary between the various National Police Authorities, as producers of skilled police personnel to Peace Support Operations, as the Strategic instrument for planning and deployment of police personnel to such operations. The national police forces can build an ownership in the sense that ASF does not only consist of a military component, but just as much of a police component and a civilian component.<sup>166</sup>

The Police Point of Contact from each national police force in the region, appointed by their National Police Chiefs, in a seminar 24–26 September 2008, underlined the necessity of having a coherent multi-dimensional approach in the Peace and Security Architecture. It is therefore advisable to complement the Committee of Chiefs of Defence Staff with the National Police Chiefs and the Council of Ministers with the ministers responsible for the police.<sup>167</sup>

In terms of PSO planning and training, it is of great importance to have a close contact between the ASF and the national police authorities. At the moment Chiefs of Police are not available as advisors.<sup>168</sup>

Four areas especially where the Chiefs of Police can make a contribution are:

- » Design/staffing of the strategic management capability of the ASF within the ‘planning element’, as well as input into improving headquarters capacity.

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163 Ekengard A. (2008) ‘The African Union Mission in Sudan (AMIS) Experiences and Lessons Learned FOI’, Swedish Defence Research Agency Division of Defence Analysis, <http://www.foi.se/upload/projects/Africa/foir2559.pdf> (Accessed on 9 February 2010).

164 Levine (2008).

165 The United States Africa Command (USAFRICOM or AFRICOM) is a Unified Combatant Command of the United States Department of Defense that is responsible for US military operations and military relations with 53 African nations – an area of responsibility covering all of Africa except Egypt.

166 The African Standby Force Training Support and Coordination Workshop Addis Ababa, Ethiopia, 24–26 April 2007, Revision of 2 March 2007.

167 Ibid.

168 Concept of the Police Component in Eastern Africa Standby Brigade.

- » Design of a suitable harmonised framework of ASF police training that meets the minimum standards for AU mandated peace missions.
- » An operational and tactical advisory function for police officers on deployment.
- » A monitoring and oversight function during PSOs.

## Emerging Areas of Concern

### Mandate and Doctrine

Within the AU Commission's Peace and Security Directorate, insufficient staff and funding have hampered personnel tasked with supporting current missions and forward-looking projects such as the African Standby Force. Lack of coordination between the AU and the sub-regional organisations on capacity-building has also impacted development of the ASF modalities. In fact, only a handful of the 53 AU member states had defence attaches assigned to Addis Ababa in 2004, making it difficult to create a standing committee at Headquarters.<sup>169</sup>

The AU and the ASF concept would benefit from clearer mandates and doctrines for its missions, as well as leadership qualifications. It must clearly identify the requirements for civilian police and other personnel through better analysis of best practices and provide greater analytic and strategic assessments.

The UN's own effort to evaluate and reform its conduct of peacekeeping should be applied to frame a discussion of support for peacekeeping in Africa. The Brahimi Report<sup>170</sup> offers one lens through which to frame the context regarding the requirements for successful management of multinational peace operations and avenues for cooperation among African efforts, outside partners, and the United Nations.

In 2005, the Henry L. Stimson Centre found that 'few African leaders and staff officials have a working knowledge of the Brahimi Report recommendations and the efforts to improve UN headquarters support to peace operations'. Of note is that it 'found little conscious effort to link subregional and regional capacity-building efforts to those being implemented by the UN in its post-Brahimi work,

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<sup>169</sup> Holt & Shanahan (2005).

<sup>170</sup> Commonly called the Brahimi Report, the Report of the Panel on United Nations Peacekeeping Operations (2000) addressed many of the dysfunctions of the United Nations, and particularly its inability to carry out its mission due to a lack of a proper global information collection, processing, and analysis capability. The report identified areas where the United Nations and its member states should support regional and sub-regional organisations' development of peace operations tools: training, equipment, logistics and other resources. It is available at: [http://www.un.org/peace/reports/peace\\_operations/](http://www.un.org/peace/reports/peace_operations/)



even where synergies seemed natural, such as for regional brigade training, use of the UNSAS<sup>171</sup> system and to improved fact-finding missions'.<sup>172</sup>

Both the Brahimi Report and the High-level Panel (2004) identified significant gaps in peacekeeping operations and specifically sufficient and highly skilled civilian police, rule of law teams and other civilian personnel.

Having identified the gaps, the UN nevertheless considers that doctrine and training for forces are national responsibilities. Both elements affect the ability of missions to meet mandates and affect the conduct of personnel on the ground. Limited UN guidelines and pre-deployment training are offered to troop contingents through the Department of Peacekeeping Operations (DPKO), Training and Evaluation Service (TES) and documents such as the Handbook on UN Multidimensional Peacekeeping Operations (2004). It has also compiled a handbook of UN Criminal Justice Standards for Peacekeeping Police. This contains detailed technical standards for various executive police functions.

These standards are intended to give some guidance on common international standards, especially to police operating in nations whose domestic police rules do not conform to international standards.<sup>173</sup>

Support for closing key capability gaps needs to be expanded. This includes headquarters management and planning capacity, financing, mission leadership and available, skilled military and civilian personnel. The UN's TES could be a natural link for training assistance to the AU. It could assist regional organisations in setting up pre-deployment training for their troop contingents to better understand their mission, mandate and the rules of engagement of an operation. These measures still need to be adopted. Such collaboration should increase the ability of the UN to take over peace operations from regional leadership more smoothly.

There is a need for strategies, policies and report-back mechanisms that address the institutional law and order vacuum in post-conflict societies in unique and innovative ways.

One of the main challenges which need to be overcome for an effective peacekeeping operation is how to manage the transition between military and police forces. Planning issues tend to be a product of conscious political decisions by the major contributors to the military force, and unfortunately not always the result of practical considerations. Distribution of responsibilities is often decided not by necessities in the field, but by political needs elsewhere and the nature of mandates. Rules of Engagement then incline to conform to political rather than to military logic. Peacekeepers, and especially the police component, can find

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171 United Nations Standby Arrangements System.

172 Holt & Shanahan (2005).

173 Levine (2008).

themselves addressing issues they are not trained or prepared for. Operational dilemmas arise in that overlap between security, law and justice. These unclear lines lead to ineffectiveness. Confusion hampers identification of the precise nature of the vacuum and who should fill it.

The AU and its Commission on Peace and Security have small and new headquarters staff. Only a few dozen professionals, with limited funding, rudimentary planning and management capacities support peace operations. Yet ambitious plans for coordinating peacekeeping and peace-building missions are being operationalised.<sup>174</sup> Such missions are not self-sufficient, however, and the AU faces major gaps in their proposed architecture for organising, supporting and deploying them.

African ambitions are high for regionally-led peacekeeping. Strong, enthusiastic political will is driving the effort in Africa and internationally. It is the important incentive needed for political and structural change in institutions. African organisations and nations should be wary though of creating the impression to having more advanced capacity for peace missions than they do in fact possess.

## **Conduct**

It should not be automatically assumed that peacekeeping is the alternative to, or opposite of, military violence. Peacekeeping may even increase conflicts and insecurity, especially in situations where relationships are already exploitative, unequal and violent.

Anecdotal evidence suggests that African peacekeepers largely act according to the high standards expected of them, even in some cases to higher standards than they behave in their home countries. During the Rwandan genocide in 1994, the Ghanaian and Senegalese contingents for example, acted in an exemplary manner, often at great risk to themselves showing extraordinary compassion for and protection to the citizens of the host country.

This is however not an excuse to remain complacent. Poorly resourced and managed police forces are easily corrupted or coopted if crime, insurgency, or private employment promise greater economic benefits than government employment.<sup>175</sup>

In an environment outside of immediate domestic control and sanction, where the functional immunity that normally applies to peacekeeping forces easily translates into a sense of impunity, there is always a risk of misconduct.

Misconduct may occur at an individual level in the form of theft, assault, extortion and petty corruption. Peacekeepers have been accused of such diverse crimes as running organised smuggling rings and swapping weapons to rebel

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<sup>174</sup> Holt & Shanahan (2005).

<sup>175</sup> Ibid.

groups for gold. Much more alarmingly, accusations surface with disturbing regularity of widespread evidence of sexual abuse. It has even been asserted that the UN Peacekeeping Mission in the Democratic Republic of Congo (DRC) (MONUC) has been infiltrated by ‘organised paedophiles who recruit their friends’.<sup>176</sup>

When those sent to help local populations cause harm, it damages local communities and undermines the positive contributions and achievements of the mission. When peacekeepers derail, there is often no effective criminal prosecution system in place to provide redress. In the absence of extensive ASF exposure to peacekeeping missions and the documentation of lessons learned, UN experience provides a stark warning. In 2001, amidst accusations that sexual violence against refugees in West Africa was endemic, the UN introduced a Code of Conduct to help prevent future abuses. This included prohibitions against sexual activity between staff and children and the exchange of money or food for sex. However, little has changed on the ground.

UN operations still lack independent oversight in conflict and post-conflict countries. For that matter, no international agency has UN authority to protect the civil rights of the victims of exploitation and crimes committed against them. The UN mostly responds to misconduct through temporary *post hoc* committees or ‘panels of experts’. Permanent UN mechanisms in place tend to be under-resourced, understaffed, inadequately mandated and often dysfunctional. In spite of the rhetoric, it is clear that the necessary steps to protect vulnerable populations from violence and sexual exploitation by peacekeepers have not been effective.

Accusations of sexual violence or abuses of power by peacekeepers are hard to investigate. The need for peacekeepers is often exactly because the local judicial system has collapsed. The international community and/or the country of origin of the peacekeepers frequently fail to take notice or follow through on investigations.

Conflict and post-conflict countries contain strong dichotomies of ‘them vs. us’ and ‘winners against losers’. Human rights abuses are often condoned in the name of security. The presence of armed forces, even if they are peacekeepers, can escalate the sense of threat and disagreements. Local populations often believe that the use of force is the normal type of social interaction.

## **Accountability**

In spite of the urgency of the matter it is clear that little to no thought had been given to practical issues of accountability in PSOs. The challenges of creating

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176 Loconte J. (2005). ‘The UN Sex Scandal’, *Weekly Standard* Vol. 10(16). <http://www.weeklystandard.com/Content/Public/Articles/000/000/005/081zxeiz.asp>.

legitimate, independent, transparent and effective accountability institutions are formidable.

When misconduct and crime in PSOs are not or cannot be addressed through the internal reporting and disciplinary mechanisms, they also tend to be larger than national jurisdictions, yet not large enough to be captured within the mandates of the few international systems such as the International Criminal Court (ICC) that deal only with the most extreme crimes of war.

It is also important that political considerations as well as considerations of cost be taken into account. Individual countries may be reluctant to contribute personnel to missions where their nationals may be subject to an oversight mechanism perceived to be too intrusive or different from their national system. Differences between Anglophone and Francophone notions of justice may hamper attempts to find common ground. Issues of national pride could prejudice accountability mechanisms that are perceived to be dominated by only one or two dominant African hegemonies or even the West.

Independent oversight should include the ability to identify and resolve incidences of misconduct, as well as guide investigations and ensure that appropriate disciplinary and/or legal actions are taken. Adequate redress should be given to the victims of transgressions, including informing them of the type of action that was taken.

Targeted attention to address accountability may be complex and ambitious but are very necessary. The UN promises that they are ‘facing these challenges in a proactive and forceful manner’ and ‘will continue to take action in terms of prevention, awareness-raising with host populations, training, investigation, disciplinary sanctions and assistance to victims’.<sup>177</sup> It is a call that should be echoed by its African counterpart.

At an AU level the introduction of an ombudsman should be considered. Reporting directly to the Peace and Security Commission, this office should be mandated specifically to investigate misconduct, especially sexual and gender violence, that tends to occur outside of any jurisdiction that has the mandate, will or resources to deal with its occurrence to the degree of seriousness that it merits.

The media often play an important role. Since most journalists depend on peacekeepers for their own safety and to gain access to conflict areas, they are often rather reluctant to report too critically on those very peacekeepers. Media attention is subject to the vagaries of international attention and newsworthiness and often focuses on ‘scandals’ and ‘exposure’ rather than investigation and resolution.

A more institutional response may be to include an accountability component

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177 UN Communications Centre (2010).

in the peacekeeping training modules. This approach provides opportunities for introducing wider concerns of a human rights and ethical nature.<sup>178</sup>

Such training creates space for NGOs to participate in the training of police, thereby widening the circle of training providers. ... [T]he African Centre for the Constructive Resolution of Disputes (ACCORD) has focused its training, research and policy development on civilian peacekeeping with particular emphasis on conflict management. Another collaborative venture – involving four partners (the Norwegian Institute for International Affairs (NUPI), Accord, ISS and the Kofi Annan International Peace Training Programme) – aims at creating a ‘common language’ and ‘common culture’ of peacekeeping that will support ‘collective approaches to security, peacekeeping missions as well as effective conflict management’.<sup>179</sup>

Although still far from satisfactory the UN did formally establish The Conduct and Discipline Unit (CDU) in the Department of Field Support in 2007, following the initial formation of a Conduct and Discipline Team in the Department of Peacekeeping Operations in 2005. It was launched as part of a package of reforms in UN peacekeeping designed to strengthen accountability and uphold the highest standards of conduct. ‘[The] CDU maintains global oversight of the state of discipline in all peacekeeping operations and special political missions. It provides overall direction for conduct and discipline issues in field missions, including formulating policies, training and outreach activities and handling allegations of misconduct’.<sup>180</sup>

This only applies to UN staff. The possibility to extend this oversight to regional peacekeeping could be explored further.

Leveraging the relationship between the UN and the AU could overcome many concerns regarding legitimacy and jurisdiction. Opportunities for closer cooperation already exist in the ‘close relationship between the AU and the UN [that] is evident in the references to the use of international standards, codes and treaties and general cooperation where appropriate, but also in the roles envisaged for the UN in assessments of African peace support capacities and coordination of external initiatives in support of the ASF’.<sup>181</sup>

Article 17 on the relationship with the UN and other international

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178 Van der Spuy E. (2009). ‘Police Cooperation in the Southern African Region: Politics and practicalities’, *Crime, Law and Social Change* Vol. 51: 243–259.

179 Ibid.

180 <http://edu.unlb.org/>

181 Engel & Porto (2010).

organisations makes it obligatory for the PSC to cooperate and work closely with the UNSC as well as with other relevant UN agencies.<sup>182</sup>

## **The Impact of International Deployment on Domestic Capacity**

African nations still encounter difficulties contributing police whose skills meet international standards, and their ability to contribute personnel is limited by the need for police at home.<sup>183</sup>

Police are inherently more difficult to deploy than soldiers because of their particular type of training and expected role at home. Police are generally not trained to operate outside their nation's borders, or to deal with foreign nationals. Militaries do this almost by definition. Unless a nation is at war, its military will typically be available for foreign missions. Police are employed continuously, and every officer contributed to a UN mission is one fewer patrolling the streets at home.<sup>184</sup>

Another common concern is that individuals trained to participate in peace operations may not be the same individuals that are deployed to peace operations. Police officers trained through international programmes or regional training centres often represent an elite skill level within their national forces. Such trainees are especially attractive for domestic use.

Countries experiencing internal instability may also have the effect of them paradoxically increasing their police contributions. Police are easily coopted by one or other side during internal conflicts. Nations emerging from conflict may also be obliged to absorb police from opposition and rebel groups. These may not be entirely trusted as impartial defenders of the rule of law. Contributing untrustworthy police to international missions may be viewed as an avenue for national governments to remove them from national duty.<sup>185</sup>

Daniel Levine also states that '[d]uring interviews ... concerns were raised that peace operations-trained police might prove at least as attractive to private military and/or security companies (PMC/PSC) recruiters as national governments and, hence, be diverted into the private sector rather than finding employment in peace operations. Many PMCs/PSCs (in Africa as elsewhere) are started by ex-police, who often recruit their former colleagues – some of whom may have received peace operations training'.<sup>186</sup> There is however, to date, not much evidence that this is happening on a large scale.

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182 Ibid.

183 Levine (2008).

184 Ibid.

185 Ibid.

186 Ibid.

## Conclusion

The draft AU Vision 2010 document states that ‘although police and other civilian capabilities will form important components of the ASF, owing to the absence of a detailed related police/civilian policy, the focus at this stage had to be mainly on the military aspects’.<sup>187</sup> It is important to address this lack of detailed policy guidance on the civilian and police components of the ASF.<sup>188</sup>

SADCBRIG, for example, had advanced substantially since March 2008. It has a regional headquarters in place in Gaborone and has already held a number of peacekeeping exercises, but as of 2007 had not yet finalised the civilian component.

The Ministers of Defence and Security recommended in September 2006<sup>189</sup> that the AU Commission ensures that police/gendarmerie and civilian components of the ASF are appropriately enhanced, in order to ensure components balance in development. The ASF Training Directive incorporating the above conclusions was subsequently endorsed by the African Chiefs of Defence Staff (ACDS) and Heads of Security in March 2008.<sup>190</sup>

Police will often find themselves in a difficult and sensitive role. When the police are expected to perform police duties and be involved in the reform of the national police, there is the risk of undermining reform without being able to resolve individual incidents. It is important to remain aware of the ownership of national authorities, ensuring that responsibility, also at the political level, rests squarely on their shoulders. The Democratic Republic of the Congo (DRC) provides an example of the apparent incompatibility between long-term objectives of sustainable peace and immediate protection concerns.<sup>191</sup>

Mandating documents as well as local, regional and international expectations may be high with regard to the ability of the AU police to significantly influence communities and national police. The AU police may be required to monitor the activities of the national police, other security actors (often private or outside the control of the state) and report on violations of international human rights standards and follow up on investigations. They will report to both local authorities and through the ASF channels on breaches of conditions contained within cease-fire or comprehensive peace agreements.<sup>192</sup>

Given this, it is important that the AU, as it prepares to test the operational readiness of the ASF through Exercise AMANI Africa in 2010, revisits the way

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187 AU Commission (PSO Division), draft discussion document, Addis Ababa, October 2005.

188 Draft Policy Framework for the Civilian Dimension of the African Standby Force, 2006.

189 Ibid.

190 Concept of the Police Component in Eastern Africa Standby Brigade.

191 Lar (2009).

192 Draft Policy Framework for the Civilian Dimension of the African Standby Force 2006.

the ASF is being developed and to take the necessary corrective measures to make the ASF a truly multidimensional body to which the civilian component forms an important part.<sup>193</sup>

Training should go beyond simply training the different operational components of the ASF. Decision-makers at the AU Commission and their equivalents in the regional economic communities should also be consulted, ensuring not only broader integration of the military, police and civilian components within the ASF but also greater coherence of the functions of each regional brigade.

Relevant committees within regional economic communities may be required to play an oversight and monitoring role. It may be desirable for committees to be set up expressly for this purpose. This should ideally include regional and local civil society organisations as members. A conscious attempt should be made to include women in all elements of the ASF. It may be particularly relevant to the police component.

Training responsibility and activities at all levels should be clearly defined and mutually supporting. In the interest of standardisation and coordination, existing training courses in all regions should be harmonised with one another as well as with UN standards.

The police component of the training must be fully integrated into the ASF training programme. Training courses should meet the guidelines provided in the ASF Policy Documents and should take the recommendations from the various police workshops into account. All training conducted at the regional level should be conducted within the overall framework established by the AU. A common approach should be adopted ensuring maximum compatibility in accordance with ASF Training Directives.

Recommendations should be based on the conclusions of relevant AU and regional workshops and doctrines, and must be realistic both in terms of resources and capacity for implementation.

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<sup>193</sup> Ibid.



