Decentralising the South African Police Service: Does South Africa's current public safety crisis and the de facto decentralising of policing necessitate a critical evaluation of its present policing model?

by

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DECLARATION

I, the undersigned, NICHOLAS LOUIS ROELF, hereby declare that:

1. The research reported in this dissertation, except where otherwise indicated, is my original work.
2. This dissertation has not been submitted for any degree or examination at any other university.
3. This dissertation does not contain other persons' writing, unless specifically acknowledged as being sourced from other researchers. Where other written sources have been quoted, then:
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N. ROELF

ABSTRACT

Violent crime in South Africa has reached epidemic levels, and something needs to be done about it as a matter of urgency. While the huge socio-economic inequalities in South Africa remain the main cause of crime in South Africa, the focus of this dissertation is on the inefficient, ineffective and unaccountable South African Police Service (SAPS), and how its failings have contributed to the public safety crisis South Africa is faced with presently. In this dissertation I suggest that, given South Africa's current public safety crisis, institutional reform of SAPS is needed in order to adequately address this social ill and argue that it is worth revisiting the decentralised policing model proposed under the Constitution of the Republic of South Africa Act 200 of 1993 (Interim Constitution), as a partial solution.

The public safety crisis effects every person in South Africa, whether directly or indirectly, however, it is the most vulnerable communities, on the socio-economic margins of the South African society, who suffer the most. The Cape Flats in Cape Town is used as a representative case study to show the failings of South Africa's current centralised policing model, highlighting how SAPS have proven to be ineffective in dealing with violent crime there. As a result of the failings of SAPS people are organising locally to ensure their own safety, including the creation of vigilante organisations. In Cape Town a *de facto* decentralised police service has been created, which in itself presents a serious problem however also reflects the demand for more localised and nuanced policing in South Africa.

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Chapter 1: Introduction

1.1. Setting the Scene

South Africa has a major public safety crisis, one which threatens to destroy the fabric of its constitutional democracy.[1] Crime is a social ill that impacts people, either directly or indirectly, almost on a daily basis in South Africa.

South Africa's crime rates for murder, rape and robbery are amongst the highest in the world, and the offences are only getting more, not less, violent.[2] Police crime statistics for the most recent reporting year (2017/2018) reveal that the murder rate – the most reliable of all crime statistics – has increased by 6.9% compared to 2016/2017.[3] This rate has increased for the past six consecutive reporting years, with the highest increase recorded in the last reporting year.[4] Based on statistics for 2016/2017 it has been suggested that, on average, there were 50 attempted murders and 61 home robberies per day, and as many as 136 sexual offences committed daily, with 109 being rape cases.[5] While these statistics are frightening in their own right, they represent only a small part of a wider epidemic, as many crimes go unreported and unrecorded.[6] It is evident that South Africa has a (violent)crime problem, that state institutions tasked with public safety have proven incapable of challenging or addressing.

Crime and violence in South Africa are inextricably linked with poverty, marginalisation and oppression associated with the legacy of apartheid.[7] This has been compounded by the prominence of liberal and neo-liberal ideologies and practices, intensifying the marginalisation of those already on the fringes. A host of academics, civil society organisations and even the South African Human Rights Commission have identified South Africa's significant socio-economic inequalities as being the main cause of crime in the country.[8] Further contributing

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[1] Nico Steytler and Lukas Muntingh 'Meeting the Public Security Crisis in South Africa: Centralising and Decentralising Forces at Play' in Bernard Martin and Raymond Koen (eds.) *Law and Justice at the Dawn of the 21st Century Essays in Honour of Lovell Derek Fernandez* (2016) at 67.
[2] Ibid.
[3] South African Police Service *Annual Crime Report* (2019) at 12. Jean Redpath 'Oral Submission to the Khayelitsha Commission' 3 February 2014 argued that 'murder rates are the most reliable measure of crime' 44.
[4] South African Police Service *Annual Crime Report* (2019) at 14.
[5] Eleanor Ross and Shahana Rasool 'You go to Campus with Fear and Come Back with Fear' (2019) 68 *SACQ* 7
[6] Anthony Altbeker *A Country at War with Itself: South Africa's Crisis of Crime* (2007) 14.
[7] Ross and Shahana op cit note 5 at 8.
[8] Ibid.

factors include inefficient police services, social disorganisation, gangsterism and substance abuse. The focus of this dissertation is on the inefficiencies of the police services and a contemplation of forms of institutional reform to increase the productivity, efficacy and accountability of the police service.

Cape Town has cemented itself as the most violent city in South Africa, with a reported rise in murder rates of 18% in one month.[9] However, violence and crime are not distributed evenly across Cape Town. At the epicentre of Cape Town's violent crime epidemic and social disintegration, is the area referred to as the Cape Flats. The Cape Flats includes communities such Bishop Lavis, Mitchell's Plain, Delft, Elsies River, Nyanga, Khayelitsha, Blue Downs, Mfuleni, Philippi, Kraaifontein, Hanover Park, Lavender Hill and Mannenberg. The argument that marginalised communities are most affected by crime becomes clear when one looks at the crime rates at police station level. The police stations with the highest numbers of violent crimes reported are predominantly found in underprivileged and under policed communities, *viz.* Khayelitsha, Nyanga and Mitchells Plain, amongst others.[10] It is the prominence of violent crimes in underprivileged and under policed communities around the country which ought to be of most concern.

The failings of the South African Police Service has meant that these communities, through necessity, have had to find a way to secure their areas through local crime prevention organisations such as neighbourhood watches and vigilante groups.

During the 1960s and 1970s the Cape Flats was used as a dumping ground for people of colour, under the Group Areas Act 41 of 1950.[11] Forced to the periphery of the city these communities have been neglected by the government for years, with the adage 'out of sight out of mind' ringing true. The Cape Flats encompasses a wide spatial expanse, with a multitude of cultures and identities. One of their commonalities is that on almost a daily basis these communities are subject to highly visible violence and crime.[12] The violence and crime often emanate from gang wars and vigilante groups acting in the communities. While the Cape Flats represents a single

[9] A Sicetsha, 'Cape Town murder rate raises by more than 18% in one month', *The South African*, 28 June 2019, available at www.thesouthafrican.com/news/cape-town-murder-rates-raises-one-month/, accessed on 24 September 2019.
[10] Khayelitsha Commission of Inquiry Proc 9 *PG* 7026 of 24 August 2012 42-43.
[11] Steffen Jensen 'Discourse of violence: Coping with Violence on the Cape Flats' (1999) 25 *Social Dynamics* 2 76.
[12] Jensen op cit note 11 at 76.

example of communities on the socio-economic and spatial margins reflecting high violent crime rates, there are many other areas and communities around the country facing a similar problem. The focus of this dissertation is on the Cape Flats, given the extremity to which violence and crime has escalated, but it is intended as a contribution to discussions on the wider systemic issue.

In reaction to the lawlessness on the Cape Flats, the provincial government's inept reaction has been to call for the deployment of the South African National Defence Force (SANDF) into particularly violent and crime ridden communities. This deployment was endorsed and ordered by the central government, as neither local nor provincial government has the right to deploy the SANDF.[13] The SANDF has been deployed to assist the police in the prevention and combating of crime in these communities. The SANDF were most recently deployed into communities on the Cape Flats in July 2019 for an initial period of 3 months ('Operation Prosper'), a deployment that has recently been extended to March 2020.[14] The deployment of the SANDF into the communities on the Cape Flats, is a hot-button issue which has not received universal approval.[15] The provincial government has also increasingly been pushing for more influence and power over the police and other policing institutions in the province, and Cape Town in particular, arguing that the centralised model of policing enshrined in South Africa's Constitution has resulted in a police service incapable of reacting to localised security concerns.[16]

The South African Police Service (SAPS) has proven inefficient and incapable of policing violence and crime in these communities.[17] Moreover, SAPS has become paralysed through the steady politicisation of the service, leading to crippling corruption from the top to the bottom, and is plagued by ineptitude and a lack of training to be able to execute its tasks.[18]

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[13] Section 201 (2) of the Constitution.
[14] Sisonke Mlamla, 'Ramaphosa extends SANDF deployment on Cape Flats to March 2020', *Cape Argus*, 16 September 2019, https://www.iol.co.za/capeargus/news/ramaphosa-extends-sandf-deployment-on-cape-flats-to-march-2020-33077607, accessed 26 September 2019.
[15] Stuart Mbanyele and Andrew Faull, 'Resolving systemic violence on the Cape Flats requires more than just 'boots on the ground'' available at https://issafrica.org/iss-today/a-plan-to-end-cape-towns-violence, accessed 19 January 2020; Rebecca Davis, 'Calls to extend army deployment to Cape Flats as SANDF claims success', *Daily Maverick*, 29 August 2019, https://www.dailymaverick.co.za/article/2019-08-29-calls-to-extend-army-deployment-to-cape-flats-as-sandf-claims-success/, accessed 30 January 2020.
[16] Lukas Muntingh 'Modest Beginnings, High Hopes: The Western Cape Police Ombudsman' (2018) 64 *SACQ* 19.
[17] Steytler and Muntingh op cit note 1 at 67.
[18] Ibid at 67 and 76.

1.2. Research Question and Purpose

This dissertation addresses the question of whether the time has come to revisit the decentralised policing model brought into effect under the Interim Constitution (IC).[19] It assesses whether the rationale relied on by the Constitutional Assembly, when drafting the Final Constitution (FC),[20] and the Constitutional Court when certifying the FC, still holds firm 25 years on, and whether South Africa's current centralised policing model still reflects societal needs, and effectively secures communities.

The purpose of my research is to propose a policing model that is more effective, accountable, socially sensitive and responsive to the needs of communities, especially within underprivileged and under-policed communities, producing a policing model which serves as a break in the institutional culture of the police service, re-constituting it from the bottom-up. I suggest that a means to achieve this purpose is through a proposed amendment to ss 205-208 of the Constitution, in order to establish a more decentralised policing model. Further, I support Sanele Sibanda's contention that constitutionalism[21] or the constitutional project, in South Africa, must be reflective of the demands of society and cannot be limited to abstract theorising.[22] While Sibanda is focused on the disconnect between constitutionalism and poverty eradication, a parallel can be drawn with the disconnect between constitutionalism and the lowering of violent crime rates in South Africa. Therefore, the Constitution, which underpins South African constitutionalism, ought to be reflective of popular will, and should be constructed in a way that is responsive to societal needs.

It must, however, be borne in mind that this dissertation only represents a short-term legal solution to a component of a far broader and more complex economic, political and social issue – the systemic exclusion, marginalisation and subversion of people on the Cape Flats.

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[19] The Constitution of the Republic of South Africa Act 200 of 1993.
[20] The Constitution of the Republic of South Africa Act 108 of 1996.
[21] For the purposes of this dissertation 'constitutionalism' will refer to 'the notion of a system of governance established under a constitutional document whose primary functions are to structure, delineate, distribute and limit state power within a defined political community'. Sanele Sibanda 'Not Purpose-made – Transformative Constitutionalism, Post-Independence Constitutionalism and the Struggle to Eradicate Poverty' (2011) 22 *Stellenbosch L Rev* 3 484.
[22] Ibid at 482 -489.

1.3. A Short Synopsis of the Debate

The Constitutional Assembly (CA), tasked with drafting the FC by 1996, emphasized the need for the establishment of one unitary state organ, with select sub-national power structures.[23] At the time the CA was conscious of the need to develop a united national identity, and was wary of the negative effects that devolving significant power to provincial governments could have on national unity. The CA, as a result, decided to have all significant polycentric/political power, including the police force, centralised in the national government (s 206 (1) FC). The FC was then ratified by the Constitutional Court in the *Certification of the Amended Text of the Constitution of the Republic of South Africa, 1996* judgment (*Certification Judgment II*).[24] The court, accepted the argument that the diminished role of the Provincial Executive was mitigated by the provinces' ability to appoint 'a commission of enquiry [*sic*] into any complaints of police inefficiency'[25] and the Provincial Executive's powers to liaise, oversee and monitor the functions of the national police force.[26]

In 2014, the Constitutional Court in *Minister of Police and Others v Premier of the Western Cape and Others*[27] again confirmed the centralised nature of the South African policing model, reiterating that the powers of the Provincial Executive, in relation to police, are limited to 'monitoring, overseeing and liaising functions' as set out in section 206 (3) of the Constitution.[28] The Constitutional Court has remained constant in their interpretation of ss 205-208 (Police) of the FC. The court has made it clear that the Provincial Executive has limited (indirect) powers in relation to the police (as outlined above) and all significant power is vested in the national government.

David Bruce[29] and Phumlani Tyabazayo[30], amongst others, have written on the limitations of the provincial governments in policing matters under the Constitution. In particular, they canvas section 206 of the Constitution, which deals directly with the distribution of policing

[23] Certification of the National Constitution *Reply on Behalf of the Constitutional Assembly* (1996) at 4.
[24] CCT 37/96.
[25] Ibid para 168.
[26] Section 206 (5)(a) of the Constitution.
[27] 2014 (1) SA 1 (CC).
[28] Ibid para 36.
[29] David Bruce 'Policing Powers, Politics, Pragmatism and the Provinces: Revitalising Policing over-sight in the Western Cape' (2012) 40 *SACQ*.
[30] Phumlani Tyabazayo 'The Khayelitsha commission of inquiry: Challenging the scope of provincial policing powers' (2014) 50 *SACQ*.

powers between national and provincial government.[31] They both note that the structure of section 206 is representative of the contestation during negotiations preceding the democratic transition.[32] While the Constitutional Court has clarified the roles of the national government and provincial government in relation to the police, there is still significant political contestation. The more apparently incapable and inefficient SAPS has become in dealing with violent crime in South Africa, the more heated the contestation for political control of the police service has become.

Nico Steytler and Lukas Muntingh[33] recognise that the centralised policing structure is 'not working' but leave unanswered the question and interrogation of whether a decentralised policing system is the solution.[34] Bruce and Tyabazayo are not as candid about their criticism of the centralised policing model, when outlining its limitations, and do not go as far as to suggest or interrogate the possibility of a decentralised model. My research thus progresses the dialogue, by critically analysing the viability and constitutional integrity of a decentralised policing model.

1.4. Chapter Synopsis

This dissertation is divided into five chapters and will proceed as follows. Chapter two sets out the extent and origins of the violent crime epidemic in underprivileged communities in South Africa, from a sociological perspective. The Cape Flats in Cape Town will be used as a case study, to represent the plight of people living in underprivileged crime-ridden areas. This chapter provides the reader with a contextualised perspective on the social and economic conditions giving rise to the democratic crisis that makes it necessary to revisit the policing model in South Africa. Chapter three examines the decentralised policing model proposed in the Interim Constitution (1993) and juxtaposes it with the highly centralised policing model provided for in the Final Constitution (1996). It details the surrounding circumstances which ultimately led to, the highly contested, adoption of a centralised policing model, showing that

[31] Bruce op cit note 29 at 3.
[32] Tyabazayo op cit note 30 at 17 and Bruc op cit note 28 at 3.
[33] Nico Steytler and Lukas Muntingh 'Meeting the Public Security Crisis in South Africa: Centralising and Decentralising Forces at Play' in Bernard Martin and Raymond Koen (eds.) *Law and Justice at the Dawn of the 21st Century Essays in Honour of Lovell Derek Fernandez*.
[34] Ibid at 84.

it was more a political than strategic decision. Thereafter, the reader will be provided with a breakdown of the limited, and largely ineffectual, powers the province has over the police service. Finally, a comparative analysis of other jurisdictions and their policing model's is followed by a brief analysis on what a decentralised policing model might look like in democratic South Africa. Chapter Four argues that in effect the Western Cape's provincial government has established a localised police service in the broader Cape Town area, primarily through the co-option of community neighbourhood watch organisations. I suggest that poor regulation and the lack of accountability of these organisations renders them no better than vigilante groups. In other words, ad hoc efforts to improve policing have resulted in a form of informal and arguably illegal decentralisation, which is not ideal in a democratic society under the rule of law. Finally, in Chapter 5, by outlining that SAPS is incapable of delivering on its mandate, especially in underprivileged and under-policed communities, I suggest that institutional reform in the form of decentralisation is needed to make SAPS more effective, efficient, accountable and socially sensitive. Moreover, in the Western Cape we have seen that the attempts of the provincial government and City of Cape Town to regulate neighbourhood watches in particular, has resulted in the creation of a *de facto* localised police service, which is a serious problem, but does reflect the demand for more localised and nuanced policing. I conclude that now appears to be an ideal opportunity for institutional reform of SAPS, considering the wave of institutional reform within institutions that form part of the criminal justice system and the fact that South Africa is faced with a serious public safety crisis. Finally, I suggest that the current South African context necessitates a decentralisation of SAPS in order to help create a more efficient, effective, accountable and socially sensitive police service, particularly for those that find themselves on the periphery of society.

