



# Policing and non-nationals

## Community Police Forums and xenophobic violence in South Africa

Louise Edwards, Azwi Netshikulwe and Laura Freeman



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# Introduction

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## Context

Community Police Forums (CPFs) were designed to play a central role in the democratic transformation of policing in South Africa by inviting local-level police accountability, community support, and participation in crime prevention and the setting of priorities. However, gaps and contradictions in the CPF regulatory framework, together with contestation regarding the extent to which they are representative of, and accessible to, the local community, have resulted in unmatched expectations. In the context of the prevention of xenophobic violence, the challenges inherent in the current structure and functioning of CPFs have manifested in serious failures by CPFs to work effectively with key stakeholders such as the South African Police Service (SAPS). Indeed, in some instances, CPFs have been accused of instigating and fuelling crime and violence against non-nationals.

Preventing crime and violence against non-nationals is a significant task which requires effort by not only SAPS and CPFs, but by society as a whole. The multi-sectoral National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (the NAP) recognises this. In its implementation plan, the NAP co-opts various departments and other stakeholders in implementation activities under the coordination of the Department of Justice and Constitutional Development (DOJ). Local community structures are recognised as having the potential to significantly shape the trajectory of xenophobic violence and related hate crimes, either by playing a positive role in working towards violence prevention and social cohesion, or a negative role in terms of actively fuelling or doing nothing in response to violence against non-nationals. CPFs have an especially important contribution to make in preventing crime and violence as mandated by legislation and policy as part of the formal architecture of policing, violence prevention and safety in South Africa.<sup>1</sup> Understanding and strengthening their role—centred on preventing violence as it threatens to flare, and being an active part of a broader push towards local-level social cohesion—must be addressed if NAP implementation efforts by the DOJ, SAPS and other departments and role-players are to be successful.

With support from the European Union (EU), the African Policing Civilian Oversight Forum (APCOF) has developed this report to examine the role under regulation and policy that CPFs can play in the prevention of xenophobic violence and related hate crimes in South Africa. It explores the challenges inherent in both the framework and its implementation that have resulted in critical failures. The report then examines whether a broader understanding of ‘prevention’ in the context of the role of CPFs is required, before identifying opportunities under the current NAP implementation to bolster the role of CPFs in actively preventing violence against non-nationals.

## Terminology

This report uses the term 'non-national' to describe a person who resides in the Republic of South Africa and is perceived as 'foreign', as not belonging to South Africa, and/or as originating from another country. 'Non-national' therefore includes:<sup>2</sup>

- migrants;
- immigrants;
- foreigners/foreign nationals;
- undocumented immigrants;
- refugees and asylum-seekers; and
- South Africans who are perceived to be foreign, including naturalised citizens and those from different ethnic groups.

This report adopts the definition of xenophobia in the NAP, which is given as:<sup>3</sup>

*... an unreasonable fear, distrust or hatred of strangers, foreigners or anything perceived as foreign or different and is often based on unfounded reasons and stereotypes. It can manifest itself in several ways in a country. For example, it can be through victimisation on the basis of one's nationality or appearance, brutal assaults, murders, ethnic cleansing in an area, and mass expulsion from the country.*

## Methodology

This study was developed through a mixed methodology of primary and secondary research methods. Researchers conducted limited semi-structured interviews with several respondents, which included police officers, policing experts, staff of the Civilian Secretariat for Police Service, provincial departments of community safety, civil society, and community members. Although every attempt was made to interview targeted experts and senior police officers with the requisite knowledge of the subject matter, it was not always possible to do so as many were not available for interviews given the challenges associated with the COVID-19 lockdown period and remote working. Previous field research conducted between 2016 and 2020 was reviewed and this has been included, in addition to a review of the policy, legislative and regulatory framework for CPFs, and other literature on the formation and function of CPFs. Thus, the research that underpins this report relies mainly on secondary data obtained from previous field research conducted by two of the report's contributing authors, and other relevant data and information that is available in the public domain.



## Structure

This report begins by providing a critical analysis of the legislative and policy framework that governs the establishment and functioning of CPFs, with a focus on those aspects that provide it with a mandate to engage, promote cooperation between the police and the community, improve the rendering of police service, promote joint problem identification and solving, or cooperate on crime- and violence-prevention initiatives. The capacity of CPFs to function as effective partners in the prevention of violence is rooted in their structure, historical and political context. Accordingly, this report provides some analysis of the effect of these elements on CPFs' contribution to the prevention of xenophobic violence and related hate crimes. The report then considers what an effective 'prevention' role could look like within the constraints of the current legislative and policy environment governing CPFs, before concluding with recommendations for action based on the research findings.

# CPF's and violence prevention: legislative and policy framework

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## Overview

CPF's have been part of the South African policing landscape since before the 1994 transition to democratic rule. From as far back as the African National Congress' (ANC) policy document *Ready to govern: ANC policy guidelines for a democratic South Africa* in 1992, the blueprint for democratic policing included a strong emphasis on community participation, support and consultation.<sup>4</sup> That position found expression in the interim Constitution of 1993 and in section 18 of the South African Police Service (SAPS) Act.<sup>5</sup> However, as this report will show, almost 30 years since their establishment, key policies and regulatory instruments either remain in draft, are outdated, or are still outstanding (see Appendix 1 of this report), with the proper functioning of CPF's not receiving clear articulation.

At the time of writing, the functioning of CPF's is primarily governed by the SAPS Act. Their functions are given effect in the SAPS Interim Regulations for Community Police Forums and Boards (2011) (SAPS Interim Regulations), which focus on the establishment of CPF's and associated structures.<sup>6</sup> However, the Interim Regulations do not provide sufficient detail on the functioning and work of CPF's relating to crime and violence prevention, or about training, resources and powers of CPF's. The Regulations also do not provide detail on the relationship between CPF's, the Civilian Secretariat for Police (CSP) and its provincial secretariats and departments, to whom responsibility for the functioning and resourcing of CPF's shifted, in policy and practice, in the 2016 White Paper on Police. As such, the necessary amendments to the legislative framework to give full effect to this shift in responsibility from SAPS to the CSP remain outstanding, and a comprehensive policy framework is required to give full effect of the powers, function and support in the shift in responsibility for CPF's from SAPS to the CSP.<sup>7</sup>

The effect of the legislative and policy ambiguity is that CPF's experience weak governance, under-resourcing, and under-performance in the application of their mandate. In the context of the prevention of xenophobic violence and related hate crimes, these challenges manifest in often unrepresentative and unresponsive structures that are not fulfilling what is arguably one of their key roles: namely, promoting community safety and assisting SAPS with the setting of policing priorities which, in communities where xenophobia is prevalent, includes violence prevention.

The mandate of CPF's in terms of crime and violence prevention, the key challenges inherent in the current legislative and policy framework, and how these impact CPF's' capacity to work with SAPS as a stakeholder in the prevention of xenophobic violence and related hate crimes are discussed below.

## Defining the personality and mandate of CPFs: prevention and accountability

In the lead up to the drafting of the interim Constitution of South Africa, a great deal of work was done to lay the foundations at a policy level to reimagine policing as a community service, with local communities involved in police accountability, as well as shaping local-level policing priorities through the participation and support of local communities.<sup>8</sup> A centrepiece of these efforts were CPFs, provided for in the 1993 interim Constitution as local-level mechanisms with a role in the promotion of police accountability, monitoring police effectiveness, efficiency and service delivery, as well as advising on local policing priorities.<sup>9</sup> The role of CPFs in accountability was provided for in the 1995 SAPS Act, with CPFs mandated to maintain partnership, promote communication and cooperation, improve rendering of policing services, promote joint problem identification and problem-solving with SAPS.<sup>10</sup> Accordingly, it can be inferred that CPFs were expected to play an active role in local-level policing.

In the 1996 Constitution, the role of CPFs is not defined; rather, provinces are mandated to 'promote good relations between the police and the community' without further reference to the promotion of local-level accountability, or prescribing the establishment of the mechanism to achieve this.<sup>11</sup> However, maintaining good relations between the community and the police, when read together with the SAPS Act and Interim Regulations, requires SAPS to work together with the communities as envisaged in section 18 of the SAPS Act.

The early redefining of the functions of CPFs from the interim to the final Constitution, and the subsequent confusion in defining a personality for CPFs in terms of their role as an accountability and cooperative mechanism, remain unresolved by subsequent legislative and policy provisions.<sup>12</sup>

Defining the personality of CPFs, and their intended relationship with SAPS for the purposes of understanding and addressing their role in the prevention of xenophobic violence and related hate crimes, is therefore difficult. However, based on the most recent iteration of relevant policy, taken from the 2016 White Paper on Policing<sup>13</sup> and the 2016 White Paper on Safety and Security,<sup>14</sup> their role and relationship with SAPS has been defined at the level of policy as one of cooperative partnership in promoting safety. The White Paper on Safety and Security recognises the importance of public and community participation in the development, planning and implementation of interventions to support safety, crime and violence prevention, with CPFs as central to that approach. The White Paper on Policing envisages a relationship between SAPS and CPFs that is forged on cooperative partnerships to facilitate regular communication and information sharing.

In support of this pre-eminence of cooperative partnership over accountability, the Civilian Secretariat for Police draft policy for the establishment of CPFs clearly defines the role of CPFs as to:<sup>15</sup>

'facilitate community–police relations within a specific police station precinct...and serve as the mouthpiece of the community with the police and vice versa on policing matters and other relevant safety issues...'

As part of implementing this mandate, CPFs are required to play a proactive role in informing crime- and violence-prevention strategies through the development of community safety plans under the SAPS Interim Regulations.<sup>16</sup> Community safety plans include a list of the priorities and needs of the CPF as determined by the community, and form part of the annual operational plan of the aligned police station. The plans must also set out the action steps, programmes and projects, how these will be funded, and how they meet the objectives of the SAPS Act in the station area.<sup>17</sup> The community safety

plans are to be developed by CPFs and implemented together with SAPS. If xenophobic violence and related hate crimes are identified as a community safety need, the plan can be used to put in place the systems and structures that the CPF and SAPS—collectively and individually—require in order to prevent the violence.

The prevention mandate of CPFs is also evident in a broader understanding of its oversight function which, although watered down in more recent legislative and policy framing of CPFs, remains in play.<sup>18</sup> Accountability and oversight by CPFs can include assessment of policing responses to xenophobic violence and related hate crimes that have taken place in the community. This oversight would then become preventive where it fed into changes to policing strategy and responses to xenophobic violence. Similarly, CPF monitoring of SAPS community safety plan implementation in relation to the prevention of xenophobic violence would also be relevant here. However, the extent to which CPFs engage on an accountability level has been questioned by research, which indicates that CPFs operate most 'effectively' when they work in cooperative partnership with the police. When CPFs take on a 'watchdog' role, and pursue the mandate of local-level accountability over SAPS, the relationship between the CPF and SAPS tends to break down.<sup>19</sup> This raises questions about the effectiveness of CPFs to conduct their work objectively and independently, with criticism levelled that they are 'either non-active, dysfunctional, or merely a police-controlled talk shop'.<sup>20</sup>

The preceding analysis makes it clear: CPFs have a clear mandate to guide and monitor SAPS performance on community safety needs, which incorporates notions of crime and violence prevention.<sup>21</sup> However, the extent to which CPFs have been effective in achieving this role, according to the research available, is questionable. The legislative and policy ambiguity of CPFs has played a significant role in this, which is set out in detail in the section below.