# 4

## Cross-border Policing – Lesotho and South Africa

*Amanda Lucey*

In the contemporary era characterised by the proliferation of transnational crime, cross-border cooperation between police agencies has become a necessity. In Southern Africa such cooperation is of a relatively recent vintage and has developed in the context of a fraught political background.

As noted by Van der Spuy, police cooperation in Southern Africa ‘has had to evolve in a region which, until recently, has been characterised by inter-state conflict and civil strife’.<sup>194</sup> In addition, security cooperation has been constrained by institutional weaknesses. This observation is exemplified by South Africa and Lesotho’s cross-border relations which were marred by political clashes and a general distrust until little over a decade ago.

Unlike policing units that have traditionally been limited to working within the confines of the country’s borders as a result of sovereignty issues, organised crime has flourished transnationally and often takes place across borders. Globalisation has contributed to the ease with which organised crime can be carried out transnationally. Regional cooperation thus became essential, particularly with the opening of South Africa’s borders in 1994 and the entry of South Africa into the

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194 Van der Spuy E. (2009). ‘Police Cooperation in the Southern African Region: Politics and practicalities’, *Crime, Law and Social Change* Vol. 51: 243–259.

global market place. Cooperation between Lesotho and South Africa is especially vital, as Lesotho is a landlocked country surrounded by South Africa and affected by a number of cross-border crimes. The need for accountability within national police forces has also been recognised. As of yet, little has been done to broach the topic of accountability within the context of cross-border cooperation, despite the relevance of such a discussion.

This paper will look at the background of both of these countries to contextualise the arena within which policing traditionally took place. It will examine the growing need for cooperation that arose in Southern Africa in the last few decades more generally, and between Lesotho and South Africa more specifically. The trajectory of cooperation can usefully be explored through some examples such as stock theft. Current models of cooperation adopted by the two countries will be outlined, as will the challenges in implementing these models. The paper will describe how cross-border operations are conceptualised, the institutional arrangements which have been developed and how these operations work in a practical sense. In addition, this paper will consider the mechanisms that have been put in place to ensure accountability and oversight, look at the lack of oversight in terms of cross-border cooperation and identify room for improvement.

## Historical Background

Lesotho became independent in 1966 under King Moshoeshoe II. In the second general election in 1970 it became apparent that the ruling party, the Basotho National Party (BNP), was facing defeat. The Prime Minister, Leabua Jonathan, declared a state of emergency. The constitution was suspended and opposition leaders were arrested. A series of attacks by the opposition party, the Basotho Congress Party (BCP), followed in years to come and an abortive *coup d'état* took place in 1974.

Not surprisingly, given the nature of South Africa's segregated, repressive system after 1948, relations between the two countries were hostile in the early 1970s. South Africa had virtually closed its borders, fearing that Lesotho was supporting the cause of the African National Congress (ANC). The government of Lesotho, for their part, maintained that South Africa was allowing the military wing of the BCP, the Lesotho Liberation Army (LLA), to use South Africa as a base for its insurgency operations. The LLA had claimed responsibility for bombings which took place in Maseru in the 1970s.<sup>195</sup>

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195 Encyclopedia of the Nations: Lesotho History. Available from <http://www.nationsencyclopedia.com/Africa/Lesotho-HISTORY.html> (Accessed on 12 July 2010).

In 1976 relations between South Africa and Lesotho worsened after South Africa bestowed independence on the Transkei, situated on Lesotho's south eastern border. Lesotho's refusal to recognise the Transkei as independent angered South Africa. In 1982 South African troops killed 42 people during a raid of private residences in Maseru, alleged to belong to ANC activists. Throughout the 1980s South Africa stepped up destabilisation activities in Lesotho and applied economic pressures.<sup>196</sup> In 1986 a military coup in Lesotho resulted in the overthrow of the government. All powers were now vested in the King. Several ANC members were flown from Lesotho to Zambia and South Africa. This ended South Africa's blockade of Lesotho.

In 1990 a constitutional monarchy was implemented in Lesotho under Letsie III. But during the 1990s Lesotho continued to be plagued by internal political conflict. In 1997 the BCP split and the Lesotho Congress for Democracy was formed. Multiparty elections were held in 1998 but the opposition argued that the results were fraudulent. Protests and demonstrations prompted peacekeeping intervention by South Africa and Botswana (which appeared more like a military invasion), known as Operation Boleas.<sup>197</sup> Peacekeepers remained in Lesotho until 1999.

South Africa held multiparty elections in April 1994 that led to the formation of an ANC-led Government of National Unity based on the principles of a constitutional *rechtstaat*.

## The Growing Need for Cooperation within SADC

Cooperation in the Southern African region developed in the post-Cold War era and allowed the 14 South African Development Community (SADC) states to find agreement on the need for economic, political, and security cooperation.<sup>198</sup> In 1995 the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) was formed. SARPCCO's members include police representatives from most of the SADC countries, namely Angola, Botswana, the Democratic Republic of Congo, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Tanzania, Zambia, Zimbabwe, South Africa and Lesotho.

SARPCCO's function is to provide space for member countries to discuss regional concerns regarding crime and to allow for the creation of joint strategies to combat organised crime. In addition, SARPCCO aimed to bring about cooperation on a number of other issues, such as disarmament and demobilisation,

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196 Hanlon J. (1987). Post-apartheid South Africa and its neighbours. *Third World Quarterly* Vol. 9(2), pp. 437–449.

197 Neethling T. (2000). Conditions for successful entry and exit: an assessment of SADC allied operations in Lesotho, ISS Monograph No. 44. Pretoria: Institute for Security Studies

198 Ibid.

good governance, policing and illegal immigration. Whilst vehicle theft and drug trafficking had long been security concerns across the region, other concerns such as the circulation of counterfeit commodities emerged. Furthermore, the need for a more accountable police force was also becoming imperative and became an issue within SARPCCO.

A Code of Conduct for SARPCCO officials provides for a common set of principles and values that can be implemented at a national level. Various challenges, however, confront adherence to and compliance with this Code at national and regional levels.<sup>199</sup>

In the case of Lesotho and South Africa a number of illegal activities take place across the border. They include *dagga* smuggling, vehicle theft, stock theft, illegal migration and armed robberies.<sup>200</sup> Without cooperation between the Lesotho Mounted Police Service (LMPS) and the South African Police Service (SAPS) it would be impossible to combat these crimes. Stock theft is one of the major problems that occur across the borders, and the policing of it requires cooperation between the security agencies of South Africa and Lesotho. In the discussion to follow we turn to an examination of cooperative efforts on this front.

## **Stock Theft: The Need for Cooperation between South Africa and Lesotho**

Cross-border stock raiding is particularly prevalent between southern Lesotho and the northern part of the Eastern Cape in South Africa. It is true that stock theft has been taking place for years and is almost considered a traditional activity. Since the 1990s though, it has become more widespread, organised and violent.<sup>201</sup> The border itself plays an important role in the way stock theft is organised, and causes considerable distress for communities close to the border. Cross-border counter raids and revenge attacks are common. This leads to increased tensions between South Africans and the Basotho,<sup>202</sup> impacting negatively on Lesotho's fragile democracy.<sup>203</sup>

Lesotho's economy relies heavily on subsistence agriculture. For a large proportion of people their only asset is in the form of cattle. Cattle are not only

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199 Ibid.

200 Lesotho is a landlocked country inside South Africa and its border with South Africa spans a total of 909 km, with 450 km of border lying between the South African Province of the Free State and Lesotho.

201 Kynoch G., Uliki T., Cekwane T., Mohapi B., Mohapi M., Phakasi N. & Seithleko P. (n.d.). 'Cross-border Raiding and Community Conflict in the Lesotho–South Africa Border Zone'. Migration Policy Series No. 21. Available from <http://www.queensu.ca/samp/sampresources/samppublications/policyseries/policy21.htm> (Accessed on 8 June 2010).

202 Ibid.

203 Dzimba J. & Matoane M. (2005). 'Stock Theft and Human Security: A case study of Lesotho'. In Njeri Kariri J. & Mistry D. (eds), ISS Monograph No. 113. Pretoria: Institute for Security Studies.

an important form of wealth and savings, but also a status symbol. Furthermore, people depend on their livestock for food. Stock theft, particularly of cattle, strikes at the very root of people's livelihood.

The high incidence of stock theft has brought about a situation where ownership of livestock cannot be used as collateral to obtain loans through either the formal or informal systems. This further entrenches already high levels of poverty. Other impacts of stock theft include malnutrition. It does not only affect the health and education of children but also the ability to effectively deal with HIV/AIDS.

A previous study by Dzimba and Matooane<sup>204</sup> found stock theft operated on the following dynamics:

- » Stock theft and associated violence is increasing as communities fight back against thieves by arming themselves.
- » Stock theft is committed by unemployed young men, driven by the usual material and status motives. Since documentation is rarely required, the informal marketing channels of stock make it easier to trade.
- » Stolen stock is kept in inhospitable terrain that makes it hard for police to track.

In addition, the researchers found that the roles of different stakeholders were not clear, a lack of resources hindered police performance and that a lack of effective means to communicate with the police makes reporting of stock theft in good time impossible. Furthermore, police records were a major weakness. They do not contain the information that prosecutors would find relevant for successful prosecution. The procedure of opening and maintaining a docket was poor. A conflict of laws negatively impact on the use of the Stock Theft Act.

Many challenges confront the policing of stock theft. Altbeker, after spending some time in the Drakensberg area with the Stock Theft Unit, remarks on the difficulty of finding willing witnesses and the challenges of patrolling the region. It is a very large area, home to around half a million people. Altbeker talks of land that is 'wide-open communal land, thousands of square kilometres of meadows and valleys, hills and mountains, and it mocks the efforts of the handful of cops and soldiers and police reservists who walk the eight- or ten-kilometre patrols on the off-chance of catching thieves'.<sup>205</sup> Altbeker identifies a number of contributory factors to the problem of stock theft in this area, some of which may be attributed to the loss of law and order following on the destabilisation of Lesotho by South Africa in the 1980s.

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204 Dzimba & Matooane (2005).

205 Altbeker A. (2005). *The Dirty Work of Democracy: a year on the streets with the SAPS*. Johannesburg: Jonathan Ball. p. 28.

Currently there are two ways in which cattle are stolen. The first is that cattle are stolen for slaughter and sold at butcheries.<sup>206</sup> An increasing trend is that animals are slaughtered in the owner's yard. Only the hindquarters and upper front thighs are taken, since they contain most of the meat.<sup>207</sup> With the absence of a national abattoir in Lesotho, it is impossible to trace where animals are slaughtered. Meat cannot be checked as belonging to the rightful owner. A revival of the use of abattoirs would assist in combating the problem of stock theft for the purposes of selling the meat.

The second method is that animals are stolen, taken to South Africa and then sold. The animals are transported across the border illegally at night, through mountainous terrain. Various routes are used. These change depending on the police presence. Ownership is often not checked in South Africa. As only a transport permit is required, criminals find it easy to sell stolen stock. For stock to be sold in Lesotho, documentation must be produced that authorises the sale. The stock permit must be signed by the chief in that area. This documentation is not required in South Africa.<sup>208</sup> Basotho stock thieves have been known to liaise with South African criminals in smuggling livestock.

Whilst stock is often smuggled into South Africa, to a lesser degree some stock is sold in Lesotho. The Basotho have found ways to erase the writing on stock permits using mentholated spirits.<sup>209</sup> A large responsibility is placed on the person who has bought the animal to check for ID and stock permits, rather than on the police. The use of mentholated spirits and false passports can mislead careless buyers. There have also been instances where stock have been stolen in South Africa by Basotho employees. They often justify this by claiming that they have been exploited by the South African farmers that they work for.

The use of ear markings and brandings currently indicates ownership of animals. But ear markings can be cut off. A simple method for removing branding contributes to the ease with which stock is stolen. A certain indigenous plant is placed in hot or battery distilled water and then applied to the animal. This irritates the skin of the animal to the extent that wounds develop. When they heal, the branding has disappeared leaving just a white patch on the animal. This also makes it harder for owners to recognise their animals. Animals are sometimes sold at public auctions. The rightful owners often only realise that their animal has been found after it has already been sold on.

The cycle of revenge attacks caused by stock theft is another major cause for concern. The only way to deal with it effectively it is for both Lesotho and South

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206 Interview with official from Stockpol, LMPS, 4 March 2010.

207 'Cattle rustler's reign of terror', *Lesotho Times* 6–12 August 2009.

208 Interview with official from Stockpol, LMPS, 4 March 2010.

209 Ibid.

Africa to cooperate more closely together and to develop similar strategies.

Stock permits should be aligned across both countries. This would reduce the ability of thieves to take advantage of loopholes created by different systems. One consideration would be the use of microchips. It would only work if Lesotho and South Africa both implemented this system. Police should be able to follow up on cases that have been reported by their neighbouring country. This would require the need to develop means to communicate quickly and effectively.

## **Current Models of Cooperation**

What are the current models of cooperation that are used by the SAPS and the LMPS? This paper will now look at the way Lesotho and South Africa cooperate, based on research that was conducted with the LMPS on 2–5 March 2010. The research was carried out in Maseru and at the Maseru Bridge border post. A number of police officials were interviewed from different departments and were asked if they would like to remain anonymous or if they were willing to be named. Names have been removed from officials who wished to keep their identity secret. Time and budgetary constraints meant that research was limited to a small area of Lesotho. Ideally this research would have been carried out at every border post with South Africa, and with a larger numbers of officials.

There are currently three ways in which Lesotho and South Africa cooperate in terms of policing. The first is through operations organised by the SARPCCO. These operations are carried out by the majority of member states as a joint effort and will be outlined below. I will call these efforts ‘multilateral operations’, although they are known in Lesotho as ‘SARPCCO operations’. Another type of cooperation is between Lesotho and South Africa only. These are called ‘bilateral operations’ and mainly occur at border checkpoints. The final type of cooperation is information sharing between LMPS and SAPS crime intelligence. Information is then used to carry out unilateral operations. Sometimes the neighbouring country is invited to observe the process.

### **Multilateral Operations (SARPCCO)**

SARPCCO operations are supposed to take place three times a year following the SARPCCO AGM. Although each member state is required to assist in the process, this does not always happen in practice. Communication between member states is a lengthy process and difficult to organise. A new system is being implemented whereby SARPCCO meetings are planned to coincide with SADC conferences. It is an effort to ensure greater participation by member states in SARPCCO meetings and to ensure commitment to SARPCCO operations.

SARPCCO operations are extensive exercises. Taking place in each of the

member's countries, they move location every three days. A number of police agencies from member states, as well as specialised officers from the SARPCCO sub-regional bureau in Harare, are expected to be present in every country. Every member state is required to be present in three other countries. Officials are divided into groups consisting of an official from each member state that is present. This is to ensure that the proper procedures are followed and to facilitate communication between countries. Ideally police agencies from each member state would be present for every operation carried out throughout the region, but this is too costly. Police look for a number of illicit activities. They include vehicle theft, drug dealing and illegal immigrants. SARPCCO provide resources such as laptops and databases and plan the operations; however, each individual country is responsible for the details, such as the people on the ground, the investigation of cases and logistics such as board and lodging. SARPCCO then reports to Interpol at a later stage and attempts to standardise operations by analysing cases.

Countries are bound by cooperative agreements within SARPCCO to attend such operations and are required to follow up on cases that are discovered using internal procedures. SARPCCO requires updating on all of these cases. A letter of apology should be sent by a country unable to attend an operation in another country.

A lack of resources is a major constraint on operations. As such, it is often the case that police from different divisions are paired together. Often they are required to do work outside their field of expertise. For example, the head of the drugs division in Lesotho may be paired with a SAPS official specialising in vehicle theft and be required to check for stolen vehicles. This was found to be the case at the time of research.

On 4 March 2010 a SARPCCO operation was carried out in Lesotho. Police from South Africa, Lesotho, Swaziland and Mozambique were present; as well as specialised officers from SARPCCO. Although there were about 15 foreign officials in total, most of the manpower came from the LMPS. Officials were operating in Lesotho for a total of three days before heading to Mozambique. A three-day break allowed SARPCCO to finish administrative work.

In an interview with the LMPS official from of the 'Drugs and Diamonds' division, it came to light that the man had been grouped with foreign police officials, none of whom shared his expertise. He argued that the operation was successful due to the fact that 'the LMPS worked a lot harder to impress others' and although there was a platform for sharing skills, they were not the skills he needed. Furthermore he noted that he had never received any training in his field and felt under-prepared generally in his role. He asked that the SAPS provide training to the LMPS since he felt that they had the skills. Acknowledging that they 'had a bond as cops', he nevertheless lamented that the LMPS 'sometimes did not know what they were doing'. In terms of checks on vehicles he mentioned



that the operation was more successful since the SAPS database was updated more regularly than Interpol's and provided more information than the LMPS had at their disposal.<sup>210</sup>

Aside from resources, another major problem mentioned in terms of SARPCCO operations was corruption and loopholes in the Interpol vehicle registry system. For example, vehicles are often found to be 'legally registered' and have SARPCCO clearance certificates when they are in fact stolen vehicles. Furthermore, the impounding of vehicles is an issue. Vehicles are released through illicit means. This may occur either through corrupt officials and sometimes through the use of lawyers employed by criminals to exploit loopholes. On occasion this is the result of a backlog of cases. It also happens when the complainant is no longer interested in pursuing the case after insurance has paid out.

### **Bilateral Operations**

Bilateral operations comprise cooperation between Lesotho and South African police only. They cover a range of illegal activities from stock theft, drug trafficking, vehicle theft to the smuggling of diamonds. In the past rotational meetings between the two countries were held to plan and discuss joint areas of concern as well as to plan joint operations. These planning meetings were cancelled after management decided that they were not fruitful. Management maintains that officials did not provide any useful feedback and showed no evidence of having planned any joint operations. Instead officials exploited trips into South Africa for personal reasons such as shopping, thereby wasting resources. The desire by SAPS to continue collaboration is hampered by a climate of mistrust amongst the LMPS. The Commissioner is wary of sending officials on foreign trips unnecessarily. When asked what could create greater accountability for such officials the remark was that most police officials had not been trained in report writing and so were unable to produce accounts and were lazy.<sup>211</sup> Bilateral cooperation is now limited to SARPCCO forums.

Cooperation does, however, continue along certain parts of the free trade border – otherwise known as 'no-man's-land' – where both agencies can operate. Legislation pertaining to this area for drug trafficking stipulates that if the suspects are entering South Africa from Lesotho, the legislation from Lesotho will be apply and vice-versa. It is nevertheless vital to standardise legislation between these countries since Lesotho has lower penalties and outdated laws.

At the Maseru Bridge border post, as well as other checkpoints, there are regular joint operations between the LMPS and SAPS. Both sides are amenable to cooperation. Regular inter-agency Wednesday meetings are held. An operational

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<sup>210</sup> Interview with LMPS official, Diamonds and Drugs, 3 March 2010.

<sup>211</sup> Interview with LMPS official, Police Headquarters, Maseru, 3 March 2010.

plan is developed every month to stipulate times and dates of each joint operation. Operational plans are not based on intelligence but on times that suit both agencies. Profiling is neither analysed nor discussed in these meetings.<sup>212</sup> Officers of the LMPS and SAPS are paired off to search every passing vehicle for *dagga*, firearms and the possibility that the vehicle may be stolen. SAPS provide resources such as equipment for checking vehicles. The SANDF patrols the border areas that do not have checkpoints. Worryingly, one official claimed that joint operations were no more successful than unilateral operations.<sup>213</sup> This may be due to a lack of intelligence sharing. The only result is the doubling of resources to perform the same task.