Chapter 2: A Background to Violent Crime in Underprivileged Communities on the Cape Flats

2.1. Introduction

The SAPS, in its many iterations, has long had a troubled relationship with Black[35] people, especially those from marginalised communities. During apartheid the South African Police (SAP), the South African Defence Force and intelligence agencies constituted a 'national security establishment', which played a central role in the implementation of apartheid policies and the maintenance of the apartheid state.[36] One of the cornerstone policies of apartheid was the Group Areas Act of 1950, which divided South Africa in to several 'racially purified' areas.[37] Black people in Cape Town were forcefully moved to the Cape Flats, a barren area on the periphery of the city, where they received little to no service delivery or resource allocation to the area. Segregated resources, amenities and jobs, led to communities on the Cape Flats almost inevitably becoming 'zones of poverty and social disintegration with high levels of violence'.[38] Post-apartheid, no administration has been able to solve the 'socio-economic problems or high levels of crime and violence' in areas such as the Cape Flats, of which there are many around the country.[39] This chapter explores the prominence of violent crime, as a result of the subversion and oppression, in communities on the Cape Flats, resulting in lasting inequalities. It outlines how poor policy creation and implementation by the police service, coupled with a lack of funding and poor resource allocation have exacerbated the situation. This exposition provides the reader with a contextualised understanding of how violent crime has flourished on the Cape Flats, to a point where it has become an epidemic, necessitating

[35] For the purposes of this dissertation when I refer to 'Black', I will be referring to the definition of Blackness as articulated by Bantu Stephen Biko in a paper he produced for a SASO Leadership Training Course in December 1971. Biko outlined that '[w]e have defined blacks as those who are by law or tradition politically, economically and socially discriminated against as a group in the South African society and identifying themselves as a unit in the struggle towards the realization of their aspirations.' He goes on to explain that 'being black is not a matter of pigmentation', preferring to locate blackness in the narrative of the oppressed versus the oppressor. Chronic, 'The definition of black consciousness by Bantu Stephen Biko', *Chimurenga*, 11 September 2017, available at http://chimurengachronic.co.za/the-definition-of-black-consciousness-by-bantu-stephen-biko/, accessed on 19 November 2019.
[36] Steytler and Muntingh op cit note 1 at 71.
[37] Jensen op cit note 11 at 76.
[38] Ibid.
[39] Ibid.

revisiting the institutional framework of the SAPS, as part of a short-term solution to a systemic issue.

2.2. A History of Violent Crime on The Cape Flats: The Result of Neglect, Poverty and Social Disintegration

The origins of violent crime, gangsterism and drug dealing on the Cape Flats lie deep within the social fabric of Cape Town.[40] It is more than the subjugation, forced removals and other apartheid policies which make up the fabric of the Cape Flats; it is also post-apartheid neo-liberal economic, social and cultural structuring which have maintained this position.[41]

In order to reduce levels of violence on the Cape Flats, in the long-term, it will take tackling the roots of gangsterism, drug dealing and violent crime. These roots lie in the devastating social and economic inequalities that exist between the communities on the Cape Flats and Cape Town more broadly. The contempt that the government has shown towards the people living on the Cape Flats has become evident with the government's periodic deployment of the defence force in the area, instead of addressing the roots of the crime or working on policy to prevent crime. It must be borne in mind that reform of the criminal justice system, in particular the SAPS, represents only a short-term project to aid in the achievement of a reduction in gangsterism, drug dealing and violent crime in communities on the Cape Flats.

2.2.1. Socio-Economic Inequality and The Prominence of Violent Crime

In South Africa, the way communities are policed and their abilities to demand resources from state institutions (SAPS in this instance) is undeniably deeply racialised.[42] A hierarchical taxonomy of racial classifications was developed and entrenched during apartheid.[43] Black, Asian, Coloured and White were all categories used, as set out in the Population Registration Act 30 of 1950, between 1960 and 1996 in South Africa. The latest census (2011) in South Africa used the categories: African/Black, Indian/Asian, Coloured and White. These are also

[40] Bill Dixon and Lisa-Marie Johns 'Gangs, Pagad & the State: Vigilantism and Revenge Violence in the Western Cape' (2001) 2 Centre for the Study of Violence and Reconciliation: *Violence and Transition Series* 3.
[41] Ibid.
[42] Dee Smythe *Rape Unresolved: Policing Sexual Offences in South Africa* (2015) 21 -22.
[43] Ibid.

the categories used by the SAPS when reporting crimes. I am acutely aware, as a South African, of how these labels 'have come to constitute entrenched political and social identities' in present-day South Africa.[44] A balance must be struck between: on the one hand the easy essentialisation of racial classifications; and, on the other hand, doing justice to the plight of the people living in communities where policing is deeply racialised. Bearing this in mind I have decided to avoid the use of these racial classifications in this dissertation, because for the sake of my argument it is sufficient, as suggested above, to use the all-encompassing category of 'Biko' Black. This is because I do not seek to draw a distinction between the prevalence of violent crime (and poor SAPS service delivery) in different underprivileged Black communities; rather I seek to draw a distinction between the prevalence of violent crime (and SAPS service delivery) in predominantly white communities versus predominantly Black communities.

In the 1950s Cape Town 'became a test case for influx control and racial segregation'.[45] In other words the influx of Black labourers into the Cape were highly regulated and controlled, and they were forced to live in racially segregated communities on the periphery of the city. These removals took place throughout the 1950s, 1960s, 1970s and into the early 1980s with Khayelitsha (meaning 'new home' in isiXhosa) only being established in 1983. It is in these underprivileged and under-resourced communities (particularly, Mitchell's Plain, Khayelitsha and Nyanga) in and around the Cape Flats, where the majority of criminal activity in Cape Town takes place, resulting in Cape Town being amongst the cities with the highest murder rates in the world.[46]

High crime rates in South Africa, particularly Cape Town, are unfortunately not a recent phenomenon. With the formal abolition of apartheid, came a renewed hope amongst South Africans that the high crime rates would decline.[47] Post-1994 there was significant emphasis on reconstruction, far-reaching policy reforms and institutional changes in order to replace the old apartheid system, with a community orientated, democratic policing model with an emphasis on accountability and efficiency, in order to address the high crime rates.[48]

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[44] Smythe op cit note 42 at 21
[45] Martin Legassick 'Forced Removals in Greater Cape Town, 1948 -1970' (2006) *Abahlali Online* 1
[46] Jean-Claude Manaliyo 'Townships as Crime 'Hot-Spot' Areas in Cape Town: Perceived Root Causes of Crime in Site B, Khayelitsha' (2014) 5 *Mediterranean Journal of Social Science* 8 597.
[47] Elrena Van Der Spuy and Adam Armstrong 'Policing of an Urban Periphery: The Case of Khayelitsha' (2014) 27 *S. Afri. J. Crim. Just.* 377.
[48] Ibid.

Unfortunately, what South Africa has seen is 'uneven' reform, and has not had the desired effect on the police and/or violent crime rates.[49] Elrena Van Der Spuy and Adam Armstrong suggest that this is a result of several factors, among which is the fact that 'the institutional machine of the police proved resistant to the revolution'.[50] What we have seen post-1994 has in fact been an increase in violent crime rates in South Africa, rather than a decrease.[51] Per the SAPS's annual crime report 2019 (detailing the statistics for the 2017-2018 reporting year) contact crime[52] amounted to 601 366 reported cases, which represented a decrease of 1.1% or 6 955 counts from the previous year.[53] There, however, should be little to no significance attached to this decrease, firstly, considering how nominal the decrease was and secondly, with the exception of the murder statistics, room must be left for under-reporting which would probably significantly elevate the statistics.[54]

The root cause of high crime rates in post-apartheid South Africa, remains contentious with politicians, government officials and academics not able to reach consensus on the matter. There is, therefore, a significant amount of existing literature linking the high crime rates to a number of different factors, with the chief amongst them being apartheid and its lasting effects.[55] During apartheid the government was uninterested in creating policy to fight or prevent crime in Black communities, instead prioritising the protection of white people and their interest.[56] Police and resources were disproportionately allocated to white areas, resulting in crime and violent crime thriving in Black communities.[57] Post-apartheid South Africa has, however, not seen a significant reversal in the disproportionate allocation of police and crime prevention resources to underprivileged communities. This much has been made clear in the Khayelitsha Commission Report and recently in the *Social Justice Coalition and Others v*

[49] Van Der Spuy and Armstrong op cit note 47 at 377.
[50] Ibid.
[51] Ibid.
[52] 'Crimes categorised as contact crime include murder, attempted murder, sexual offences, all categories of assault, common robbery and robbery with aggravating circumstances' South African Police Service *Annual Crime Report* (2019) 12.
[53] Ibid.
[54] Ibid.
[55] Ingrid Palmary 'Social Crime Prevention in South Africa's Major Cities' (2001) *Centre for the Study of Violence and Reconciliation* (CSVR); Mark Shaw *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire* (2002); Gabriel Demombynes and Berk Özler 'Crime and Local Inequality in South Africa' (2005) 76 *Journal of Development Economics* 2 265-292; D Singh 'Resorting to Community Justice when State Policing Fails South Africa' (2005) 18 *Acta Criminologica*, 3 43-50.
[56] Shaw op cit note 55 at 10.
[57] Ibid.

Minister of Police and Others case.[58] While both focus specifically on Khayelitsha, the situation is reflective of many other communities on the Cape Flats and around South Africa.[59]

Another significant factor to be considered when determining the root causes of why there remains such a high crime rate in South Africa, is the social and economic inequalities, and income disparities.[60] Discrimination and marginalisation of Black people in the workplace, have created systemic poverty and significant socio-economic disparities between the majority of Black people and white people as a result of apartheid policies.[61] High youth unemployment rates in these communities has left vulnerable young people open to a life of crime or to being co-opted into joining the ranks of a gang.[62] As Bill Dixon and Lisa-Marie Johns suggest:

> 'The social dislocation of forced - often repeated - removals to purpose-built ghettos lacking both basic communal amenities and local sources of employment took its toll on people whose existence on the social and economic margins of white South Africa had always been precarious.'[63]

As a result, for people who find themselves on the margins of society, turning to crime becomes the only hope of survival for some. The economic benefits that come with criminal activities are a significant attraction for people wanting to turn to a life of crime. This much has been confirmed by economists.[64] Given the social disintegration and economic inequalities in underprivileged communities, it is little wonder that crime and violent crime in South Africa is still so high.

The significance of drug abuse and alcohol consumption in contributing to the high crime rate in South Africa cannot be underestimated.[65] Drug abuse and drug-trafficking are inextricably linked to gangsterism and gang violence on the Cape Flats.[66] With the need to address the drug

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[58] *Social Justice Coalition and Others v Minister of Police and Others* (EC03/2016) 2019 (4) SA 82 (WCC) and Khayelitsha Commission of Inquiry op cit note 10 at 42-43.
[59] Supra note 57 paras 41-53, Jean Redpath amicus submission.
[60] Shaw op cit note 55 at 11.
[61] Dixon and Johns op cit note 40 at 10.
[62] Ibid at 60.
[63] Ibid at 10.
[64] Manaliyo op cit note 46 at 597.
[65] Lizette Lancaster and Ellen Kamman 'Risky Localities: Measuring Socioeconomic Characteristics of High Murder Areas' (2016) 56 *SACQ* 28
[66] Irvin Kinnes 'Gangs, Drugs and Policing the Cape Flats' (2014) *Acta Criminologica*: *Southern African Journal of Criminology* 19.

and alcohol problem (which is strongly associated with violent crime) on the Cape Flats comes, through necessity, the need to simultaneously address the gangsterism problem. Gang attacks and violence have become an ever-present feature of life on the Cape Flats and are inseparable from the high violent crime rates in those communities.[67]

Irvin Kinnes argues that the distinction between drug dealers and gang leaders is inconsequential, as most gang leaders peddle drugs as a source of income and for increased influence over their 'turf'.[68] It is this need for control and influence over their 'turf' that makes drug dealing important, as addicts become reliant on the hand that deals them – which is often the hand that got them addicted in the first place. In many cases addicts commit crimes in order to obtain money to be able to purchase drugs and alcohol, creating a vicious cycle of crime and drug and alcohol abuse.[69] Control over 'turf' leads to 'turf wars', in which gang members fight to consolidate their 'turf' and spheres of influence, allowing them to be able to trade and commit crime more freely.[70] Given the vulnerability of young people from these communities, gangsterism and gang life become enticing options for the youth, almost guaranteeing continued membership for gangs.[71]

2.2.2. The Deployment of the South African National Defence Force (SANDF) as a 'quick-fix'

The SANDF have been deployed periodically, for non-traditional military tasks, to areas such as the Cape Flats and Richmond since 1998 and have had little or no lasting impact on high crime rates.[72] This is in the absence of any concrete and effective crime fighting or reduction policies, the SANDF have on occasion been deployed to aid the SAPS in crime fighting in the crime ridden communities of the Cape Flats.[73] The defence force, owing to practical reasons, is only able to be in these communities for an insignificant period of time. While it is clear that

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[67] Kinnes op cit note 66 at 14.
[68] Ibid at 19.
[69] Mannaliyo op cit note 46 at 599.
[70] Kinnes op cit note 66 at 19
[71] An in-depth analysis of how socially and economically marginalised people are more likely to abuse drugs is beyond the purview of this dissertation. For the purposes of this dissertation it is sufficient to recognise the prevalence of drug and alcohol abuse in socially and economically marginalised communities, and how they are linked to gangsterism and high crime rates in those communities.
[72] Theo Neethling 'Non-Traditional Military Tasks: The Defence Force in Policing and Peacekeeping' (1998) *Stellenbosch University* 4.
[73] The Constitution section 201 (2)(a) 'Only the President, as the head of the national executive, may authorise the employment of the defence force' 'in co-operation with the police service'.

the situation on the Cape Flats is an emergency, the deployment of soldiers in order to carry out community policing is ineffective and unsuitable and is evidently not the solution to the problem faced by communities on the Cape Flats.

The deployment of the SANDF was not the solution for the Cape Flats in May 2015 when soldiers were deployed to Manenberg during Operation Fiela, precisely because their deployment has nothing to do with addressing the social and economic ills of the community.[74] As the SANDFs presence in these communities is also always for an insignificant amount of time it is difficult to see how they could create any lasting change. Deployment also does little to nothing to improve the accountability, responsiveness and efficiency of the SAPS, which is the primary community policing institution. Four years on from Operation Fiela and the SANDF are again being deployed to the same communities to perform similar functions, hoping for better results. The deployment of the SANDF to crime-ridden communities appears to be a knee-jerk reaction to the untenably high violent crime rates in such communities, policy which by all accounts has simply not worked.