## Introduction to the gaps in the legislative, policy and operational capacity of CPFs to prevent xenophobic violence and related hate crimes

With the shift of responsibility for CPFs from SAPS to the CSP and provincial secretariats in the 2016 White Paper on Policing remaining incomplete, CPFs are still managed under the SAPS Act and its outdated Interim Regulations. The 2019 CSP policy on community policing, which was to address a number of key issues related to the shift in responsibility for CPFs, is still in draft form, and the required amendment to the SAPS Act to reflect the relationship between SAPS and CPFs has not been adopted. Critically, the CSP is also still to action key resources for CPFs, including a model constitution, national-level training materials and induction manuals, a resourcing policy, and SAPS national instructions to members on their role and relationship with CPFs, amongst others.<sup>22</sup>

In the meantime, the SAPS Interim Regulations for CPFs, which came into effect in 2001, remain the principal guiding instrument on CPF establishment. These regulations are largely administrative and set out the rules for the establishment and governance of CPFs, their constitutions, sub-forums or boards, the provision of community safety planning, information on logistics and fundraising, communication and dispute resolution procedures.

The Interim Regulations have 'long been seen as a weak response on the part of the SAPS [...] reflected in the weak overall support for CPFs and hostility towards their presence by SAPS prevalent at the time (early 2000s)'.<sup>23</sup> As observed by members of provincial departments of safety, this has resulted in 'police [that] have never embraced the concept and the responsibility to look after CPFs [...] and CPFs have

seen themselves being treated like a stepchild'.<sup>24</sup> However, over time, other experts have noted that what was initially an 'unfamiliar burden' for SAPS has shifted to a more wider acceptance of the need for CPFs.<sup>25</sup> CPF members themselves have expressed frustration and confusion about the legislative and policy framework, with a CPF member in the Eastern Cape noting that '[f]or years there was a problem because nobody knew where CPFs belonged in terms of the SAPS Act until it was clarified last year [2019] that we are under SAPS.'<sup>26</sup> This, despite the CPF member's observation that it is the provincial department of community safety and liaison that monitors and supports the functioning of the CPF and associated programmes.<sup>27</sup>

The 2020 SAPS draft Amendment Bill focusses on shifting the responsibility of CPFs to the CSP, which becomes responsible for establishing CPFs and sub-forums, ensuring their membership is representative, and ensuring they are trained, capacitated and receive financial support.<sup>28</sup> However, aside from creating a role for SAPS as *ex officio* members of CPFs, and requiring monthly reporting by CPFs to SAPS and provinces on their performance and functions,<sup>29</sup> the draft Amendment Bill does not provide further clarity on the substantive engagement between SAPS and CPFs in terms of the key mandate areas such as the development of community safety plans and crime prevention.

Accordingly, neither the 2020 draft Police Act Amendment Bill, nor the draft CPS policy addresses the core issue of how SAPS works with CPFs, administrative, operationally or substantively. What this means in terms of defining and evaluating their role in the prevention of xenophobic violence is that key mechanisms for ensuring coherency and consistency in personality, approach and performance of CPFs – such as constitutions, induction, training and an agreed framework for engagement with SAPS – are absent, and it becomes a question of personality and leadership at a local level to define a CPF's approach.

The effectiveness of CPFs in achieving their mandates is also dependent on the extent to which provincial departments of community safety and secretariats have the institutional capacity to develop and support CPFs, with the Western Cape, KwaZulu-Natal and Gauteng operating with much larger budgets and better "pressure points" for improving community safety'.<sup>30</sup> In these areas, the provincial secretariats and departments have provided support as varied as the creation of uniform constitutions, funding and training, but these are resource-dependent and apply only at the provincial level.

The overarching challenge that emerges from this situation is that the framework provided by the SAPS Act and Interim Regulations have inherent gaps and grey areas which affect the performance of CPFs in their prevention and accountability mandates, with concerning impacts on their role in the prevention of xenophobic violence and related hate crimes. Based on an analysis of the legislative and policy framework, and a review of the performance of CPFs in local communities that have experienced xenophobic violence and related hate crimes, the following key gaps that speak directly to issues of xenophobia and violence prevention emerge:

1. Gap 1: Inclusivity in the composition of CPF structures;
2. Gap 2: Training and capacity building;
3. Gap 3: Community safety planning;
4. Gap 4: Geographical or jurisdictional issues; and
5. Gap 5: Funding and resourcing.

Each of these five gaps, and the way in which they have been observed to manifest in situations of xenophobic violence and related hate crimes, are discussed in detail in the following sections.

## Gap 1: Composition of CPF structures

The regulatory framework creates a gap in terms of the composition of CPFs, and the requirements of inclusivity and diversity. There is currently no model national-level constitution, or policy guidance, on the composition of CPFs. This is significant because the research indicates that the extent to which CPFs can be effective in the prevention of xenophobic violence and related hate crimes often hinges on the extent to which it is representative of the views, experiences and demographics of the local community. The significance of this factor grows given how central the participation of communities in their own safety, and the setting of policing priorities, are within the policy frameworks set out in the 2016 White Paper for Safety and Security, and the 2016 White Paper for Policing, and the reliance on CPFs to undertake most of that representative work. Unfortunately, gaps within the current regulatory framework mean that CPF membership is often framed and formed along non-representative and exclusionary lines, and becomes politicised.<sup>31</sup>

The SAPS Interim Regulations provide that in establishing a CPF, station commanders must 'identify community-based organisations, institutions and interest groups in the station area under [their] jurisdiction'.<sup>32</sup> However, no practical guidance is provided on what this means, leaving it to the station commander to determine who is representative of the community. While the regulations speak broadly of an inclusive and non-discriminatory membership of the CPFs, in the absence of clear guidance on these issues there is a risk that CPFs are unrepresentative of the communities they serve. The draft 2020 South African Police Service Amendment Bill goes some way to addressing this, providing that CPFs 'shall be broadly representative of the local community', and '[t]he Minister shall prescribe adequate representation [...] representative of demographics of women, youth and other vulnerable groups'.<sup>33</sup> Similarly, the CSP community policing policy draft states that CPFs should be comprised of groups that are both broadly representative of the community, including in terms of demographics, and 'must include representation of women, youth and vulnerable groups'.<sup>34</sup>

The broader approach suggested by draft legislation and policy, but not yet operational in terms of governing the membership of CPFs, still lacks clarity in regulation and other instruments on what 'broad community representation' and 'vulnerable groups' mean. However, it is an improvement on the current SAPS Interim Regulations, in which, as explained above, it is left up to the local station commander to make the determination without any practical guidance on how to do so.

The Interim Regulations also provide that CPFs can establish their own constitutions, developed by CPF 'steering committees', with the provision that the constitution not 'unfairly discriminat[e] against any member of the community on any ground'.<sup>35</sup> While guidance on the contents of constitutions is provided, no information is provided on how SAPS will ensure that the constitution remains within the requirements and the spirit of the Interim Regulations. Individual CPFs and communities are left, then, to make their own interpretations of the requirements, which has resulted in exclusionary membership provisions or practice.<sup>36</sup> At provincial level, the Western Cape and KwaZulu-Natal have developed their own uniform constitutions that are to be used by all CPFs. However, in both instances, these provincial constitutions exclude non-nationals from CPF leadership and decision-making positions, despite the non-discrimination clause contained in the Interim Regulations.<sup>37</sup> A research respondent in KwaZulu-Natal cited the reason for the exclusion of non-nationals on CPFs as 'not [wanting] people from other countries to dictate in SAPS' area'.<sup>38</sup> In addition, a non-national was elected to become a secretary in Bloekombos (Western Cape) CPF structures but had to resign because he was told that the provisional constitution does not allow non-South Africans to hold executive, decision-making positions.<sup>39</sup> In terms of non-executive membership, non-nationals are only eligible under the model constitutions of the Western Cape and KwaZulu-Natal if they are representatives of organisations whose constitutions are aligned to the CPF.<sup>40</sup>

The issue of CPF membership representation was evident in analysis of the effectiveness of the CPFs conducted more than 10 years ago. Bruce (2011) observed:

*'...one should be cautious about assuming that the concerns [CPF] articulate are those of the 'community'. Some CPF members may be 'tuned in' to community perceptions and concerns but CPFs as a general rule cannot be seen to represent communities'.<sup>41</sup>*

Inclusivity of CPF membership, particularly at the executive (management and decision-making) level, is centrally important to their capacity to prevent xenophobic violence and related hate crimes. As set out in the next section of this research report, evidence from the field has illustrated that, in order to prevent violence, CPFs must have links with the local and non-national community. To be effective, the CPF must know community affairs and politics, which necessitates varied and representative membership, and includes attending community meetings (at which most coordinated xenophobic attacks are organised). Utilising this network, CPFs would then have access to the intelligence and networks needed to provide useful information to the Visible Policing (VISPOL) and Crime Intelligence units at their SAPS station. It may also have the benefit of deepening understanding between local and non-nationals within a community, and foster dialogue and social cohesion to address issues of barriers based on race, class, nationality, ethnicity and gender.

Inclusivity is further critical when the role of CPFs in setting policing priorities, and developing community safety plans at the local level is taken into consideration. While it is part of the CPF's role to assist in setting policing priorities at a local level through safety planning, what happens when community sentiment is opposed to the rights and safety of non-nationals? Public opinion surveys indicate a high level of anti-foreigner sentiment in South Africa that cuts across population, socio-democratic and racial markers.<sup>42</sup> It is likely therefore that the make-up of CPFs at the community level will include an element, if not a majority, of membership with similarly xenophobic attitudes to the general population and within SAPS. In that context, ensuring a diversity of voices on the CPF is an important element in ensuring safety planning that reflects a cross-section of community concerns (though not the only element—issues of training for CPFs in diversity and non-discrimination is discussed further below). In Dunoon, for example, a project by Freedom House (2016–2017) which sensitised CPF sub-forum members to issues of xenophobia and non-discrimination, resulted in the sub-forum shifting from harbouring xenophobic attitudes, to actively and successfully recruiting non-nationals, and working with non-national communities to prevent crime and violence against them.<sup>43</sup>

Concerningly, non-nationals also face varying degrees of xenophobic sentiment or opposition to their participation in community structures. As a member of the Western Cape Department of Community Safety articulated, 'the inclusion of non-South Africans varies from area to area and also depends on the leadership in those communities. Some communities are very hostile to non-South Africans and it made them feel uncomfortable to attend meetings'.<sup>44</sup> Lack of participation in CPFs by non-South Africans has also been attributed to time availability, fear of victimisation, or name-calling. It was apparent during interviews with some CPF members, who referred to non-nationals as *amakwerekwere*, but quickly apologised to the researcher.