Resources are limited at checkpoints – communication is by telephone only. There is no internet access on the Lesotho side. The LMPS is also understaffed. For example, there are 40 LMPS staff that work at Maseru Bridge. Around 60 are needed. The staff are organised into morning, afternoon and day shifts. Joint operations consist of about 15 SAPS staff at a time with around 6 LMPS staff.

Training of police in Lesotho lasts six months. Approximately 250 new recruits are employed biannually.

### **Cooperation between Crime Intelligence Centres**

Crime intelligence within the LMPS and within SAPS is shared on a daily and needs basis through informal phone conversations. There is particularly focused cooperation between the LMPS and SAPS in the Free State. Special attention is paid to armed robberies, fraud, the smuggling of firearms, drugs and immigration.

There is a large flow of immigrants to South Africa from Lesotho. Lesotho is sometimes blamed for having lax laws. According to one official, Lesotho ‘is not interested in aliens, if we see them crossing the border (into South Africa) we let them go’.<sup>214</sup>

Despite good cooperation, a number of factors prevent operations from being carried out successfully. Lengthy extradition procedures allow criminals time to find loopholes to escape prosecution. This is the case at times with armed robberies. Criminals will, for example, commit an armed robbery in Lesotho and flee to South Africa. Crime intelligence officers will find the suspects and arrest them. Whilst they are waiting for extradition procedures to follow their course, the criminals will procure South African documents and produce these in court. The court case will then be thrown out. Crime intelligence keeps finding that the same suspects are arrested for crimes, but the police are never able to prosecute them.<sup>215</sup>

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212 Interviews with LMPS official at Maseru Bridge, Borders and officials from Crime intelligence, 4 March 2010.

213 Interview with LMPS official, Maseru Bridge, 4 March 2010.

214 Official with LMPS official, Police Headquarters, 4 March 2010.

215 Interview with officials from Crime Intelligence.

In addition there are no clear operating procedures for cooperation. Cooperation happens on an *ad hoc* basis as neither agency has jurisdiction to act in the country of the other. Lesotho, for example, will only be invited to South Africa as an observer. South Africa and Lesotho have signed agreements under SARPCCO that state the intention of countries to cooperate. However, there are no oversight mechanisms and systems of accountability in terms of bilateral operations. The options for oversight mechanisms in terms of cross-border operations will be discussed later.

The trafficking of *dagga* is another concern. Since the 2010 World Cup took place in South Africa at the same time as *dagga* harvesting in Lesotho with South Africa the major target market, SAPS and the LMPS paid special attention to this issue. The LMPS recruited informants and knew the major routes used to smuggle *dagga*. They conducted raids in villages to prevent this smuggling. In some areas the inhospitable and mountainous terrain makes it easy for smugglers to cross the border. Despite cooperation between the LMPS and SAPS, a lack of resources hampers LMPS patrols in the area. Therefore joint operations with SAPS are minimal. On the South African side, the SANDF patrol these porous border areas, but communicate very little with the LMPS.

The problem of stock theft is especially rife in Mokhotlong in the south-east of Lesotho. There is close cooperation between the LMPS in Mokhotlong and the SAPS in Natal. Police are allowed to enter the neighbouring country to assist with identification processes. As already shown, identification processes are outdated and easily circumvented by criminals. In addition stolen animals are frequently slaughtered very quickly and sold to local butcheries. Micro chipping in both countries would assist in curbing this problem but would require the necessary agreements on both sides.

## Challenges to Cooperation

Despite a number of positive developments in terms of cross-border cooperation between the SAPS and the LMPS, serious challenges remain. SARPCCO operations have produced positive results in terms of arresting criminals and have offered a platform for information sharing on operational procedures. Nevertheless a limited budget and the lack of resources throughout the region have hampered the work of these multilateral operations. As a result only three operations a year can be carried out. Police officials are also not paired according to expertise.

Cooperation does not extend to the sharing of information on profiling. Joint operations conducted without intelligence-led policing may simply lead to the expenditure of twice as many resources to achieve the same result. In addition,

there are no longer rotational meetings to discuss general areas of concern or to issue warnings about fugitives that have escaped across the border. This came about as a result of a lack of accountability which will be explored in the next section.

Communication between crime intelligence in the LMPS and within the SAPS is on an informal, *ad hoc* basis. A more formalised approach, such as signed MOUs to solve issues of jurisdiction, might assist in creating referral policies that police can attend to promptly. MOUs would also assist in allowing for greater oversight and accountability.

Most worrying are the illegal and unmarked border crossings, often in inaccessible terrain. The SANDF patrols such areas but does not communicate with the LMPS. The LMPS is under-resourced and cannot carry out frequent operations in this terrain.

## Accountability

The need for accountability within national police organisations is an ideal that has increasingly gained momentum, both internationally and within SADC. As put by Bruce, ‘when police commitment is present, strong oversight can create a dialogue that will assist them in evaluating the steps that they are taking, and keep them committed to, and focussed on, achieving high standards. Effective and collaborative oversight further benefits police by reassuring policy makers, who provide the budgets to support high policing standards that they are getting value for money’.<sup>216</sup> With regard to governance, transparency and accountability, there are a number of factors that democratic policing involves, including (i) accounting to legislature, congress or parliament, the criminal justice system and civilian oversight bodies (ii) demonstrating transparent budget management, adhering to controls on integrity of reporting on budget expenditure and procurements (iii) supporting outside scrutiny and cooperating with bodies responsible for the oversight of police and with civilians, making effective use of mechanisms for police-community dialogue, outreach and cooperation (iv) working in a cooperative manner with private and other public police organisations (v) using reliable systems for recording information (vi) holding individuals accountable for performance and conduct (vii) exercising effective control over covert activities, and (viii) striving for efficiency in the use of resources.<sup>217</sup> Moreover, accountability is not only about ensuring control over the behaviour of staff and

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216 Bruce D. & Neild R. (2005). *The Police We Want: a handbook for oversight of police in South Africa*. Johannesburg: Centre for the Study of Violence and Reconciliation. Available from <http://www.csvr.org.za/docs/policing/policewewant.pdf> (Accessed on 17 June 2010).

217 Ibid.

their use of resources, but it also addresses the way in which institutions uphold the international human rights framework that democratic systems of governance subscribe to.

Although some attention has been paid to the development of national oversight mechanisms, the issue of accountability in the context of cross-border operations has been largely neglected. The challenges facing national oversight mechanisms are apparent and these challenges are only magnified and convoluted in a cross-border context. The SARPCCO Code of Conduct at this stage only provides broad sets of principles for accountability and lacks clear indicators for measuring these principles. SARPCCO does not have the means to ensure compliance on these matters.

The national oversight mechanisms that have been instituted in Lesotho and South Africa have not had much success in achieving accountability within the LMPS and the SAPS respectively. Currently the LMPS is responsible for its own members in cross-border operations and the same applies to the SAPS. Accountability in cross-border operations therefore depends on the strength of the oversight mechanisms in each country. These challenges are compounded by the fact that Lesotho and South Africa have different standards of accountability. Discrepancies in police training, conduct and corruption in cross-border operations could hinder the progress of cooperation between two states. This could limit measures of accountability and lead to political tension. Ideally these standards would be harmonised to ensure uniform accountability in cross-border operations.

Both countries are also individually responsible for policy decisions. Sometimes policing methods have been criticised as being destructive of communities but no one has been held to account. In the case of *dagga* eradication for example, it has been claimed that rural families in South Africa and Lesotho rely on this crop as their sole source of income. Farmers have displaced the growing of *dagga* to more environmentally sensitive areas as a result of police activities and the herbicides used to spray and destroy the crops are harmful to the environment.<sup>218</sup> Furthermore, these sprays can cause such damage that no other crops can be grown in place of the *dagga* and families are left destitute. Whilst the policy of *dagga* eradication by spraying is controversial, there is no recourse for the families who are now left without a source of income. If the spraying of *dagga* is undertaken as a cross-border operation then it is even less clear how governments are held accountable. These issues need to be considered as cross-border cooperation increases.

Oversight mechanisms in Lesotho are weak and fail to address issues of accountability internally. There are provisions in the Lesotho Mounted Police

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218 WESSA policy on *dagga* in South Africa, 6 December 2008, available from <http://www.wessa.org.za/index.php/Policies/Dagga.html> (Accessed on 23 June 2010).

Service Act of 1988 (Police Act) for an Inspector of Police, whose duty is to ensure that the police function efficiently and effectively. There is also a Civilian Directorate of Policing. In addition there is a Police Complaints Authority that is designed to address issues of police conduct and to deal with complaints by the public; however, these complaints have to be referred by the police. The Police Complaints Authority also does not have search and seizure powers.<sup>219</sup> Little seems to have been done regarding complaints that have already been lodged with the Authority. In an effort to combat corruption, the Directorate on Corruption and Economic Offences was established in 1999 and investigates any complaints of corruption, including within the police. The Police Act also sets out internal measures of discipline within the police.

South Africa also has a number of oversight mechanisms. Any member of the public can lay a complaint against the police and the matter is then referred to a designated disciplinary officer who decides what action to take. It is unclear how effective this system is and there is a lack of transparency surrounding such issues. Externally, there is an Independent Complaints Directorate, which deals with very serious cases of police misconduct and legislation is underway to differentiate this body from SAPS. It only deals with serious assault, death in detention and torture and is not applicable to other forms of misconduct. There is also the South African Human Rights Commission, the Auditor General and the Public Protector. Despite the development of these institutions, there are still a number of gaps in terms of police accountability and a general lack of transparency.

It is clear that an oversight mechanism is needed that establishes and monitors uniform accountability measures in cross-border operations. This could either be a regional mechanism or one that operates bilaterally. This paper proposes three different possibilities for accountability during cross-border operations in South Africa and Lesotho, which must be evaluated in terms of legitimacy, independence, cost, and effectiveness. These mechanisms would require explicit terms of reference and signed memorandums of understanding.

The first option is a bilateral oversight mechanism between South Africa and Lesotho. The difficulties in establishing such a mechanism include the fact that in all likelihood South Africa would have to foot most of the costs, and the lack of legitimacy of the mechanism in the region as a whole. South Africa as the stronger country may unduly dominate the process. A second option would be a commission within the SADC to investigate accountability in the cross-border arena. Such a commission would have to consider incongruities in the notions of justice and human rights and the problem that the dominant countries would impose their own ideas. Similarly an ombudsman within SARPCCO would have to factor in

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219 US Department of State (2006). Country Reports on Human Rights Practices 2005: Lesotho. <http://www.state.gov/g/drl/rls/hrrpt/2005/6/1576.htm> (Accessed on 22 June 2010).

these issues but would be more appropriate given that SARPCCO is specifically a policing organisation. A lack of funding would impose serious constraints on the establishment of an ombudsman but should garner regional legitimacy once established. Despite these difficulties it is necessary that discussions over where to locate an oversight mechanism be initiated. It is suggested that SARPCCO take up these responsibilities.

## Conclusion and Recommendations

It is clear that SARPCCO has made headway in initiating cooperation between member states throughout the South African region. However, the organisation's effectiveness has been hindered by a lack of funding. South Africa has predominantly footed the bill but this dependency on South Africa is not sustainable in the long-term.<sup>220</sup> In addition, SARPCCO does not have the resources or the power to make sure that member states comply with SARPCCO operations or the SARPCCO Code of Conduct.

Lesotho and South Africa have implemented strategies to combat cross-border crimes that affect them both. There is no doubt that this cooperation is the way forward and that the sharing of information, resources and knowledge will only serve to better combat certain crimes. Yet the absence of accountability still remains a major challenge. The fact that rotational meetings were stopped because of an abuse of police funds raises questions over whether or not resources are adequately allocated. It shows that there is still a long way to go before police are held accountable for their actions on a regional and national level. There is an absence of accountability and oversight mechanisms for internal operations and this has ramifications for cross-border operations, since accountability in such operations depends on the strength of oversight mechanisms in each country. Following the research discussed above, several recommendations are made:

- » Organise SARPCCO operations that focus on one particular illicit activity at a time and bring together officers from SARPCCO member states that are trained in this field of expertise so that they may share skills and information. Unfortunately SARPCCO operations will be limited by budgetary constraints and this needs to be taken into consideration.
- » Reintroduce rotational meetings but set up a system of accountability for officials who are required to attend the meetings. Provide training on report writing and ensure that plans are concretised and written down. Reports should be fed back to officials in charge.

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<sup>220</sup> Van der Spuy (2009).

- » South Africa should consider handing control of the borders to the SAPS as has been frequently suggested by the South African government, since the LMPS and SAPS have better communication than the LMPS and the SANDF. If this is not possible then communication between the LMPS and the SANDF should be facilitated and reported upon. This should be considered in border management strategies.
- » Legislation should be developed for no-man's-land that pertains to illicit activities other than drug trafficking. MOUs should be signed between the LMPS and the SAPS that outline a referral procedure for joint operations and for sharing of information.
- » Officials should where necessary receive training in their field of expertise, perhaps through the training of the LMPS by the SAPS.
- » Internal oversight mechanisms need to be strengthened in both Lesotho and South Africa.
- » An oversight mechanism that pertains to accountability in cross-border operations must be established.



# 5

## Operation Rachel: A Case Study in Cross- border Police Cooperation

*Chelete Monyane*

### **Introduction**

In 2001, Mozambique and South Africa signed the Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and other Related Materials.<sup>221</sup> It was ratified by Mozambique a year later and by South Africa in 2003. The Protocol controls the manufacture, accumulation, trafficking and use of illicit firearms, ammunition and other related materials in the region.<sup>222</sup> It seeks to improve the capacity of law enforcement including police, customs, and border guards to fulfil their role in the implementation of the Protocol by coordinating national training programmes in combating and eradicating illicit firearms, establishing national data bases on firearms, promoting inter-agency working groups to improve policy coordination and sharing of information and undertaking joint training exercises.<sup>223</sup>

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221 Southern African Development Community. *Compendium of SADC protocols & other legal instruments*. Namibia; South Africa: SADC Parliamentary Forum; Safer Africa (2007).

222 SADC Protocol on Control of Firearms, Ammunition and Other Related Materials (2001).

223 SADC Protocol on Control of Firearms, Ammunition and Other Related Materials (2001). Article 6.

Cross-border cooperation among police agencies forms an important part of the Protocol. Article 14 of the Protocol provides for mutual legal assistance which includes the investigation and detection of offences, obtaining evidence, execution of searches and seizures, and any other form of mutual legal assistance consistent with national laws.<sup>224</sup>

Article 15 provides for law enforcement and instructs states to establish appropriate mechanisms for cooperation, including communication systems, infrastructure, multidisciplinary law enforcement units, cooperation with international organisations, national focal points and effective extradition arrangements.<sup>225</sup>

Preceding the Protocol by six years, however, was one of the seminal weapon recovery and destruction operations in the world if not the region, Operation Rachel. A Memorandum of Understanding (MOU) between Mozambique and South Africa paved the way for cooperation between the two countries to locate and destroy illegal weapons.

This MOU was known as the 'Agreement Between the Government of the Republic of Mozambique and the Government of the Republic of South Africa in Respect of Cooperation and Mutual Assistance in the field of Crime Combating', and was signed between South Africa and Mozambique by the Heads of States, Presidents Nelson Mandela and Joaquim Chissano in March 1995.

The MOU created more than the framework within which the arms destruction operations were designed, planned and carried out. It also covered more than just the cooperation regarding arms destruction. It emphasised the need for cooperation with regard to general crimes and organised crime but most importantly, regarding the exchange of information on crime and assistance or logistical support whenever it was reasonable, practical and possible.<sup>226</sup>

In so doing it set the scene for ongoing cooperation not only between the South African Police Services (SAPS) and Mozambique Republic Police (PRM) but among police agencies in the region as a whole. Three years later in Harare in 1997, the ministers of police in the region signed the Agreement in Respect of Cooperation and Mutual Assistance in the Field of Crime Combating, mirroring the provisions of the MOU between South Africa and Mozambique. By 2005, SARPPCO was using Operation Rachel as the practical phase of their newly developed cross-border Arms Destruction Course. By 2007 Operation Rachel Standard Operating Procedures were being adapted to guide those used in Operation Mandume, the Small Arms Destruction Operation between South Africa, Namibia and Angola.

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224 SADC Protocol on Control of Firearms, Ammunition and Other Related Materials (2001). Article 14

225 SADC Protocol on Control of Firearms, Ammunition and Other Related Materials (2001). Article 15.

226 South African Police Service, Nov/Dec 2005. p. 24.

It is the impact of the legacy of Operation Rachel on subsequent cross-border cooperation that is the subject of this paper. In particular, according to commentators such as Hennop,<sup>227</sup> many of the defining characteristics of Rachel were that it was not planned in advance, but resulted from responses to operational difficulties arising from the collaboration of two different national police forces and from looking to rural communities to provide a continual supply of information on arms caches.

Cachiu<sup>228</sup> argues that while other regional arrangements began as the *ad hoc* measures that were later institutionalised, Operation Rachel was ‘the opposite – an institutionalised arrangement providing an umbrella for *ad hoc* cooperation’.

While this flexibility is identified as having provided the impetus for some of the most significant successes of the operation, it raises questions on how the operation, which ran for over decade, was conceptualised, budgeted for and planned. The success of Operation Rachel in part meant that the more contentious issues of cross-border policing had to be addressed. Resourcing, for example, was not clearly articulated in national planning and provided for in national budgets. When the operation became too expensive it was continued via donor funding and when that dried up it was simply concluded. Likewise the absence of any overt abuse of police powers meant issues of oversight and accountability of members of one police agency operating in another country were not addressed. The silence on these issues finds its way into the current Protocol.

The lack of clarity regarding aspects of Operation Rachel raises questions regarding the extent to which domestic democratic processes, including political leadership, parliament, civil society and civilian oversight structures, can exercise their mandate in a cross-border context. This is not premised on the assumption that cross-border policing activities are prone to abuse but rather that the notion of a democratic police organisation is one governed according to principles of transparency accountability, equitable service, community service rather than regime needs, according to the standards of behaviour set down in international law.

Cooperation has become an important feature of policing internationally and in the region over the past two decades. It is likely to grow as regional integration is pursued by SADC and cross-border cooperation is seen as an important aspect of the fight against crimes such as drug trafficking, human trafficking and organised crime. As this happens, questions of how the operations should be conceptualised, budgeted for and planned – and ultimately held to account – are likely to grow.

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227 Hennop E. (2001) *Operation Rachel, 1995–2001*, Institute for Security Studies, Occasional Paper No. 53.

228 Chachiu, M. (1999). *The Evolution of Operation Rachel, 1996-1999*. Monograph No. 38: Arms Management Programme, June 1999. Pretoria: Institute for Security Studies. p. 7

## Methodology

The paper is based primarily on written resources. In addition, some interviews were conducted with key persons involved in Operation Rachel to gain clarity on the issues under discussion and insight into the features of cooperative arrangements in the region, as well as legal and jurisdictional challenges, human rights violations, and the functionality of internal disciplinary mechanisms.

The paper begins with the discussion of Operation Rachel before discussing the challenges and lessons learned with particular emphasis on oversight and accountability.

## Police Cooperation

According to Van der Spuy, the impetus for police cooperation in Southern Africa derives from three quarters: regional, continental and international:

Cooperation amongst police as a sub-sector of the security establishment is a by-product of wider regional cooperation driven by both economic and political interests pursued within the SADC. In the post-Cold War environment of Southern Africa, the impetus towards security cooperation is also a response to the institutional underdevelopment of police agencies in the region and the increasing necessity for pooling (limited) resources and raising institutional capacities across police agencies in the region.<sup>229</sup>

Second, such cooperation is shaped by continental structures located at the level of the African Union. And third, police cooperation at the regional level is affected by global influences related to the internationalisation of crime control agendas. Global concerns about organised crime have been instrumental in inducing a common security agenda in the global community. Post-9/11, the perceived threat posed by terrorism has further facilitated cooperation and joint strategies.