It must be noted that the SANDF themselves have indicated that they are unable to carry out community policing. The SANDF is simply not trained to combat crime at a community level, since they are not trained in the subtleties of community policing. As SANDF Chief General Solly Shoke stated on 31 July 2018, in a media briefing: 'crime is not our domain […] when we (the SANDF) come in, we skop and donner'.[75] The presence of soldiers in underprivileged, predominantly Black communities, conjures up unwanted images of state violence perpetrated against Black communities during apartheid and under states of emergency. The military's presence contributes to the disintegration of the social fabric of these communities, as it intrenches the feeling of marginalisation and neglect amongst people.[76] Calls for military intervention by community members, are symptomatic of the dire situation affected communities find themselves in, and how desperate they are to bring an end to gangsterism,

[74] Ziyanda Stuurman, 'Military Intervention is not a Crime-Fighting Solution', *Mail & Guardian*, 15 July 2019, available at https://mg.co.za/article/2019-07-15-military-intervention-is-not-a-crime-fighting-solution#.XS2lTk1T0sU.email, accessed 27 November 2019.
[75] Ibid. emphasis added. 'skop and donner' is an Afrikaans metaphor for an exceedingly violent action (Literally "kick and fuck up").
[76] Theodore Petrus 'Policing South African's Ganglands: A Critique of a Paramilitary Approach' (2014) *Acta Criminologica: Southern African Journal of Criminology* 21-22.

gang activities, drug dealing and violent crime. Ironically though, the SANDF might have the opposite effect.[77]

The high crime rate on the Cape Flats cannot be solved by the military's intervention. It arguably, makes the situation in these communities even more untenable. It is decades of political apathy towards the residents of these communities together with inefficiencies of the police force which need to be addressed to create change.

2.3. Failings of the Criminal Justice System

Not only have residents of communities on the Cape Flats experienced chronic and systemic social and economic oppression and neglect, the criminal justice system has proven ineffective in providing a bulwark against and response to high crime rates in the area. One way to see the criminal justice system is as a confluence of several bodies and institutions (primarily the police, prosecutors, courts and prisons) with the aim of securing or restoring 'social control'.[78] The focus of this section will be on the failings and shortcomings of the police, as an integral component of the criminal justice system, in the fight against violent crime on the Cape Flats, showing how the ineffective and unaccountable SAPS have lost the faith and trust of the community, which has negatively affected their ability to reduce crime.

The ineffectual nature and inefficiencies of the police can, arguably, be seen as symptomatic of a much bigger problem within the criminal justice system more broadly. Consistency in the criminal justice system is important. Knowing that there is no doubt that those involved in criminal activities will be caught, prosecuted and jailed, can serve as a significant deterrent.[79] The police play a central role in the system. An efficient and effective police service can both result in a reduction of crime and increase public confidence, which maintains social order.[80] An increase in social order in the communities on the Cape Flats will aid in reversing the effects

[77] Petrus op cit note 76 at 22.
[78] Francis Pakes *Comparative Criminal Justice* 2 (ed.) (2010) 1. In defining 'social control', Pakes relies on the definition provided by Stanley Cohen which defines social control as 'the organised ways in which society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome and undesirable'.
[79] Daniel S. Nagin 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice* 1 201. 'The evidence in support of the deterrent effect certainty of punishment is far more consistent than that for the severity of punishment.'
[80] Pakes op cit note 78 at 46

of the social disintegration, which has taken place in those communities over a number of years. Moreover, social order in and of itself can play a role in the reduction criminal activities on the Cape Flats.

What we have seen in the communities on the Cape Flats is, unfortunately, a trend of ineffective and inefficient law enforcement by the police, leading to the deterioration of trust and faith in the police.[81] These problems in the SAPS stem primarily from chronic under-resourcing (including human resourcing), corruption and accountability issues within the police force.[82] Police corruption is by no means a South African or Cape Flats issue, it is an endemic problem that all police services have to varying degrees.[83] However, police corruption on the Cape Flats has reach unconscionable heights over the past few years. In 2012, Derica Lambrechts interviewed 'respondents' from Manenberg, a community on the Cape Flats, on, amongst other things, the role the police plays in maintaining peace in the community. Many people in the small group discussions agreed that police officers 'worked with the gangsters', with some claiming that the police were even 'friends with the drug merchants', with many of the respondents suggesting that they have lost faith in the police, as result of the number of police officers 'on the payroll' of gangsters.[84] This highlights the levels of corruption (or perceived corruption) that exist within the police service on the Cape Flats, which have escalated to a point where there is little or no faith in the police as an institution.

Consequently, it can be argued that, with all else having been tried, and failed, it becomes the ideal time for reform of the policing model, reviewing the police services' operational capacity in a similar vein to the review of the National Prosecuting Authority (NPA), following issues stemming from state capture.[85] At the time of writing, the South African state is looking to inject new life into important centrally organised institutions (Eskom, the NPA etc.) but the SAPS has managed to seemingly slip under the radar. It is unlikely that the police service did not suffer institutionally from state capture, but it appears to be business as usual within the

[81] Derica Lambrechts 'The Impact of Organised Crime on State Social Control: Organised Criminal Groups and Local Governance on the Cape Flats, Cape Town, South Africa' (2012) *Journal of Southern African Studies* 803.
[82] Khayelitsha Commission of Inquiry op cit note 10 at 292 and 315-317. Lambrechts op cit note 81 at 796-797.
[83] Khayelitsha Commission of Inquiry op cit note 10 at 292.
[84] Lambrecht op cit note 81 at 797. Here being 'on the payroll' refers to police officers who are or have been involved in corrupt dealings with gangsters, for example tip-offs or letting certain actions go unpunished.
[85] Elaine Pypers *The State Capture of Independent Institutions: an analysis of the National Prosecuting Authority, 1998-2017* (unpublished LLM thesis, University of the Western Cape, 2018) 101.

SAPS. This represents an ideal time for introspection when it comes to the operations and effectiveness of the police service

In his testimony in front of the Khayelitsha Commission of Inquiry Gareth Newham referred to Robert Klitgaardt's framing of corruption as equalling 'monopoly plus discretion, minus accountability'.[86] The SAPS monopoly of power and unfettered discretion will be addressed at a later stage in this dissertation.[87] Here I focus shall be on the oversight and accountability of the police service. Sean Tait, another policing expert who testified in front of the Khayelitsha Commission, outlined that oversight in a modern democracy is 'multi-layered', with three levels of control: 'government, social or civilian and internal'.[88] Unfortunately, the South African government is weak and riddled with corruption, limiting the effectiveness of their oversight functions.[89] At the same time, the SAPS's internal structures are equally hamstrung by corruption within the institution, as well suffering from a 'serial crises of top management' as argued by Newham.[90] Again, this limits the amount and effectiveness of oversight the internal structures can exercise. Moreover, as we have seen, residents of the communities on the Cape Flats have lost faith and trust in the SAPS, resigning themselves to the fact that the SAPS are a corrupt and ineffective institution. Given the limitations of the oversight mechanisms, it becomes difficult to see how the police as an institution and the police officers themselves can effectively be held accountable for their actions. An unaccountable police service contributes significantly to police corruption, which leads to an inability to exercise their functions effectively.

Graham goes on to argue that for the police to achieve their key objectives they need 'public trust and confidence' on their side.[91] Without the trust of the community (public legitimacy), Graham argues, the police cannot be effective in their role.[92] Therefore, not only does corruption in and of itself hamper the effectiveness of the police service, but it simultaneously leads to an erosion of public legitimacy in the institution which also hampers its effectiveness. A decentralised policing model with significant grass-root involvement, presents a potential solution to the crisis of corruption and public legitimacy within the SAPS. Public legitimacy

[86] Khayelitsha Commission of Inquiry op cit note 10 at 292.
[87] See Chapter 3 sub-section 3.3. 'Policing Model under the Final Constitution'.
[88] Khayelitsha Commission of Inquiry op cit note 10 at 295.
[89] Pypers op cit note 85 at 87.
[90] Khayelitsha Commission of Inquiry op cit note 10 at 294.
[91] Ibid at 290.
[92] Ibid.

will benefit from a more nuanced and social conscious policing policy, while the police service working more closely with communities, has the potential to increase accountability within the service.

2.3.1. Vigilantism on the Cape Flats

The lack of public legitimacy or faith in the SAPS is not isolated to communities on the Cape Flats but is a prevailing trend even in more affluent neighbourhoods. As a result, we have seen an increased 'democratisation' and 'privatization' of security services around Cape Town and South Africa.[93] With the increased democratisation of security services, we have seen an increased emphasis on 'community policing' – which does not have a uniform definition, but can be seen as a relationship between police and civil society in order to maintain social order.[94] Neighbourhood watches, Community Policing Forums (CPF) and vigilante organisations are all forms of community policing which are present in communities around Cape Town.[95]

While on the Cape Flats there are CPFs and neighbourhood watches, there is also an acceptance of vigilantism in these communities. Vigilante organisations,[96] have been present in various forms on the Cape Flats since at least the mid-1970s with an organisation known as the 'Manenberg Residents' Movement (Vigilantes)' operating in the Manenberg community around that time.[97] People Against Gangsterism and Drugs (PAGAD), is probably the most recognisable vigilante organisation to have operated on the Cape Flats.[98] PAGAD was formed in 1995, as a solution to high crime rates, instead of relying on the state.[99] PAGAD was centred on the empowerment of the community and mobilisation of the community against gangsterism and drugs.[100] Vigilante organisations have stepped into the vacuum left by the state both socially. Therefore, their existence reflects a lack of public legitimacy in the SAPS. Vigilantism

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[93] Mike Brogden and Preeti Nijhar *Community Policing: National and International models and approaches* (2005) 135-136; Laurent Fourchard 'The Politics of Mobilization for Security in South African Townships' (2011) 110 *Oxford Journals: African Affairs* 441 610.
[94] Fourchard op cit note 93 at 608.
[95] Ibid at 608-609; Fourchard argues that there is no clear distinction between 'vigilantism and community policing' suggesting that they should be seen as being two sides of the 'same mobilization process'. See also Western Cape Community Safety Act 3 of 2013.
[96] For the purposes of this dissertation, vigilante organisations will be defined as: organisations acting in a policing/law enforcement role, without legal authority to do so, therefore acting extra-legally and in the absence of any regulation to regulate their actions.
[97] Fourchard op cit note 93 at 615.
[98] Dixon and Johns op cit note 40 at 3.
[99] Ibid at 4.
[100] Ibid.

is fundamentally an exercise of popular will and 'localised sovereignty', which unencumbered can present a significant risk to the South African democratic project.[101]

Vigilante organisations are known not only for their inherent violence and extra-legal *modus operandi*; they are also known to harbour strong anti-government sentiments.[102] This inherent violent and extra-legal nature of vigilante groups is undesirable in the fight against high crime rates in the communities on the Cape Flats. In a society governed by the rule of law, it is impermissible to allow the existence of such organisations. Vigilante organisations are less accountable than the SAPS and are likely to contribute to the social disintegration and violent crime in communities – but communities are so desperate, they are willing to try anything. The fact that communities are willing to put their faith in vigilante organisations is an indictment on the current state of affairs within the SAPS and the criminal justice system more broadly. Vigilantism on the Cape Flats represents another example of why reform of the South African policing model could be beneficial.

2.4. Conclusion

Poverty, social disintegration, high levels of violent crime, gangsterism and drug abuse punctuate the everyday lived experience of people on the Cape Flats. Social and economic ills such as extreme poverty, gangsterism, drug abuse and fractured family structures make a fertile breeding ground for violent crime. At present the SAPS is unable to effectively help reduce the high levels of violent crime or secure the residents of the Cape Flats. This is not a recent occurrence and requires more urgent attention than carelessly sending in the SANDF. While there is literature which attributes the high crime rates on the Cape Flats to apartheid and its lasting systemic effects, a long-term project is needed in order to improve the social and economic conditions on the Cape Flats. The deployment of the SANDF into communities on the Cape Flats represents neither a viable long-term nor short-term solution to the high violent crime rates on the Cape Flats. The SANDF are not trained to fulfil the duties of the SAPS and they should not be tasked with doing so. The poor socio-economic conditions on the Cape Flats coupled with the failings of the criminal justice system, particularly the SAPS, provide ideal conditions for crime to flourish. A short-term project that can reduce the high crime rates is the

[101] Fourchard op cit note 93 at 611.
[102] Ibid at 615.

decentralisation and reform of the SAPS. Decentralisation of the SAPS has the potential to make the institution more accountable, effective and socially sensitive to the specific needs of the communities in which they operate. With the current investigations into the effectiveness and operational capacity of a number of state institutions, in the wake of state capture, it represents an ideal time to consider reform of the police service in order to make it more effective. In the next chapter I look more closely at the nature and limitations of South Africa's current centralised policing model.

Chapter 3: The South African Policing Model: Centralisation of the Model and its Limitations

3.1. Introduction

At present South Africa has a highly centralised policing model, with all significant political and decision-making powers resting with the national government. Nico Steytler and Lukas Muntingh argue that our centralised policing model (and criminal justice system) is a result of the 'repressive and ignominious policing practices' of the apartheid government.[103] The push for a strong centralist state, after the formal ending of apartheid, came primarily from the African National Congress (ANC), who were widely expected to win a significant majority in parliament post-apartheid. The idea was that a highly centralised state would afford the ANC the necessary power to build a united nation and to redress the atrocities of apartheid.[104] In the end South Africa ended up with a sort of hybrid system between a centralised and federal state. While the nine provinces have significant legislative and executive competence under Schedule 4 (concurrent competence with national government) and Schedule 5 (exclusive competence) of the FC, they have no power with regards to the police. The Provincial Executives' powers in relation to the police are limited to the monitoring, oversight and liaison functions set out in s 206 (3) of the FC, which provides as follows:

> '206. Political Responsibility.
> […]
> (3) Each province is entitled –
>
> (a) to monitor police conduct;
> (b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
> (c) to promote good relations between the police and the community;
> (d) to assess the effectiveness of visible policing; and
> (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.'[105]

[103] Steytler and Muntingh op cit note 1 at 70.
[104] Ibid at 72.
[105] Section 206 (3) of the Constitution.

Thus, while South Africa has a hybrid governance system where powers are distributed between the central government and the provinces, this centralised policing model was favoured. This centralised policing model has, arguably, been a failure in democratic South Africa considering it has failed to deliver on its mandate, to secure the inhabitants of South Africa.[106] Reform of the South African policing model is needed, as a matter of urgency, in order to create a more effective, accountable, socially sensitive and responsive police service in order for the SAPS to begin to deliver on their mandate. This chapter explores the transition from a decentralised policing model, under the Interim Constitution (IC), to a centralised policing model under the Final Constitution (FC), arguing that a decentralised policing model, established through community-orientated processes, will lead to a more effective, accountable and responsive police service. Moreover, it suggests that a constitutional amendment, reverting to a decentralised policing model would bring the Constitution closer to the needs of society. This exposition provides the reader with a critical analysis of both the centralised and decentralised policing models and the rationale behind each. I will be arguing for a decentralised model, suggesting it is a more favourable model for creating a constitutionalism more reflective of the current needs of the South African society.[107]

3.2. Policing Model under the Interim Constitution

Democratic South Africa functioned under the IC for a period of four years until the FC came into effect in February 1997. Amongst other things the IC provided the processes by which the FC would come into being.[108] As the Constitutional Court in *Certification Judgment II* outlined, there were three essential steps to the constitution-making process (i) the Constitutional Assembly (CA)[109] had to adopt the new constitutional text by a two-thirds majority,[110] (ii) that text had to comply with a prescribed set of Constitutional Principles (CPs),[111] and (iii) it could come into force only once the Constitutional Court had certified that it did indeed comply.[112]

[106] Steytler and Muntingh op cit note 1 at 67 and 71.
[107] Sibanda op cit note 21 at 483.
[108] Procedure for the drafting of the FC is contained in chapter 5 (sections 68 to 74) of the Interim Constitution.
[109] Sections 68 (1) and (2) of the Interim Constitution.
[110] Ibid section 73 (2).
[111] Section 71 (1) read with Schedule 4 Interim Constitution.
[112] Ibid section 71 (2).