Related to this are the structural barriers to participation by non-nationals in CPFs, given language issues and the proximity of these structures to SAPS. In terms of the former, language and cultural differences can prevent non-nationals from becoming integrated into CPFs. In many communities, there is a linguistic and cultural homogeneity of residents which enables easy social interactions for the majority, but which is also perceived to be a barrier for minorities or those considered to be 'outsiders'.<sup>45</sup> In some areas, such as Dunoon or Khayelitsha, researchers observed that non-nationals rarely attend CPF meetings, or any other

community meetings, due to language barriers (with meetings being conducted in local languages).<sup>46</sup> In terms of the latter, non-nationals describe receiving policing services less favourably than South Africans—including in terms of discriminatory and exclusionary policing practices, and lack of protection offered by SAPS during incidents of xenophobic violence and related hate crimes.<sup>47</sup> This has a deleterious impact on levels of trust in SAPS by non-national communities, and may impact their willingness to engage in structures aligned with their local stations, and SAPS-aligned community leaders.<sup>48</sup> The extent to which non-nationals are integrated into their local communities is also a factor in terms of the effect this will have on their capacity and willingness to participate in CPFs, with research that in communities where non-nationals are integrated and participating in community structures, xenophobic violence is less likely to flare.<sup>49</sup>

Finally, inclusivity is also critical to ensuring that CPFs capture broad-based community issues and concerns, and not just those of organised political and business interests (as illustrated in the examples provided in the next section of this research paper). The Regulations stipulate that a CPF and all associated structures are 'non-political' and prohibit members from utilising their membership 'to further or prejudice party-political interests'.<sup>50</sup> Oversight of this provision is weak and, coupled with lack of specificity in the regulatory and policy framework about broader issues of representation, CPFs have had a tendency to become dominated by political or interest groups, and thus 'captured' spaces which lack representativity and legitimacy in their communities.<sup>51</sup> Stakeholders have expressed concern that this has resulted in CPFs being perceived as platforms to advance members' political ambitions, and provide a platform for aspiring politicians.<sup>52</sup> A SAPS member in Ikamvelihle in the Eastern Cape warned that CPF members begin to serve the interests of a particular political group and not represent the community and its interests; and that this has serious implications for community–police relations.<sup>53</sup> In some CPF areas that have experienced xenophobic violence, the research indicates that the CPF is dominated by one group, or is politically driven or aligned. For example, the CPFs in Khayelitsha were found to be dominated by the Khayelitsha Development Forum, or aligned to the South African National Civic Organisation. This creates exclusions for multiple groups, including non-nationals, and makes the CPF a place to assert political power or domination in the area.<sup>54</sup>

Where non-nationals are represented on CPFs, an emerging research finding is that their inclusion is increasingly motivated by the expectation that non-national members will then work to fund and sustain the CPF. A representative from the Western Cape Department of Community Safety explained that non-nationals were being co-opted to sub-forums because of their socio-economic standing in their communities.<sup>55</sup> The same has been shown in Gqeberha, with members using non-nationals to assist with resources.<sup>56</sup> This contingent and instrumental membership raises concerns, as it does not rest on the principle of inclusivity, but rather utilises non-national business owners as a means to fundraise for under-resourced CPFs.<sup>57</sup>

## Gap 2: Training and capacity building

The Interim Regulations do not include any information on capacitating or training CPF members, be it on the technical aspects of their roles (such as administrative and financial management), community policing, how to oversee SAPS, or how to develop and implement community safety plans. In 2000, Pelser argued that there had been too much focus on 'establishing and maintaining CPFs and little effort [...] to develop a comprehensive approach, or to train police and CPF representatives'—a criticism that largely stands today, particularly for CPFs that are located in areas that are already capacity constrained.<sup>58</sup>

There is no SAPS-developed CPF training curriculum for incoming CPF members, with SAPS reportedly only providing a simple induction session.<sup>59</sup> When asked whether the induction process covers their core functions



as CPF members, a research respondent stated that ‘these one-day induction workshops focus on administration functioning and financial matters such as application for funding, compliance with memorandum of agreements, meeting procedures, etcetera’.<sup>60</sup> Provincial departments provide varied training to CPFs, but this is dependent on budget and curriculum development, and is not uniform across or within provinces.<sup>61</sup> Some CPFs have received training on their roles, but this tends to be *ad hoc*. For example, several CPFs received capacity building in a peacekeeping role as part of a project conducted by Freedom House in, amongst other sites, Motherwell, in 2016–2017. It was during that training that CPF members reported being aware of their role regarding the prevention of xenophobic violence.<sup>62</sup> Recently the Wits School of Governance began developing training for CPF members in a collaboration with the CSP.<sup>63</sup>

The current systemic lack of training for CPF members raises concerns regarding xenophobic violence and related hate crimes on two levels. First, the capacity of members to engage in safety planning and monitoring of SAPS performance will be constrained without the knowledge and skills to actively fulfil this role. One CPF member in Motherwell mentioned to researchers that CPF members were ‘hardly trained’ and only realised that they play a preventative role regarding xenophobic violence when provided training by the civil society organisation, Freedom House, as part of their peacebuilders training.<sup>64</sup>

Second, it creates a knowledge deficit in CPF membership of the overarching framework that requires equality and non-discrimination in the provision of public policing, safety and security services in South Africa, and its implications for the function and conduct of CPFs. CPFs operate within a broader policing and justice paradigm that has, at its centre, a constitutional, legislative and policy framework that imposes a clear obligation to ensure equitable service delivery to non-nationals, and the effective prevention and detection of xenophobic violence and related hate crimes.<sup>65</sup> This framework, which derives from constitutional guarantees of equality and non-discrimination, applies to the work of CPFs in terms of safety planning, and oversight of police functions. Beyond the legal framework issues, given the data on the prevalence of xenophobia in South Africa, and the actions of some CPFs to plan and conduct attacks (see below), training on issues of diversity, equality and non-discrimination would be beneficial in addressing these challenges.

Field research also indicates that CPF members do not receive training on dealing with matters related to collective violence in general, and xenophobic violence more specifically,<sup>66</sup> which makes their role in broad-based prevention activities aimed at promoting social cohesion somewhat constrained. A CPF member in Ikamvelhile mentioned the importance of continuous dialogue between different community stakeholders, and the need to build solid relationships with non-nationals, as part of improving CPF effectiveness.<sup>67</sup> Similarly, a Somali national interviewed for this report felt that continuous dialogue plays a significant role in building sustainable relationships between community structures, including between local and non-nationals communities.<sup>68</sup> Based on these responses, training for CPFs on coordinating and holding community dialogues as part of the prevention mandate could assist in preventing violence.

### Gap 3: Community safety planning

As part of implementing a prevention mandate, the Interim Regulations require CPFs to play a proactive role in informing crime and violence prevention strategies through the development of community safety plans.<sup>69</sup>

However, there are challenges with the implementation of community safety planning. While the role of the CPF and SAPS in creating community safety plans is provided for in the Interim Regulations, the roles and responsibilities in actioning this is not provided, including how to support the capacity of CPFs to develop the plans. To fill this gap, some provincial departments of community safety have developed guides, toolkits and training on crime prevention, processes required to conduct a needs analysis and

community safety audit, and developing community safety plans,<sup>70</sup> but this is not uniform across the country. Concerningly, there is evidence that CPFs often only operate in the space of direct crime prevention, rather than safety planning, which is within the mandate of other community safety structures such as the local neighbourhood watch.<sup>71</sup>

Related are the practical challenges experienced by CPFs in accessing SAPS members, which inhibit the capacity of the CPF not only to obtain access to the necessary information and personnel to conduct safety planning and implementation, but also to fulfil other core functions such as oversight. Concerningly, the research indicates that CPF access to SAPS in communities that have experienced xenophobic violence tends to be poor. There are two key barriers to access identified by the research. First, while the Interim Regulations are clear that the station commander is responsible for establishing the CPF and related structures, and that they must be continually available to the CPF, research shows that the station commanders often delegate this role to community policing officers (CPOs). The CPOs are usually part of VISPOL's Social Crime Prevention, and while it makes sense that this delegation would be made, in reality the CPOs are relatively junior, and access by the CPF to the station commander then becomes limited or non-existent. This is mainly because junior members were observed to be dismissive and lack experience in dealing with CPFs.<sup>72</sup> This inhibits CPF access to police stations in order to conduct oversight, and to gain information in order to conduct safety planning and implementation. In communities where there is a breakdown in the relationship between SAPS and the CPF, such as Wells Estate (Eastern Cape), CPFs have been observed to engage in vigilantism or extrajudicial activities.<sup>73</sup>

CPF effectiveness is also constrained by limits on direct access to their police stations, or being accommodated in terms of office space and related logistics. Research has found that CPFs who have office space or space at the SAPS station tend to be in a position to better fulfil their function of oversight and crime prevention.<sup>74</sup> Conversely, those CPFs without space reported being 'disconnected' from the station, and have less knowledge about police activities. In some instances, the station was some distance away and not easily accessible to the CPF and community members.<sup>75</sup> In Dunoon (with the SAPS station in Milnerton), the CPF sub-forum operated from negotiated space such as the ward councillor's office or community hall. Once more, the physical disconnect was cited as a barrier to the CPF conducting its work.<sup>76</sup> The issue of office space also relates to resourcing of CPFs, which is discussed in more detail below.

Where CPFs have been able to develop and implement community safety plans, and prevent collective violence including xenophobic violence, such as in New Brighton in Gqeberha, the provincial department of community safety has been crucial in terms of logistical support and guidance in the process.<sup>77</sup> Public participation engagement with different community stakeholders, including councillors, ward committees and municipal officials, is guided by the department. In successful community safety planning, respondents to this research mentioned that in order to develop the plans, data is collected, including information on all shops and the nationalities of people operating in the area, stating 'we are able to consult with everyone, including foreigners so that all angles are being looked at'.<sup>78</sup> In this example, the CPF played a critical role with regards to proactively preventing forms of violence, including xenophobic violence, but despite the support from the provincial department, it still struggles to regularly meet and implement plans.<sup>79</sup>

#### **Gap 4: Geographical and jurisdictional issues**

The issue of geography and jurisdiction, as it pertains to defining community<sup>80</sup> within a policing precinct and sector boundary context, has significant implications in terms of the effective functioning of CPFs and in information sharing and prevention initiatives aimed at xenophobic violence and related hate crimes. The issue stems from policing precincts and the use of sector boundaries.

CPF represent the police precinct of the station area as a whole. Given the nature of policing precincts – which can include multiple, distinct areas where crime issues, formality, crime and core socio-demographic elements vary considerably – the Interim Regulations provide for the establishment of CPF sub-forums. The establishment of a sub-forum is led by the CPF itself, taking into account the size of the station area, the population density and distribution, the degree of operational independence of satellite police stations (if any), and crime tendencies within the station area.<sup>81</sup> The Interim Regulations require that the sub-forum must be ‘broadly representative of the relevant section of the community in the station area concerned’.<sup>82</sup> Once a decision has been made to establish a sub-forum, the procedure mirrors the CPF formation entirely which, as discussed above, has troubling elements in terms of ensuring a representative composition. The sub-forums meet with CPF members to discuss the policing priorities in their areas, who then pass information to SAPS. The Interim Regulations are silent on the relationship between the sub-forums and SAPS directly.