Increased regional cooperation tests two important areas where police agencies are overseen and held accountable. At a policy level, a supra-national agenda is not always reflected in the considerations and debates that inform the development of policy priorities and resourcing to the same extent that domestic priorities are subject to scrutiny. At an operational level often weak oversight mechanisms are even further stretched to hold members in foreign jurisdictions to account.

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229 Van der Spuy E. (2009). 'Police Cooperation in the Southern African Region: Politics and practicalities', *Crime, Law and Social Change* Vol. 51: p. 248.

# Operation Rachel

## Agreement

Operation Rachel is a bilateral cooperation agreement between the SAPS and the PRM, and took the form of a number of individual operations to locate and destroy illegal arms caches.

Launched in 1995, Operation Rachel was one of the first operations undertaken internationally to recover and destroy small arms and light weapons (SALWs). It emerged out of the recognition that quantities of arms and ammunitions of the Mozambique civil war not collected during the United Nations Mission to Mozambique (UNMOZ 1993–1995) found their way into criminal hands across Southern Africa.

While the primary intention was to curb the proliferation of weapons in the region, a second and equally important objective was to assist both countries to combat crime, especially violent firearm-related crimes. According to the SAPS, most of the weapons used in the violent crimes committed in South Africa were traced back to hidden and abandoned arms caches in Mozambique.<sup>230</sup>

## Training

Training has all along been a key component of Operation Rachel. In fact an objective was for SAPS to equip members of the PRM with skills necessary for weapon recovery and destruction. This training focus was carried into subsequent operations.

The members of the Operation were trained in:

- » the safe handling and identification of foreign firearms;
- » weapons and explosives, techniques for safely uncovering underground caches;
- » the use of global positioning systems and map reading;
- » the use and handling of mine detectors;
- » the establishment and maintenance of crime intelligence networks; and
- » how to work with air support.

In all these training programmes, members also were cross-trained in more than one discipline. This supposedly was to ensure that they became interchangeable in discharging their duties.<sup>231</sup>

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230 South African Police Service, Nov/Dec 2005.

231 Ibid.

## Operations

The first phase of operations jointly undertaken by the South African and Mozambique police led to the destruction of over 270 firearms and a large quantity of ammunition in full view of the media. The majority of weapons destroyed came from Maputo province. There were a further four big operations conducted in the central and southern provinces of Mozambique. Owing to the land mines in Mozambique, these operations were conducted with heavy land-mine-resistant vehicles.

In 1999 a new approach was implemented. Arms caches were destroyed as soon as they were discovered. More mobile multidisciplinary teams (Special Task Force, Bomb Disposal Unit, Firearms Investigation Unit and Organised Crime Unit) which could move faster were used for this approach and it meant that more than one *ad hoc* or smaller operation could be carried out per year. The multidisciplinary teams were able to react swiftly on information about arms caches, either by destroying that cache or removing the arms to a police station for safekeeping until they could be destroyed in a big operation. The slow mine-resistant vehicles used before 1999 had delayed the progress of the operations. They were slow and had numerous mechanical breakdowns. However with the recent floods their manoeuvrability became ever more problematic. The introduction of lighter 4x4 vehicles saw longer distances being covered and significant progress made northwards into Mozambique.

Subsequent operations followed this pattern of using a number of the smaller multidisciplinary units working on information collected over a longer period. From 1999 to 2004, 23 operations were conducted throughout Mozambique in the various provinces.

The new approach also heralded in a change from a police-only crime-combating operation to involve other state and non-state partners. Part of the motivation underlying a wider networked approach was to share the costs of the expanding operation. New partners included foreign donors, private companies, individuals and NGOs, and by 2005 Operation Rachel included the SAPS and PRM, the governments of Belgium and the United Kingdom, the European Union and non-governmental organisations.<sup>232</sup>

Operation Rachel was largely information-driven; its strength was on the reliance on the information gathered from the local population about the hidden arms and abandoned arms caches. Its successes were numerous.<sup>233</sup>

The total arms captured and destroyed by Operation Rachel exceeded any other amounts captured and destroyed in gun buy-backs or other collection operations elsewhere in the world.

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<sup>232</sup> Institute for Security Studies (2006); South African Police Service, Nov/Dec 2005.

<sup>233</sup> Hennop (2001).

The total cost of Rachel was below that of other similar or related efforts worldwide. Operation Rachel was the only small arms recovery and destruction programme that was initiated, created and designed entirely by indigenous (i.e. local) decision-makers and implemented, at least initially, entirely with African resources. It was unique in that it was implemented without first developing a confidence building approach at operational level between the partners. This meant that police and armed forces of two nations regarded as enemies for over a decade, shifted to be able to collaborate within a period of less than one year.

The programme was the result of a political decision between two governments who instructed their agencies to collaborate in identifying and destroying caches in a cooperative manner. When this decision was implemented, SARPCCO had not yet been institutionalised, nor was there any other formal umbrella for cooperation in existence.

Rachel was unique because, despite the earlier animosity between the agencies, and between one of the agencies and the people of the affected territory, all the problems of implementation were analysed and resolved as the operations evolved. The rapid resolution of personal and historical problems seemed to have generated trust between the lower structures of the implementing agencies and created a bond between the beneficiaries and the agencies.

As the operations progressed, the bond that had developed between the people and the implementing agencies started to drive the political process. The mandate from above that had forced the initiation of the project became a driving force from below that ensured the continuation of the project, despite the imminent cutting of funds. Finally, Operation Rachel was primarily information-driven rather than resource-driven.

## Legacy

The success of Operation Rachel in terms of police cooperation and weapons destroyed is evident both in the numbers and the continuing popularity of this type of operation in the region. As early as 1998, the SARPCCO annual general meeting agreed to expand regional anti-crime operations and identified firearms-trafficking as one of its priority areas. Since then SARPCCO has initiated further weapon recovering and destruction operations in Angola and Namibia modelled on the Rachel experience.<sup>234</sup>

As a result of Operation Rachel, security cooperation between South Africa and Mozambique grew. Mozambican Defence Minister Aguiar Mazula and his South African counterpart Joe Modise signed a Letter of Intent on 4 February 1996 which authorised the SANDF to enter Mozambican territory in areas that were difficult of access for the Mozambican police and security forces. It allowed

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234 Simon D. (1999). 'The Peace is not yet fully won', *Review of African Political Economy*, Vol. 25(77).

SANDB units to enter Mozambique on 'hot pursuit' operations against armed groups already engaged in South Africa. This set a positive precedent for future policing cooperation among police officers from both countries particularly along the Kruger National Park border.

Following Rachel, there is now a constant communication between not only the police officers from both countries but also the military, conservation bodies and local farmers.

A series of successful counter poaching operations was carried out in Mozambique involving the the police and Nature Conservation officials of the two countries. These operations led to many arrests and the confiscation of a number of weapons and animals products such as ivory and rhino horn. These cross-border operations became central in assisting the Mozambique officials with their anti-poaching activities. All intelligence and information collected was used to plan on going operations to counter the threat.<sup>235</sup>

## Challenges

The obvious success of Operation Rachel means that its problematic aspects are often overlooked. The reality was the operation was tested in a number of areas including the use of incentives, communication, skills and logistics, leadership, corruption and confidence in the police. Each of these areas is of significant interest to the oversight agencies in any jurisdiction with an interest in how effectively resources were being expended, whether discipline was being maintained and the risks of abuse minimised. The absence of oversight agencies from the interaction involved with Rachel is indicative of how far below the radar such an idea is.

### *Incentives*

Operation Rachel was based on a combination of an undeclared amnesty and a series of buy-back programmes. The main reasons were to secure future sources of weapons and to keep the operations de-politicised. In the Mozambican post-conflict context of the time there was understandably concern about not jeopardising the reconciliation processes, and to ensure community support through creating small financial incentives in a region characterised by poverty.

Initially, the involvement of local communities was to be encouraged through small rewards to informers. A cash reward was given to those who supplied information. No rigid criteria were used to define the value of the reward: it depended mostly on the value of the cache (both with regards to quantity and quality of weapons). This, in turn, was determined at the discretion of the team through negotiations with informers. Since rewards were used as an incentive for disclosing caches, the value was greatly influenced by indications that the informer

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235 Snelling S. (1999). *Conservation of SA Parks*. Pretoria: South African National Parks.



might know of other caches. Informers were thus mobilised to disclose further caches that they were aware of, and were encouraged to pass on their experience to other potential informers.

Small incentives were also provided to women and children who handed in weapons or ammunitions. Initially, this improved the standing of the operation in the eyes of the local population, and volunteerism and unpaid collaboration increased significantly.<sup>236</sup>

According to some sources, some of the caches that were plotted on the GPS map had already been destroyed by the Mozambican defence force prior to the arrival of Rachel.<sup>237</sup> The question this begs is whether incentives had been paid for the information and if so by whom to whom.

### *Communication*

According to Hennop (2001), the main problems hampering effective communication and the sense of common purpose during Operation Rachel 1 related to historical distrust between the SAPS and Mozambican police, personality-related conflicts within the officer corps, cultural differences, and perceptions that evolved from the prevailing prejudices and different languages spoken by the two police forces.

The SAPS and PRM had previously regarded each other as enemies. Speculation among the ranks was rife as to the true purpose of the operation as if the SAPS had a different agenda to investigate the role that Mozambique played during apartheid. The levels of mistrust remained high during the first encounter between the two police forces. For example, during the first operation, Mozambican police officers questioned why SAPS officials insisted on identifying the origin of the weapons that were found only when they were sure that these weapons were not of South African make. The prevailing perception was that the South African task force team had a parallel agenda of dismissing old allegations that one of the major suppliers of weapons for the conflict in Mozambique was South Africa itself.<sup>238</sup> While these perceptions were subsequently dispelled, they illustrate the importance of accurate and thorough briefings and training on the nature and scope of the operation along with clear agreement at political level on the policy imperatives under which the operations were conceived.

Related to communication is the issue of language. The interpersonal communication between members of the two police teams from Mozambique and South Africa was not always easy due to the language barrier. Attempting to counter this by recruiting bilingual speakers for the operations introduced further

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236 Chachia, M. (1999).

237 Radio Mozambique, Maputo in Portuguese 1730 GMT, 3 October 1997.

238 Simon (1999).

criteria to the required levels of expertise to an already small pool of suitable personnel.<sup>239</sup>

### *Skills*

Differences in operational skills between police officers, for example technical skills in the handling of explosives, played themselves out in the relationships and the sense of equity among the two police organisations. This exacerbated the tensions associated with command and control over the operation and was worsened by the tension of working under poor conditions.<sup>240</sup>

### *Leadership*

Internal power struggles further complicated the operation. There was continuing ambiguity over the respective roles of various parties involved in the control efforts: the army, the police and the various elite units formed in response to the problems. The Mozambican Defence Force (FADM), the Rapid Intervention Police and Lightning Battalion were eager to impose their directives. A related issue was a political struggle over the approval of new laws for the Mozambique defence forces.<sup>241</sup> This infighting resulted in some purges of the teams through disciplinary measures.<sup>242</sup>

### *Corruption*

Corruption and the tipping off of arms traffickers prior to the raids were also identified as a challenge. This allegedly involved South African officials and their Mozambican counterparts' secret engagement with traffickers and turning a blind eye to the flow of weapons.<sup>243</sup> The mechanisms available to address corruption, criminality and abuse of office were not clearly defined, as was the case with criteria in terms of which the team of operators were going to be held accountable for their actions.

Dimongo<sup>244</sup> noted that with no clear oversight mechanisms, there were a series of scandals that involved tipping off arms traffickers prior to raids. This was worsened by the lack of effective oversight over the conduct and the behaviour of the operations team members.

Police and military officials were seen as the main sources of gun-running, which made any action against them difficult. In November 1996, Attorney

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239 Chachiuva (1999).

240 Ibid.

241 Jakkie Potgieter, Institute for Security Studies, Eskom Conference Centre, Midrand, 3 July 1997.

242 Dimongo, 'Joint Operation: South Africa Police Service and Police of the Republic of Mozambique (PRM): Arms Caches in Mozambique', No. 31, 11 February 1996.

243 Vines A. (1998). 'The Struggle Continues: Light weapons destruction in Mozambique', Occasional Papers on International Security Policy No. 25. Pretoria: Institute for Security Studies.

244 Dimongo, 'Joint Operation: South Africa Police Service and Police of the Republic of Mozambique (PRM): Arms Caches in Mozambique', 11 February 1996.

General Sinai Nhatitima in his report on crime to parliament stated that many of the guns used by criminals came from the police. 'Guns ... [were] stolen from the arsenals and are lent out, rented or sold to be used in criminal activities'. The governor of Manica province corroborated this and publicly disclosed that weapons fuelling the illegal arms trade had been sold from police stations. 'There is nothing we can do about indiscipline of certain officers, which is making the problem worse'.<sup>245</sup> Some senior officials turned a blind eye, ignored the arms trade and became actively involved in it.<sup>246</sup>

### *Confidence in the Police*

Popular confidence in the Mozambican police remained low throughout the operation. About 102 policemen were expelled in 1995 for what was described as activities contrary to police ethics. Between January and October 1997, about 137 police were also expelled, but it remained unclear as to how these disciplinary proceedings were undertaken. A total of 290 policemen faced disciplinary hearings in the same period although it is unsure as to how many were actively involved in the Rachel operations.<sup>247</sup> Little is known about possible violations of human rights and acts of corruption committed by SAPS members in Mozambique.

### *Cost*

As to be expected, South Africa carried the bulk of the costs of the operations and provided expertise on weapons and explosives disposal and destruction. The limited ability of Mozambique and subsequently of other countries to contribute financial resources has put additional stress on the operations.

The Mozambican police encountered numerous problems in maintaining proper intelligence networks with both credible and constant information. This was largely the result of the shortage of financial resources to sustain such networks and to be in the position to pay the informants whose information led to positive results.<sup>248</sup>

By the end of the operations, the direct benefit of these costs to South Africa and Mozambique was being questioned. The SAPS was of the opinion that the firearms destroyed in later Rachel operations were not having an effect on the availability of firearms in South Africa anymore, but more on countries such as Zimbabwe, Malawi and Tanzania.<sup>249</sup>

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245 Bishop C. (1995) 'Arms for Africa. Deadly trade poses threat to stability', *Sunday Times* (Johannesburg), 27 August 1995.

246 Jakkie Potgieter, Institute for Security Studies, Eskom Conference Centre, Midrand, 3 July 1997.

247 Radio Mozambique, Maputo, in Portuguese 1730 GMT, 3 October 1997.

248 Safer Africa (2003). *Operation Rachel*. Pretoria: Safer Africa.

249 Ibid.

# Promoting Oversight and Accountability in Transnational Policing

## Domestic Oversight

The accountability structure for the involvement of the SAPS in cross-border operations depends on the nature of their contribution and the institution/state with whom a contribution agreement is made. That responsibility for accountability and discipline for misconduct by SAPS personnel generally remains with the SAPS and is confirmed in the Agreement in Respect of Cooperation and Mutual Assistance in the field of Crime Combating. Article 4 (5) provides that the hosting country will report any official who acts contrary to the agreement to the contributing country who will take the necessary action in consultation with the hosting country.

The power of the hosting country to insist on a particular course of action is naturally offset by its interest in the mission. If, as in the case of South Africa and Mozambique, the resource, strength and contribution of the SAPS far exceed the contribution of Mozambique to the operations, this may weigh against the demand for a particular response. In all likelihood this means a SAPS member accused of an offence will be sent home to face disciplinary charges, according to the internal disciplinary mechanisms of the organisation.

Delays, lack of transparency of the internal system, difficulty in calling witnesses, police culture and codes of silence are raised as ongoing concerns regarding the effectiveness of internal oversight mechanisms in a domestic context and are likely to be magnified if the alleged offence occurred outside of South African territory.

Effective oversight should be multifaceted and comprise of both internal and external mechanisms. In the case of transgression outside of the territory of South Africa and in the context of a cross-border operation, both the internal and external oversight mechanisms should apply.

The Independent Complaints Directorate (ICD) established to oversee the SAPS is empowered through the South African Police Act to:

- » investigate any misconduct or offence allegedly committed by a member, and may, where appropriate, refer such investigation to the Commissioner concerned;
- » investigate any death in police custody or as a result of police action; and
- » investigate any matter referred to the Directorate by the Minister or member of the Executive Council.<sup>250</sup>

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<sup>250</sup> Section 53(2) of the South African Police Act (Act no. 68 of 1995).

The SAPS are obliged to report every death in police custody and as a result of police action to the ICD. Currently separate legislation for the ICD is being drafted that may expand this compulsory reporting to include rape, torture and the ability to investigate systemic corruption.

It should be made explicit in the mandate of the ICD and the new legislation that any violations of a serious nature including death, rape and torture at the hands of the SAPS, even if occurring outside of the territory of South Africa, should be reported to the ICD for investigation.

## **Regional Oversight**

In a recent reflection on the state of security sector governance in Southern Africa, it was noted that civilian control, oversight and democratic norms and standards for the governance of the security sector are ‘tenuous’ due to weak institutions, human and financial constraints, party partisanship and political interference. It has been further argued that policing and correctional services require significant investment in resourcing and training and in the development of a rights respecting culture.<sup>251</sup>

The observations are noteworthy in the light of the imminent review of the Strategic Indicative Plan (SIPO) for the Organ on Politics Defence and Security Cooperation (OPDSC) for the SADC.

SIPO provides an enabling environment ‘for a regional security framework to create a peaceful and stable political and security environment through which the region will endeavour to realise its socio-economic objectives’.<sup>252</sup>

The OPDSC through the SIPO has the potential to promote greater accountability of the police in cross-border operations. This can include establishing a guiding framework for the conceptualisation, implementation and oversight of transnational policing. This can be advanced through the articulation of the positive duties of the police to uphold human rights, minimum standards for pre-mission training guidelines on reporting transgressions, the role of internal oversight mechanisms, and the role of SADC structures such as the OPDSC and the Parliamentary Forum in playing an oversight role.

Recently the UN Human Rights Council has come out clearly that support by the UN for military operations (and by implication police operations as well) is conditional on their observance of human rights law. High Commissioner Navi Pillay noted, ‘We need to ensure that the UN and bilateral support to military operations and security sector reform is tied to promoting respect for human rights.’ The support that SADC and SARPPCO can expect in building

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251 Institute for Security Studies (2010) ‘The State of the Region: Security Sector Governance in Southern Africa’. ISS 17–19 March 2010, Pretoria.

252 Ibid.

its transnational policing capacity may well be tied to demonstrating its ability to uphold international human rights standards.

## **Conclusion**

The fact that Operation Rachel, through the vehicle of the MOU, was able to establish an enabling environment for two police agencies with different organisational histories, cultural differences and legal traditions to cooperate successfully, provides testimony to the professionalism and dedication of the members and partners.

Common policing efforts spurred on by efforts to address organised crime or combat terrorism are likely to increase, and with them issues of accountability for this new role of police will surely become increasingly important.

However, given the context of cross-border operations, this utility is often magnified. Police members forming a cross-border operation or a peace mission come from different backgrounds and policing traditions and are brought under a single command. This at best adds additional layers of complexity to executing duties in the field and with it the potential for error (if not by the members themselves then in the perception of the communities being served). At worst, the potential among certain officers to err in the country of origin is likely to be magnified by the conditions of a cross-border operation where latitude may be greater.