Chapter 14 (sections 214, 217 and 219) of the IC dealt with 'Police and Defence' and more specifically the provinces powers in relation to the police service. Section 217 outlines the powers of the province in relation to the police service, while section 217 (3) outlined that the 'provincial legislature may pass laws' - provided that these were not inconsistent with national legislation. Section 214 (2)(a) provided for the appointment of a Provincial Police Commissioner, whose powers are subsequently outlined in section 219.[113] What is immediately recognisable is that the powers of the province, with regards to the police service, were far greater under the IC than under section 206 of the FC. Considering that section 206 of the FC only vests monitoring, oversight and liaison functions in the Provincial Executive, it represents a significant reduction in provincial powers and functions. This is something that concerned the Constitutional Court in the *Certification of the Constitution of the Republic of South Africa, 1996* (*Certification Judgment I*),[114] because it raised concerns about the violation of Constitutional Principle (CP) XVIII.2, since it represented a 'significant reduction in the powers and functions of the provinces'.[115]

3.2.1. The Constitutional Assembly and the Certification Judgments

[113] Section 219 of the Interim Constitution outlines the Provincial Commissioners' powers as the following:

(1) Subject to sections 214 and 218 and the directions of the relevant member of the Executive Council referred to in section 217 (1), a Provincial Commissioner shall be responsible for-
  (a) the investigation and prevention of crime;
  (b) the development of community-policing services;
  (c) the maintenance of public order;
  (d) the provision in general of all other visible policing services, including-
    (i) the establishment and maintenance of police stations;
    (ii) crime reaction units; and
    (iii) patrolling services;
  (e) protection services in regard to provincial institutions and personnel;
  (f) transfers within the province of members of the Service performing functions in terms of this section; and
  (g) the promotion, up to the rank of lieutenant-colonel, of members of the Service performing functions in terms of this section.

(2) Subject to sections 214 and 218 and the directions of the National Commissioner, a Provincial Commissioner shall be responsible for-
  (a) the maintenance and discipline of the Service in the province concerned;
  (b) the recruitment of members of the Service responsible for the functions set out in subsection (1);
  (c) such other functions as may be assigned to him or her by the National Commissioner under section 218 (2); and
  (d) subject to such procedures or mechanisms as may be established by the Board of Commissioners referred to in section 220(2), the transfer of members of the Service under his or her command to or from positions outside his or her jurisdiction.

[114] CCT 23/96.

[115] Ibid paras 401 and 448.

CP XVIII.2 of the IC proved to be a point of significant contestation between the Constitutional Court and the CA, in the constitution-making process. CP XVIII.2 outlined that:

> 'The powers and functions of the provinces defined in the Constitution (FC), including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this Constitution (IC).'[116]

The Constitutional Court in the *Certification Judgment I* did not certify the initial version of the 'New Text' (NT), which is how they referred to the Constitution of the Republic of South Africa, 1996, before it was certified.[117] This was because the NT did not comply with the Constitutional Principles, contained in schedule 4 of the IC, with the lack of compliance with CP XVIII.2 being of significant concern.[118]

After *Certification Judgment I* the CA was given an opportunity to provide a reply to the Constitutional Court's concerns before eventually furnishing the Court with an amended text (AT) to be certified. In the 'reply on behalf of the Constitutional Assembly' the CA submitted that the objections by the Constitutional Court were 'misconceived' and primarily as a result of a misreading of CP XVIII.2.[119] In the reply the CA argued that 'the constitutional principles allow the CA a choice of how to flesh them out or give effect to them'.[120] In other words, the CA argued that there were multiple means to achieve the ends (conformity with the CPs) and that the Court should respect their authority to decide the wording of the FC – provided it was consistent with the CPs. The CA went on to outline the following:

> 'The insistence that the final constitution in order to enjoy legitimacy, should be written by at least two-thirds of the elected representatives of all the people of South Africa, would not be satisfied if the principles are interpreted in a manner which would require a carbon copy of the interim constitution to be produced as the new text.'[121]

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[116] Schedule 4 CP XVIII.2 of the Interim Constitution (emphasis added).
[117] Supra note 114 paras 16 and 484.
[118] Ibid para 484.
[119] Certification of the National Constitution op cit note 23 at 4.
[120] Ibid.
[121] Ibid.

In other words, the FC need not be a mere replication of the IC text. The CA went on to argue that the evidence of such a choice, what constitutional regime to adhere to, lies in the words of CP I, which '[…] provide for the establishment of […] a democratic system of government […]'.[122] Furthermore, the CA argued that they had no other choice but to 'provide for the establishment of one sovereign state' – suggesting that the CPs favoured a unitary state.[123] However, the CA did suggest that there should also be 'certain parameters' for sub-national structures, citing CP XX's commitment to '[…] national unity and legitimate provincial autonomy […]'.[124]

The CA correctly asserted that the political decision on the substance of the FC ought to have rested with them, and that the Constitutional Court was there only to determine whether the substance of the negotiated text met the CPs. This is a simple enactment of the separation of powers doctrine, which the CA do allude to above. However, while the principles did not require a carbon copy of the IC, the FC was still required to conform to the principles drafted by the elected representatives. A united and sovereign state does not necessarily equate to a state where all significant powers and functions are centralised. The CA recognised this when providing that there should be legitimate provincial autonomy. The issue then becomes what constitutes 'legitimate autonomy' and what is that autonomy in relation to. This is essentially a policy decision on where to draw the proverbial line. In the NT the CA made the decision to significantly limit the powers of the provinces in relation to the police, and to favour a highly centralised model, which I would argue was in contravention of CP XVIII.2.

After the CA issued their reply to *Certification Judgment I*, they reconvened, in accordance with the provisions of s 73A (2) of the IC and passed an amended text of the new constitution referred to as the 'AT'.[125] The Constitutional Court was then required to examine afresh whether the AT complied with the CPs, this was *Certification Judgment II*. As noted above provincial police powers was one of four areas of concern for the Court in *Certification Judgment I*. When comparing the AT with the NT, the Court noted that under the AT the powers and functions of the province in respect of the police were 'still less than those contained in those corresponding provisions of the IC but they are greater than the powers

[122] Certification of the National Constitution op cit note 23 at 4.
[123] Ibid.
[124] Ibid.
[125] Supra note 24 at para 3.

vested in the provinces in terms of the NT'.[126] The Constitutional Court certified the AT, even though the powers and functions of the province were 'still less than or inferior to those accorded to the provinces in terms of the IC', because the Court believed this did not amount to a substantial deviation from the CP.[127] The Court cited the new monitoring. oversight and liaison functions contained in the AT, along with the provinces' ability to appoint a commission of inquiry into complaints of police inefficiency, as the reason for their satisfaction.

3.2.2. Rationale for Adopting a Centralised Policing Model

I am not suggesting or arguing in this dissertation that the FC is invalid because it does not meet the requirements of CP XVIII.2. The Constitutional Court clearly outlined that compliance or non-compliance of any aspect of the FC with the CPs could never be raised in any court of law going forward.[128] However, by detailing the constitution-making process, I wish to provide the reader with an understanding of how contentious the provincial policing powers was as an aspect of the FC, and to show the political climate which lead to a centralised police service.

The significant difference between the FC and the IC, in relation to provincial police power, should, however, not be seen as peculiar. It is in line with the overall diminution of provincial competencies under the FC by the ANC.[129] By looking at the individual bodies who were responsible for the drafting of each document, the political context in which each was created becomes clear. The Multi-Party Negotiating Forum (MPNF), the successor to the Congress for a Democratic South Africa (CODESA),[130] adopted the IC (containing the CPs) in 1993 before it was ratified by the apartheid parliament.[131] The MPNF was an unelected body, which the National Party (NP) favoured to be the body who drafted the FC.[132] The ANC on other hand favoured using a democratically elected body to draft the FC, and as a result the CA was constituted as a combined sitting of the first democratically elected National Assembly and the

[126] Supra note 24 para 166.
[127] Ibid para 204.
[128] Pierre De Vos and Warren Freedman (eds) *South African Constitutional Law in Context* (2014) 22.
[129] Steytler and Muntingh op cit note 1 at 73.
[130] 'CODESA was convened in late 1991 and it was this body – comprising all the major political formations in South Africs – which was tasked with drafting the interim Constitution' De Vos and Freedman (eds) op cite note 128 at 19.
[131] Ibid.
[132] De Vos and Freedman (eds) op cit note 128 at 20.

Senate.[133] Therefore, the IC should be seen as an effort by the NP, who at the time still held power, to secure their future prospects and those of the white minority. On the other hand, the FC should be seen as the ANC trying to secure as much centralised power as possible to ensure that no small pockets of power would undermine their nation building project.

It becomes evident that the centralisation of the police service in the FC was more a political move than a calculated crime fighting policy decision. At the time, the adoption of a centralised police system made sense, considering the real possibility of a fractured state developing – with white minorities groups undermining national policy. It was a time for nation building, unity and addressing the atrocities of the past, and the FC is reflective of that social context. However, over the past 25 years South Africa's social context has changed, and, while nation building remains an important project, the exceedingly high violent crime rates and living conditions on the Cape Flats present a crisis of South African constitutional democracy. Therefore, I suggest that the change in social context necessitates a re-evaluation of the reasoning relied on in creating a centralised police service.

3.3. Policing Model under the Final Constitution

The SAPS is established under Chapter 11 of the FC. Chapter 11 regulates the Security Services, which includes the defence force, the police, and the intelligence services.[134] Chapter 11 commences with the principles governing national security, which are the following –

> 'The following principles govern national security in the Republic:
> (a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, *to live in peace and harmony*, to be *free from fear and want and to seek a better life*.
> (b) The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.
> (c) National security must be pursued in compliance with the law, including international law.

[133] De Vos and Freedman (eds) op cit note 128 at 21. See also s 68 (1) of the Interim Constitution.
[134] Section 199 (1) of the Constitution.

(d) National security is subject to the authority of Parliament and the national Executive'[135]

Section 198 (a) of the FC establishes that the national security services should ensure that individuals in South Africa are able to 'live in peace and harmony' and that they are 'free from fear and want and to seek a better life'. While this might appear to be ambitious phrasing, these are the ideals that the national security services should be seeking to achieve. I suggest that if the national security services, at minimum, are not tending towards these ideals then there must be a re-evaluation of their operating capacity.

Section 199 (1) of the FC provides that part of the security services will be, amongst other things, a 'single police service', with political responsibility largely concentrated in the national executive. The objects of the police service, are 'to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and uphold and enforce the law.'[136] Consequently this shift to a centralised power under the FC affected the role in and influence over the police that the provincial governments play.

3.3.1. Provincial Policing Powers under the Final Constitution

Schedule 4 Part A of the FC outlines that the police are under the legislative competence of the provinces 'to the extent the provisions of Chapter 11 of the Constitution confer upon the provincial legislature competence'. In other words, the national legislature has legislative competence over the police service in all areas expect for those specified in Chapter 11 of the FC. Importantly, all significant political power over the police service rests with the Minister of Police and the national executive.[137]

When creating national policing policy, the national executive has a consultative duty to take into account 'the policing needs and priorities of the provinces as determined by the Provincial Executives'.[138] In turn, the provinces are entitled to liaise with the national Minister of Police on crime and policing in the provinces. In each province, a member of the provincial

[135] Section 198 of the Constitution (emphasis added).
[136] Ibid section 205 (3).
[137] Stuart Woolman 'Security Services' in Stuart Woolman et al (eds) *Constitutional Law of South Africa 2ed* (2004) 23B-11.
[138] Section 206 (1) of the Constitution.

government and MEC is politically responsible for the police in the province (in accordance with the power allocated to them under national policy).[139] A committee consisting of the Minister of Police and the provincial MECs, is responsible for the co-ordination of the police service and co-operation among the spheres of government.[140] It is unclear what exactly is required for the fulfilment of the consultative duties by the Minister of Police, under s 206 (1) of the FC. Section 206 (1) provides that the Minister of Police may only create a national policing policy 'after consulting the provincial governments', but the meaning of 'after consulting' is unclear. A literal meaning would suggest that the Police Minister merely needs to consult with the provincial MECs before creating national policing policy, with no suggestion that the Minister needs to seriously consider the suggestions made by the provincial MECs. On the other hand, a more purposive interpretation[141] would suggest that the Minister must seriously consider the considerations of the provincial MECs and try as far as possible to have national policy that reflects the needs of the provinces. As provinces have decreased control over national policy, one can only conclude that a purposive interpretation of the words 'consulting provincial governments' has not been adopted, even though the only way now for provinces to have a policing policy that addresses provincial issues is through the consultative process.[142] Therefore, in my view, it is imperative that the Minister does not simply consult, because it is mandated under law, and then ignore the recommendations of the provincial MECs. Instead, the Minister ought to take purposive approach to the matter.

In practice what we have seen is a limited role for provinces in the formulation and determination of national policing policy.[143] This has meant that provinces have essentially been at the mercy of the Minister in the determination of policing policy, even with regards to those aspects that directly affect the provinces.[144] This shows a significant lack of co-operative governance amongst the different spheres of government, when it comes to policing policy, with the central government seemingly jealously guarding their supremacy.

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[139] Section 206 (4) of the Constitution.
[140] Ibid 206 (8).
[141] 'The purpose or object of the legislation (the legislative scheme) is the prevailing factor in interpretation' Christo Botha *Statutory Interpretation: An Introduction for Students* (5ed) (2012) 97. See also *Jaga v Dönges* 1950 (4) SA 653 (A), Schreiner JA judgment.
[142] Section 206 (1) of the Constitution.
[143] Tyabazayo op cit note 30 at 21.
[144] Ibid.

Having said that, the main provincial policing power under the FC is that of oversight. Section 206 (3) outlines that a province is entitled to: (i) monitor police conduct; (ii) oversee the effectiveness and efficiency of the police service; and (iii) assess the effectiveness of visible policing. This is in addition to the liaising functions detailed above. These powers, however, are render rather ineffective, considering the provinces cannot of their own accord attach sanctions to their findings, and are limited to making recommendations to the Minister of Police.[145] Again it is up to the Minister's discretion whether these recommendations are acted upon or form part of the policing policy. In effect, the provincial role in policing has been rendered ineffectual and far removed from the significant decision-making in relation to the police.[146] If a requirement for effective policy-making is a collaborative effort between the different spheres of government, then policing policy in South Africa cannot been seen as effective at all.

Even with these serious questions regarding the reduced influence provincial governments have over the police service, the Constitutional Court was satisfied that the diminution in powers and functions was not substantial. In *Certification Judgment II*, before the Court certified the AT, they noted that the monitoring and oversight functions of the provinces were 'given more teeth' by the power to appoint a commission of inquiry into complaints of police inefficiency.[147] The Court looked to this provision when reasoning that although the 'more expansive powers of the provinces' in relation to policing provided under the IC were not fully restored, there was nevertheless a 'significantly greater degree of power and control' when comparing the AT with the NT.[148] I am of the opinion that it is unconvincing to suggest that powers of oversight, monitoring and liaising, coupled with the power to appoint a commission of inquiry amounts to a 'significant' increase in the degree of power and control. On paper it might represent a significant amount of power, however in practice (as we have seen above) these powers do not amount to much in terms of influence over the police service.