Since SAPS’ transition to sector policing, the practice appears to be that CPF sub-forums are generally formed under the geography of SAPS sectors, with sectors being an area demarcated by SAPS that breaks down the policing precinct into manageable portions.<sup>83</sup> Each sector has a sector forum, which is created and led by SAPS and is distinct from CPF structures. The SAPS National Instruction (NI) on sector policing requires that the resources, geography, infrastructure, demographic features and community profile be taken into account when demarcating sectors.<sup>84</sup> In describing the community profile, the NI states: ‘This includes the population size and cultural diversity (chiefdoms, indunas and tribal offices) of the area. Also note any interest groups in the community with extraordinary or specific policing needs.’<sup>85</sup>

In practice, policing sectors do not necessarily align with geographically identified, self-identified policing communities, and SAPS does not always work directly with communities to identify policing sectors that reflect recognised communities, or recognised parts within communities. Sectors are carved up mainly by main roads, and do not reflect community areas.<sup>86</sup>

With the introduction of sector forums, there are somewhat confused reporting lines, as sector forums report to the sector manager, rather than the CPF. It is also clear that sector forums are created and led by SAPS, and reflect their vision of community policing, rather than the CPF and any CPF sub-forums. Further, policing precincts often do not align to other formal types of demarcation, such as ward boundaries, which a study by the Department of Community Safety and Transport suggested would be beneficial on the basis that it would lead to more ‘democratic representation’ of CPFs.<sup>87</sup>

One of the critical challenges with this misalignment, highlighted by Maroga (2013), is that ‘CPF often cover areas that are too large and diverse for any one police representative to have the kind of detailed knowledge of a particular location that would be expected from a sector manager’.<sup>88</sup> How the inter-relationship between SAPS, sector forums, CPFs and CPF sub-forums will function once the migration of CPF management to the CSP is complete is unclear, and not dealt with in either the draft CSP Policy or 2020 SAPS Draft Amendment Bill. More generally, the legislative and policy framework, existing and proposed, does not address the issue of geography and how the misalignment of policing precincts, sector boundaries, and actual communities, should be handled.

As a result, CPF sub-forums and sector forums unnecessarily duplicate in overlapping locations, despite the clear impacts this has on community policing generally, and the prevention of xenophobic violence and related hate crimes more specifically. The challenges are illustrated by the following case study.

### Dunoon, Western Cape, 2016

The police station that covers most of Dunoon is Milnerton SAPS, while Doornbach (largely considered part of the Dunoon community) is covered by Tableview SAPS, with all the areas falling within the same municipal ward boundary. Doornbach is not only in a different policing precinct, but both precincts form part of larger areas which are demographically diverse, with varying crime profiles from Dunoon and Doornbach. Dunoon and Doornbach otherwise represent a recognisable community, with ward and other community structures operating in both.

During a xenophobic incident in 2016, the Doornbach area experienced more effective police intervention and protection by SAPS members from Tableview SAPS than Dunoon by Milnerton SAPS. Non-nationals in Dunoon were upset at the inequitable policing services, and felt that the police were only deployed to protect large shops such as Shoprite and Pick 'n Pay, and MyCiti stations at the expense of vulnerable non-national owned businesses: 'even the police is protecting only Shoprite, not come in [to Dunoon]. Shoprite and the Pick 'n Pay, the white people only. Not for us. Not for black not these foreigners'.<sup>89</sup> This response is partly explained by SAPS Milnerton not being present on the night of the attack of 17 April, and the only police presence being Tableview SAPS, who protected the areas under their geographical jurisdiction, indicating a lack of communication and coordination.<sup>90</sup>

In this situation, there is a need for a CPF sub-forum for Dunoon (Milnerton SAPS), and that needs to be connected to the sub-forum for Doornbach (Tableview SAPS), and the two need to be able to work together, develop coordinated community safety plans, and to work with SAPS collectively. However, the SAPS Act and Interim Regulations do not provide for sub-forum operation in this environment if they fall entirely in a different policing precinct. This creates challenges for creating a cohesive station-level CPF and sub-forum.

### Gap 5: Funding and resourcing for CPFs

The current regulatory framework for CPFs does not provide much detail in terms of CPF resourcing. The Interim Regulations provide that CPFs can 'raise funds' (which has, in turn, raised issues regarding equity, independence and accountability of CPFs in relation to these fundraising activities), and leaves the provision of logistical support – including the discretion to provide an office to the CPF – to the station commander.<sup>91</sup> Though, in a 1997 manual developed to support SAPS' engagement with CPFs, station commanders are encouraged to respond to all 'reasonable requests for information and logistical support' to ensure that CPFs can function effectively.<sup>92</sup>

In practice, resourcing of CPFs is a key issue hampering their capacity to initiate or sustain programming, or carry out basic functions related to their mandate.<sup>93</sup> In 2015, the National Assembly's Portfolio Committee on Police expressed its concern that CPFs were 'not resourced either through budgeting of programmes or provision of infrastructure, for example, office accommodation or transport to carry out prescribed functions'.<sup>94</sup> Fieldwork research findings and observations in Motherwell and Ikamvelihle Police Stations in the Eastern Cape found that office space was a fundamental issue of concern, without which the CPF could not effectively fulfil its functions.<sup>95</sup>

In some provinces, departments of community safety provide funding to CPFs, but this depends on availability and allocation of funds.<sup>96</sup> The Western Cape has probably the most developed funding model for CPFs, through their Expanded Partnership Programme (EPP). Under the EPP, CPFs become eligible for funding if their safety plans align to their constitution and oversight functions.<sup>97</sup> The SAPS draft Amendment Bill proposes funding to CPFs through provincial departments, which would codify what has

been happening in practice for some time in several provinces, but detail on how that funding would be allocated, and on what terms and conditions, will not be available until the Bill passes (and, indeed, if that provision remains following the parliamentary review and consultation process).

The lack of resources for CPFs in areas that have experienced xenophobic violence have led to problematic fundraising initiatives by CPF members. Further, the lack of a stipend for CPF members (their role is purely voluntary) has been a continual source of tension, particularly in poor communities with high levels of unemployment and poverty.<sup>98</sup> In some instances, as described above, CPFs have demanded a protection fee or groceries from non-national shopkeepers to support their activities. A research responded from the Western Cape Department of Community Safety reported that this occurring in Nyanga and Gugulethu.<sup>99</sup> A Somali shopkeeper in Khayelitsha similarly revealed that the CPF asks for protection money.<sup>100</sup> This abuse of power has further undermined the capacity of CPFs to work collaboratively with non-national communities, and thereby prevent xenophobic violence and related hate crimes.

## Conclusion

CPFs' core mandates of oversight and working with SAPS to prevent crime provide a framework under which CPFs can work to prevent xenophobic violence and related hate crimes. However, while the current regulatory framework speaks to principles of inclusivity, and being apolitical, gaps in the framework mean that CPFs can become exclusionary spaces in which non-nationals are often denied participation. Moreover, CPFs' core mechanism to prevent xenophobic violence is through working with SAPS and developing community safety plans—however, the regulatory framework does not fully articulate how this should work. These issues and legislative gaps need to be addressed to enable CPFs to prevent xenophobic violence. Resourcing of CPFs remains a critical issue, with gaps in the provision of technical support, resources and training. Issues stemming from policing precincts and the use of sector boundaries inhibit the flow of information, and effectiveness, of efforts to prevent xenophobic violence. These issues and legislative gaps need to be addressed to promote more effective CPFs in the prevention of xenophobic violence.

# Evidence gathered from the ground

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## Overview

The preceding review of the regulatory framework governing the formation and functioning of CPFs has highlighted a number of critical gaps that can impede the effectiveness of CPFs in fulfilling their mandate to work cooperatively towards the prevention of crime and violence, including xenophobic violence and related hate crimes. This section focuses on evidence from places that have experienced xenophobic violence, and how CPF structures have functioned and responded, given the known constraints. It first examines what is known about CPFs, before tracking different scenarios where CPFs have (i) been the cause of violence; (ii) prevented violence, and (iii) been an irrelevant or unimportant actor in violence.

## What is known about CPFs during xenophobic attacks?

Available evidence from an analysis of xenophobic violence suggests that the risk depends on political dynamics at the local level. It also depends on the role of local politicians or leaders and the extent to which they accept non-nationals in their communities. When politicians and community leaders exhibit anti-foreigner sentiments, there is a likelihood of xenophobic violence occurring. Indeed, politicians and community leaders have tended to utilise anti-foreigner sentiment and instigate attacks when faced with service delivery complaints, and for their own personal benefit.<sup>101</sup>

Xenophobic attacks are also more likely to occur in contested urban places that have experienced significant in-migration, most commonly internal migrants from elsewhere in South Africa.<sup>102</sup> Misago establishes that local leadership, including CPFs, SAPS and street committees either (a) directly organise the violence and/or are actively involved in the attacks; (b) are complicit with instigators/perpetrators and sanction their actions; (c) passively encourage or tolerate the violence; or (d) do not make effort to prevent the attacks despite visible warning signs.<sup>103</sup>

Given these complex dynamics, gaining direct knowledge of the role of CPFs during xenophobic attacks requires in-depth fieldwork and analysis, which was beyond the scope of this research paper. However, there are a few examples and case studies, which can prove illustrative and which are covered in this report, grouped into three basic scenarios:

1. CPFs as instigators of xenophobic violence.
2. CPFs as central actors in preventing xenophobic violence.
3. CPFs as a minor or irrelevant actor in preventing xenophobic violence.

Analysis of these three scenarios provides insight into the role of CPFs during xenophobic violence in order to understand the various features and elements of CPFs that can lead them to cause, prevent or be inconsequential in xenophobic violence.

## Scenario 1: CPFs as causing xenophobic violence

In some instances, CPF members have been central to organising community violence targeting 'outsiders'. This was most starkly portrayed in the case of Alexandra in May 2008, below. In almost all instances of orchestrated xenophobic violence, community leaders were the instigators of violence.<sup>104</sup> CPF members, as leaders in their communities, and particularly utilising their political affiliations, came to instigate violence.

### Alexandra, Gauteng

In May 2008, widespread xenophobic violence in Gauteng had its origins in Alexandra, where the CPF was central to coordinating and organising the attacks. At a monthly CPF meeting, just prior to the attacks and attended by SAPS, a representative 'announced that his constituency was sick and tired of crime, that the police were doing nothing about it and that Sector Two's residents were going to take up arms and drive out criminals and foreigners themselves.'<sup>105</sup> In other words, tired of the lack of provision of police services, the CPF representatives were going to take the law into their own hands.

At a follow up meeting, three days later on 10 May 2008 and attended by the SAPS sector manager, a police officer shared that 'it was decided that they will attack around the hostel and the shack area'.<sup>106</sup> It is reported that during this meeting, 'a policeman told community members that 'people must decide on how they deal with someone who has entered his kraal and took his cattle.'<sup>107</sup>

On 11 May, at a meeting held at a local church and again attended by the SAPS sector manager, a nearby building said to house 'Zimbabwean criminals' was identified. The meeting spilled out and attendees started attacking this building, with the inhabitants chased out and followed through the township. From this, the group grew, and, by nightfall, thousands of shacks thought to belong to foreigners had been burnt.<sup>108</sup>

Some of the known drivers of this scenario are described below.