Promoting accountability and developing oversight can be undertaken both in terms of the procedures, systems and capacities necessary for identifying and addressing errant behaviour and through more positive inputs such as training to equip police members with the skills necessary to minimise the potential for abuse. The scope of such positive oversight can include tools for assessing, planning, recruitment and evaluation. This is a challenging area in a domestic context where external and internal oversight systems are usually weak. Transnational and cross-border deployment introduces additional challenges which often serve to further remove the victims of abuse from the possible remedy. Domestic oversight mechanisms and regional bodies such as SADC must recognise and address these emerging lacunae in the form of clarifying their investigative mandate and establishing the means to review and oversee. The creation of a SADC Code of Conduct provides an opportunity to develop a common standard of policing in the region which is a prerequisite for greater regional integration.

# 6

## The SARPCCO Code of Conduct

*Amanda Dissel*

### **Introduction**

Political and social factors have led to a significant shift in policing in Southern Africa over the last 25 years. The dismantling of colonial rule provided the opportunity to redefine the nature and practice of policing. Yet post-colonial regimes often placed an emphasis on the development of military powers at the expense of developing civilian policing authority. At the same time, police were often required to defend repressive regimes. The police in many Southern African jurisdictions were often viewed by the civilian population as brutal and corrupt.<sup>253</sup> It was during the 1990s that increasing development aid to Africa became linked to an agenda of democratisation of governments and with it came pressures for reform of security and stability systems in keeping with a human rights framework.

However, the transition from a repressive colonial, and often a subsequently militaristic regime, to a more democratic one is often constrained by the very legacy it was designed to replace. Much of the continent and the Southern

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253 Rauch J. & Van der Spuy E. (2006). *Recent experiments in police reform in post conflict Africa: A Review*. Pretoria: Institute for Democracy in South Africa (IDASA). p. 11.

African region have been embroiled in long periods of civil and political strife. Demobilisation of military veterans without the security of employment and the availability of weapons contribute to the high levels of crime and violence. Political destabilisation often resulted in weak social and economic structures and high levels of personal insecurity and unemployment. Loosening of border restrictions and ongoing conflict and economic hardship have led to the migration of large numbers of people across the continent at the same time facilitating the conditions for easier cross-border criminality.

The programme of democracy-building has focussed on reform and development of policing structures,<sup>254</sup> and placed a greater emphasis on different forms of accountability and oversight. These include a democratic parliament, civilian oversight and oversight by independent bodies such as human rights commissions. Professionalism and efficiency of policing have been promoted, including the training and capacity development of personnel. The adoption of concepts such as community policing were introduced in many countries requiring a different approach to engaging with the public and to preventing and responding to crime.

The development of regional police cooperation for the sharing of crime information and strategies has led to the increasing recognition of the important role that effective policing may play either in transition or in the development of a democratic state. It is recognised that police that uphold a human rights culture and enforce the law consistently, contribute towards faith in a democracy.

In the face of challenges such as inadequate staff and resources, and the shortage of skills, the police must consistently struggle to uphold these standards. Most often, the police in Southern Africa are constrained by shortages in skills and personnel, and lack administrative capacity as well as basic equipment and supplies. They also face pressures from the public and politicians who want to see faster, tougher action against crime. Many police, especially those in developing countries, tend to believe that human rights observance is a barrier to efficient policing and that policing by force is more effective for solving crime. In countries where there is a high tolerance of violence in general life, there is often more public support for using force to solve crime.<sup>255</sup> There are also often high levels of corruption in the police.

Increasing democratisation in Africa and the social and political interests of the African regions propelled the need for greater police cooperation among states. In Africa, regional cooperation largely occurs through four regional committees, each related to their economic and political communities: the East African Police

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254 Ibid.

255 Hills A. (2009). 'The Possibility of Transnational Policing', *Policing and Society* Vol. 19(3). pp. 300–317.



Chiefs Coordinating Organisation (EAPCCO),<sup>256</sup> the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO),<sup>257</sup> *Le Comité des Chefs de Police de l'Afrique Centrale* (CCPAC);<sup>258</sup> and *Le Comité des Chefs de Police de l'Afrique de l'Ouest* (CCPAO).<sup>259</sup> All of the member countries are also members of Interpol which also fulfils secretariat functions for the committees.

One of the advantages of international and regional cooperation is its potential to lead to the emergence of a set of values, goals, programmes and practices that will be accepted by police everywhere, and which will contribute to effective, democratic and humane policing, as well as the potential ostracism of regimes which do not conform to this idea.<sup>260</sup> Regional cooperation involves constitutional and international and regional agreements at the macro level which harmonise national laws and regulations.<sup>261</sup> These are the international human rights instruments which govern state parties, and the regional instruments such as the African Charter on Human and People's Rights and subsidiary Declarations and Protocols. States are also required to cooperate around the operational practices, policies and procedures of law enforcement agencies.

The SARPCCO has responded to this need with the development of a Code of Conduct, or a set of minimum norms and standards for police officials in the Southern African region.<sup>262</sup> To help assist police with the implementation of the Code of Conduct, as well as to establish a method for monitoring implementation of the Code, APCOF developed a set of indicators for policing in respect of the SARPCCO Code of Conduct.<sup>263</sup> The indicators aim to provide greater clarity on what the Code of Conduct means for police organisations in the region, and to assist them and all those interested in policing to evaluate the extent to which police in the region have put in place measures to comply with the Code, as well as to assess the impact of these measures.

This paper looks at how the SARPCCO Code of Conduct for policing may foster better regional cooperation and contribute to the greater observance of

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256 There are eleven member countries of EAPCCO: Burundi, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania, Uganda.

257 The 12 member countries of SARPCCO are: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

258 Consisting of eight member countries: Cameroun, Central African Republic, Congo, Democratic Republic of Congo, Gabon, Sao Tome and Principe.

259 Consisting of 16 countries: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

260 Marenin O. (2001) 'United States International Policing Activities: An overview', in D. J. Koenig & D. K. Das (eds) *International Police Cooperation: A World Perspective*. Maryland: Lexington. p. 319.

261 Das D. K. & Kratoski P. C. (2001). 'International Police Cooperation: A World Perspective', in D. J. Koenig & D. K. Das (eds) *International Police Cooperation: A World Perspective*. Maryland: Lexington. p. 4.

262 A similar initiative has been undertaken with the East African Police Chiefs Coordinating Organisation (EAPCCO) in the development of *Common Standards for Policing in East Africa* (2010) by the organisations Commonwealth Human Rights Initiative (CHRI) and the African Policing Civilian Oversight Forum (APCOF). See [http://apcof.org.za/images/stories/common\\_standards\\_for\\_policing\\_in\\_east\\_africa.pdf](http://apcof.org.za/images/stories/common_standards_for_policing_in_east_africa.pdf).

263 Dissel A. (2010). *Indicators for Implementing the SARPCCO Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum (APCOF). A portion of this chapter is derived from the document.

human rights norms and standards in the SADC region. It comes at a time when the tenth anniversary of the Code of Conduct is being celebrated and significant developments are underway to bring SARPPCO into the SADC and for the SADC to develop a code of conduct for security forces.

## SARPPCO

The Southern African Regional Police Chiefs Cooperation Organisation (SARPPCO)<sup>264</sup> was formed in 1995 to foster better cooperation and mutual assistance between countries in Southern Africa. The objectives of SARPPCO are to:

- » promote, strengthen and perpetuate cooperation and foster joint strategies for the management of all forms of cross-border related crimes with regional implications;
- » prepare and disseminate relevant information on criminal activities to contain crime in the region;
- » carry out regular reviews of joint crime management strategies in view of changing regional needs and priorities;
- » ensure efficient operation and management of criminal records and effective joint operations on cross-border crime;
- » make recommendations to the governments of member countries in relation to effective policing in the Southern African region;
- » formulate systematic regional police training policies and strategies taking into account the performance requirements of regional police services; and
- » carry out relevant and appropriate acts and strategies for the purposes of regional police cooperation and collaboration as regional circumstances dictate.<sup>265</sup>

SARPPCO has a streamlined structure consisting of the Council of Police Chiefs and the Permanent Coordinating Committee. Additional committees and task units may be established on an *ad hoc* basis according to need. Legal and training subcommittees have been set up in this way.

The SARPPCO constitution defines certain principles of cooperation, which include respect for national sovereignty; equality of police services; non-political

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<sup>264</sup> Member countries of SARPPCO are: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

<sup>265</sup> SARPPCO and SAHRIT (2003). *SARPPCO Code of Conduct: Human Rights and Policing: Towards Ethical Policing Resource Book*. SARPPCO and SAHRIT, p. 19.

professionalism; observance of human rights; non-discrimination and flexibility of working methods; and mutual respect and goodwill.<sup>266</sup>

## **A Framework for Human Rights Policing in the Region**

The SARPCCO Code of Conduct is derived from a range of international and regional human rights instruments that are supplemented by specific guidelines on police. These treaties, covenants, guidelines, principles, standards and codes of conduct outline the detailed responsibilities and restrictions placed on law-enforcement officials, and thus serve as the basis for the development of a set of indicators for policing in the Southern African region.

### **International Instruments**

The International Bill of Human Rights is the informal name given to the three primary human rights instruments of the UN. These are: the Universal Declaration of Human Rights (UDHR),<sup>267</sup> which sets out the general principles and standards on human rights; the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>268</sup> which define the specific human rights and their limitations. These instruments form the backbone of many subsequent international and regional instruments, as well as national constitutions and legislation.

The UDHR is the founding articulation of human rights applicable to all human beings and has the force of binding international law. It guarantees the rights to dignity and equality, and life, liberty and security of the person. It also prohibits torture and cruel, inhuman and degrading treatment or punishment, and arbitrary arrest and detention – rights which often lie at the intersection of policing responsibilities. The ICCPR seeks to create conditions in which people can enjoy civil and political freedom and affirms and provides more detail to the rights contained in the UDHR. An important principle of these instruments is that of indivisibility of rights. In other words, no single right is considered as being more fundamental than any other right. Many of these rights are again directly affected by policing. For example, in relation to people deprived of their liberty, the ICCPR outlines the rights of detained and arrested people which includes the right to be treated with humanity and respect for the inherent dignity of the person. It stresses the principle that everyone charged with a criminal offence

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<sup>266</sup> *Ibid.*, p. 20.

<sup>267</sup> Adopted by the UN General Assembly Resolution 217 A (III) of 10 December 1948.

<sup>268</sup> Both the ICCPR and ICSECR were adopted by the UN General Assembly Resolution 2200 A (XXI) on 16 December 1966, and entered into force in 1976.

shall be presumed innocent until proven guilty, and sets out the rights of an accused person. The ICCPR also deals with rights such as privacy, and the rights to freedom of speech, movement, peaceful assembly and association. Importantly, it provides for equal protection before the law and protection of the law without discrimination of any kind. In ratifying the ICCPR (as have all the SARPCCO member countries) a state is obliged to take legislative and other measures to give effect to these rights.

The ICESCR expands on the economic, social and cultural rights by promoting a reasonable standard of living and a cultural life free from discrimination.

A range of other instruments were developed to deal with particular rights, limitations and responsibilities. These include the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>269</sup> the Convention on the Rights of the Child (CRC),<sup>270</sup> the Convention against Corruption (CAC),<sup>271</sup> the Convention on the Elimination of all Forms of Racial Discrimination (CERD),<sup>272</sup> the Convention against the Elimination of all Forms of Discrimination against Women (CEDAW),<sup>273</sup> and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW),<sup>274</sup> the Convention for the Protection of all Persons from Enforced Disappearances (CED),<sup>275</sup> and the Convention on the Rights of Persons with Disabilities (CPRD).<sup>276</sup>

Once conventions are ratified by a state, they become binding on them. Nonetheless, even for non-state parties, these conventions contribute to customary international law and might have some impact on the courts when it comes to interpretation of national legislation. The conventions carry international moral authority. They establish international guidelines for acceptable conduct by a state, and they aim to encourage states to work towards the implementation of the standards. Several of these conventions also have optional protocols which create additional obligations and guide state parties on the implementation of the rights expressed in the conventions. These are optional in the sense that states which are party to the conventions are not automatically party to, and bound by, the optional protocols.<sup>277</sup>

There are also a number of guidelines, principles and declarations governing

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269 Adopted by the UN General Assembly on 10 December 1984.

270 Adopted by the UN General Assembly Resolution 44/25 of 20 November 1989.

271 Adopted by the UN General Assembly Resolution 58/4 of 31 October 2003.

272 Adopted by the UN General Assembly Resolution 2106(XX) on 21 December 1961.

273 Adopted by the UN General Assembly on 18 December 1979.

274 Adopted by the UN General Assembly Resolution 45/158 of 18 December 1990.

275 Adopted by UN General Assembly on 20 December 2006.

276 Adopted by the UN General Assembly on 13 December 2006.

277 An example is the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. State parties to the Convention have the discretion whether or not to sign and ratify the Optional Protocol as well.

specific aspects of human rights. These do not necessarily have the same force of international law and are not legally binding, but are seen as affirmations of the intention to implement the measures contained within them. They are often used to provide further details on how to implement the primary international obligations contained in binding instruments. These are often called ‘International Soft Laws’. Some examples containing provisions relevant to policing are:

- » Standards related to professional conduct and the use of force, such as: the Code of Conduct for Law Enforcement Officials;<sup>278</sup> and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>279</sup>
- » Instruments dealing with the treatment of detainees and prisoners include: The Standard Minimum Rules for the Treatment of Prisoners;<sup>280</sup> the Basic Principles for the Treatment of Prisoners;<sup>281</sup> and the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment.<sup>282</sup> The UN Standard Minimum Rules for Non Custodial Measures (the Tokyo Rules) outline standards in respect of individuals in conflict with the law, but who are not in custody.<sup>283</sup>
- » Standards governing the treatment of children in conflict with the law: the Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules);<sup>284</sup> and the Rules for the Protection of Juveniles Deprived of their Liberty.<sup>285</sup>

## Regional Instruments

The human rights framework for the African region is based on the International Bill of Human Rights and is developed along the lines of the international system, but with a regional focus. The founding document is the African Charter of Human and Peoples’ Rights<sup>286</sup> and it reiterates the rights outlined in the UDHR. It differs from the United Nations instruments in two major respects: it recognises that development of civil and political rights cannot be dissociated from social, economic and cultural rights; and it introduces the concept of ‘peoples’ rights in

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278 Adopted by the UN General Assembly, Resolution 34/169 of 17 December 1979.

279 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the treatment of Offenders, Havana, 27 August to 7 September 1990.

280 Adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955, and approved of by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Though this instrument sets out standards for an adequate penal system, it applies to all categories of prisoners, criminal and civil, untried and convicted, including prisoners subject to security measures, and thus applies to detainees in police custody as well as to those in prisons.

281 Adopted by General Assembly Resolution 45/111 of 14 December 1990.

282 General Assembly Resolution 43/173 of 9 December 1988.

283 General Assembly Resolution 4511/10 of 14 December 1990.

284 General Assembly Resolution 40133 of 29 November 1985.

285 General Assembly Resolution 371194 of 18 December 1982.

286 Adopted by the Organisation of African Unity on 27 June 1981.

addition to the recognition of individual rights. The Charter calls upon member states, which are also members of the AU, to take legislative and other measures to give effect to the rights expressed in it. The African Commission on Human and Peoples' Rights monitors the implementation of the African Charter by state parties.

As a regional body the AU aims to promote peace, security and stability on the continent, to promote democratic principles and institutions and good governance, and to promote and protect human rights in accordance with the African Charter.<sup>287</sup> The AU has adopted a number of treaties and conventions, as well as the less binding declarations emerging from the sittings of the AU and African Commission on Human and Peoples' Rights. Some relevant instruments include the African Union Convention on Preventing and Combating Corruption.<sup>288</sup> An important instrument in Africa is the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (also known as the Robben Island Guidelines).<sup>289</sup> Also of relevance are the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.<sup>290</sup>

### **Sub-regional Instruments**

At the sub-regional level, the SADC, to which all SARPCCO member countries belong, also has the vision of improving standards of living and quality of life, ensuring freedom and social justice, and peace and security for people in Southern Africa.<sup>291</sup> An objective is also to promote common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate and effective.<sup>292</sup>

SADC has no specific declarations dealing with civil and political rights, but has a charter on Fundamental Social Rights in SADC, and protocols dealing with regional cooperation on various issues, such as corruption; combating of illegal drugs; control of firearms, ammunition and related matters; extradition; and politics, defence and security-related matters.

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287 Objectives of the African Union, taken from the African Union website, [http://www.africa-union.org/root/au/AboutAu/au\\_in\\_a\\_nutshell\\_en.htm](http://www.africa-union.org/root/au/AboutAu/au_in_a_nutshell_en.htm), accessed 19 October 2009.

288 Adopted by the African Union in Maputo on 11 July 2003.

289 Resolution of the 32<sup>nd</sup> Ordinary Session of the African Commission, October 2002.

290 Adopted by the African Commission on Human and People's Rights in 2001. DOC/OS(XXX)247.

291 SADC website, <http://www.sadc.int/>, accessed 19 October 2009.

292 The Treaty of the Southern African Community, as amended, Article 5.

## The SARPCCO Code of Conduct

Recognising the observance of human rights as a central component of SARPCCO, a Code of Conduct was developed and presented to the Council of Police Chiefs sitting at the Sixth General Assembly of SARPCCO in Mauritius in August 2001 where it was accepted.<sup>293</sup>

The Code of Conduct for Police Officials is a set of minimum professional standards for police forces and services in the region. The Code of Conduct refers to fundamental human rights principles, accountability and the management of the use of force and police power, and acknowledges police responsibilities in protecting and serving members of the public, irrespective of gender, ethnic or religious affiliations and victims of crime. The Code of Conduct presents a commitment to encouraging ethical and professional policing in the region. Each member country undertook to implement the code of conduct nationally. SARPCCO has the responsibility to oversee the dissemination, promotion, and implementation of the Code of Conduct, as well as monitoring its implementation.

The Code of Conduct consists of the following 13 Articles. Each article is defined by a standard:

- » *Article 1: Respect for Human Rights* – In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold human rights of all persons.
- » *Article 2: Non-discrimination* – Police officials shall treat all persons fairly and equally and avoid any form of discrimination.
- » *Article 3: Use of Force* – Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.
- » *Article 4: Torture or other Cruel, Inhuman and Degrading Treatment or Punishment* – No police official shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.
- » *Article 5: Protection of Persons in Custody* – Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.
- » *Article 6: Victims of Crime* – All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.
- » *Article 7: Respect for the Rule of Law and Code of Conduct* – Police Officials shall

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293 The Harare Resolution on the SARPCCO Code of Conduct for Police Officials was adopted at the 6<sup>th</sup> Annual General Meeting, 27–31 August 2001 in Mauritius.

- respect and uphold the rule of law and the present Code of Conduct.
- » *Article 8: Trustworthiness* – The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undercut the public confidence in a police force/service.
  - » *Article 9: Corruption and Abuse of Power* – Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.
  - » *Article 10: Performance of Duties* – Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.
  - » *Article 11: Professional Conduct* – Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.
  - » *Article 12: Confidentiality* – Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.
  - » *Article 13: Property Rights* – In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

### **Measuring the Implementation of the SARPCCO Code of Conduct**

Increasingly, countries, institutions and international bodies and organisations are adopting indicators as a means of measuring performance in certain areas. Indicators provide information on how far an organisation has gone in meeting its obligations in a specified area, and are meant to track progress towards a defined objective and the implementation of a programme or policy.<sup>294</sup> Indicators are important in order to determine the progress of the institution in meeting those objectives. They can also help to evaluate how this progress affects the people whom the police interact with on a daily basis.<sup>295</sup>

Many countries experience difficulties in meeting all the international and regional human rights commitments, or even the objectives determined by regional and national policing priorities. In the SADC region, police are often constrained by lack of resources at all levels which impacts on this ability. Indicators can help to identify specific actions steps and objectives that states need to take in order to achieve the larger goals and objectives. In that way, indicators can be seen as helping a country to reach the standards that it aspires to.