South Africa has appointed a number of commissions of inquiry to investigate and outline the issues within the state, however these commissions have for the most part been ineffective because their recommendations have not been implemented (e.g.: Marikana Commission of

[145] Steylter and Muntingh op cit note 1 at 74.
[146] Ibid.
[147] Supra note 24 para 168. See also s 206 (5)(a) of the Constitution.
[148] Ibid para 169.

Inquiry[149] and Khayelitsha Commission of Inquiry). Section 206 (5)(b) of the FC provide that once the commission of inquiry is complete, recommendations are sent to the Minister of Police. The problem lies with the fact that the Minster may decide not to act upon the recommendations or may frustrate the implementation process.[150] Again the significant amount of discretion afforded the Minister is a hinderance to the implementation and creation of effective policing policy. The Khayelitsha Commission is an example of a commission of inquiry established under s 206 (5)(a) where the recommendations of the commissioners have for the most part not been implemented, and it has been five years since the report was published.

Given the significant amount of discretion afforded to the Minister of Police when both making policy and implementing recommendations from the provinces, it renders the little influence that the provinces have almost immaterial. Moreover, this inevitably means that national policing policy lacks a contextualised understanding of what is required in each province, which is not helpful when more nuanced approaches are needed. The lack of co-operative governance amongst the different spheres of government is concerning, considering the way in which policing powers are distributed.

3.3.2. South African Police Service Act 68 of 1995

Section 205 (2) of the FC provides that national legislation must 'establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively'. This piece of legislation is the South African Police Services Act 68 of 1995 (the SAPS Act). The SAPS Act provides for the establishment of the SAPS,[151] the appointment of the National and Provincial Commissioners,[152] and the Board of Commissioners, consisting of the National and Provincial Commissioners, which is constituted in order to promote co-operation and co-ordination in the SAPS. [153]

Section 11 provides for the powers of the National Commissioner, s 11 (1) provides, generally, that the Commissioner 'shall exercise control over and manage the police service in accordance with section 207 (2) of the Constitution'. Before turning to section 207 (2) of the FC, it is

[149] Proc 50 *GG* 35680 of 12 September 2012
[150] Tyabazayo op cit note 30 at 21.
[151] Section 5 of the SAPS Act.
[152] Ibid section 6.
[153] Ibid section 10 (2).

important to take not of the fact that the appointment of the National Commissioner is the sole prerogative of the President as head of the national executive.[154] In essence, the appointment of the National Commissioner becomes a purely political decision, as opposed to finding someone who is able to effectively lead the SAPS in the execution of their mandate. In the past, the ANC have favoured the policy of 'cadre deployment'[155] to the position of National Commissioner, resulting in the appointments of Gen. Jackie Selebi and Gen. Bheki Cele amongst others. These appoints have not proven to be the best appointments, considering both were investigated for corruption during their time in office, with the former being found guilty of corruption. Cadre deployment in and of itself is not necessarily a problem, it becomes a problem when cadre's are asked to and put the needs of their political party ahead of the country's needs. Former National Commissioners General, Gen. Khomotso Phahlane and Gen. Riah Phieyega were not exactly covered in glory either, with questions being raised around their appointment and their conduct while in office. A decentralised policing system might not eradicate purely political appointments to key positions, considering the Western Cape Cabinet was involved in the appointment of the most recent Provincial Police Commissioner (Yolisa Matakata).[156] If there is a review of the current policing model this is an area that might need revisiting as well.

Section 207 (2) of the FC provides that the National Commissioner 'must exercise control over and manage the police service in accordance with the national policing policy and the direction' of the Minister of Police. This a peremptory provision, meaning the National Commissioner is bound to follow the policy and directives from the Minister of Police, which does not allow for much autonomy for the Commissioner. If a more contextualised and socially sensitive policing model is seen as the ideal, it is not beneficial to have decisions being made from the furthest point of abstraction (Minister of Police in collaboration with the national executive). Police policy creation ought to reflect a significant grassroot influence, in order to be more socially sensitive, and it is suggested that a decentralised policing system can allow for this.

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[154] Section 207 (1) of the Constitution.

[155] '[T]he filling of a range of offices with supporters of the ANC, who wield their power in those institutional roles to implement the policies of the ANC, as determined by the ANC NEC' Sujit Choudhry ''He Had a Mandate'; the South African Constitutional Court and the African National Congress in a Dominant Party Democracy' (2009) 2 *Constitutional Court Review* 1 14.

[156] Sisonke Mlamla 'Western Cape welcomes its first female police commissioner, Yolisa Matakata', *Cape Argus*, 13 December 2019, https://www.iol.co.za/capeargus/news/western-cape-welcomes-its-first-female-police-commissioner-yolisa-matakata-39186095, accessed on 25 January 2020.

Provincial Commissioners, under the SAPS Act, have 'command of and control over' the SAPS in their provinces.[157] Provincial Commissioners' powers are limited to the establishment and maintenance of police stations and units in the province and the determination of the boundaries of such station and units,[158] as well as the determination of the distribution and strength of the SAPS among different areas, station areas, offices and units.[159] While the number of police stations, where they are located and the human resource distribution in underprivileged areas is an important issue, it is an issue that has been covered in great detail in the Khayelitsha Commission and Social Justice Coalition and Others[160] case. These powers afforded to the Provincial Commissioner are undoubtedly significant on their own in attempting to secure particular communities – as has been made clear by the Khayelitsha Commission and the equality court in the Social Justice Coalition case – however, this does not mean we can ignore the enactment of policy and its creation. It is simply the recognition that more equitable distribution of police officers and police stations alone will not solve the policing issues in the communities on the Cape Flats, better policy is needed in addition.

3.4. Commentary on Mawby's Comparative Analysis of Some of the Most Popular Policing Models

Before detailing what is meant by a decentralised policing model/system, and what it would look like if implemented in South Africa, I would like to provide commentary on a few key features and functions of prominent policing models from around the world, as classified and discussed by Rob Mawby. These models are namely – the Anglo-American policing model, the Continental Europe policing model, the Colonial policing model and a Far-Eastern policing model.[161] This is in order to both provide the reader with a theoretical understanding of the dominant policing models, as well as providing a comparative analysis of other jurisdictions to see how theory has translated into practice. While there are a variety of internal and/or external pressures which help contextualise these models into the ones that operate within individual countries, it is useful to know the core features.

[157] Section 12 (1) of the SAPS Act.
[158] Ibid section 12 (2)(b).
[159] Ibid section 12 (3).
[160] See *Social Justice Coalition and Others* case.
[161] Rob Mawby 'An International Comparison of Police Systems in a Legal Context' in Monica den Boer (eds) *Comparative Policing from a Legal Perspective* (2018) 66.

3.4.1. Anglo-American Policing

The Anglo-American policing model is best described as a 'community-orientated system where the main function of the police is to provide a public service that addresses the wider needs of the community'.[162] This is a form of decentralised policing, where legitimacy is garnered from local communities, and the police are able to focus on issues that are symptomatic of community problems.[163] Consequently, the police are generally managed and organised locally, with the benefit of having local residents in uniform policing these areas – people who are more socially aware.[164] As a result of operating and working closely with communities, the police are held accountable, not through political means, but through popular opinion within the community, therefore, in theory making them more accountable and sensitive to the needs of the community. Versions of this policing model exist in England, Wales, the USA and Canada.

The Canadian constitution provides for the establishment of a federal state with considerable autonomy afforded to the provinces.[165] Policing within each province in Canada is a local government matter, the result being that a combination of provincial and metropolitan forces are responsible for policing in each province.[166] This is the basis of most of the Anglo-American policing systems, Canada in addition has a federal policing institution known as the Royal Canadian Mounted Police (RCMP). The RCMP is similar in nature to the USA's Federal Bureau of Investigation (FBI), as they are both federal police forces able to exercise their power in any jurisdiction within their respective countries. The federal police in Canada have three services they perform: they are a 'federal police force with national responsibilities throughout the country', they 'maintain the responsibilities for policing the Yukon and Northwest Territories', and they can be 'subcontracted to provide police services at provincial and municipal levels'.[167] While in Yukon and the Northwest Territories, the RCMP provides the policing, which ordinarily would be provided by the provincial and/or metropolitan police forces, in Ontario and Quebec the RCMP have far less of a presence – with provincial and metropolitan police forces operating in these provinces.[168]

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[162] Mawby op cit note 161 at 67.
[163] Ibid.
[164] Ibid.
[165] Rob Mawby 'Models of Policing' in Tim Newburn (eds) *Handbook of Policing* (2006) 29.
[166] Ibid.
[167] Ibid.
[168] Mawby op cit note 165 at 29-30.

As a result, it can be argued that Canada has two policing systems, one in Ontario and Quebec and one in Yukon and the North-western Territories. However, it should rather be seen as the blueprint of the 'Anglo-American' policing system being present, with further modifications being made, owing to internal and or external influences. This becomes an example of how policing systems through necessity become moulded to meet the needs of the state and provinces.

The USA on the other hand, has maintained a strict adherence to the Anglo-American policing system blueprint, with a five-tier policing system. At a federal level in the USA, there is no agency specifically tasked with policing, but there are approximately 50 agencies that perform law-enforcement functions (for example: the FBI and the Drug Enforcement Administration (DEA)).[169] The second level is state law enforcement, of which 49 of the 50 states have their own police force, which are traditionally accountable to state governors.[170] The third level of law enforcement is the county; most counties have their own police departments, headed by a sheriff who is elected for a period of between two to four years.[171] The fourth level of law enforcement is at a city level.[172] Finally, the fifth level of law enforcement is small town police institutions which operate at a rural level.[173] One of the major draw backs of this exceedingly decentralised model is that there are often jurisdictional overlaps, which need co-operative governance effort. It is a level of co-operative governance which South Africa has been unable to achieve. Such a detailed stratification of policing, therefore, might not be ideal considering the constraints of local/ municipal government.

3.4.2. Continental Europe Policing

Continental European countries traditionally tend to have an increased emphasis on political control, with close ties to the government.[174] The traditional continental model is one that is characterised by a centralised police force that is militaristic in nature.[175] A highly centralised

[169] Mawby op cit note 165 at 31.
[170] Ibid.
[171] Ibid.
[172] Ibid.
[173] Ibid.
[174] Mawby op cit note 161 at 69-70.
[175] Ibid at 70.

police force would explain the close political ties with the government. While this is the traditional continental model it does not have universal acceptance in countries across Europe.

There have been a number of countries that have adopted a decentralised policing system – with significant emphasis placed on regional and/or local autonomy for police forces.[176] For example, Iceland and Switzerland have district and canton-based police forces; similarly in Germany, which is a federal state, policing is primarily organised in the counties (Länders).[177] On the other hand there are still countries with centralised police forces, for example Sweden and the Irish Republic.[178] Belgium, on the other hand has adopted a 'mixed model', where a federal police force operates at a national level, working in conjunction with approximately 200 local police forces.[179]

Interestingly, the Netherlands had previously restructured their police force into 25 regional forces and a force with national responsibilities.[180] In 2013, the police in the Netherlands were subject to another restructuring, where they created, a national centralized police force.[181] This is of interest, because the Dutch have not been hesitant to change a policing model where shortcomings are evident. The Dutch have not been hesitant to adapt and restructure their policing system to meet the needs of their society, and South Africa should take comfort in the fact that they have restructured their police force a number of times. The situation in the Netherlands suggests that the policing system is not above reform and that the system can be tailored to suit the needs of society at any given time. Simply put the Dutch case study presents a strong argument for the restructuring of the police force if the needs of society dictate as much. Furthermore, South Africans should not be deterred by the reality that they might have to tinker with the model a few times in order to arrive at a model which suits the South African context. Moreover, there must be a realisation that further adaption might be required as society evolves over time.

[176] Mawby op cit note 161 at 70.
[177] Ibid.
[178] Ibid.
[179] Ibid.
[180] Ibid.
[181] Ibid.

Despite these differences across continental Europe, there remains an understanding that the traditional continental Europe model is a centralised, often militaristic, police force with strong political ties to the central government.

3.4.3. The Japanese Policing Model

With the exception of the British and the North American police systems, the Japanese policing model is one of the more extensively researched policing systems in the world.[182] The police force in Japan are administrated centrally through the National Police Agency, but also have a significant decentralised policing presence, with 47 local prefectures, which are predominantly locally funded.[183] The assumption would be then that the Japanese included localised police prefectures to provide a community-orientated policing service, this is however, not the case at all. The Japanese, in fact, have been keen to prevent divided loyalty between the national and local policy amongst their police officers, and have been known to recruit police officers from other areas and transferring officers regularly.[184] In Japan, the balance between a local police presence and a central organising system has been modified and refined over the years to match the distinct Japanese culture.[185] They have not simply imported a rigid system from the West or Continental Europe; they have found what works best for them.

This, again, underscores the notion that policing systems cannot simply be transplanted 'wholesale' from other contexts without further contextualisation. Moreover, it suggests that for a policing model to operate effectively within a particular state it will require further contextualisation.

3.4.4. The Colonial Policing Model

Policing systems implemented in colonies around the world are interesting because they were set up to safeguard and protect the rights of the colonists, while at the same time subjugating the indigenous people. For instance, the British enforced an entirely different policing system in its colonies to the one operating in England and Wales – it was one that was tailored to

[182] Mawby op cit note 161 at 32.
[183] Mawby op cit note 165 at 76.
[184] Ibid.
[185] Ibid.

control and subjugate the majority of the population.[186] It is a model which the British exported throughout British-controlled Africa, Asia and the Caribbean. Where the objective is to control and subjugate colonised persons, the establishment of a strong police institution becomes paramount. In order to enforce control, the police in these colonies were highly centralised, politicized and generally militaristic in nature.[187] The South African police force under the imperial British flag was no different, with the police being used as an instrument of control and subjugation for the 'merchant capital'.[188]

Unfortunately, as Mike Brogden and Clifford Shearing suggest, even though there has been significant political change in South Africa, the police systems continue to resemble those of the colonial era.[189] In many ways the FC, whether consciously or unconsciously, has adopted the policing system of the British under colonial rule in South Africa. The SAPS under the FC is both a highly centralised and highly politicised institution, with the centralised government exercising a level of control over the provinces, to limit dissenting policy creation. Again, as we have seen, this is as a result of the ANC government's need to control the policies of the police service post-1994, to prevent dissenting policies which could contribute to a fractured national identity. It is as Mawby suggests –

> '[in] postcolonial societies, new governments also sometimes [retain] old police systems in order to establish and assert their authority. South Africa provides an excellent example of the difficulties in enacting reform.'[190]

This is a policing system with its ideological and contextual roots in the colonial era, and the South African government, whether consciously or not, have chosen to adopt this policing system in democratic South Africa. This, again, reinforces the need for a reform and a contextualising of the policing system in South Africa, to align it with the needs of present-day South Africa, with the aim of progressing it past a system which has it ideological and contextual roots in the colonial era. Moreover, the SAPS is legitimised through their political connections with the central government, rather than through popular support in communities

[186] Mike Brogden and Clifford Shearing *Policing for a New South Africa* (1993) 2.
[187] Mawby op cit note 161 at 74.
[188] Brogden and Shearing op cit note 186 at 2.
[189] Ibid at 3.
[190] Mawby op cit note 161 at 81.

or areas in which they operate.[191] This is again reminiscent of the colonial policing system.[192] A decentralised policing system would require police policy creation to move to the municipal and local level, bringing the police closer to the community in turn making them more receptive to community needs thereby also gaining community legitimacy.

3.5. A Decentralised Policing Model for Democratic South Africa

Having analysed a selection of the most popular policing models around the world above, this section provides the reader with a brief description of what a decentralised policing system in South Africa might look like.