### The politicised nature of CPFs

CPF members have a tendency, as explained in the previous section, to become politicised spaces, dominated by one interest group or political party. In this way, CPF members can use the CPF to further their political, social or economic agenda. For example, it was found that just before 2016 local government elections, some of the politicians who were also members of the CPF at Atteridgeville (Gauteng) were pushing anti-immigrant messages in order to gain support in their candidacy as councillors.<sup>109</sup> Similarly, a respondent in New Brighton (Eastern Cape) observed that political 'structures that send delegates to CPF elections in some cases also form part of the meetings to orchestrate xenophobic attacks'.<sup>110</sup>

## CPFs as vigilante groups

CPF are prone to become vigilante group. In some communities they have community patrollers who respond to crime complaints. Although their vehicles are distinct from SAPS vehicles they are marked with CPF and SAPS emblem. Often patrollers also carry side firearms and operate as de facto police officers.

As set out in detail in the previous section, in addition to a mandate to work with SAPS on safety planning, many CPFs operate in the space of direct crime prevention.<sup>111</sup> In some communities, armed CPF patrollers respond to complaints of crime and use vehicles that, although distinct from SAPS vehicles, are marked with both the CPF and SAPS emblems. In these cases, a propensity of some community members to using violence to manage crime in their communities has been observed by researchers, with CPFs then misused as a platform from which to legitimise these activities.<sup>112</sup> In cases where non-nationals are linked to crime, some community members in these situations organise violence against non-nationals, as part of a strategy to deal with the crime.<sup>113</sup>

## CPFs as xenophobic

As foreshadowed in the previous section, members of CPFs can hold xenophobic views. This is likely true of the SAPS,<sup>114</sup> and of the broader community. Public opinion surveys indicate a high level of anti-foreigner sentiment in South Africa that cuts across population, socio-democratic and racial markers.<sup>115</sup> The 2019 South Africa Reconciliation Barometer shows high levels of distrust towards non-nationals, with 54.1% of respondents expressing distrust for African non-nationals, and 51.9% for non-African people.<sup>116</sup> The 2018 South African Social Attitudes Survey similarly confirms high levels of intolerance against non-nationals, with the perception that the actions of non-nationals themselves precipitating violence against them.<sup>117</sup> Related, Afrobarometer's 2018 survey finds that 50% of respondents agreeing that foreign nationals take jobs from South Africans,<sup>118</sup> which is one of the key messages observed in monitoring of perceptions and attitudes of South Africans towards non-nationals.<sup>119</sup>

Given the extent of anti-foreigner sentiment within South African communities, it is likely therefore that the make-up of CPFs at the community level will include an element, if not majority, of membership with similarly xenophobic attitudes to the general population. For example, interviews with CPF members in Khayelitsha revealed the use consciously or not, of derogatory names for non-nationals being used, such as a 'amakwerrekwere' or 'amagweja'.<sup>120</sup> Responding to this, a SAPS member in Khayelitsha noted that special training would be required before the CPF could work to prevent xenophobic violence.<sup>121</sup>



## Scenario 2: CPFs as preventing xenophobic violence

From field work in places that have previously experienced xenophobic violence, it is clear that the inclusion of non-nationals in CPFs structures (directly or indirectly) works to prevent xenophobic violence. The following examples highlight the possibilities of CPF efforts to prevent xenophobic violence, with the common theme of non-national inclusion within CPF structures. However, they also indicate the limits of this approach, including a lack of responsiveness by SAPS to information received, and the individual vulnerability of non-nationals who operate in these spaces in a leadership capacity.

### **Bloekombos, Kraaifontein, Western Cape**

A Zimbabwean who integrated into the community has become part of both the Bloekombos sub-forum and CPF (comprised of six sectors). Active in community affairs through his network of non-nationals, and the broader community through other members, the CPF sub-forum was able to prevent xenophobic violence during a community protest in August 2020. While some shops were looted, the looting was stopped when the CPF gave the information of looters to the SAPS, who proceeded to arrest them.<sup>122</sup>

The Zimbabwean member of the CPF has been in South Africa since the 1990s and is well 'integrated', speaking local languages, and being active in the community as a pastor and trusted leader. Despite this, there remains an element within the community with vocal xenophobic attitudes towards his role and leadership.<sup>123</sup> This highlights the vulnerability of non-national should they be willing to become more active in community structures.

### **Motherwell and Ikamvelihle, Eastern Cape**

Since 2015, the CPFs in Motherwell and Ikamvelihle (which are adjacent) have developed a relationship with non-nationals who are operating spaza shops in the area. This has created a direct line of communication between the CPF and these business owners regarding issues of safety and security. In Ikamvelihle, a Somali person became chairperson of a sub-forum, and was able to directly relay information about planned xenophobic attacks to the station commander and other CPF members in mid-2017, preventing violence.<sup>124</sup>

However, in both Motherwell and Ikamvelihle, non-nationals complain that police will respond promptly to a call with information if received from the CPF, but will 'drop the call' if the caller does not have a South African accent.<sup>125</sup> Within the CPF, there is concern that some SAPS members have deliberately dismissed the concerns of non-nationals, citing institutional xenophobia as a possible reason. As a non-national CPF member explained, 'we can get information and give it to the station commander. But you will find that some station commanders don't take you seriously. They hold the information and do nothing...I think we have got a problem of institutional xenophobia because anything related to foreign nationals is not taken seriously in South Africa'.<sup>126</sup> This suggests that while CPFs may be in a position to proactively prevent xenophobic violence, their effectiveness can be hampered by a lack of responsiveness by SAPS influenced by xenophobic attitudes within the service itself.

### Walmer township, Gqeberha, Eastern Cape

In 2019, xenophobic violence was prevented in Walmer through community dialogue between the CPF, SAPS, peacebuilders, shopkeepers and community members. Due to the established relationship between non-nationals and the CPF, Walmer SAPS members had already been alerted to an imminent xenophobic attack, and supported a platform for community dialogue to resolve the issues. Non-nationals had not only built a relationship with the CPF, but had established and maintained direct contact with the station commander, through their representative, to convey information and seek assistance.<sup>127</sup>

Beyond membership of non-nationals in CPFs, another entry point for the successful prevention of xenophobic violence by CPFs has been their relationship with other non-national community structures and groups. Where a relationship exists, information can be shared in aid of early warning of planned or imminent violence against non-nationals. This has been observed in Lwandle Hermanus, Masiphumelele, Wells Estate, and Ikamvelhile, where business community forums developed a relationship with CPFs and worked together to prevent xenophobic violence, including through the development of conflict resolution mechanisms.<sup>128</sup> In Alexandra, a local group of 'Peace Monitors' worked closely with CPF and SAPS to prevent violence in 2017. The Alex Peace Committee was established in 2015 to gather information and intervene to prevent violence against non-nationals and their businesses following the death of Mozambican national Emmanuel Sithole. The initiative was achieved through collaboration with volunteers, community informants, community elders or Izinduna, and ordinary community members.<sup>129</sup> Research indicates that the success of the Committee in resolving conflict peacefully and preventing xenophobic violence relies on its mutual collaboration with the CPF and other interested community stakeholders.

## Scenario 3: CPFs as irrelevant or unimportant in the prevention of xenophobic violence

Research indicates that in many of the sites studied that have experienced xenophobic violence, CPFs were found to be barely functional, or facing serious challenges including fraught relationships with both communities and SAPS. This is often closely associated with the perceived failure of SAPS to provide safety. In almost all sites that have experienced xenophobic violence, there is a lack of trust in community leadership, including CPFs.<sup>130</sup> In these instances, community members, including non-nationals, use other community safety mechanisms in order to find security.

During xenophobic attacks, *ad hoc* formations and street committees can form to provide protection against violence. These are almost always pockets of safety, and they tend to rest on personal relationships between the community and non-nationals to succeed in preventing violence.<sup>131</sup> Fieldwork research found that taxi associations in Dunoon and Khayelitsha Site C were central in preventing violence directly targeting non-nationals in 2016 and 2017.<sup>132</sup> In explaining why non-nationals and community members used the Dunoon taxi association to stop community violence and resolve conflicts rather than the CPF, a member stated that the CPF was thought to be ineffective and weak.<sup>133</sup>

## Conclusion

Drawing from the evidence of communities that have experienced xenophobic violence, CPFs' are more likely to play a role in causing xenophobic violence when they are politicised or non-representative spaces; they are willing to use vigilante violence to resolve community conflict; and they display overtly xenophobic sentiments. CPFs are more likely to work to prevent xenophobic violence when they include non-nationals directly and indirectly in their structure and work; they successfully work with other community structures; and they have benefited from civil society intervention to provide them with training and skills to resolve conflict, develop safety plans, and understand non-discrimination and xenophobia. Finally, CPFs are more likely to be irrelevant or unimportant in xenophobic violence when they are perceived to be ineffectual or weak in managing conflict and preventing and violence; they are not trusted by the community; and other mechanisms of community safety provide safety solutions.

# Strengthening the role of CPFs in preventing xenophobic violence and related hate crimes

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## Introduction

CPFs have a mandate to prevent violence, including xenophobic violence, but given the challenges identified in their legislative and policy framework as detailed earlier in this report, and how these have manifested in communities that have experienced xenophobic violence, it is clear that this prevention mandate requires strengthening at the regulatory and operational levels. This moment in time presents an opportunity to not only strengthen those aspects of the prevention mandate that are understood from the current regulatory framework that governs CPFs, but to rethink the scope of this prevention role so that it transcends the more narrowly conceived, short-term, interventions and involvement in the prevention of violence, generally, and xenophobic violence, more specifically.

This section provides a context for the reimagining of the role of CPFs in prevention and in doing so expand this role of crisis intervention to include support a more holistic range of prevention interventions. The recommendations then address key gaps in the capacity of CPFs to exercise their current mandate, based on the research findings in this report and present a pathway to allow for an expression of more holistic prevention efforts.

The opportunity to reimagine prevention in the CPF context arises from three factors. First is the work still required to give full effect to the shift in responsibility of CPFs from SAPS to the CSP, with the finalisation (and therefore possibly revision) of the CSP policy, and required provisions in subsequent revisions to the draft SAPS Amendment Bill, and regulations that will follow.

Second, there is an opportunity inherent in the emphasis of the NAP on the potential of local communities to significantly shape the trajectory of the prevention of xenophobic violence and related hate crimes (amongst others). The NAP recognises that local communities can play a positive role in working towards violence prevention and social cohesion, or a negative role in terms of actively fuelling or failing to respond to violence. CPFs are recognised in the key regulatory and policy frameworks governing crime and violence prevention in South Africa as key community stakeholders, which arguably gives them a mandate within the formal policing architecture to play a strong role in the prevention of violence under NAP implementation.<sup>134</sup>

Third, considerable work has been done over the past five years since the adoption of the White Paper on Safety and Security to develop and articulate a comprehensive prevention architecture in the form of Community Safety Forums (CSF) and the role these compacts. These draw membership from a range of mandate holders including the departments of Social Development, Home Affairs, Education, Health and Local Government, as well as community structures such as CPFs, and can play a strong role in

promoting safety and violence prevention. This can be applied in the context of the prevention of xenophobic violence as CPFs are key members of the CSF. According to the 2017 CSP Policy on CSF (CSF Policy):<sup>135</sup>

*'[a]mong the functions of the CSF are to stimulate the identification and development of crime prevention measures and long term strategies for tackling the causes of crime and lack of safety and ensuring that community safety is a high priority for relevant departments, and community formations.'*

According to the CSF Policy this will be achieved through dealing with among others:

- a local perspective on community safety and crime prevention;
- social crime prevention;
- crime prevention through environmental design;
- encouraging and improving participation in community safety initiatives;
- promoting restorative justice;
- improving community cohesion;
- improving community participation in the local economy;
- ensuring safer human settlements; and
- ensuring access to justice.