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294 Parsons J., Thornton M., Bang H., Estep B., Williams K. & Weiner N. (2008). *Developing Indicators to Measure the Rule of Law: A Global Approach*. Vera Institute of Justice. p. 3.

295 Human Rights Trust of Southern Africa (SAHRIT) (2005) *Monitoring Indicators for Human Rights and Policing in Southern Africa*. Harare: SAHRIT. p. 8.



In order to measure progress towards a defined objective or goal, one has to decide what is to be measured, and how this can best be done. There are many different ways to measure performance. Indicators can be used at the highest policy levels to measure progress towards an overarching purpose, such as improved personal safety for all members of society. These are strategic indicators. At a second level are institutional indicators that measure institutional objectives or outcomes, such as increasing the number of convictions for violent offences. Finally, there are activity-level indicators which measure the daily activities that an institution is engaged in to help meet its institutional goals, such as the number of police officials trained in the investigation of violent crime.<sup>296</sup>

Indicators should be able to take complex information and policies and make them understandable so that information can be compared over time in order to keep track of progress. The indicators should be selected to measure whether policies are being implemented equitably across different sectors. They should be meaningful to a wide audience and be easy to use and adaptable to change.<sup>297</sup> Indicators are not always directly able to measure the outcome that is meant to be achieved. For example, if an objective is to determine any change in the level of violent crime then a measurement of the number of violent crimes reported to the police as an indicator of the volume of crime may be affected by the number of crimes reported, the overall level of confidence in the police, as well as the number of violent crimes committed. It is important then, to define a group of indicators that attempt to measure the one desired objective.<sup>298</sup>

### **Developing Indicators for the SARPCCO Code of Conduct**

The SARPCCO Code of Conduct can be strengthened by the development of appropriate indicators to measure the performance of the police organisation in achieving the articles and standards identified in the Code of Conduct. These indicators could support oversight practitioners, civil society and police management in monitoring performance. In designing a set of indicators, we should primarily be concerned with indicators at the institutional and activity level, although some strategic indicators may be included for the purpose of assessing overall strategic performance.

The development of indicators can be guided by three notions:

- » The indicators should assist external organisations, such as oversight bodies, non-governmental organisations, research bodies and the media to understand and have oversight over the implementation of good policing

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296 Vera Institute of Justice (2005) *Justice Indicators*. Vera Institute of Justice. p. 3.

297 Parsons et al. (2008).

298 Vera Institute of Justice (2005).

- conduct and human rights standards by the police.
- » The indicators should establish what standards police managers need to uphold in order to ensure adherence to fundamental rights and minimum standards of practice in terms of the Code of Conduct. The indicators should enable these managers to understand what their responsibilities are and what actions they need to take in order to achieve defined objectives. They can measure their implementation of these standards over time. The standards can be used by police at various managerial levels, including at the station level, programme level, as well as for senior national managers, depending on their levels of responsibility and access to information.
  - » The indicators for the SARPCCO Code of Conduct should ideally be focused on those aspects of policing work which are in the sphere of direct control of the police, rather than more broadly in the control of the State. For example, legislation which enacts international instruments is an important indicator of a state's intention to adhere to human rights principles, but it is usually outside of the jurisdiction of the police to enact that legislation. The job of the police is to enforce and adhere to existing legislation as well as to international and regional human rights standards regarding law enforcement. Notwithstanding this, the indicators may need to look at the country's legislation to determine the extent to which this reflects basic human rights principles, and to measure police performance against such legislation where it exists.

### **Challenges in gathering information**

Developing indicators is only part of the process. One needs to collect the information to verify that the indicators have been met, and this is often challenging for the researcher or police organisation.

Legislation and case law should be publicly accessible, as should public documents such as annual reports which are submitted to parliament; however, not all countries do publish and distribute these, or make them available on their websites. Other forms of information may be more easily available to police than to the public. Police management, and even a station commander, may have access to administrative information at his or her own station level, such as disciplinary or human-resource records, assets registers and custody registers.

To supplement police documentation and to ensure an unbiased perspective, it is important to also gather information from a wide range of sources external to the police. This includes reports, statements and reviews by politicians, external organisations or NGOs, oversight bodies, research organisations and the media. Such reports often provide a more critical perspective of policing and may provide some balance to information obtained solely from the police. Some studies may

also help to consolidate information about policing and to analyse trends. The indicators could also be measured by means of surveys or research studies. For example, in order to measure whether police are practising non-discrimination, it may be useful to survey members of the public on their perceptions of the police, or on their experience following an encounter with the police. Victims of crime surveys are useful to understand the nature and extent of crime and the perception the public have of the police or criminal justice system. Surveys are costly and difficult to design and organise, but it may be possible for policing organisations or oversight bodies to ask researchers to include questions ascertaining information on attitudes to, or experiences of, policing in more general community or country-wide surveys that are undertaken from time to time.

In many countries, numerous administrative documents or reports used to verify the indicators may not exist or may not be up to date. It may be necessary for the police manager or independent researcher to conduct interviews with relevant people to obtain the required information, or to collate the information after perusing original source documents, such as disciplinary records or court judgments.

In gathering data, information may be obtained which appears to present a negative picture of the police. For example, when ascertaining what procedures are followed against police accused of corrupt activities, the means of verification requires the number of police disciplined and dismissed. A large number of officials so disciplined may convey a sense of a high level of corruption. However, it is more likely that this reflects an effective system that is functioning well to identify and respond to corruption within the police, and so may be seen as a positive indicator of police accountability. The researcher needs to be able to access this information to see whether it is more likely to reflect high corruption or greater accountability.

## **Conclusion**

The SARPCCO Code of Conduct is a valuable tool for civil society and oversight practitioners interested in policing in Southern Africa. It provides an agreed normative framework for policing to which the agencies themselves have subscribed. The Code is derived from international, regional and human rights principles, and is an expression of police commitment to adhere to these standards and the rule of law irrespective of political interference. However, like most normative codes, the Code of Conduct is a broad statement of principles, which is sometimes difficult to interpret and apply consistently. It is also difficult to monitor and assess the extent to which the Code has been implemented without a detailed set of guidelines of what police are expected to do in their day-to-day work.

The African Policing Civilian Oversight Forum (APCOF), which promotes oversight and accountability of policing on the continent, aims to assist not only oversight practitioners and civil society in the region, but also the police, and has developed a set of indicators for the Code of Conduct: *Indicators for Implementing the SARPCCO Code of Conduct*. These indicators can be used as a tool to assist in achieving compliance with the Code's standards. They are also a tool to help police officials and other interested stakeholders to assess achievements in its implementation. While the Code of Conduct is framed as an instrument for the use of individual police officials, the indicators and monitoring tool have been developed for the use of oversight practitioners, members of civil society and managers within the police, in order to assist police officials and policing units to meet their obligations in respect of the Code.

The indicators are intended to be seen as a tool to help in the progressive realisation of the Code of Conduct. They have been developed taking into account human rights norms and standards and expectations of police performance in a democratic society. By outlining particular responsibilities related to each standard contained in the Code, the indicators aim to elaborate on what the key requirements are for meeting the standards.

# 7

## Strategic Indicative Plan 2010–2015 for the Organ on Politics, Defence and Security Cooperation: Considerations for Policing in the Region

*Sean Tait*

### **Introduction**

The Strategic Indicative Plan (SIPO) for the Organ on Politics Defence and Security Cooperation (OPDSC) for the Southern African Development Community (SADC), was adopted in 2004. The SIPO provides an ‘enabling environment’ for a regional security framework.<sup>299</sup> Its core objective is ‘to create a peaceful and stable political and security environment through which the region will endeavour to realise its socio-economic objectives’.<sup>300</sup>

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299 SADC (2004). ‘Strategic Indicative Plan of the Organ on Politics Defence and Security Cooperation’.

300 Ibid.

In 2009, SIPO expired and a revision is currently being developed for the next five-year period 2010–2015. This paper reflects on issues pertaining to policing currently identified in the SIPO and explores potential new areas to consider. It is based on a submission made by the African Policing Civilian Oversight Forum (APCOF) to the Institute for Security Studies (ISS) towards the revision of SIPO.

## Public Security and Policing

The SIPO 2004–2009 is based on the SADC Protocol on Politics, Defence and Security Cooperation of 2001. It is structured to provide a guideline for actions, to shape the institutional framework and align the regional peace and security agenda of SADC with that of the African Union (AU).<sup>301</sup> It is structured along four sector themes, the political sector, the defence sector, the state–security sector, and the public–security sector. Policing issues are largely contained in the public–security sector but are cross referenced against the other sectors.<sup>302</sup>

Among its objectives the SIPO seeks to:

- » protect people and safeguard the region against instability arising *inter alia* from, among other factors, a breakdown of law and order;
- » promote regional coordination and cooperation;
- » promote the development of democratic institutions and practices within the territories of state parties and encourage the observance of universal human rights as provided for in the charters and conventions of the AU and UN;
- » develop close cooperation between the state security and defence forces of state parties in order to address cross-border crime and promote a community based approach to domestic security; and
- » develop peacekeeping capacity of national police services.

## Crime and Insecurity in the Region

The SIPO is premised on the assumption that peace, security and political stability are key to socio-economic development and, by implication, to addressing or ameliorating the challenges for the region. These challenges were identified in the 2004 SIPO as:

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301 Van Nieuwkerk A. (2010). 'Regional Security challenges and responses, The State of the Region: Security Sector Governance in Southern Africa', ISS 17–19 March 2010, Pretoria.

302 SADC (2004).

- » economic underdevelopment and poverty;
- » HIV/AIDS;
- » inter- and intra-state conflict;
- » consolidation of democracy and good governance;
- » refugees, illegal movers and illegal migrants and internally displaced persons;
- » imbalances in accessibility to wealth and natural resources; and
- » demobilisation and disarmament of ex-combatants.

The SIPO 2004–2009 goes on to identify the combating of terrorism, organised crime, cyber crime, violent crime, rape and sexual abuse, illicit trafficking in small arms, drugs and human trafficking, money-laundering, and trade in conflict diamonds among its priorities. It recognises the importance of promoting human rights and good governance and fighting corruption and the control of private security in furthering its objectives. While recognising political pluralism of the region the SIPO acknowledges the importance of strengthening common values and culture.<sup>303</sup>

Southern Africa has seen progress to peace over the past five years from the conflicts and wars that characterised the 1990s. Economic activity has increased as demonstrated by a growth in GDP driven largely by the resource demands from the West and China while the peripheral nature of many of the region's economies meant that it largely escaped the recent global economic crisis.<sup>304</sup>

Nonetheless the region continues to display many of the socio-economic factors associated with its troubled past. Like the world generally, it is characterised by continuing urbanisation. However urban planning and infrastructure across the region are generally poorly equipped to deal with inflows of new residents and these challenges are exacerbated by a legacy inherited over the past and which failed to care adequately if at all for local populations within the built up urban areas. Many of these failings are perpetuated into the present *inter alia* through the pressures of structural adjustment policies, corruption and misuse of public resources.<sup>305</sup> Unsurprisingly, the region suffers and is likely to continue to suffer from very high rates of violent crime.

Meanwhile police agencies in the region are generally under-resourced and ill-equipped and are often viewed as corrupt.<sup>306</sup> In turn, communities seek private security solutions. Where they can afford it, the responsibility for security services is contracted to private security companies and where not, to community

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303 Ibid.

304 Cilliers J. (2010). Keynote address, 'The State of the Region: Security Sector Governance in Southern Africa', ISS 17–19 March 2010, Pretoria.

305 UNODC (2005). *Crime and Development in Africa*. UNODC.

306 Ibid.

protection formations. Reliance on private security erodes the power and stature of the state police and where these actions of private security degenerate to vigilantism, they threaten the rule of law.

## **The Policing Sector in the Strategic Indicative Plan of the Organ 2004–2009**

The policing sector in the SIPO 2004–2009 focuses on regional cooperation to combat cross-border economic crimes, drugs and terrorism. Specific activities speak broadly to police actions which include:

- » regular assessments of the regional security situation;
- » combating cyber crime and terrorism;
- » building databases for law enforcement agencies;
- » managing smuggling across borders;
- » combating illegal trafficking;
- » implementing community-based policing initiatives; and
- » promoting joint training of civil police for peace support missions.

On a wider front, the policy aims to promote good governance of the police organisations through:

- » promoting accountability by combating corruption and strengthening ethical practices;
- » developing a common Code of Conduct;
- » exchanging information and best practices;
- » addressing HIV/AIDS in law enforcement, joint training in law enforcement and human rights; and
- » harmonisation of legal instruments.

## **Emerging Considerations**

The current SIPO has promoted a common security agenda in SADC. For the SIPO 2010–2015 to be more effective this agenda needs to become more focussed and supported with a clear implementation plan. In addition two new high level goals are identified.

The OPDSC through the SIPO should enable the development and articulation of a vision of a desirable standard of policing in the Southern African region. This can be supported among others by a clear and monitored Code of Conduct.



Secondly, it should seek to encourage greater regional cooperation on violent crime. This should not only include crime and security threats that are of an overtly transnational nature but identify how the region as a whole can support local national policing efforts to promote greater safety and security. This can be supported by sharing best practice and training not only for transnational policing operations but in addressing local domestic crime. The SIPO should champion a common standard of policing across the region.

### **Development and Articulation of a Vision of a Desired Policing in the Southern African Region**

In furthering the development and articulation of a vision of a desired policing in the Southern African region, OPDSC can:

- » Perform a vital role in helping articulate the desirable model of policing for the region. As has been done in the East African Community,<sup>307</sup> this can be promoted by developing a common set of standards for policing in Southern Africa to guide and underpin policing in the region including training and joint operations across the region. The concept of democratic policing can also be used as a framework against which to develop a vision of policing in the region. Democratic policing describes a police organisation that is orientated toward the service of the community and is protected from undue political interference; it is an organisation that is transparent and accountable. It is an organisation with adequate and secure funding. Its personnel are representative of the communities they serve. Police members are skilled, professional and can perform effectively and efficiently across the organisation. Integrity management is a central function of the police administration. Police members are treated respectfully and rewarded equitably.<sup>308</sup>
- » Promote the greater sharing of practice and training on public-order management that is in accordance with the principles of democracy promoted by SADC and the UN Basic Principles on the Use of Force. Public order policing practices that fail to comply with international standards can frustrate legitimate democratic expression, thereby impeding developing and deepening democracy, a stated goal of the organ.
- » Promote practices within the territories of state parties and encourage the observance of universal human rights enshrined in the conventions of the AU and UN.<sup>309</sup> The strategies and activities include developing a common

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307 See APCOF and CHRI, 'Common Standards for Policing in Eastern Africa', APCOF and CHRI, 2010 available on [www.apcof.org.za](http://www.apcof.org.za)

308 Marenin O. (2005). 'Restoring Policing Systems in Conflict Torn Nations, Process Problems and Prospects'. DCAF.

309 SADC (2004). 'Strategic Indicative Plan for the Organ, Public Security Sector', Objective 4.

Code of Conduct for law enforcement agencies; undertaking regular joint training programmes; and developing a culture of observance of the existing international provisions on human rights.

OPDSC can further this objective through:

- » encouraging compliance with the SARPCCO Code of Conduct by developing clear guidelines for the application of and regular and institutionalised mechanisms for reporting on compliance;
- » encouraging sustained cooperation between oversight agencies with both state and non-state actors, including the role of structures such as the SADC Parliamentary Forum, to share best practice and build knowledge and skills;
- » promoting dialogue between the Organ, civil society and police on policing and security issues in the region;
- » encouraging the development of African knowledge and practice on police oversight. In 2004 the South African ICD brought together oversight agencies from across Africa. A similar event should be facilitated for the region. This is not without precedent. In the East African Community the national human rights institutions have established a forum which meets regularly to exchange best practice on promoting ethical and human rights compliant police across the region; and
- » promoting oversight of the private security industry by establishing basic minimum requirement for private security oversight.

### **Regional Support in Addressing Violent Crime**

The challenges facing the region, namely poverty, disease, urbanisation, and climate change, youthful populations, the impact of HIV/AIDS and increased abuse of substances, highlight a continued and increasing vulnerability of the region to social fabric crimes and armed violence. Armed violence which includes robbery at gun or knife point makes the greatest contribution to injury and violence related fatalities. Of these, often the most prevalent is armed street robberies.<sup>310</sup> It is also perceived as driving the fear of crime. While these can be localised in-country they are nonetheless as likely to impact on the SIPO goals of promoting peace, security and political stability and will continue to undermine socio-economic development.

The current priority crimes identified by the SIPO, and more importantly

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310 According to research by the CSVR: 'Street robbery' makes a far greater contribution to overall murder rate than does the 'high profile categories of robbery. They probably also account for more 'robbery related rapes' than other robberies. They impact almost exclusively on poorer people not only in inner city areas, township areas and other poor communities. Though the value of goods taken in street robberies is in general less than that taken in high profile robberies they are not necessarily proportionately less valuable to victims. In so far as robberies feed into trauma and fear their impact is likely to be as great if not greater.

which have seen an investment in resources, are largely what can be classified as economic crimes and are often those that impact across borders.

The regional focus on, for example, combating the proliferation of firearms has been an important contribution. This however needs to be expanded to a general focus on regional support in tackling the problem of armed violence. The OPDSC in developing the SIPO can play a central role in encouraging the transfer of good and emerging ‘best practice’ that is suited to the African context. This should include the role of the police in crime prevention and the manner in which the Organ can create an enabling environment for a regional support of prevention interventions that involve stakeholders beyond the police.

### **Promoting Regional Coordination and Cooperation in Policing**

Transnational and cross-border policing operations to address the proliferation of small arms, drug smuggling and vehicle theft have been the hallmark of SARPCCO cooperation and have been vital in building trust and confidence between the region’s police agencies.

However, the evaluation and review of these operations by the Organ and the assessment of their impact on meeting the SIPO objectives is underdeveloped.

The OPDSC through the SIPO can:

- » routinely review transnational policing operations;
- » develop a framework and strategy for cooperation and development assistance in the recording and analysis of crime; and
- » develop a regional crime threat analysis and safety strategy based on identified threats.

## **Conclusion**

A revision of SIPO should deepen the current trajectory towards better regional cooperation in policing. This should include:

- » harmonisation of national legislation;
- » continued cross-border training operations and information exchange;
- » increased coordination with agencies such as nature conservation and correctional services;
- » ongoing evaluation of training; and
- » implementation of common border management systems.

To further its objective, however, additional areas of investment should be considered. A recent report on the state of security sector governance in Southern

Africa, noted that:

- » civilian control, oversight and democratic norms and standards for the governance of the security sector are ‘tenuous’ due to weak institutions, human and financial constraints, party partisanship and political interference;
- » civil society, except for think tanks that specifically work on peace and security issues, are not meaningfully engaged in the discourse on security, nationally and regionally, and in the oversight of their respective national security institutions;
- » policing and correctional services require significant investment in resources and training, and in the development of a rights respecting culture; and
- » labour relations in the security sector are an increasingly contested arena. More attention must be given to the management of human resources in terms of grievance procedures and mechanisms, recruitment and retention strategies and remuneration packages.<sup>311</sup>

The increasing integration of the Southern African region has highlighted and continues to emphasise the need for a common security approach. This common approach must be based on a shared vision of security and agreed principles.