The ideal or goal should be to create a community-orientated policing system, which seeks to address the needs of the particular communities and areas in which the police service operates. This is the ideal for which the Anglo-American policing model strives and is best achieved through a decentralised policing system, as police services are able to work closer with communities. Consequently, I would suggest this ideal should form the foundation of a decentralised policing system in South Africa. Given how diverse (culturally and socially) the South African population is, a decentralised policing model makes sense. With the above in mind, lessons must be learnt from the Japanese case study, where emphasis is put on a contextualised balance between a central organising structure and community-orientated policing system. A balance between a centralisation and decentralisation model, accounting for a slight bias either way, is preferable rather than a model couched solely in one ideology. For instance, the policing system in the USA is highly decentralised with cities and towns showing almost complete autonomy. I would argue, this is not ideal in the South African context, because smaller municipalities are not able to operate in this manner, as a result of already poor levels of service delivery at local government level.[193] Mfundo Masuku and Nokukhanya Jili attribute the poor service delivery at local government level to, amongst other things, poor levels of communication between the different levels of government.[194] Therefore, an element of centralisation might be beneficial.

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[191] Brogden and Shearing op cit note 186 at 3 and Mawby op cit note 161 at 76.
[192] Mawby op cit note 160 at 76.
[193] Mfundo Mandla Masuku and Nokukhanya Noqiniselo Jili 'Public Service Delivery in South Africa: The Political Influence at Local Government Level' (2019) 19 *Journal of Public Affairs* 4 1.
[194] Ibid at 2.

South Africa should be aiming for a system where there is a central organising structure but with localised policing and policy creation. The ideal balance for the present South African context would need to be found. Fortunately, there is no need to start from scratch as there is a decentralised police system envisaged in the IC.

As has been established above, s 214 of the IC provides for the establishment of a police service which is structured at both a national and provincial level. Further, ss 218 and 219 of the IC outlines the responsibilities of the National and Provincial Commissioners respectively. Under the IC, the National Commissioners responsibilities are exercised subject to s 214 (in particular the act of Parliament envisaged under s 214 (1)) as well as the Minister's directions referred to in s 216 (1).[195] On the other hand when Provincial Commissioners exercise their responsibilities they are subject to s 214, in the same way as the National Commissioner. However, unlike the National Commissioner they are subject to the directions of a member of the Provincial Executive Council responsible for police service rather than the National Minister.[196] This highlights the decentralised nature of the police system, as the Provincial Commissioner's immediate superior is a member of the Provincial Executive Council, who is not necessarily connected to the central national government.

It is important to note that the powers and functions of the provincial service, under the IC, are 'subject to' those powers and functions of the national service.[197] The meaning of 'subject to' is, however, not immediately determinable in this context. It could mean, either, that the provincial powers and functions, are 'subject to' qualifications or restrictions of the national powers and functions or powers and functions can only be exercised without prejudice to what maybe done under other provisions.[198] Dion Basson suggests that the meaning of 'subject to' is not necessarily as ambiguous as first appears, arguing that it should mean that the provincial powers and functions of the police service can only be exercised without prejudicing what may be done nationally.[199] Basson substantiates his position by suggesting that it is 'in accordance with the clear purpose of s 214 to establish a national as well as provincial [s]ervice'.[200] Under s 214 the provincial powers and functions of the service are clearly distinguishable from the

[195] Section 218 (1) of the Interim Constitution.
[196] Ibid section 219 (1).
[197] Dion Basson *South Africa's Interim Constitution: Text and Notes* (2014) 266
[198] Ibid.
[199] Ibid.
[200] Ibid.

national powers and functions, suggesting an intention to create two distinct services. I tend to agree with Basson's interpretation of the phrase 'subject to'. The first interpretation seems to suggest that there is still this idea that the provincial service falls under the national service (in a centralised way), instead of the two working simultaneously in a mutually beneficial way to achieve their individual and collective objectives (in a decentralised way).

The IC can help serve as a framework for balancing a centralised organising system with localised community-orientated policy creation and implementation. The focus of the policing model should be less about control and suppression of separatist agenda's and more about effective policing of communities – this can be realised through the decentralisation of the police service. Moreover, the tendency is to have an over politicised police service when power is centralised; this politicised nature invariably detracts from the police services primary obligations. Again, a balance ought to be struck between the South African police service's political accountability, and their accountability to the communities which they service. I would suggest this balance lies with a decrease in the politicisation of the police service and an increased direct involvement of the communities (emphasis on bottom-up policy creation). Finally, provinces must be the site of the decentralised police service because, as has been alluded to above, not all local/municipal governments necessarily have the capacity or expertise to operate a police service. This might be a necessity in the future but not right now.

Chapter 4: The Western Cape and its Quasi-Provincial Police Service

4.1. Introduction

The reality is that we inhabit a world where policing, safety and security are not and cannot be the sole responsibility of the national and/or provincial police service. Ian Loader has suggested that we live in a world of plural networked policing, with the 'network of power' extending beyond governments 'to policing activities engaged in by citizens *below* government'.[201] This is based on the fact that South Africa, post-apartheid, has seen an increased pluralisation of policing within public spaces, which includes civilian led community crime prevention organisations such as neighbourhood watch groups.[202] A number of neighbourhood watch organisations operate in and around the Cape Flats, trying to offer a more legitimate alternative (at least theoretically).[203] In addition to these community crime prevention organisations there are a number of private security companies, the result of which is that unofficially South Africa has already, through necessity, decentralised and democratised its policing model. This in and of itself is not a bad thing, as I have emphasised above, and neither is South Africa alone in this form of decentralisation and democratisation of its policing model. However, it is important that these non-state actors are subject to the same level of scrutiny and regulation as the central police.[204] While Julia Berg and Jean-Pierre Nouveau show that the private security industry is regulated; neighbourhood watches and other similar organisations remain largely unregulated or at least not adequately regulated as this chapter will show.[205] Without adequate regulation and levels of scrutiny and accountability these community organised associations become little more than vigilante organisation[206] with a more palatable name.

For instance, when assessing the role that neighbourhood watches (particularly in the Western Cape) play in communities, the importance of strict scrutiny and regulation becomes evident, considering they are increasingly performing 'quasi-policing' functions in public spaces. While this increased interest in the performance of policing functions is concerning, what is even

[201] Ian Loader 'Plural Policing and Democratic Governance' 9 (2000) *Social and Legal Studies* 3 323-324 (his emphasis).
[202] Julia Berg and Jean-Pierre Nouveau 'Towards a Third Phase of Regulation: Re-imagining Private Security in South Africa' (2011) 38 *SACQ* 23.
[203] Fourchard op cit note 92 at 64.
[204] Tessa G Diphoorn *Twilight Policing: Private Security and Violence in Urban South Africa* (2015) 33.
[205] Berg and Nouveau op cit note 201 at 27 -30.
[206] See footnote 95 where vigilante organisations are defined for the purposes of this dissertation.

more alarming is the level of political interference in the operations of these neighbourhood watch associations (in the form of funding and training) by the Western Cape Government and the City of Cape Town. This co-optation of the neighbourhood watch mandate, around Cape Town, has in effect given the province its own private, unofficial and unconstitutional *de facto* provincial police force. This is likely as a result of the limited powers the provinces have in relation to the SAPS; and is an attempt to carve out as much influence over (quasi-)policing institutions in the province, as possible. Needless to say, this is not the form of decentralisation of the police force being advocated for in this dissertation, nor is it a desirable form of decentralisation, given its extra-legal nature.

The intention of this chapter is to provide the reader with an insight into how: (i) the increase in quasi-policing functions performed by neighbourhood watch organisations in the broader Cape Town area, coupled with (ii) a significant amount of political interference in the workings of these neighbourhood watches has effectively led to the creation of an unofficial, unconstitutional 'quasi-provincial police force'.

4.2. The Western Cape Community Safety Act and Neighbourhood Watches

When the role of a neighbourhood watch (NHW) was originally conceptualised, the intention was not for NHWs to have a strong policing nature, rather the intention was to establish a far more benign set of organisation. Section 6 of the Western Cape Community Safety Act[207] (WCCSA) provides for the establishment and accreditation of NHWs. There is no national legislation that provides for their establishment.[208] The SAPS Act (national legislation) provides only for the establishment of Community Policing Forums (CPFs) – no specific reference is made to NHWs.[209] Schedule 4 Part A of the FC provides that provincial legislatures have legislative competence over the police, only to the extent conferred upon them in Chapter

[207] Act 3 of 2013.
[208] Section 1 (with reference to section 6) of the WCCSA defines neighbourhood watches as the following: "[N]eighbourhood watch" means an organisation or association contemplated in section 6(1) and accredited in terms of section 6(5)

6. (1) Any organisation or association that –
(a) operates not for gain as a voluntary organisation or association;
(b) comprises members who are residents, tenants or owners of immovable property or with any other relevant interests in the area where the organisation or association operates; and
(c) has the purpose of safeguarding its members, their immovable and other property against crime and other safety concerns in the area where the organisation or association operates,

[209] Section 19 of the SAPS Act.

11 of the FC. Ostensibly the Western Cape provincial legislature's power to legislate on matters related to the establishment and regulation of NHWs is sourced in Chapter 11 section 206 (3). Section 206 (3) is the only section in Chapter 11 that provides for provincial legislative power in relation to the police. It should be noted, however, that the entitlements under section 206 (3) do not necessarily equate to the allowance for the establishment of NHWs or other similar organisations. Lukas Muntingh is of the opinion that the enactment of the WCCSA, which provides for the establishment and accreditation of NHWs, can be seen as an indication of the province's dissatisfaction with the state of policing and an attempt to 'roll back the highly centralised nature of policing in the country'.[210]

Legislative competence being sourced in section 206 (3) of the FC makes sense when considering the aims and objectives of NHWs, contained in sections 2 and 3 of the Western Cape Provincial Constitution and Code of Conduct for Neighbourhood Watches in the Western Cape 2003 (WCPC & CoC).[211] The aims and objectives of NHWs can broadly be summarized as the following: to promote unity and good neighbourly relations in the community, while assisting the local police in the creation of a safe and secure environment, and ultimately developing a co-operative and working relationship between the community and the SAPS.[212] This is closely linked to the wording in section 206 (3) of the FC - in fact sections 2 and 3 almost mirror the wording in s 206 (3). It should be noted that section 206 (3) outlines the only areas in relation to the police on which the province is permitted to legislate. Further, Muntingh highlights the fact that the WCCSA (which provides for the establishment of NHWs) was passed in the Western Cape provincial legislature to help 'improve monitoring of and oversight over the police' in line with s 206 (3).[213] It is clear then that the establishment of NHWs is to aid in the achievement of the provinces mandate of monitoring and overseeing the functions of the SAPS (in addition to the achievement of sections 2 and 3 of the WCPC & CoC) and not to actively police communities in the absence of the SAPS. As a result, active policing of communities would mean they are in contravention of sections 2 and 3 of the WCPC & CoC, because that refers only to co-operation with SAPS not independence from SAPS.

[210] Muntingh op cit note 16 at 19.
[211] NHWs are defined, established and accredited under section 6 of the WCCSA, while their actions appear to be regulated by both the WCPC & CoC as well as an updated Code of Conduct for Neighbourhood Watches in the Western Cape 2016 (CCNWW).
[212] Sections 2 and 3 of the WCPC & CoC.
[213] Muntingh op cit note 16 at 17.

4.2.1. Community Policing Forums (CPFs) and The Western Cape Police Ombudsman

Before addressing concerns around the increase in political interference and quasi-policing functions being performed by community-organised associations, I touch briefly, for the sake of comprehensiveness, on CPFs and the Western Cape Police Ombudsman.

In the South African literature on community policing, CPFs are referenced extensively when engaging with the democratisation of policing and community organised crime prevention associations. As outlined above, CPFs are provided for and established under national legislation (the SAPS Act). Neither the SAPS Act nor the Uniform Constitution for Community Police Forums and Boards in the Western Cape 2010 (UCCPF) provide a clear definition of what exactly a CPF is. In its preamble, the UCCPF, simply notes that community policing exists to give effect to the relevant provisions within the Constitution and the SAPS Act. The objects and functions of CPFs are contained in sections 18 and 22 of the SAPS Act, which is supplemented by the UCCPF. When assessing the 'objects of community police forums and boards' as outlined in section 18 of the SAPS Act, it becomes apparent that CPFs and NHWs are exceedingly similar in nature, and share an almost identical mandate. There appears to be no discernible difference between CPFs and NHWs, besides that one is provided for under national legislation and the other is provided for under provincial legislation. Therefore, for the purposes of this dissertation they will not be treated as individual concepts, rather reference to one should, through implication, include reference to the other. Moreover, both concepts serve the same purpose in this dissertation – they provide an example of the democratisation of policing, to a community level, and the decentralisation of police power. Again, this sort of decentralisation is ideal however, such organisations must be regulated properly and should not usurp the policing power of the police, even in the absence of the police otherwise they become little more than vigilant organisations.

Under the WCCSA the premier has a mandate to appoint an Ombudsman after consultation with the provincial police minister, the provincial police commissioner and the executive heads of municipal police services.[214] The police Ombudsman is another example of how the Western Cape provincial government, through the WCCSA, is pushing for more influence over the

[214] Muntingh op cit note 16 at 21.

police even with their significantly curtailed power under the FC. The police Ombudsman in the Western Cape is the only one of its kind in the country, it is little surprise then that it is found in the only province controlled by an opposition party.

The primary function of the Ombudsman is to 'receive and […] investigate complaints submitted in terms of section 16, regarding inefficiency of the police or a breakdown in relations between the police and any community'.[215] This power is largely a reactive measure, and unfortunately the Ombudsman has no proactive powers to investigate of its own volition - hampering the effectiveness of the institution.[216] Unfortunately, the recommendations contained in the Ombudsman's report have no binding effect on the provincial police commissioner, as there is no constitutional basis for the power.[217] Further, it should be noted that the Ombudsman does not have remedial powers.[218] This is, however, not to say that the recommendations of the Ombudsman are completely powerless; the provincial police minister is obliged to furnish a recommendation to the national police minister on investigations that could not be concluded by the Ombudsman.[219] In theory this system appears to be logical, however, the problem of political apathy or a lack of political will to act on recommendations, is an ever present concern especially when individuals are asked to act from the furthest point of abstraction. This appears to be a prevailing concern throughout different aspects of the South African policing model, and is something that needs to be addressed as a matter of urgency. A potential cure for this being the decentralisation of the policing model in order to increase effectiveness and accountability in decision-making.

A police Ombudsman has the potential to strengthen the oversight and accountability of police. If the ideal is to create a more efficient, effective and accountable police service, then it makes sense to mandate the appointment of a police Ombudsman in every province under the decentralised policing model.

[215] Sections 15-16 of the WCCSA.
[216] Muntingh op cit note 16 at 21.
[217] Ibid at 22.
[218] Ibid.
[219] Section 17 (8) WCCSA.

4.3. Creation of a Quasi-Provincial Police Force

From the above analysis it is evident that NHWs could not have been established to be actively involved in policing of communities,[220] since the provincial government simply does not have the legislative competence under section 206 (3) to create such an institution. NHWs and other similar institutions were created to supplement the efforts of the SAPS, monitor and oversee the actions of the police service and to provide a link between the police and the community. However, we have seen an erosion of the distinction between the functions and operations of the SAPS and the NHWs. Increasingly we have seen NHWs type organisations usurping the powers of the SAPS and actively policing communities, this is likely due to both the ineffectiveness of the SAPS and the absence of the SAPS officials when needed. Moreover, as has been suggested above, without proper regulation, accountability and supervision these organisations effectively become vigilante groups (like PAGAD) especially when they undertake policing activities independently of the police. Presumably NHW organisations have a thin veil of legitimacy, when compared to vigilante groups, that veil as a result of the assumption that they are constituted legally, regulated and accountable under the law and operate within law. Without that veil they must be assumed to be one and the same.