As highlighted in the introduction to this report, strengthening the role of CPFs in the prevention of violence must be addressed if NAP implementation efforts by DOJ, SAPS and other departments and role players are to be successful.<sup>136</sup>

## Application of a broader understanding of 'prevention' to addressing the role of CPFs in the prevention of xenophobic violence

The prevention of violence against non-nationals is not within the purview of CPFs alone, nor SAPS. This is evident from the analysis of the role of CPFs in this report, and recognised by the NAP and its implementation plan, which co-opts multiple sectors and is being overseen by the Department of Justice and Constitutional Development. The research indicates that CPFs can play a vital role in the more traditionally understood prevention realms of crisis intervention, and the provision of information to SAPS as part of formal and informal early warning systems and potentially through their partnerships with other mandate holders through facilities such as the CSF in longer term prevention.

There are several pre-requisites that can facilitate the development of these roles. First, it is clear that attitudes at the individual and organisational level of CPFs themselves must be addressed as part of broader efforts to prevent xenophobic violence and related hate crimes at the community level.

Secondly, the regulatory framework for CPFs requires completion, with clarity provided for the support, both technical and financial, required to allow CPFs to function effectively. The gaps in the current

framework identified in this report as contributing to the failure of CPFs to fulfil their prevention mandate, is a necessary first step.

Thirdly, longer term, capacity support to CPFs will be vital if they are to play a broader preventive role when it comes to violence prevention, generally, and xenophobic violence, more specifically. This relates to the support CPFs require undertake the development and implementation of community safety planning at the local level. Community safety plans are a vital mechanisms for proactively and sustainably addressing factors that lead to xenophobic violence and related hate crimes at a local level, rather than viewing the role of CPFs in prevention as one of crisis intervention, or information gathering, when violence is planned or threatened.

Fourth, it is important for the NAP itself to develop a clearer understanding and model of what is needed in the form of an intervention role for CPFs. Ideally this should extend beyond crisis intervention to inputs upstream, which will have a prevention effect, and already provided for in the policy and legal mandates that provide for community safety plans in both a policing sphere but also a broader municipal sphere.

Within international human rights and public health discourse is an emerging consensus on the need to broaden the concept of prevention, and ultimately the design and implement programmes and activities, to strengthen the capacity of mechanisms to effectively and sustainably address drivers upstream and in so doing seek to prevent re occurrence. This is an important departure from the traditional approaches which tended to prioritise reactive responses such as early warning systems and place less emphasis on the significance of other factors that converge to enhance preventive efforts, such as understanding and addressing broader societal or environmental factors that lead in this instance to xenophobic violence. This holds particular relevance for how we conceptualise the stated objective of the NAP to develop early warning systems to respond to xenophobic violence which is largely limited to a rapid response mechanism.

Within the Special Procedures of the UN Human Rights Council, the importance of adopting a broad-based approach to prevention, and the deficiencies that underpin the restricted application of the concept, has gained recognition. In 2017, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, observed that discussions about prevention have been affected by various forms of reductionism, which includes limiting prevention to a form of crisis response, as evident in the prominence given to early warning systems as an effective means to prevent the onset and escalation of violence.<sup>137</sup> The Special Rapporteur stressed that the approach necessary to address the over-reliance on traditional, but crisis-related prevention practices, such as early warning systems, to the exclusion of other less obvious, but equally effective practices. This, he noted, is achieved by adopting a comprehensive framework that addresses prevention, and all its constituent elements, in a holistic and integrated manner, including interventions in civilian institutions, security sector reform, strengthening the role of civil society in violence prevention, and interventions in the cultural and individual spheres.<sup>138</sup> The utility of this approach is in its ability to provide a structure of interrelated elements that combine and complement each other to strengthen preventing planning, while also guiding comprehensive decision-making, to ensure non-repetition of violence.<sup>139</sup>

Similar to this idea is the World Health Organisation's ecological model for understanding violence, which uses a four-level socio-ecological model to understand and prevent violence within the context of a complex interplay between individual, relationship, community and societal factors.<sup>140</sup> This model has been used extensively in the training of local Community Safety Forums and municipalities in crime and violence prevention.<sup>141</sup>

Each is discussed in turn below.<sup>142</sup>

- **The individual factors** are those that relate to the status of a person (such as gender, age, socio-economic status, immigration status) that increase the risk of becoming a victim or perpetrator of violence. Prevention at this level emphasises the need to address attitudes and behaviours that will assist in the prevention violence.
- **The relationship factors** are personal relationships that may increase the risk of a person becoming a victim or perpetrator of violence, such as peer groups, families, and friends. If, for example, xenophobic attitudes are entrenched within the culture of a CPF, incoming members may be negatively influenced in terms of their attitudes towards non-nationals. Prevention at this level could include programs designed to promote positive peer norms.
- **The community factors** are those where social relationships are formed, including schools, workplaces, and, in this context, community groups such as CPFs , which can also influence violence. Prevention at this level focuses on improving the environment in settings where violence is occurring, including the physical and social environment, as well as addressing other factors that can give rise to violence, such as poverty, instability and crime.
- **Societal factors** are broader, macro-level influences on whether violence is encouraged or prohibited. In this context, the social and political norms, as described above, within South Africa that indicate high levels of xenophobic attitudes, is a contributing factor, together with other issues such as socioeconomic inequality, and the normalisation of violence as an acceptable method of conflict resolution in some contexts.

According to the WHO, the ecological model framework 'treats the interaction between factors at the different levels with equal importance to the influence of factors within a single level'.<sup>143</sup> The ecological model therefore acknowledges that there is not one single factor to explain the risk of violence, and that interventions to prevent that violence from occurring are required concurrently at multiple levels: from the individual through to the societal.

Effective intervention planning can, if utilising the ecological model framework, contribute to addressing factors from the individual to the societal level in local communities that are contributing to violence, and provide a more viable long-term solution to addressing violence and its impacts than interventions focused solely on diffusing tensions once they arise.<sup>144</sup>

# Conclusion and recommendations

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This report examined the regulatory framework governing CPFs mandate to play a role in the prevention of xenophobic violence and related hate crimes, and analysed the performance of CPFs in places where xenophobic violence has occurred. It identified a number of critical gaps in both the regulatory framework, and the operational support provided to CPFs which significantly constrain their capacity to fulfil their mandate, including the critical work of developing community safety plans to prevent crime and violence in the local community. Five key gaps emerged from this analysis:

**Gap 1:** Composition of CPF structures – There are multiple critical gaps in the regulatory framework on the issue of inclusivity and representativity within CPF membership. This leaves the space open to being co-opted by certain groups, or simply the CPF being non-representative of its community, and therefore lacking legitimacy and effectiveness. Similarly, this lack of clarity on membership, and the shaping of community safety plans, opens the possibility for CPFs to become politicised and captured spaces. The exclusion of non-nationals from CPFs – through their lack of membership of identified and recognised community structures, or through provincial uniform CPF constitutions – has been shown to significantly undermine the ability of CPFs to prevent xenophobic violence.

**Gap 2:** Training and capacity building – The current regulatory framework provides no specific detail on training or capacity building, despite the complex and multifaceted roles of CPF members. Through the transition of CPFs under the ambit of CSP and provincial secretariats, these issues are being somewhat addressed, with some remaining questions around the curriculum and its emphasis primarily on the oversight mandate of CPFs.

**Gap 3:** Community safety planning – There is little information provided on community safety plans in the regulatory framework, which would be the process through which CPFs and SAPS, possibly in collaboration with CSFs and partners would (ideally) work together to identify crime and safety needs, and work on prevention measures. In terms of preventing xenophobic violence, the limited community safety planning has manifested in a confusion around the role of CPFs in safety planning versus the combating of crime, and serious concerns about the lack of effort in violence prevention.

**Gap 4:** Geographical and jurisdictional issues – Other than providing for the provision of sub-forums, the regulatory framework provides no information on how SAPS should interact and operate with communities, and it is unclear how sub-forums, sector forums, and CPFs should work together.

**Gap 5:** Funding and resourcing for CPFs – The current regulatory framework for CPFs does not provide much detail in terms of CPF resourcing, and while on a practical level, this has been taken up by provincial secretariats, the extent of support is dependent on the size and budget of the province, and is not equally spread across CPFs nationally. Lack of resourcing significantly hinders the capacity of CPFs to fulfil their mandate areas, including safety planning.

This report also questioned whether the understanding of 'early intervention' is understood broadly enough to have a sustainable impact on xenophobic violence. Drawing on the work of the UN Special



Rapporteur and the WHO to define a prevention mandate as one beyond just crisis management, it concluded that urgent interventions are required to address not only the capacity of CPFs, and their attitudes and behaviours, as part of a broader effort to contribute to the sustainable prevention of xenophobia as envisaged by the NAP. This requires intervention from all NAP stakeholders in specific areas that heighten the risk and vulnerability to violence. It also requires that the NAP implementation includes a broader understanding of intervention beyond early warning and rapid response. In doing so, the NAP can contribute to a broader prevention framework that promotes coordination between local provincial and national stakeholder to identify and address key factors that exacerbate xenophobic violence, and address the impact of such violence on communities.

Based on the findings contained herein, and within the context of the broader objectives of the NAP and its implementation priorities, this report concludes with the following recommendations aimed at both CPFs and their stakeholders to improve the role of CPFs in the prevention of xenophobic violence and related hate crimes. As observed by Edwards and Freeman (2021) in their analysis of the capacity of SAPS to prevent, detect and resolve xenophobic violence and related hate crimes,<sup>145</sup> despite the lack of focus in the NAP on role of SAPS and other safety and security role players such as CPFs, it remains an important resource to benchmark and prioritise recommendations to CPFs, as it is the agreed cross-sectoral blueprint for addressing xenophobia. The implementation plan, in particular, contains broad areas of action that relate to the challenges identified in this report, and which can guide the formulation of recommendations for CPFs that keep within the priorities and themes of the NAP itself.<sup>146</sup>

## **Recommendation 1:**

### **Close the gaps in the regulatory framework governing CPFs**

The effective functioning of CPFs requires a legislative and policy framework that is complete and cohesive. However, as comprehensively detailed earlier in this report, CPFs are still managed under the SAPS Act, and its outdated Interim Regulations, with the 2019 CSP policy on community policing still in draft form, and the required amendment to the SAPS Act to reflect the relationship between SAPS and CPFs not adopted.

Accordingly, the CSP should:

- Update and finalise the 2019 draft policy, and amending the 2020 draft SAPS Amendment Bill, ensuring that the revised drafts address the core issue of how SAPS works with CPFs, administrative, operationally and substantively.
- Develop an induction manual for use by provinces for CPF and Board members to ensure that all members clearly understand their role and functions in relation to crime prevention and police-community relations.