The OPDSC through the SIPO can be invaluable in setting an enabling environment in which Southern African police, governments and civil society can conceptualise and promote the desirable form of police of the region.

Increasing regionalisation also brings new dynamics to issues of crime and insecurity. It is important that the OPDSC look beyond transnational economic crimes associated with the illegal movement of goods and people across borders and also support SADC members in addressing violent crime more broadly.

Regrettably, corruption and the abuse of force are challenges that affect police organisations across the region. The new SIPO should be mindful that policing is not only about the operational management of police actions, but as clearly identified in the current SIPO, it encompasses a range of role-players and covers a variety of functions including, importantly, the institutions that guide police, govern and hold the police organisations accountable. The Organ must continue and build the role it plays in promoting the sharing of good practice across these multiplicity of interests and institutions of police governance.

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<sup>311</sup> Cilliers (2010).

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## The World Cup 2010 and Police Cooperation: The South African Case<sup>312</sup>

*Elrena van der Spuy*

### **Introduction**

On the eve of Africa's very first sport's mega-event to be held in South Africa, there was no shortage of apocalyptic visions of an impending criminal anarchy disrupting the grand spectacle. Gripped in the claws of high levels of violent predatory crime, many argued, law enforcement would struggle to make any headway against the expected increase in opportunistic crimes. The mega-event would draw other, bigger moths to the flame too. The predictions spoke of a steady infiltration of sophisticated crime syndicates from across our borders, of an exponential increase in sex-for-sale on the streets and the vagaries which human trafficking were to inflict on women and children. To this list of ordinary, criminal things one had to add the possibility of terror attacks; the certainty of spectator violence in and around the stadiums and the more-than likely proliferation of labour strike actions and social protests on the streets. The mega-event would create the perfect moment for the criminally inclined and socially discontented to

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312 Thanks to Ben Groenewald and Jeffrey Lever for their input and to Elaine Atkins for her assistance too.

make their disruptive influences felt.

In the end things turned out not quite as expected. The country was not plunged in darkness – neither literally or figuratively. Thanks to South Africa's energy supplier, electricity failures were avoided. Crime, commented some, dropped during the event. The hooligans stayed home *en masse* thanks to the efforts of international authorities. (British<sup>313</sup> and Dutch authorities for example, banned thousands of 'known hooligans' from travelling to South Africa. Two handfuls of 'hooligans' who made it through the security net were intercepted in neighbouring states or at Oliver Tambo airport.)<sup>314</sup> No terrorist threat materialised and strikers – in the spirit of national unity – waited until well after the last game of the tournament before they took to the streets. Even others intent on driving foreigners from South African townships too held back until after the departure of FIFA celebrities. The only labour threat that really constituted a challenge – briefly – emerged from a private security company assigned to guard the peace inside the stadiums. Private security personnel contracted to act as 'stewards' inside stadiums entered into a wage dispute with their employer, Stallion Security Consortium.<sup>315</sup> The state moved in swiftly. It fired some teargas canisters and rubber bullets, removed striking workers and replaced them with hundreds of South African Police recruits.<sup>316</sup> In doing so, the state re-asserted its political authority and organisational capacity to take charge of security at no less than five soccer stadiums. The symbolic importance of this bold assertion of the role of the state in the fractured world of modern security was not lost on observers.

What lies behind this story of South Africa's success in delivering on its promise of the delivery of effective security for the first World Cup Event ever to take place on the African continent? And how indeed should 'success' be defined? In pursuit of some answers to these questions, this paper takes a closer look at the ways in which security was approached and managed. The securitisation of the 2010 World Cup event relied, it is argued here, on the ideas and practices associated with 'cooperative governance'. In the second instance, it made use of a security machine with generous resources and guided by the principles of robust saturation, thick surveillance, ongoing intelligence and rapid operational responses to 'incidences' in spatially designated areas.

Before exploring in more descriptive detail the nature of cooperation under the command of a centralised and militarised security machine, let us briefly

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313 According to an article published in *The Guardian*, 26 January the UK authorities prohibited 3 143 English fans from travelling by taking in their passports. Such strategies form part of tough banning order legislation which has been adopted by the UK government. In similar fashion Dutch authorities issued 1 200 banning orders.

314 The interception of the Eleven Barra Bravas from Argentina at Oliver Tambo Airport was made possible due to intelligence cooperation. [http://www.saps.gov.za/2010\\_worldcup/2010\\_index.htm](http://www.saps.gov.za/2010_worldcup/2010_index.htm)

315 Basson A. & Tolsi N. (2010). 'World Cup Security Shambles'. *Mail & Guardian*, 18 June 2010.

316 Al Jazeera, 'World Cup workers go on strike', 14 June 2010, <http://english.aljazeera.net/> (Accessed on 31 August 2010).

consider the challenges for security associated with mega-events as we have come to know them.

## Mega-events and Security

In the world that we inhabit today, the mega-event is here to stay. Since 1982 mega-events have grown spectacularly. Mega-events, says Maurice Roche, 'are large-scale cultural (including commercial and sporting) events, which have a dramatic character, mass popular appeal and international significance'.<sup>317</sup> Such events put extraordinary demands on public and private service delivery by host nations. Over the past decade the delivery of safety and security, in particular, has become a key concern. In fact, in the post-9/11 environment, the governance of security of mega-events has emerged as one of *the* critical issues.<sup>318</sup> Vulnerability to terror attacks constitutes one facet of the challenge. But vulnerability to 'systems failures' as Jennings and Lodge<sup>319</sup> would have it, is another. To such challenges host nations need to respond with bold strategies for managing risks and with operational capacity to deliver on such strategies.

Issues relating to the security governance of mega-events have only recently begun to attract scholarly attention.<sup>320</sup> One can expect future research to unravel 'the complex cross-cutting governance arrangements straddling statutory, public and private sectors' during mega-events, and to examine the impact of risk-based security thinking and action for domestic law enforcement beyond the event itself.<sup>321</sup>

There is an expanded logic, so argue Boyle and Haggerty,<sup>322</sup> which informs planning for sport mega-events. Guided by the notion of 'incalculable risk' and preparing for unknown events, thinking 'outside the box' is now considered a key approach to securing mega-events. Post-9/11 there has been widespread recognition of 'asymmetric threats' and 'novel, unforeseeable and catastrophic' forms of terrorism. Within this configuration security can no longer be subject

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317 Roche M. (1994). *Mega-events and Modernity: Olympics and expos in the growth of global culture*. Abingdon: Routledge. p. 1.

318 The point is argued by Giulianotti and Klauser as follows: 'In the post-9/11 context security issues have become increasingly central to the hosting of sport mega-events. Security budgets for events like the Olympic Games now run into billions of dollars.' Giulianotti R. & Klauser F. (2010). 'Security Governance and Sport Mega-Events: Toward an Interdisciplinary Research Agenda'. *Journal of Sport and Social Issues*, 34 (1). p. 49.

319 Jennings W. & Lodge M. (2009). 'Governing mega-events: tools of security risk management for the London 2012 Olympic Games and Games and FIFA 2006 World Cup in Germany'. Paper delivered at the 29<sup>th</sup> Political Studies Association Conference, Manchester, 8 April 2009.

320 See Giulianotti R. & Klauser F. (2010). 'Security Governance and Sport Mega-Events: Toward an Interdisciplinary Research Agenda'. *Journal of Sport and Social Issues* Vol. 34(1). pp. 49-61.

321 See in this regard the details of a research project to be undertaken by Burman, M. et al *The Governance of Security and the Analysis of Risk for the Sporting Mega-events: Security Planning for the 2014 Glasgow Commonwealth Games*. The Scottish Centre for Crime and Justice Research.

322 Boyle P. & Haggerty K. (2009). 'Spectacular security: Mega-events and the security complex'. *Political Sociology* Vol. 3, pp. 257-274.

to calculable and actuarially-based risk assessments, for risk itself has become 'unknowable'. This broadening of the notion of risk may mean that an ever wider purview of disorderly behaviour becomes the target of surveillance. In the process the panopticon itself expands its reach into new urban spaces. In the name of 'event security', as we have witnessed in the run up to the 2010 World Cup, the homeless may be swept off the streets, street vendors displaced to peripheral locations, and the fires of domestic labour unrest quickly smothered – at least for the duration of the event.

## **Mega-events and Security Cooperation**

The quest for security during mega-events has given security cooperation an altogether new impetus. Using South Africa's hosting of the FIFA 2010 World Cup, this discussion provides a description of the nature and extent of such cooperation which has characterised the event. Here the emphasis is on state-centred forms of cooperation at the level of security planning and coordination, police training, and the exchanges of intelligence (international to national; national to regional to local). As the discussion will illustrate, a wide variety of mechanisms – each with its defined mandate and dedicated resources – played a contributing role within the complex jigsaw of security.

Mega-events provide powerful and very particular incentives for cooperation. Four features of mega-events provide insight into such incentives. In the first instance, the securitisation of mega-events increasingly relies on international bench-marking of 'best practices' and a robust exchange of security templates and operational practices from one event to another. In fact, mega-events are increasingly being regulated by well developed security frameworks. Tight monitoring of host nation organisational and operational capacities contributes to a form of global managerial 'accountability'. The penalties for non-compliance, and the dire consequences attached to 'failure', provide very powerful incentives to invest resources and to streamline organisational capacities at the national level. A second feature is that mega-events focus surveillance and operational capacities – situated at international, regional and local levels – on a unifying security objective. The common objective of 'making the game safe' creates a singularity of focus which transcends the usual sectarian impulses so often embedded in international liaisons and intra-governmental cooperation. There is a third feature of security in the context of mega-events that has to do with the unlocking of resources. Access to resources allows for an unprecedented expansion of technological infrastructure and the deployment of manpower on a scale not easily matched for domestic crime control. In the case of mega-events, efficiency and effectiveness are linked to generous budgets – comparatively speaking. Such



budgets stand in sharp contrast to the routine demand for economic stringency in domestic crime prevention.

Finally, mega-events project national security capacity into the international spotlight where failure to 'deliver' is associated with wide-ranging social costs. Success in security governance is one factor on which the national reputation of the host country hinges. The political and cultural dividends to be reaped from staging a safe event mobilise stakeholders in unprecedented ways. As Boyle and Haggerty put it:

Mega-events are high-profile, deeply symbolic affairs that typically circulate from host city to host city. The classic examples are the Olympic Games, World Exhibitions, the FIFA World Cup. Highly prized by national and civic planners, they are simultaneously political, economic and cultural happenings that reap a windfall of publicity and initiate infrastructural projects long on the municipal 'wish list'. ... The intense media coverage of these events offers an opportunity to promote a distinctive image of the city to a global audience that can, it is hoped, consolidate its position within the global hierarchy of cities.<sup>323</sup>

## **International Bench-marking and Risk Management**

The mega-event is a transient one. Yet, it provides an exceptional moment for concentrating security capacities. After the event the security knowledge and practices move on to the next location. Nations eager to bid for mega-events, as noted above, can draw on past practices. There is no need to reinvent the security wheel. Increasingly standardised security templates are circulated and transferred from one mega-event to another. The opportunities for bench-marking, packaging and trading in security artefacts are legion. The forces associated with marketisation contribute to a much wider dispersal of technology and operational practices. One influential example of the standardisation of strategic frameworks and contingency plans illustrates the point quite well. The influential *European Union Handbook on International Police Cooperation for Football Matches* recognises the multi-agency character of managing football events. The Handbook sets out to maximise the 'effectiveness of police cooperation' by creating guidelines for information management; event related preparations; cooperation during the event; and cooperation between police, criminal justice and prosecuting agencies. As such it provides a blueprint to those situated outside of the Eurostate.

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323 Boyle & Haggerty (2009). p. 257.

The South African case illustrates the multiple exchanges which have been underway as early as 2005 with study visits by teams from the South African Police Service (SAPS) observing mega-events security as far a field as Korea, Japan, Germany and Brazil.<sup>324</sup> Deliberate international lesson-drawing has been part and parcel of the preparation of South Africa's elaborate security strategy. The host city cooperation programme between Germany and South Africa has greatly facilitated the quest for emulating best practices. In terms of this programme provision is made for experts (in this case no less than 70) to advise South Africa on a wide range of organisational matters relating to World Cup 2010. A further example of the exchange, for example, in standard operating procedures is to be found in the handling of mass casualty incidences in stadiums and public viewing areas.<sup>325</sup>

Successful cooperation in the context of mega-events requires organisational capacity on a huge scale. Here the capacity of the state itself is critical. Such cooperation is enacted through carefully demarcated and well resourced mechanisms. Such mechanisms may be situated at the transnational, international, regional and domestic levels. For mega-events cooperation and coordination has to extend beyond security institutions as well as beyond public institutions. Intra-state cooperation between security and other structures (involving the SAPS, the South African National Defence Force[SANDEF], municipal police, intelligence agencies, disaster management, health and welfare agencies) is required. Mega-events thus provide both new opportunities and imperatives for many forms of cooperation. The cooperation can be visualised at the horizontal and vertical level. It takes place within the host state and between other states; between the state and the corporate sectors; as well as between the state and civil society. Mega-events also provide new spaces for thousands of active citizens to be involved as volunteers in the security project.

## **'All hands on deck and all eyes on the ball': Regulatory Frameworks**

The key regulatory frameworks include the 2010 FIFA World Cup South Africa Special Measures Act, No. 11 and No. 12 of 2006. These Acts were meant to give legal substance to the various provisions contained within the Organising Association Agreement between FIFA and the South African Football Association

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324 Interview with Deputy Commissioner Pruis, Pretoria, 26 March 2008.

325 One illustrative example of the way in which international lessons are transferred to the next host country is to be found in the Standard Operating Procedures in handling mass casualty incidences in stadiums and public viewing areas as developed by a German expert in from the German Association of Chief Fire Officers under the InWEnt agreement. See German Association of Chief Fire Officers (2006). *Standing Operating Procedures for South Africa World Cup 2010*.

as agreed to in 2004. The purpose of Act No. 11 was to 'give effect to the Organising Association Agreement between FIFA and the South African Football Association (SAFA) and the guarantees issued by the Government to FIFA for the hosting and staging of the 2010 FIFA World Cup South Africa; and to provide for matters connected therewith.' The Act contains provisions on a range of matters<sup>326</sup> and provides the Minister of Safety and Security with responsibility and authority to make regulations aimed at securing the overall event. The responsibility for the provision for security is carved up both spatially and institutionally. The Local Organising Committee (LOC) assumed responsibility of order and safety in and around stadiums and the training grounds of participating member associations. This includes responsibility for access control and crowd management inside stadiums. The South African government through the SAPS took responsibility for the activation of joint structures and for the coordination and provision of national security and law enforcement. They were also tasked with the provision of support to the LOCs in fulfilling their briefs around event security. A detailed security matrix was developed to map and assign responsibilities.

The Acts created the broadest of legal frameworks. The detail of security planning and delivery came to be stipulated in a staggering number of strategic documents which had been refined over a period of four years. A General Safety and Security Plan was submitted to FIFA in June, 2008. Over the next two years the Plan was refined. In the first week of May 2010, Deputy Commissioner Andre Pruis of the SAPS unveiled a detailed security plan to the Portfolio Committee of Safety and Security. His presentation revealed a plan of staggering density. The 'war machine' was being assembled with precision on a very wide front. Land, air and sea space were to be brought under constant surveillance. To 'sanitise airspace', Commissioner Pruis said, fighter jets would undertake air sweeps. Airports were to be placed under constant monitoring and ships would be escorted by police into harbours. Joint border patrols would rely on the deployment of SAPS and SANDF personnel as well as Interpol and SARPCCO colleagues. Special task forces, bomb squads, national intervention units; seven medical battalions were on permanent standby to deal with 'any possible chemical, biological and radiological threat'. Ten kilometre cordons were being wrapped around stadiums. Emergency points were established on highways and provision was being made for mass evacuation areas should disaster strike. The multifaceted plan against terrorists, hooligans, organised criminals and ambush marketers seemed elaborate. In addition, the national focus as the minister put would be on 'domestic extremism'. The latter, he explained included strike action and service delivery protests.

With such a comprehensive security plan at its disposal, with thousands of

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326 Issues such as the declaration of stadiums and venues; the playing of anthems and flying of national flags; the granting of permits and visas; the utilisation of accreditation cards in designated areas; access control, the search and seizure powers of peace officers; and the demarcation of traffic free zones are outlined.

law enforcement officials visibly walking the beat, and with specialised security formations waiting in the wings for things to go wrong, at least parts of South Africa resembled a ‘theatre’ over which hovered a complex surveillance machinery reliant on visual images, electronic messages, optic fibres and ordinary human eyes and ears.

Operational planning which was initiated in 2004 was developed by the Joint Operational and Intelligence Planning Committee, assisted by a Support Team that worked in close contact with the Security Directorate of the FIFA Organising Committee.<sup>327</sup> Part and parcel of the security plan involved the large-scale activation (as opposed to the creation) of various structures such as the multidisciplinary Justice, Crime Prevention and Security Cluster. The most important of these included the National Joint Operational and Intelligence Structure (NATJOINTS) with representation from 22 government departments. The NATJOINTS operated around the clock in 12-hour shifts from Snake Valley, a military basis outside Pretoria. The ‘war room’ had at its disposal state of the art technology. One law enforcement official observed:

It is mind blowing. You have never seen anything like this and neither will you soon again. The screens are enormous. Satellite images are beamed into the war room from all over. There is constant monitoring of the images. Spotters alert supervisors to suspicious issues. The equipment can zoom in on micro detail happening on the street. It is just mind blowing.<sup>328</sup>

At daily meetings held at the Joint Operational Committee (JOC) intelligence reports received from levels down the line were considered, operations reviewed and issues identified which required attention. Chaired by the Deputy National Commissioner of Police with the support of the SAPS Soccer World Cup Committee, this structure reported directed to the National Commissioner.

This national structure was duplicated at provincial and local levels. The Provisional Joint Operational Centres (PROVJOCS) communicated with Cluster Joint Operational Centres as well as Venue Operational Centres (VOCs). A constant flow of information – up and down the chain, back and forth from periphery to centre, to and fro between structures – took place. Over such information laboured many an analyst. ‘Intelligence’ had to make sense of the daily raw data and format it for consumption suitable to developing contingency and action plans.

A second structure of importance was that of the International Police

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327 Burger J. (2010). *Crime and Security: FIFA World Cup: South Africa*. Crime and Justice Programme: Institute for Security Studies, 9 June 2010.

328 Conversation TA, PE, 2 July 2010.

Cooperation Centre (IPCC). Described as a 'new' South African invention, the IPCC provided a mechanism to which 200 police officials from 27 playing countries were affiliated. This structure, based at the Burgers Park Hotel in Pretoria, took responsibility for the coordination of the activities of foreign police and their operational deployment, in support of the SAPS, to soccer stadiums. In terms of the regulations, foreign police had a strictly advisory and monitoring function. The non-executive mandate was explicitly defined. As a consequence, operational authority and command remained invested in national security organs with domestic criminal law and the standing regulations of the national police prevailing at all times.

Interpol also played a critical role during the 2010 World Cup. It deployed its largest ever International Major Events Support Team which consisted of 50 experienced officers from 32 countries in support of the SAPS. These officers were posted at airports and border crossings and deployed to hotels and matches. The Team was linked via the I-24/7 global police communications systems to Interpol's secure network to help identify threats relating to terrorism, hooliganism and serious crime. Prior to the World Cup event, exchanges between Interpol and the SAPS involved security briefings in Lyon, France. In March 2010 Interpol also hosted the first security-themed meeting of its kind focussing on the challenges for the 2010 World Cup in Zurich. This event was attended by Interpol, chiefs of police, heads of security and police liaison officers from all World Cup participating countries. At this elaborate meeting the SAPS had an opportunity to convey its security planning approach to international colleagues for consideration.