Further concerns should be raised around the significant political involvement, by the provincial government, in the functions of NHWs, with the effect being that the province dictates the mandate of these organisations. The net result being the creation of a quasi-provincial police force in the Western Cape, controlled by the provincial government and operating without adequate regulation or supervision. This represents a rather crude attempt by the province to roll back the highly centralised policing model in the country.[221] The purpose of this section is to provide the reader with an understanding of how the Western Cape's provincial government has in effect created their own quasi-provincial police force and why this is a dangerous prospect.

4.3.1. Neighbourhood Watches: An Increased Emphasis on Policing

[220] For the purposes of this dissertation when I refer to active policing or policing by community lead organisations, it is in reference to policing activities which usurp the powers of the SAPS and are actions which are exercised independently of the police service.
[221] Steytler and Muntingh op cit note 1 at 85.

Section 6 (1)(c) of the WCCSA outlines the purpose of NHWs as '*safeguarding* its members, their immovable and other property against crime and other safety concerns'.[222] This purpose, incorrectly, suggests that the NHWs ought to be involved actively in policing functions, rather than merely supplementing the efforts of the police service. Further, section 10 (a) of the Code of Conduct for Neighbourhood Watches in the Western Cape 2016 (CCNWW) outlines that 'when possible' patrolling members of NHWs should 'alert the SAPS in the area'. This provision appears to suggest that the role of an NHW is not simply to supplement the actions of the SAPS, rather it suggests that NHWs can both: act independently from the SAPS and/or fulfil the policing functions of the SAPS.

Firstly, the suggestion that NHWs can act independently from the SAPS is concerning, because a NHW cannot legitimately deliver upon their mandate contained in section 206 (3) of the FC read with sections 2 and 3 of the WCPC & CoC if they do not operate in conjunction with the SAPS. The presence of the SAPS legitimates the actions of these NHWs, as the SAPS are the primary policing institution in South Africa's centralised policing model. Secondly, NHW organisations should not be policing communities, that is the sole prerogative of the SAPS. Not least because the SAPS are trained specifically in community policing (which includes knowledge of the Criminal Procedure Act[223] (CPA)) and their actions are extensively regulated and scrutinised to prevent impeding the rights of others. Moreover, there are certain policing actions and functions, under the CPA and other pieces of legislation, which can only be performed by police officials and private persons cannot assume these powers and functions. Some of these provisions in the CPA include, but are not limited to, section 21 'article to be seized under search warrant', section 22 'circumstances in which article may be seized without search warrant', sections 23 (1)(a) 'search of arrested person and seizure of article', section 24 'search of premises', s 40 'arrest by a peace officer without warrant', and section 44 'execution of warrants of arrest'. It is evident that there are necessary limitations on the actions that can be undertaken by private persons under the law. Yet there has been a concerted effort to illegally enable NHWs to perform policing functions, both in the regulatory documents and from the provincial government as it will be highlighted below.

[222] Section 6 (1)(c) of the WCCSA (own emphasis added).
[223] Act 51 of 1977

The absence of any adequate regulatory measures and/or accountability mechanisms has further emboldened NHWs to step into the policing shoes of the police, in the absence of the SAPS, without fear of legal ramifications. An example of the inadequate regulation of NHWs and their activities is the accreditation process under the WCCSA. Section 6 (7) of the WCCSA provides that the provincial minister must publish, annually, in the Provincial Gazette a list of accredited NHWs. On 3 May 2019, then Minister of Community Safety Dan Plato, published in *Provincial Gazette Extraordinary* 8090 the list of accredited NHWs for 2019. There are a handful of NHWs, which are fully operational at the time of writing, which did not appear on the list – three examples being the Mannenberg, Pinelands and Kommetjie neighbourhood watches. This is cause for concern, because how can you regulate the activities of a NHW of whose existence you are unaware? Moreover, the accountability levels for the actions of individuals operating within the organisation is next to nothing. After a quick assessment of the internal code of conduct of the Pinelands NHWs (PNW) it becomes evident why strict regulation of these organisations is important. Section 5.1.15 of the PNW Code of Conduct,[224] provides a list of 'items [that] could, under different circumstances, be used for the purpose of protecting private property and/or self-defence'. Amongst the items listed in section 5.1.15 are 'bush knives' and '*pangas*', which are weapons that are capable of inflicting serious bodily damage. While it is suggested that these weapons are carried in self-defence and/or protection of private property, there is a thin line between what is acting in self-defence versus acting in an intimidatory or provocative manner. While private persons are allowed to act in self-defence and in protection of private property, individuals in the area (community members or otherwise) have the right to be 'free from all forms of violence from either public or private sources'[225]. Encouraging members to carry such weapons, will only lead to more tension and unease in the community and could ultimately lead to vigilantism, i.e. people taking the law into their own hands. It is clear then that better and more onerous regulation of these organisations is needed going forward, regardless of the role they play in communities, in order to prevent absurdities in internal regulation.

In summation, NHWs, at least in the broader Cape Town area, are becoming more prominent, likely as a direct result of the high violent crime rates around the Cape. Given the SAPS's apparent inability to adequately secure communities, NHWs have seen it pertinent to fulfil their

[224] Accessible on the PNW website: https://www.pinelandsnw.co.za/constitutions/.
[225] Section 12 (1)(c) of the Constitution.

policing functions where they have been absent or ineffective. Loose regulatory structures and elements of the WCCSA have arguably facilitated the quasi-policing functions of these organisations, functions which are beyond their intended mandate. All of the above makes NHWs and similar organisations exceedingly similar to vigilante organisations, and in a modern-day democracy vigilantism cannot be seen as acceptable.

4.3.2. Political Interference in the Functions of Neighbourhood Watches

Regulation 4 (2)(a) of the Western Cape Community Safety Regulations 2016 (WCCSR) provides that the founding documents of NHWs must provide for the following: 'the purpose of the neighbourhood watch and for it to operate not for gain and *not to promote the activities of any political party*'.[226] In other words, NHWs are required to be politically neutral, and therefore should not be influenced by any political party to directly or indirectly promote their agenda. Since 2008, however, what we have seen is the City of Cape Town, controlled by the Democratic Alliance (DA) and official opposition to the ANC, spend approximately R3 million on 'support' for NHWs, including training funding and resource allocation.[227] Once you fund and train an organisation, it is indisputable that you control that organisation's mandate to a significant extent and in effect end up promoting your agenda and policy decisions. It is uncontroversial then to state that, given the funding, resource allocation and training that the DA led City of Cape Town allocates to these NHWs, the NHWs are enacting, to an extent the policy of the DA.

This claim is further bolstered by the fact that the training of these NHWs by the city is based on the highly controversial 'Broken Window theory'.[228] On 27 May 2019, the City of Cape Town via their official twitter page (@CityofCT), outlined that they have been training NHWs in 'broken window theory and community policing principles'. Broken window theory, as the basis for law enforcement, has been criticised for empowering police (and similar institutions)

[226] Regulation 4 (2)(a) of the WCCSR (emphasis added).
[227] Sisonke Mlamla, 'City of Cape Town praises Neighbourhood Watch members', *Cape Argus*, 22 October 2019, https://www.iol.co.za/capeargus/news/city-of-cape-town-praises-neighbourhood-watch-members-35527404, accessed on 12 January 2020.
[228] Broke Window Theory is a criminological theory that states, 'that bad social conditions (visible crime and civil disorder) make criminals out of people who have no more natural inclination to follow a life of coercive anti-sociality than anyone else'. Robert Shanafelt 'Crime, Power, and Policing in South Africa: Beyond Protected Privilege and Privileged Protection' in in Pino and Wiatrowski (ed.) *Democratic Policing in Transitional and Developing Countries* (2006).

to disobey laws of criminal procedure, with a policy of 'stopping and frisking' individuals without *reasonable* suspicion being implemented.[229] The implementation of this theory supports a hard stance on policing, with the presumption that people are guilty before proven innocent.[230] It is this brazen suppression of the rights of an individual that has made this law enforcement mechanism highly controversial and not suited for a democratic state under the rule of law.

With the DA taking a policy stance to implement broken window theory-based policing, NHWs have subsequently adopted this policy, and should be seen as promoting the agenda of the DA. It is evident then, that the DA have co-opted a significant number of, presumably politically neutral, NHW organisations around Cape Town into enacting their policy and agenda. It is this political control over NHWs and increased policing nature of NHWs that suggests that the provincial government has, in effect, created their own localised police force with far less regulation and accountability. Moreover, this disjuncture or disharmony between the policy being enacted by the NHWs and the SAPS is not ideal as it creates confusion and tension between two organisation that should be complementing each other. This is likely to lead to a fracturing of the national identity. Decentralisation of the police should rather be done in a democratic and transparent manner, with the different levels of government on the same page.

4.4. Conclusion

It is not only as a result of the failings of the SAPS that we have seen an increase in localised, community-lead crime prevention organisations; given the complexities and dynamics in policing modern societies this form of democratisation and decentralisation has become an almost inevitable evolution. The democratisation and decentralisation of the policing model in and of itself is not something negative, provided that it is done in a manner that respects the rule of law and provides for effective regulation and scrutiny of the non-state actors. Unfortunately, in Cape Town we have not seen appropriate or effective regulation and scrutiny of these non-state community crime prevention organisations. The NHWs in Cape Town are an example of how loosely these non-state actors are regulated, and the problems that can arise if these sorts of organisation are not scrutinised to the same level as the SAPS.

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[229] David Dixon 'Broken Windows, Zero Tolerance, and the New York Miracle' (1998) 10 *Current Issues in Criminal Justice* 1 99.

[230] Bernard E. Harcourt and Jens Ludwig 'Broken Windows: New Evidence from New York City and Five-City Social Experiment' (2006) 73 *University of Chicago Law Review* 284.

NHWs were ostensible created to improve monitoring of and oversight over the police; working in conjunction, not independently from, the SAPS. In addition, the core functions of NHWs are to promote unity and good neighbourly relations, assist the local police, and co-operation (working relationship) between the community and SAPS. These locally organised crime prevention groups were not created to actively police communities, that is the sole mandate and function of the SAPS primarily because the police are trained in community policing and the relevance of the CPA, and are regulated accordingly. However, inadequate scrutiny and regulation of community crime prevention organisations has allowed the creation of a *de facto* provincial police service.

This inadequate regulation of the NHWs has allowed for an increase in policing functions by NHWs, as the regulatory framework confuses the mandate/function of NHWs for one which involves active policing, effectively usurping the functions of the SAPS. This is as a result, in part, of the absence and ineffectiveness of the SAPS and in part to the provincial government trying to carve out as much power and influence over (quasi-)policing institutions as possible because of the centralised nature of policing. What is, arguably, more problematic about the inadequate regulation of NHWs is the interference and appropriation of the mandate of NHWs by the provincial government and City of Cape Town. NHWs are meant to be apolitical institutions, however, the provincial government (the DA) has been training and funding NHWs in Cape Town for several years now. To make matters worse, the DA has been basing the training of these NHWs on the 'Broken Window' theory, which is a highly controversial; it is a theory which is not ad idem with national policing policy, which is problematic. Again, this highlights how the local and provincial governments in Cape Town have been attempting to increase influence and power over (quasi-)policing institutions, considering the increase in policing nature of the NHW organisations.

While this is problematic and needs to be addressed as a matter of urgency, it reflects the need for a legitimate localised police service to provide a more social sensitive form of policing in these communities.

Chapter 5: Conclusion

Violent crime rates in South Africa are at untenable levels and have been for a number of years now. It has reached a point where it constitutes a significant threat to South Africa's democracy and it should be treated accordingly. South Africa's democracy cannot be said to be doing well, or even alright, when during the reporting year of 2016/2017 there were, on average, 50 attempted murders and 109 rape cases reported daily, with hundreds, maybe even thousands, more incidents going unreported and forgotten about each day. While there are number of underlying factors that contribute to this, in South Africa, crime is inextricably linked to the poverty, marginalisation and oppression of people in South Africa as a legacy of apartheid, with socio-economic inequalities remaining the main cause of crime in South Africa. Crime, and violent crime, is a problem faced by the whole of South Africa, but it is the communities on the margins and the periphery of society that are disproportionately worse off. Communities such as those situated on the Cape Flats of Cape Town, which served as a representative case study of the plight faced by many underprivileged and under-policed communities. To compound their problems, the South African Police Service has proven to be inadequate and ineffective in policing and securing communities across South Africa.

South Africa has a public safety crisis, and the South African constitutional project must be reflective of its societies need for change in order to address this crisis. Fundamentally a constitution should be reflective of the will of the people, providing the legitimacy for the state to govern (social contract theory[231]). If the South African Constitution is not reflective of the needs or the will of the people, then it ought to be amended to become more aligned thereto. The current centralised policing model provided for under the Constitution, 1996, has failed to deliver effective, accountable and responsive policing services in South Africa – this failure has been significantly more pronounced in underprivileged marginalised areas in South Africa. A reasonable person would recognise the fact that change is needed in order to establish a police service capable of delivering on its mandate. In this dissertation it has been suggested that this disjuncture, between the needs of the people and what is provided for under the Constitution of 1996, requires correction. Consequently, it is submitted that decentralising the South African police service will create a more effective, accountable and responsive police

[231] Stuart Woolman 'My Tea Party, Your Mob, our Social Contract: Freedom of Assembly and the Constitutional Right to Rebellion in *Garvas v SATAWU (Minister for Safety & Security, Third Party)* 2010 (6) SA 280 (WCC)' (20111) 27 *SAJHR* 3 346.

service; reflective of the needs and the will of the people meaning to have an effectively functioning police service.

This dissertation has sought to show that institutional reform of the South African policing model, in the form of decentralisation, presents a viable option in the fight against and reduce violent crime across South Africa. While recognition is given to the fact that total, or at least near total, eradication of violent crime will require long term systemic change of the socio-economic conditions in South Africa, reform of the policing model represents a necessary short-term step to decreasing violent crime in South Africa.

Now is an ideal period for such reform of the police service, considering South Africa is in the process of assessing the efficiency and operational capacity of a lot of centrally controlled institutions, emanating post state capture revelations. The police forms an integral part of the criminal justice system, acting in concert with the NPA, courts and the prisons, a system which has not been performing optimally for a number of years. For the past year at least, 2019, there has been a significant amount of attention placed on the operations and effectiveness of the NPA following the appointment of Shamila Batohi as the new NDPP. This is in order to reinvigorate and breathe new life into the NPA. Unfortunately, for some or the other reason the same emphasis has not been placed on the seriously underperforming SAPS. Given the current reform within the criminal justice system, now presents an ideal time to critically evaluate the functioning of the SAPS, and to drive reform within the institution.

Communities on the Cape Flats, to a large extent, have lost all faith and trust in the abilities of the SAPS to secure and effectively police their communities. This is representative of a far broader mistrust in the abilities of the state and the provincial government to adequately deliver services in these communities. The people in these communities are so desperate for any form of relief from the high levels of violent crime, that they have called for the deployment of the SANDF into communities on the Cape Flats. While the national government have often obliged and deployed the SANDF into the communities worst effected, the regular deployment of the SANDF represents an uncaring and lazy approach by the national government. The SANDF are simply not trained to do community policing, and their deployment does nothing to improve the chronic and systemic inefficacy of the SAPS (who are the primary community policing institution). Further, deployment of the SANDF increases the tension in these communities furthering the untenable daily struggle faced by residents. Deployment of the SANDF into

these predominantly Black communities also conjures up unwanted and regrettable parallels with these communities under emergency rule during apartheid. Longer term, more thoughtful and dynamic policies are needed to aid these communities. Once again, the decentralisation of the police service represents a more carefully consider and longer-term project to aid in the eradication of violent crime on the Cape Flats.