## Recommendation 2:

### Ensure that CPFs are representative, inclusive bodies that work with other community structures

CPFs must be inclusive of non-nationals, who can directly participate in CPF structures and SAPS in order to voice their safety concerns. Broader, community representativity is important in multiple ways, not least because it similarly provides the networks required in order to understand community needs; track community tensions; and effectively detect when community violence may take place. In both instances, the inclusion of non-nationals and a broadly representative CPF enable the CPF to build relationships and build trust that can make the CPF a legitimate structure of community safety. Perhaps obviously, the inclusion of foreign nationals (or any other group) in the CPF should not be based on purely instrumental intentions, such as the resourcing of the CPF. CPFs need to have a genuine wish to protect minority groups, which requires they do not harbour discrimination against them.

Further, the research has demonstrated that that CPFs, in many instances, play a key role in instigating violence against non-nationals, who they largely consider as 'outsiders'. There is increasing evidence that CPFs, either directly organise the violence and/or are actively involved in the attacks; or are complicit with instigators/perpetrators and sanction their actions; or passively encourage or tolerate the violence; or do not make any effort to prevent the attacks despite visible warning signs.<sup>147</sup> This was most starkly portrayed in attacks that took place in Alexandra, Johannesburg in May 2008.<sup>148</sup>

Finally, evidence very clearly shows that effective xenophobic violence prevention can be led by the CPF when non nationals are integrated in communities and are able to participate fully community structures and bodies including participating in community safety, local government, business associations, faith-based organisations, minority groups, etc. Once more, these networks are valuable and complementary to policing as they have the effect of strengthening community trust between the police and the community. In addition they can provide valuable information and intelligence to address xenophobic violence and other crimes that the police are grappling with. By working together, importantly, there can be a coordinated response that includes multiple community actors (such as CPF patroller groups, neighbourhood watches, street committees, business forums etc.) and levels of policing (sector, station, VISPOL, crime intelligence, etc.). In this context, CPFs would operate as an important conduit between the community and the SAPS.

Accordingly, the CSP should:

- Advise the Minister on amendments required to the 2020 draft SAPS Amendment Bill to clarify the requirement for inclusivity and representativity in CPFs, including the inclusion of minority and vulnerable groups.
- Draft a model constitution for CPFs that includes specific detail on inclusive and representative CPF memberships, and effective engagement with other community structures in the aid of preventing xenophobic violence and related hate crimes.
- Develop a model code of conduct for CPFs, including provision on zero tolerance for xenophobia;
- Develop training designed to enhance the knowledge of CPF members on non-discrimination, diversity and multiculturalism, and to address issues of conscious and unconscious bias on the basis of national origin or ethnicity.

### Recommendation 3:

#### **Support the development of community safety plans and other prevention activities such as community dialogues and outreach to non-national communities and South Africans on issues of crime, violence, safety and non-discrimination**

More information on the roles and responsibilities of SAPS, CPFs and provincial secretariats in developing and implementing community safety plans is needed in the 2020 SAPS Amendment and any subsequent CPF regulations. It is important that SAPS' obligations towards CPFs, and CSFs in particular around community safety plans, is provided in the SAPS Amendment. SAPS should provide support to CPFs in identifying policing needs and conducting safety audits; in developing community safety plans that are inclusive of the whole community; and in providing police resources and support in the execution of plans. Given the overlapping responsibilities with provincial secretariats, the lines of responsibility need to be clearly laid out in the Act and regulations.

Related, the research has shown that CPF must be able to operationally work with the SAPS to implement community safety plans and other violence prevention measures for xenophobic violence. In particular, it is important that the CPF has direct access to visible police and crime intelligence who can develop various strategies from community presence to arrests to prevent xenophobic violence.

Finally, a critical element in an expanded understanding of a prevention role for CPFs is proactive prevention through the use of community dialogues and outreach to both non-national and South African communities. CPFs need to be trained and capacitated to fulfil this function.

Accordingly, the CSP should:

- Advise the Minister on updating and finalising the 2019 draft policy, and amending the 2020 draft SAPS Amendment Bill, ensuring that both deal substantively with the development, implementation and oversight of community safety plans, and the role of CPFs in community dialogue and outreach.
- Develop training for CPFs on the community safety planning, implementation and oversight, community dialogues and outreach, as well as multiple elements of violence prevention, include on non-discrimination and diversity; understanding conflict and conflict resolution skills (such as mediation); violence and violence prevention; community development and community capacity enhancement tools (including community and safety mapping); developing community action plans; civic education; local government processes and service delivery; refugee and migrant rights; and organisational administration and management; and
- Ensure the integration of community policing paradigm and functions of CPFs in police training;

SAPS should:

- Issue a national instruction on CPFs which sets out the obligations and responsibilities of members (including in relation to accessibility and information flow with CPFs), ensure that members are trained on the instruction, and monitor compliance.

## Recommendation 4: Work at the community level

As detailed above, how the relationship between SAPS, sector forums, CPFs and CPF sub-forums will function once the migration of CPF management to the CSP is complete is unclear, and not dealt with in either the draft CSP Policy or 2020 SAPS Draft Amendment Bill. CPF sub-forums and sectors forums should not be unnecessarily duplicated in overlapping locations. Only one should exist and the necessary regulatory changes should be made to the SAPS national instruction on sector policing and CPFs so as the formations directly 'speak' to one another.

Accordingly, the CSP should:

- Advise the Minister on the changes required to the 2020 draft SAPS Amendment Bill and draft CSP policy to clarify the relationship between SAPS, sector forums, CPFs and CPF sub-forums.

SAPS should:

- Work directly with communities in order to identify policing sectors that reflect recognised communities or recognised parts within communities.
- Adapt their sectors and community policing to reflect recognised community.

## Recommendation 5: Secure resourcing for CPFs

In order to conduct community engagement and violence prevention activities such as community dialogues, it is important that CPFs are appropriately resourced. However, resourcing of CPFs has been continually identified in the research as a key factor in their lack of effectiveness in fulfilling their prevention mandate, with resources and capacity often dependent on the extent of provincial support.

The CSP should:

- Facilitate access to stations, resources and funding to ensure that CPFs have adequate resources to implement community safety plans, and to conduct other prevention activities.

## Recommendation 6: Establish mechanisms and procedures to improve the flow of information between CPFs and SAPS as part of the development of a Rapid Response Mechanism

The NAP locates the development of an early-warning system within the Department of Justice, from a coordination standpoint. SAPS will require internal processes that support an effective early-warning facility within its broader crisis intervention response to xenophobic violence. CPFs will become an invaluable part of the information network, providing issues such as representivity identified in this report and its recommendations are addressed.

The CSP should:

- Ensure that CPFs have the necessary training and resources on the collection and transmission of information to SAPS as part of an early-warning system for xenophobic violence and related hate crimes.
- Engage with the Department of Justice on the development of the NAP early warning mechanism.

## Recommendation 7:

### **Broaden the conceptualisation in the NAP of an early warning system to extend beyond a rapid response to encompass a prevention planning**

It is important for the NAP, as a cross-sectoral blueprint for addressing xenophobia, to develop a clearer conceptualisation of the role of CPFs, which should ideally extend beyond early warning to inputs upstream and which will have a prevention effect. This role in prevention is provided for in the CPFs' own mandate but also in the CSFs that are designed to encompass a broader developmental safety mandate and a wider municipal sphere.

At a local level this intervention framework could be informed by the elements of the NAP implementation plan prioritised for the local community including:

- Safety auditing:
  - Incorporate questions of levels of racism, anti-foreigner sentiment, homophobia, racial incidents, interracial relations and perceptions of national identity into safety audits.
- Early warning:
  - Collection of accurate reported statistics from relevant stakeholders on the number of cases of racist and xenophobic violence and attacks.
  - Provision of information to facilitate rapid response.
- Capacity building:
  - Multi-faceted educational strategies of government departments to combat racism, racial discrimination, xenophobia and related intolerance.
  - Develop and implement anti-racism and xenophobia and equality promotion modules in the school curriculum.
  - Design and implement programmes that engender and promote values of racial, cultural and religious tolerance for all people regardless of difference.
- Social cohesion:
  - Rollout social mobilisation campaigns to address racism, racial discrimination, xenophobia, and other intolerance.
  - Facilitate the integration of migrants into host communities where they stay.
- Equitable service delivery:
  - Develop and implement mechanisms to ensure that non-nationals receive the policing services to which they are constitutionally entitled.
  - Encourage and facilitate reporting of crimes by and against non-nationals
  - Adopt zero tolerance of corruption and racism in services, especially policing.

- Response capability to xenophobic violence:
  - Establish an accessible database/ directory of service providers to provide assistance to victims of racism, racial discrimination, xenophobia and related intolerance.

The NAP focal point and co-ordinating department should:

- Develop and provide tools to support local CPF and CSF safety planning to incorporate key elements of the NAP and prevention programming against racism, racial discrimination, xenophobia and related intolerance. Currently the NAP provides for the development of municipal model toolkits to combat racism, racial discrimination, xenophobia and related intolerance and this can be refined in terms of the potential roles of CPFs and CSFs in this process.

## Recommendation 8:

### **Include CPFs as a stakeholder in NAP implementation planning and delivery**

As the research that underpins this report has highlighted, the work of CPFs is affected by a range of societal factors including the normalisation of violence, including gender-based violence; high levels of crimes in South Africa; and a trust deficit in the police as a legacy of Apartheid. In order to realise the intended outcomes of the NAP, CPFs should be included as a key stakeholder in the implementation planning and development.

The DOJ should include CPFs in the planning and development of NAP implementation in relation to the following key NAP outcomes:

- encourage the collection of data regarding racism, racial discrimination, xenophobia and related intolerance and allow for a more comprehensive assessment of the needs to effectively combat it;
- ensure that the concerns of individuals and groups encountering racism, racial discrimination, xenophobia and related intolerance are more effectively addressed;
- increase the effectiveness and coherence of measures against racism, racial discrimination, xenophobia and related intolerance including financial and human resources;
- strengthen programmes for individuals and groups encountering racism, racial discrimination, xenophobia and related intolerance in education, health, employment, housing, food security, social services and access to justice including where necessary through appropriate remedies;
- facilitate the identification of legislation that needs to be amended or adopted with a view to improving the protection of victims;
- and build a more equal society and strengthen the rule of law and democracy.