Representatives from the Southern African Development Community's (SADC) police chief network, the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO), in turn established a joint operational centre within the IPCC with linkages to the NATJOC. Within SARPCCO circles the responsibility lay in enacting the regional security component of the overall national security plan and for coordinating deployment of security services to police border posts and assisting with monitoring of people and criminal networks.

Every participating football team was allocated a Team Security Liaison Officer (TSLO) and Close Protection Officer (CPO) – all hand-picked from the Special Task Force of the SAPS and National Intervention Units. Each of these members was subject to sophisticated training in securing facilities, counter-intelligence, diplomatic protocol and close protection.<sup>329</sup> In the run up to the event international exchanges in training aimed at building specific capacities within the South African security sector. So, for example, the gendarme model

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329 Security: 2010 FIFA World Cup Media Statement Minister Nathi Mthethwa, Deputy Minister Fikele Mbalalu and General Bheki Cele, Thursday, 15 July 2010. [http://www.saps.gov.za\\_dynamicModules/internetSite/newsBuild.asp?myURL=1015](http://www.saps.gov.za_dynamicModules/internetSite/newsBuild.asp?myURL=1015) (Accessed on 27 August 2010).

of public order training was imported by French instructors to pockets of the South African police. This in itself signalled a departure from the former reliance on Belgian models of public order policing.<sup>330</sup> The FBI too continued its long-standing training in the policing of terror and money-laundering. The European Union again sponsored the Germans to provide operational commander training of mega-events to the SAPS.<sup>331</sup>

After the conclusion of the World Cup, Interpol described inter-agency cooperation as a huge success. The head of the IMEST initiative said that 'South Africa established a high threshold' and South Africa provided a 'blueprint for future major events in relation to police preparation and processes'.<sup>332</sup> The 'security plan' utilised by South Africa was a 'winning one'.<sup>333</sup> Prepared for a range of eventualities, the threats of terror, hooliganism and serious (organised) crime did not materialise. Incidences dealt with during the duration of the World Cup within the identified security 'enclaves' (hotels, transport routes, training venues, fan parks and stadiums) were relatively minor. The policing strategies relied on a combination of 'high' intelligence, thick surveillance through the utilisation of CCTV cameras and satellite images fed from helicopters into control rooms, as well as saturation policing through the deployment of large numbers of visible police.

## From Security to Criminal Justice Coordination

The template for cooperation did not stop at the front line of the police. Court personnel too were brought into the orbit of coordination. After all, access to security had to be synchronised with access to justice.<sup>334</sup> In 2008 it was reported that 'the South African Police Service, the Department of Justice and Constitutional Development and the Department of Correctional Services had agreed on an integrated plan for the arrest, court appearance the brief detention of offenders during match games'.<sup>335</sup> Here South Africa was simply following international practices. The fast tracking of judicial arrangements and court

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330 French support of Soccer World Cup, 2010 South Africa. [http://www.ambafrance-rsa.org/SoccerWorld\\_Cup-2010-South-Africa.html](http://www.ambafrance-rsa.org/SoccerWorld_Cup-2010-South-Africa.html) (Accessed on 27 August 2010).

331 Telephone interview, TA, 29 August 2010.

332 2010 FIFA World Cup a security success for host South Africa confirms INTERPOL. <http://www.interpol.int/Public/ICPO?PressReleases/PR2010/PRO58.asp> Accessed 27 Aug 2010.

333 Address by the National Commissioner of the South African Police Service (SAPS) General Bheki Cele to the National Press Club on the state of security for the 2010 FIFA World Cup, Sheraton Hotel, Pretoria dated 29 June 2010. <http://www.info.gov.za/speeche/2010/10070215151001.htm> (Accessed on 27 August 2010).

334 See the section 2.2 Access to Justice as contained in the Background information on government's preparations for the 2010 FIFA World Cup.

335 See report by South African Government Information dated 13 August 2009. <http://www.sa2010.gov.za> (Accessed on 2 September 2010).

practices are increasingly a feature of mega-events. In setting up 56 dedicated World Cup courts (modelled on German experiments) in close proximity to sporting venues, South African court practitioners too had a role to play in fast tracking justice for those found guilty of violating either FIFA-specific regulations (relating to ambush marketing in particular) or for transgressions of national criminal law.<sup>336</sup>

In agreeing to such cooperation, criminal justice practitioners were fulfilling a requirement stipulated by FIFA. This again opened up the space for judicial cooperation between host institutions and their international counterparts. As set out in the *European Handbook*,<sup>337</sup> international cooperation between and actual exchange of court personnel has become standard practice. The secondment of a senior crown prosecutor from the UK to South Africa was debated in parliament. In answer to a question posed to the Secretary of State for the UK Home Department it was said that a senior crown prosecutor with expertise in UK football legislation was deployed to South Africa and that his role was to 'liaise with South African authorities in accordance with an agreement with the South African Ministry of Justice'. The crown prosecutor, it was indicated, would provide authoritative witness statements should a UK subject be brought before court.

## Resources for Securing the Mega-event

Mega-events provide opportunities for modernising and expanding security surveillance systems on an unprecedented scale. In South Africa too the 'war chest' (as President Zuma, called it) has been put to generous use over the past three years. Finance Minister Trevor Manuel's 2009 budget made provision for a stadiums development grant (of R1.9 billion and an additional R3.2 billion awarded to offset shortfalls) and host city operating grants (in total R718 million) over two years. The SAPS was allocated R1.35 billion to provide maximum security – for both the Confederation and World Cup.<sup>338</sup> This included R665 million for the procurement of special equipment and R640 million for the deployment of personnel.<sup>339</sup> Part of the latter portion made provision for the deployment of an additional 4 100 officers with an anticipated police strength of 190 000 for the

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336 Byrne C. (2010). 'Speedy justice in World Cup courts', *Mail and Guardian online*. <http://www.mg.co.za/article/2010-06-16-speedy-justice-in-world-cup-courts> (Accessed on 31 August 2010).

337 European Union Handbook on International Police Cooperation for Football Matches. <http://www.statewatch.org/news/2010/jun/eu-new-police-football-handbook-9467-10.pdf> (Accessed on 23 August 2010).

338 A closer look at 2010 security plan 20 May 2010 [http://www.sagoodnews.co.za/world\\_cup\\_security/a\\_closer\\_look\\_at\\_2010\\_security\\_plan.html](http://www.sagoodnews.co.za/world_cup_security/a_closer_look_at_2010_security_plan.html) (Accessed on 23 August 2010).

339 2010 World Cup budget allocation, <http://www.shine2010.co.za/Community/blogs/goodnews/archive/2009/02/11/2010-world-cup-budget> (Accessed on 18 August 2010).

SAPS by 2010. In addition, police reservist numbers doubled in the run up to the World Cup. State of the art information and community technology was procured as well as crowd-control equipment, sniper weapons, advanced bomb-disabling equipment, helicopters, water cannons, BMWs for highway patrol, body armour and hundreds of cameras. Four mobile command centres with an anticipated cost of R6 million each were part of the infrastructure.<sup>340</sup> Some of the arsenal at the state's disposal was displayed in Sandton, just prior to the opening of the World Cup. High-tech armoured vehicles and an ambulance fleet rolled down the well-paved streets of corporate South Africa.<sup>341</sup> Furthermore, dedicated 2010 police stations within close proximity of stadiums were equipped with crime-investigation capacity to fast track all cases through the 56 designated special courts. For the duration of the event all leave was cancelled; force levels boosted to allow police to work in twelve hour shifts for seven days of the week. No one knew for sure how much all of this cost but the anticipated costs of over-time were expected to be 'enormous'.<sup>342</sup>

With this kind of infrastructure, technology and manpower at his disposal it comes as no surprise that the honourable Minister of Police, Nathi Mthethwa, was upbeat about the prospects of the police delivering on the political promises to secure the event.<sup>343</sup>

## National Image and Reputation

Mega-events provide unprecedented opportunities for marketing and for improvement of the host country's image.<sup>344</sup> Huge expectations were attached to South Africa's hosting of the World Cup event in terms of nation-building on the one hand and of proving Africa's capacity to the international community on the other.<sup>345</sup> The costs of failure at both at a national and international level would be enormous indeed.

We are certain that each and every one of us will do the right thing  
and spare no effort to ensure that everything necessary is done

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340 Mthethwa, N. How SA will secure the soccer World Cup, 24 January 2010 <http://www.politicsweb.co.za/politicswe/veiw/politicsweb/en/page71654?oid=157123&sn=Detail> (Accessed on 28 August 2010).

341 'A closer look at 2010 Security Plan', 20 May 2010 [http://www.Sagoodnews.co.za/world\\_cup\\_security/a\\_closer\\_look\\_at\\_2010\\_security\\_plan.html](http://www.Sagoodnews.co.za/world_cup_security/a_closer_look_at_2010_security_plan.html) (Accessed on 23 August 2010).

342 Conversation with TA, PE June 2010.

343 Mthethwa, N. How SA will secure the soccer World Cup, 24 January 2010 <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71654?oid=157123&sn=Detail> (Accessed on 28 August 2010).

344 Florek M., Breitbarth T. & Consejo F. (n.d.) 'Mega Sports Events and Host Country Image: The case of the 2006 FIFA World Cup', [http://conferences.anzmac.org/ANZMAC2007/papers/Florek\\_1.pdf](http://conferences.anzmac.org/ANZMAC2007/papers/Florek_1.pdf) (Accessed on 18 August 2010).

345 See S. Cornelissen (2004). 'Sport Mega-Events in Africa: Processes, Impact and Prospects', *Tourism and Hospitality Planning and Development* Vol. 1(1). pp. 39-55.



for a truly successful World Cup. As South Africans, our hearts, our spirit, minds and bodies will talk, live and breathe in unison towards the achievement of the common goal of helping to define 2010 for humanity as eminently the year of the celebration of the fulfilment of the dreams of an entire people about their dignity that has taken centuries to realise.<sup>346</sup>

The security sector in particular was burdened with an enormous responsibility to deliver on the expectations of a safe environment for the duration of the Cup. This, some pointed out, allowed them to put the internecine squabbles aside, and to rise as a united security front to the occasion.

## Security Legacies beyond the Mega-event

Mega-events are transient but their affects are not. Mega-event security in any specific urban locality also leaves within the host environment a legacy of ideas and practices which may shape the pursuit of safety and security at the local level. Guilianotti and Klauser<sup>347</sup> are particularly concerned with the security legacy of sport mega-events. For them a security legacy refers to ‘a range of security-related strategies and impacts which continue to have significance beyond the life of the sport event’.<sup>348</sup> They go on to identify different kinds of security legacy, at the level of security technologies, new security practices, new policies and legislation and the impact of security considerations on urban architecture – all of which are relevant to the South African case too.

If ‘South Africa was never to be the same again after the World Cup’, could the same be said of its security and justice system more widely?<sup>349</sup> What indeed would be the institutional legacies of the large-scale and expensive experiment in World Cup security, for the very institutions charged with the responsibility of making South Africa safer for its own citizens? Will the international re-branding of the country as a safe and hospitable space find its echo amongst its citizens too? There were promises to this effect forthcoming from both the political centre and from police headquarters. The security armament acquired with World Cup security in mind, so the rationalisation went, would benefit the nation after the event. After July 2010 domestic priorities would simply replace World Cup

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346 Mthethwa, N. ‘How SA will secure the soccer World Cup’, 24 January 2010, <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71654?oid=157123&sn=Detail> (Accessed on 28 August 2010).

347 Guilianotti R. & Klauser F. (2010).

348 *Ibid.*, pp. 53–4.

349 SA Good News, ‘A closer look at 2010 Security Plan’, 20 May 2010, [http://www.Sagoodnews.co.za/world\\_cup\\_security/a\\_closer\\_look\\_at\\_2010\\_security\\_plan.html](http://www.Sagoodnews.co.za/world_cup_security/a_closer_look_at_2010_security_plan.html) (Accessed on 23 August 2010).

priorities. The Minister of Police urged that the ‘momentum’ achieved during June–July to be sustained so as to render the country safe(r). At the end of July, police management met to plan the ‘way forward after the World Cup’.<sup>350</sup> The content of these discussions is yet to be made public. But in thinking of possible security legacies we may want to conclude with some broad observations.

#### *Thick Surveillance and the Attraction of Technology*

Reliance on security technology in pursuit of event security is likely to have longer term repercussions with an amplification of previous trends towards technology-based crime control and prevention. In a conversation with Deputy-Commissioner Pruis in the early days of pre-event planning he spoke of the ‘toys’ to be acquired, of the state-of-the art vehicles safely mothballed in secure spaces to be rolled out in months to come. Gadgets do have an appeal for those in uniform. High-tech surveillance systems are likely to become an enduring feature of crime prevention in life beyond 2010 – provided, of course, that their optimal utilisation can be afforded. The World Cup event left what one observer called ‘the biggest surveillance footprint for Cape Town’, and also taught ‘us the importance of information management. This is what needs to be sustained.’ There is much wisdom in this statement. Technology on its own may well be nice to have but it will remain pretty useless unless the information can be managed, collated, analysed and then translated into action. This brings us to the virtues of intelligence-led policing.

#### *Robust Intelligence*

The 2010 World Cup Event provided an opportunity for experimentation in intelligence-orientated policing on a grand scale. There is no other recent South African precedent for the concerted deployment of intelligence data, networks and operational capacities situated at the transnational, international, regional and national levels. One would expect that there is more to the intelligence exchange than what has been made known for public consumption. The level of cooperation between different intelligence agencies inside the country was an issue which a law enforcement agent commented on very favourably indeed.<sup>351</sup> In a country battling the effects of high levels of violent and organised crime, one may be excused for anticipating the preventative use to which sophisticated surveillance may be put in making inroads into more organised forms of criminality and corruption. The prospects for intelligence-led policing beyond July 2010 will be dependent on consolidating a fractured intelligence community on the one hand and weeding out the rot of corruption within the corridors of the state itself. In this regard the

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350 Police to build on World Cup success. <http://www.southafrica.info/news/saps-190710.htm> (Accessed on 27 August 2010).

351 Conversation, BG, Cape Town, 8 September 2010.

conviction of South Africa's former Commissioner of Police, Jackie Selebi, for corruption may serve as a source of inspiration for the near future.

#### *A Re-establishment of Police Primacy in the Business of Security Governance*

The security of the 2010 World Cup assigned the primary coordinating role to the SAPS. As such, it occupied the central position within the wider hub of the security establishment. Its performance one would suspect has re-established its institutional status and clout within the wider security network. The display of organisational capacity of the police must bolster what has become a rather embattled institution plagued by skills deficiencies, bad morale, case overload and widespread corruption. Whether strength can be drawn for focusing energies on domestic crime priorities remains to be seen. What should not come as a surprise is the belief in the virtues of saturation policing as an antidote to crime. The post-World Cup '*babalas*' (hangover), to which a Metro police officer referred, may serve as a rude wake-up call that the policing the state of 'exception' cannot serve as a template for policing the state of normality. As the interviewee put it: 'You can't maintain that kind of momentum because you don't have that kind of budget. We are in for a hell of a *babalas*'.<sup>352</sup> If that is the case, then the morale boosting effects of the World Cup for security agencies runs the risk of petering out quickly.

#### *Coordination of Security and Justice*

A defining feature of the organisational approach in the lead up to and during the World Cup was the mobilisation of agencies and networks, which was well coordinated. For many, professionalism and collegiality were defining features of such cooperation. The success of this cooperative experiment and of the capacity for 'inter-operability' stands in contrast to long-standing difficulties of coordinating actions both within and across government departments. Noting the anomaly between a dysfunctional court system more generally and the super efficiency of the World Cup specialised court, a member of the political opposition wondered how best we could apply the lessons in a way which 'does not erode democracy'.<sup>353</sup> Others too expressed concern about the zealotry with which the South African criminal justice system was protecting the commercial interests of FIFA.<sup>354</sup> Here the response of the South African authorities to a group of 36 Dutch supporters accused of 'ambush marketing' created a furore. The women were arrested under the Contravention of Merchandise Marks Act for promoting a Dutch brewery,

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352 Interview, RY, CT, 6 July 2010.

353 Urquhart C. 'Special courts key to World Cup success' <http://www.southafrica.info/2010/project2010column63.htm> (Accessed on 31 August 2010).

354 South Africa's World Cup Special Courts Out of Control <http://www.euticketsnews.com/20100622814/south-africas-world-cup-spical-courts-out-of-control.html> (Accessed on 31 August 2008).

and released on bail of R10 000 each. The German Ambassador to South Africa found it necessary to convey his concern about the ‘judicial overkill’ relating to the Dutch women. In the event the charges were dropped and the women released.

Whilst the networks of cooperation may be difficult to sustain, some police were quick to comment on the future importance of personalised linkages forged during the event, for business as normal. Contacts have been established across departments and friendships have taken root. The contribution of such informal networks to the post-event business of crime control and crime prevention should not be underestimated. The importance of personalised networks for getting the job done, after all is well recognised in the international police literature. But informal networks – much like formal security networks – need to be subject to the principles of ‘good governance’. Which brings this discussion by way of conclusion to a final issue, namely accountability, in the delivery of security for mega-events.

### *Accountability*

On the accountability issue it may be instructive again to draw on the *European Handbook*<sup>355</sup> for guidance. It sets a policy framework for police cooperation at different levels only to insert briefly a qualification that such cooperation be guided by the principles of ‘legality and proportionality’. *The Handbook* provides no further guidance as to the interpretation of the concepts of ‘legality and proportionality’ and their relevance for building transnational security capacities. In developing contexts, where neither the existence nor exact meaning of concepts such as legality and proportionality of actions aimed at security should be taken for granted, issues relating to accountability are critical. There are of course many dimensions to accountability in the context of mega-events and its securitisation. Three come easily to mind: political, financial and social accountability for the decisions made regarding the prioritisation of the security concerns of some over others; the allocation of resources for securing the event; and the investment in particular models of crime control/prevention. And so, when inserting the question of accountability into our consideration of 2010 World Cup security, it remains to be seen whether South Africa’s ‘success’ in securing the event may assist or undermine the search for ‘safety’ of the country’s citizens in years to come.

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355 European Union Handbook on International Police Cooperation for Football Matches, <http://www.statewatch.org/news/2010/jun/eu-new-police-football-handbook-9467-10.pdf> (Accessed on 23 August 2010).

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- » develop a culture of human rights, integrity, transparency and accountability within the police;
- » promote a good working relationships between the police and communities; and
- » promote good working conditions in the police.

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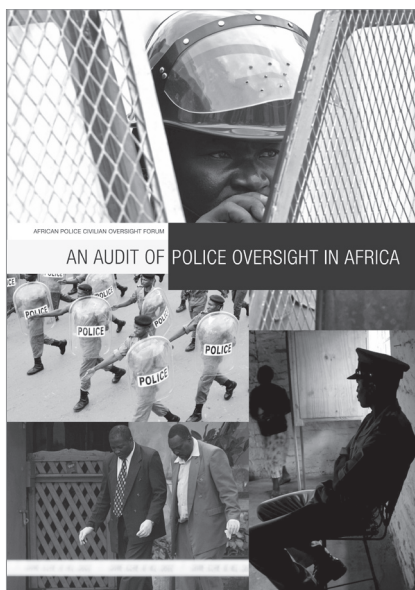
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