South Africa moved from a decentralised policing model under the Interim Constitution to a centralised policing model under the Final Constitution. This decision was a highly contentious one at the time as the powers of the province, in relation to the police service, under the Final Constitution are significantly less when compared to the powers under the Interim Constitution. The decision to move to a highly centralised policing structure appears to be primarily a politically motivated decision, rather than a decision on how to best secure the inhabitants of South Africa. The Final Constitution was drafted by the first democratically elected parliament, in which the ANC held a large majority. The ANC were keen to secure as much centralised power, in order to implement redress measures more smoothly and to ensure no small pockets of power could not undermine this process. In effect, a reversion to a decentralised policing model represents the first occasion in democratic South Africa where the policing model adopted will be based on how best to secure the inhabitants of the country. At the time national unity was likely the most pressing issue, whereas now attention needs to be given to South Africa's public safety crisis, as a matter of urgency.

Under the current policing model all significant power is centred in the Minister of Police and the National Commissioner of Police (who are politically appointed). While the provinces, on the other hand, are limited to liaison, oversight and monitoring functions over the police service. These powers have largely proven inconsequential as provinces cannot attach sanctions *mero motu*, they are only able to make recommendations to the Minister of Police. Whether these recommendations end up being implemented is a matter of the political will of an individual sitting at the furthest point of abstraction in the chain of command. The Minister may very well decide to not act upon the recommendations or may even frustrate the implementation process of recommendations. It is submitted that a decentralised policing model will improve this situation, even if only marginally, as recommendations from communities or officials will be made at a provincial level, where they ought to be more socially conscious and aware of what is required.

By looking at different jurisdictions policing models, it enables South Africa to make an educated and well-informed decision as to the benefits and draw backs of various policing models. Moreover, a comparative analysis of this nature provides an amount of solace to South Africans given that many other countries have grappled – often chopping and changing between systems – with which policing model best suited to their context. There is also a recognition that finding the ideal policing model might involve a bit of trial and error and mixing and matching models from different jurisdictions.

Decentralisation of this nature is not uncommon around the world and is most commonly found in the Anglo-American context. What is ideal about the Anglo-American model is that it is a community-orientated system, with residents/community members doing patrols, where the main aim is to address the needs of specific communities. This allows for community buy-in in the policing process, allowing for policy to emanate primarily from the bottom up rather than from the top down, which allows for a more effective and accountable police service. Moreover, the police service becomes more nuanced and socially sensitive to the needs of particular communities, which is ideal in a country like South Africa which is still so divided. Further, it allows for the retention of a centralised police service operating at a federal level, moving into provinces when needed, while the bulk of the community policing will be done at a provincial level. Similar to the Japanese model, South Africa will need to find the right balance between the police power at a federal level and the police power at a provincial level. It is, however, unfortunate that this decentralisation of the police service is not able to go down to the local/municipal government level right now, considering the lack of expertise and capacity at that level of government. However, it might be a viable option going forward if South Africa can address its deficiencies at local government level.

Under the Interim Constitution, there is already an existing framework for a decentralised policing model in South Africa, which simply needs to be further contextualised. It is not a matter of reinventing the wheel necessarily.

Finally, we have seen both in South Africa and across the globe the process of democratisation and decentralisation of policing powers; with private institutions and community-led crime prevention organisations playing an increased role. However, it is important for these non-state actors to be regulated and scrutinised to the same level as the SAPS. Unfortunately, that has not been the case in the Western Cape where neighbourhood watches (a community-led crime

prevention mechanism) are being under regulated. This in turn has meant that neighbourhood watches have been allowed to act beyond their mandate and become co-opted by the provincial government of the Western Cape. The City of Cape Town and the Western Cape Provincial Government have funded, resourced and trained a number of neighbourhood watches around the Cape Town, resulting in them controlling, to an extent, the actions of the community organisations. This, in effect, has allowed the Province and the City to create their own unofficial and unconstitutional quasi-provincial police service, which they have significant influence and over which they have power. Decentralisation is the ideal, however, it must be done through legitimate and democratic processes, otherwise these community-led organisations become little more than vigilante organisations, acting extra-legally. This form of decentralisation cannot be accepted in a democratic country, governed by the rule of law.

In summation, with all things considered there is significant value in revisiting a decentralised policing model in South Africa. The social context in the country demands some form of change, as the current policing model has not been able to deal with the public safety crisis facing South Africa. Decentralising the police will create a more effective, efficient, accountable and socially sensitive police service, which is what is needed in South Africa now receiving attention. With the reform of parts of the criminal justice system in South Africa, as a result of state capture, now is an ideal time to be thinking about reform of the police.

REFERENCES

Primary Sources:

Constitutions

The Constitution of the Republic of South Africa Act 108 of 1996.

The Constitution of the Republic of South Africa Act 200 of 1993.

Legislation

Criminal Procedure Act 51 of 1977.

Group Areas Act 41 of 1950.

Population Registration Act 30 of 1950.

South African Police Services Act 68 of 1995.

Western Cape Community Safety Act 3 of 2013.

Western Cape Community Safety Regulations in Proc 19 *PG* 7671 of September 2016.

Case Law

Certification of the Amended Text of the Constitution of the Republic of South Africa, 1996 CCT 37/96.

Certification of the Constitution of the Republic of South Africa, 1996 CCT 23/96.

Jaga v Dönges 1950 (4) SA 653 (A).

Minister of Police and Others v Premier of the Western Cape and Others 2014 (1) SA 1 (CC).

Social Justice Coalition and Others v Minister of Police and Others (EC03/2016) 2019 (4) SA 82 (WCC).

Secondary Sources:

Books

Altbeker, Anthony *A Country at War with Itself: South Africa's Crisis of Crime* (2007), Jonathan Ball publishers, Michigan.

Basson, Dion *South Africa's Interim Constitution: Text and Notes* (2014), Juta & Co, Cape Town.

Botha, Christo *Statutory Interpretation: An Introduction for Students* (5ed) (2012), Juta, Cape Town.

Brogden, Mike and Nijhar, Preeti *Community Policing: National and International models and approaches* (2005) Willan Publishing, London.

Brogden, Mike and Shearing, Clifford *Policing for a New South Africa* (1993), Routledge Publishing, London and New York.

De Vos, Pierre and Freedman, Warren (eds) *South African Constitutional Law in Context* (2014) Oxford University Press, Cape Town.

Diphoorn, Tessa G *Twilight Policing: Private Security and Violence in Urban South Africa* (2015), University of California Press, Los Angeles.

Mawby, Rob 'An International Comparison of Police Systems in a Legal Context' in Monica den Boer (eds) *Comparative Policing from a Legal Perspective* (2018), Edward Elgar Publishing Limited, London.

Mawby, Rob 'Models of Policing' in Tim Newburn (eds) *Handbook of Policing* (2006), Willan Publishing, London.

Pakes, Francis *Comparative Criminal Justice* 2 (ed.) (2010) Willan Publishing, London.

Shanafelt, Robert 'Crime, Power, and Policing in South Africa: Beyond Protected Privilege and Privileged Protection' in Pino and Wiatrowski (eds) *Democratic Policing in Transitional and Developing Countries* (2006), Routledge Publishers, Philadelphia.

Shaw, Mark *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire* (2002) Hurst and Company, London.

Smythe, Dee *Rape Unresolved: Policing Sexual Offences in South Africa* (2015) UCT Press, Claremont.

Steytler, Nico and Muntingh, Lukas 'Meeting the Public Security Crisis in South Africa: Centralising and Decentralising Forces at Play' in Bernard Martin and Raymond Koen (eds.) *Law and Justice at the Dawn of the 21st Century Essays in Honour of Lovell Derek Fernandez* (2016) UWC Publishers, Bellville.

Woolman, Stuart 'Security Services' in Stuart Woolman et al (eds) *Constitutional Law of South Africa* 2ed (2004).

Journal Articles

Berg, Julia and Nouveau, Jean-Pierre 'Towards a Third Phase of Regulation: Re-imagining Private Security in South Africa' (2011) 38 *SACQ*.

Bruce, David 'Policing Powers, Politics, Pragmatism and the Provinces: Revitalising Policing over-sight in the Western Cape' (2012) 40 *SACQ*.

Choudhry, Sujit ‘‘He Had a Mandate’; the South African Constitutional Court and the African National Congress in a Dominant Party Democracy’ (2009) 2 *Constitutional Court Review* 1.

Demombynes, Gabriel and Özler, Berk ‘Crime and Local Inequality in South Africa’ (2005) 76 *Journal of Development Economics* 2.

Dixon, Bill and Johns, Lisa-Marie ‘Gangs, Pagad & the State: Vigilantism and Revenge Violence in the Western Cape’ (2001) 2 Centre for the Study of Violence and Reconciliation: *Violence and Transition Series.*

Dixon, David ‘Broken Windows, Zero Tolerance, and the New York Miracle’ (1998) 10 *Current Issues in Criminal Justice* 1.

Fourchard, Laurent ‘The Politics of Mobilization for Security in South African Townships’ (2011) 110 *Oxford Journals: African Affairs* 441.

Harcourt, Bernard E. and Ludwig, Jens ‘Broken Windows: New Evidence from New York City and Five-City Social Experiment’ (2006) 73 *University of Chicago Law Review*.

Jensen, Steffen ‘Discourse of Violence: Coping with Violence on the Cape Flats’ (1999) 25 *Social Dynamics* 2.

Kinnes, Irvin ‘Gangs, Drugs and Policing the Cape Flats’ (2014) *Acta Criminologica*: *Southern African Journal of Criminology*.

Lambrechts, Derica ‘The Impact of Organised Crime on State Social Control: Organised Criminal Groups and Local Governance on the Cape Flats, Cape Town, South Africa’ (2012) *Journal of Southern African Studies*.

Lancaster, Lizette and Kamman, Ellen ‘Risky Localities: Measuring Socioeconomic Characteristics of High Murder Areas’ (2016) 56 *SACQ*.

Legassick, Martin ‘Forced Removals in Greater Cape Town, 1948 -1970’ (2006) *Abahlali Online*.

Loader, Ian ‘Plural Policing and Democratic Governance’ 9 (2000) 3 *Social and Legal Studies*.

Manaliyo, Jean-Claude ‘Townships as Crime ‘Hot-Spot’ Areas in Cape Town: Perceived Root Causes of Crime in Site B, Khayelitsha’ (2014) 5 *Mediterranean Journal of Social Science*.

Masuku, Mfundo Mandla and Jili, Nokukhanya Noqiniselo ‘Public Service Delivery in South Africa: The Political Influence at Local Government Level’ (2019) 19 *Journal of Public Affairs* 4.

Muntingh, Lukas ‘Modest Beginnings, High Hopes: The Western Cape Police Ombudsman’ (2018) 64 *SACQ*.

Nagin, Daniel ‘Deterrence in the Twenty-First Century’ (2013) 42 *Crime and Justice* 1.

Neethling, Theo ‘Non-Traditional Military Tasks: The Defence Force in Policing and Peacekeeping’ (1998) *Stellenbosch University*.

Palmary, Ingrid ‘Social Crime Prevention in South Africa’s Major Cities’ (2001) *Centre for the Study of Violence and Reconciliation* (CSVR).

Petrus, Theodore ‘Policing South African’s Ganglands: A Critique of a Paramilitary Approach’ (2014) *Acta Criminologica: Southern African Journal of Criminology*.

Ross, Eleanor and Rasool, Shahana ‘You go to Campus with Fear and Come Back with Fear’ (2019) 68 *SACQ*.

Sibanda, Sanele ‘Not Purpose-made – Transformative Constitutionalism, Post-Independence Constitutionalism and the Struggle to Eradicate Poverty’ (2011) 22 *Stellenbosch L Rev* 3.

Singh, D ‘Resorting to Community Justice when State Policing Fails South Africa’ (2005) 18 *Acta Criminologica* 3.

Tyabazayo, Phumlani ‘The Khayelitsha commission of inquiry: Challenging the scope of provincial policing powers’ (2014) 50 *SACQ*.

Van Der Spuy, Elrena and Armstrong, Adam ‘Policing of an Urban Periphery: The Case of Khayelitsha’ (2014) 27 *S. Afri. J. Crim. Just.*

Woolman, Stuart ‘My Tea Party, Your Mob, our Social Contract: Freedom of Assembly and the Constitutional Right to Rebellion in *Garvas v SATAWU (Minister for Safety & Security, Third Party)* 2010 (6) SA 280 (WCC)’ (20111) 27 *SAJHR* 3.

News Articles

Chronic, ‘The definition of black consciousness by Bantu Stephen Biko’, *Chimurenga*, 11 September 2017, available at http://chimurengachronic.co.za/the-definition-of-black-consciousness-by-bantu-stephen-biko/, accessed on 19 November 2019.

Davis, Rebecca ‘Calls to extend army deployment to Cape Flats as SANDF claims success’, *Daily Maverick*, 29 August 2019, https://www.dailymaverick.co.za/article/2019-08-29-calls-to-extend-army-deployment-to-cape-flats-as-sandf-claims-success/, accessed on 29 August 2019.

Mbanyele, Stuart and Faull, Andrew ‘Resolving systemic violence on the Cape Flats requires more than just ‘boots on the ground’’, *Institute for Security Studies*, 08 August 2019, https://issafrica.org/iss-today/a-plan-to-end-cape-towns-violence, accessed on 19 January 2020.

Mlamla, Sisonke ‘City of Cape Town praises Neighbourhood Watch members’, *Cape Argus*, 22 October 2019, https://www.iol.co.za/capeargus/news/city-of-cape-town-praises-neighbourhood-watch-members-35527404, accessed on 12 January 2020.

Mlamla, Sisonke 'Ramaphosa extends SANDF deployment on Cape Flats to March 2020', *Cape Argus,* 16 September 2019, https://www.iol.co.za/capeargus/news/ramaphosa-extends-sandf-deployment-on-cape-flats-to-march-2020-33077607, accessed 26 September 2019.

Mlamla, Sisonke 'Western Cape welcomes its first female police commissioner, Yolisa Matakata', *Cape Argus,* 13 December 2019, https://www.iol.co.za/capeargus/news/western-cape-welcomes-its-first-female-police-commissioner-yolisa-matakata-39186095, accessed 25 January 2020.

Sicetsha, A 'Cape Town murder rate raises by more than 18% in one month', *The South African,* 28 June 2019, available at www.thesouthafrican.com/news/cape-town-murder-rates-raises-one-month/, accessed 24 September 2019.

Stuurman, Ziyanda 'Military Intervention is not a Crime-Fighting Solution', *Mail & Guardian,* 15 July 2019, available at https://mg.co.za/article/2019-07-15-military-intervention-is-not-a-crime-fighting-solution#.XS2lTk1T0sU.email, 27 November 2019.

Reports

Certification of the National Constitution *Reply on Behalf of the Constitutional Assembly* (1996).

Khayelitsha Commission of Inquiry Proc 9 *PG* 7026 of 24 August 2012.

Marikana Commission of Inquiry Proc 50 *GG* 35680 of 12 September 2012.

South African Police Service *Annual Crime Report* (2019).

Masters Thesis

Pypers, Elaine *The State Capture of Independent Institutions: an analysis of the National Prosecuting Authority, 1998-2017* (unpublished LLM thesis, University of the Western Cape, 2018).

Codes of Conduct

Code of Conduct for Neighbourhood Watches in the Western Cape 2016.

Western Cape Provincial Constitution and Code of Conduct for Neighbourhood Watches in the Western Cape 2003.