# Annexure 1:

## Legislative and policy framework for CPFs

Legislation	Year	Relevant sections
Interim Constitution <sup>149</sup>	1993	<p>Section 221(1) gave directive to parliament for the establishment of Community Police Forums (CPF).</p> <p>Section 221(2) on the functions of the CPF:</p> <p>“(a) the <b>promotion of accountability</b> of the Service to local communities and co-operation of communities with the Service;</p> <p>(b) the <b>monitoring of the effectiveness and efficiency of the Service</b>;</p> <p>(c) <b>advising</b> the Service regarding local policing priorities;</p> <p>(d) the <b>evaluation of the provision of visible police services</b>, including-</p> <ul style="list-style-type: none"> <li>(i) the provision, siting and staffing of police stations;</li> <li>(ii) the reception and processing of complaints and charges;</li> <li>(iii) the provision of protective services at gatherings;</li> <li>(iv) the patrolling of residential and business areas; and</li> <li>(v) the prosecution of offenders; and</li> </ul> <p>(e) <b>requesting enquiries into policing matters</b> in the locality concerned.”</p>
SAPS Act <sup>150</sup>	1995	<p>Section 18(1) of the 1995 SAPS Act states:</p> <p>“The Service shall...liaise with community through community policing forums and area and provincial community boards...with the view to-</p> <ul style="list-style-type: none"> <li>(a) <b>establishing and maintaining a partnership between the community and the Service</b>;</li> <li>(b) promoting communication between the Service and the community;</li> <li>(c) promoting <b>co-operation</b> between the Service and the community in <b>fulfilling the needs of the community regarding policing</b>;</li> <li>(d) improving the rendering of police services to the community at national, provincial, area and local levels;</li> <li>(e) improving transparency in the Service and accountability of the Service to the community; and</li> <li>(f) promoting joint problem identification and problem-solving by the Service and the community.” <p>Section 19(1) determines how the Police Service must execute its functions, including cooperation with communities to combat crime.</p> </li></ul>
Constitution <sup>151</sup>	1996	<p>While the final Constitution did not explicitly speak to CPFs, its Chapter 7, Section 18 contemplated their establishment.</p> <p>Section 206(3)(c): “each province is entitled to promote good relations between the police and the community.”</p> <p>In case of breakdown of relations, Section 206(5) states each province “may investigate or appoint a commission of inquiry into complaints of police inefficiency or of a breakdown in relations between the police and communities.”</p>

Interim Regulations for Community Policing Forums and Boards <sup>152</sup>	2001	Provides the rules for the establishment of CPFs and sub-forums, Area Community Police Boards and Provincial Community Police Boards; provides some general principles on the functioning of CPFs and related structures; briefly outlines a Community Safety Plan; and provides some information on logistical support and fundraising. Perhaps because the regulations are interim, the bulk of the material covers fairly detailed instructions of the establishment of CPFs, their sub-forums, and other related structures.
Civilian Secretariat for Police Service Act <sup>153</sup> (and regulations <sup>154</sup> )	2011 (2016)	<p>The Act outlines that one of the objectives of the secretariat is to “provide guidance to community police fora and associated structures and facilitate their proper functioning” (s 5(i)). The Act states that the CSP will “develop frameworks and strategies to ensure uniformity, accountability and enhancement of community police fora and associated structures” (s 6(c)(i)(viii)). The Act states that one of the core functions of provincial secretariates is to “promote community police relations”, including “manag[ing] the enhancement of community safety structures” (s 17(b)).</p> <p>The CSP regulations states the Partnerships Unit “reports on guidance to community police fora and the status of their functionality in provinces.” (s 28(b)(v).)</p>
SAPS National Instruction 3 of 2013: Sector Policing	2013	“The CPF may be used to facilitate the establishment and effective functioning of a sector forum” (s 10(2)). The term “may”, and the fact that section 10(1) outlines that a sector forum “must be established for each demarcated sector” suggests the sector forum can be established by SAPS separately from the CPF. The purpose (10(1)) of the forum is “to enhance interaction between the police and the community in order to jointly address safety and security issues in the sector”, which overlaps considerably with CPFs and sub-forums.
Western Cape Community Safety Act <sup>155</sup>	2013	<p>Section 5(2)(a-c) of Act requires the Head of the Community Safety Department to evaluate the level of functionality of CPFs and boards, and the relation between police and the CPFs and boards; regularly attend the meetings of the community police forums and boards in order to promote the objectives of section 18(1) of the SAPS Act; and annually report his or her findings in respect of paragraphs (a) and (b) to the Provincial Minister for Community Safety. The Act provides a regulatory framework for how the provincial Department of Community Safety (DOCS) exercises its oversight function over the police in the province.</p> <p>Section 5(3) enables the WC DOCS to provide funding, training and resources to CPFs.</p>
CSP Community Safety Forum Policy <sup>156</sup>	2016	<p>The CSF policy clearly articulates that the SAPS are responsible for the “establishment of and support for the functioning of the CPFs”.</p> <p>The policy goes to lengths to explain the difference between a CSF and CPF, with CPFs being one of the stakeholders represented in CSFs, which operate at the municipal level to “facilitate and enhance co-operation, integrated planning and coordinate implementation of safety programmes and projects in the local sphere.”</p>
White Paper on Police <sup>157</sup>	2016	<p>The White Paper outlined a community-centric approach to policing.</p> <p>“Delivering on [community-oriented policing] requires the SAPS and Community Policing Forums (CPF) to forge cooperative partnerships to facilitate regular communication and information sharing. Issues relating to the operational effectiveness of CPFs and their ability to properly execute their mandate in terms of oversight over the police will be resolved by locating these structures within the Civilian Secretariat for Police.”</p> <p>The White Paper states that, in order to avoid conflict, street committees must be located within CPFs; and that CPFs must be inclusive of youth.</p>
White Paper on Safety and Security <sup>158</sup>	2016	Refers to CPFs and recognises active citizenry and coordinated partnerships as a key component to a sustainable strategy for citizen safety. The white paper argues there should be “[p]ublic and community participation in the development, planning and implementation of crime and violence prevention programmes and interventions.”



<p>Draft CSP Community Policing Policy<sup>159</sup></p>	<p>2019</p>	<p>The draft policy considers the role of various actors in community policing, including CPFs, CSFs, neighbourhood watches, patrollers and private security.</p> <p>The functions of CPFs (additional to those outlined in the Interim Constitution and SAPS Act):</p> <ul style="list-style-type: none"> <li>• “To initiate, develop and implement sustainable crime prevention projects that will improve the safety of communities, in line with the policing priorities of the local community;</li> <li>• To participate and mobilise communities in crime prevention programmes and initiatives;</li> <li>• To promote joint problem solving between the police service and communities;</li> <li>• To work in collaboration with other safety structures;</li> <li>• To ensure sustained community support and participation in CPFs; ...</li> <li>• To hold community meetings and ensure effective communication with the community”</li> </ul> <p>Provincial Secretariates are “responsible for the establishment, administration and regulation of CPFs...”</p>
<p>Draft SAPS Amendment Bill<sup>160</sup></p>	<p>2020</p>	<p>6B.(1) “The MEC shall be responsible for establishing community policing forums at police stations in the province which shall be broadly representative of the local community.”</p> <p>(2) “The station commander and the members designated by him or her from time to time for that purpose, shall be <i>ex officio</i> members of the community policing forum and sub-forums established at the police station concerned.”</p> <p>17A.(2) “The provincial secretariats shall, in consultation with the MEC, facilitate the allocation of funds and resources for the effective functioning of community policing forums and community policing boards.”</p>

# Endnotes

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- 1 See, for example, Civilian Secretariat for Police (2016), White Paper on Policing, available at [http://www.policesecretariat.gov.za/%E%downloads/bills/2016\\_White\\_Paper\\_on\\_Policing.pdf](http://www.policesecretariat.gov.za/%E%downloads/bills/2016_White_Paper_on_Policing.pdf) (accessed 1 April 2021), and South African Police Service (SAPS) Act 96 of 1995, section 18(f), which promotes ‘joint problem identification and problem-solving by the Service and the community’.
- 2 South African Human Rights Commission, ‘Non-Nationals’, available at <https://www.sahrc.org.za/home/21/files/FINAL%20Non-Nationals%20Educational%20Booklet.pdf> (accessed 7 February 2021).
- 3 Government of South Africa (2019), National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, para 80.
- 4 For a detailed examination of this issue, see David Bruce (2011), *Unfinished Business: The architecture of police accountability in South Africa*, p. 1, APCOF Policy Paper No. 2, available at <http://apcof.org/wp-content/uploads/2016/05/No-2-Unfinished-Business-The-architecture-of-Police-Accountability-in-South-Africa-David-Bruce.pdf> (accessed 1 April 2021).
- 5 The South African Police Service Act 68 of 1995, section 18.
- 6 SAPS, Interim Regulations for Community Police Forums and Boards, 2011, s 8(2).
- 7 Proposal for the legislative amendment to shift responsibility from the SAPS to the CSP have been made in the SAPS Amendment Bill 2020 (submitted by the CSP for public comment in 2020 but still to be presented to Parliament). However, the extent to which this shift in responsibility can be delegated to the provincial secretariats for Police Services who operate under provincial legislation is not clear.
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- 20 Ibid.
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- 23 Email correspondence with representative of KZN Department of Community Safety and Liaison, 15 August 2020.
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- 25 Interview with ISS policing expert, 13 August 2020.
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- 31 Interview with senior SAPS Social Crime Prevention officer, 1 September 2020.
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- 39 Interview with a CPF member, Bloekembos, Western Cape, August 2020.

- 40 Under the KwaZulu-Natal and Western Cape constitutions for CPFs, any person who belongs to an organisation or interest groups as well as other recognised community structures can be nominated and elected to become a member of a CPF. In terms of some these constitutions, non-South Africans can also be part of the CPF but only if they are part of an organisation or an interest group to represent their interest in the CPF such as a business forum, association or church group. The assumption is that in these communities there are groups or organisations which are considered representative of the 'community'. Interview with members of Department of Community Safety and Liaison, KwaZulu-Natal, 20 August 2020; Interview with members of the Department of Community Safety, Western Cape, 14 August 2020.
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- 45 Interview with an Ethiopian shopkeeper, Ikamvelihle, Eastern Cape, 2020.
- 46 Interview with a Community Policing Forum member in Khayelitsha, Western Cape, 2017.
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- 67 Ibid.
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- 71 Interview with former SAPS senior official, 5 August 2020; interview with senior SAPS social crime prevention member, 1 September 2020; interview with ISS policing expert, 13 August 2020.
- 72 Interview with a Community Policing Forum member, New Brighton, Eastern Cape, 2020.
- 73 Interview with a Community Policing Forum members, Wells Estate, Eastern Cape, 2019.
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- 76 Interview with sub-forum members in Dunoos, Western Cape, 2016.
- 77 Interview with a Community Policing Forum member, New Brighton, Eastern Cape, 2020.
- 78 Ibid.

- 79 InInterview with a Community Policing Forum member, New Brighton, Eastern Cape, 2020.
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- 81 South African Police Service Interim Regulations for Community Police Forums and Boards, 2001 s 3(2)(a)–(d).
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## About the authors

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## ABOUT THIS REPORT

The African Policing Civilian Oversight Forum (APCOF) is funded by the European Union (EU) in order to support the development of the South African Police Service's (SAPS) capacity to detect and prevent, and respond to, xenophobic violence and related hate crimes. The present project is set against the backdrop of numerous incidents of xenophobic violence and hate crimes directed, since 2008, at non-nationals and other persons marginalised on the basis of their national origin who reside in the Republic of South Africa. Outbreaks of xenophobic violence have, however, persisted, and the SAPS' capacity to effectively detect, prevent and respond has been questioned, despite successive research studies, inquiries and recommendations by national, regional and international human rights bodies over the past 11 years designed to strengthen the SAPS' capacity.

The present research was conducted in order to better understand the role under regulation and policy that Community Police Forums can play in the prevention of xenophobic violence and related hate crimes in South Africa. It explores the challenges inherent in the legislative and policy framework and its implementation that have resulted in critical failures. The report examines whether a broader understanding of 'prevention' in the context of the role of Community Police Forums is required, before identifying opportunities to bolster their role in actively preventing and responding to violence against non-nationals.

## ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research and providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

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