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LLM by Coursework and Minor Dissertation

**A New Sphere of Vigilantism in South Africa in the Age of
Social Media?**

**Operation Wanya Tsotsi – an Analysis of Prospects for
Collaboration with the Police**

University of Cape Town

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CHAPTER 1: INTRODUCTION

‘South Africa Has A Serious Vigilante Justice Problem’.¹ This pronouncement by Stone in the title of her article reflects widely held negative opinions about vigilantes. According to the article, ‘at least two people a day die as a result of vigilante [...] attacks in South Africa’.² These statistics are indeed frightening and unfortunately do not reflect the potential positive contribution to the fight against crime that vigilantes could make. An increasing preoccupation towards vigilantes is visible.³ Vigilantes are seen as hostile and a threat to the human rights contained in the Constitution of South Africa.⁴ This negative association is also reflected in the legal definition of vigilantism, which is characterised by illegal methods in order to take the law into one’s own hands.⁵

Buur and Jenson, however, explored vigilantism from a different angle and advise that the phenomenon has to be studied as a practice and not as an object because of its ambiguity.⁶ Consequently, each vigilante group should be considered individually in order to explore their intention, their methodology and their contribution to the community. In line with this, it should be recognised that the form and methods of various vigilantes in South Africa differ widely. Considering the grave incidence of crime in South Africa, and the fact that vigilantes and police often pursue the same goal, the time is ripe to examine whether certain groups are suitable for collaboration with the police if they are willing to refrain from illegal methods. This could provide an important avenue through which the capacity of the police could be enhanced and supported by civilians and is thus worthy of serious attention.

¹ Stone, Jasmine ‘South Africa Has A Serious Vigilante Justice Problem – Check These Stats’ (2019), available at <https://www.2oceansvibe.com/2019/03/06/south-africa-has-a-serious-vigilante-justice-problem-check-these-stats/>, accessed on 27 January 2020.

² Ibid.

³ Buur, Lars & Jenson, Steffen ‘Introduction: Vigilantism and the Policing of Everyday Life in South Africa’ (2004) 63 *African Studies* 139; Häefele, Benjamin ‘Vigilantism in the Western Cape’ (2020) Department of Community Safety, Provincial Government of the Western Cape, available at https://www.westerncape.gov.za/text/2006/4/vigilantism_in_the_western_cape.pdf, accessed on 28 December 2020; Lancaster, Lizette ‘Is mob violence out of control in South Africa?’ (2019), available at <https://issafrica.org/iss-today/is-mob-violence-out-of-control-in-south-africa>, accessed on 28 December 2020; Schnitzler, Antina von et. al. ‘Guardian or Gangster? Mapogo a Mathamaga: A Case Study.’ (2001) 3 *Violence and Transition Series* 33.

⁴ Buur, Lars & Jensen, Steffen op cit note 3 at 139; Constitution of the Republic of South Africa, 1996.

⁵ <https://www.lexico.com/en/definition/vigilantism>, accessed on 30 November 2019;

<https://dictionary.cambridge.org/de/worterbuch/englisch/vigilantism>, accessed on 28 December 2020;

<https://legal-dictionary.thefreedictionary.com/Vigilantism>, accessed on 28 December 2020;

<https://www.oxfordlearnersdictionaries.com/definition/english/vigilante>, accessed on 28 December 2020,

[https://www.merriam-](https://www.merriam-webster.com/dictionary/vigilante#:~:text=%3A%20a%20member%20of%20a%20group,from%20Merriam%2DWebster%20on%20vigilante)

[bster.com/dictionary/vigilante#:~:text=%3A%20a%20member%20of%20a%20group,from%20Merriam%2DWebster%20on%20vigilante](https://www.merriam-webster.com/dictionary/vigilante#:~:text=%3A%20a%20member%20of%20a%20group,from%20Merriam%2DWebster%20on%20vigilante), accessed on 28 December 2020.

⁶ Buur, Lars & Jensen, Steffen op cit note 3 at 148.

Both the history of South Africa and the media have helped to shape the negative attitude towards vigilantism. While vigilantism was largely politically orientated during apartheid and supported by the state, it has changed since the end of apartheid, with citizens using illegal methods in order to establish safe neighbourhoods.⁷ The media often refers to vigilantism by reference to incidents of mob justice, that is ‘a violent spectacle where victims, and the communities with which they are linked, proclaim the extent of their suffering and seek vengeful redress’⁸. Those mobs are described as fast-paced, emotionally charged and relatively spontaneous.⁹ This obscures the fact that many vigilante groups have been formed because of the inability of the police to fight crime in poverty-stricken areas.¹⁰

Nevertheless, it is true that vigilante groups use some reprehensible methods. Corporal punishment, including whipping and stoning, banishing unwanted people by destroying their homes and even necklacing¹¹ are common methods applied by vigilantes for minor offences.¹² These methods are why vigilantes and the police have always been pitted against each other. However, new methods of vigilantism that have emerged from the use of the internet could provide a new point of intersection between the police and vigilantes. The use of the internet, especially social media, could play an important role in citizens supporting the work of the police.

The internet has reinvigorated the punitive practice of public shaming. The extensive public participation on social media platforms has allowed vigilantes to expose people online in order to enforce social norms.¹³ The internet is a new terrain for public shaming because of its far greater public access. Vigilantes utilise the internet in order to achieve a greater exposure and reach a greater number of people. Therefore, public shaming is more potent than ever. The police have also recognised that the internet gives them access to new opportunities. For instance, the police in Vancouver asked the public to share evidence in the form of videos and photographs after a riot in order to track down perpetrators.¹⁴ In another example, the police in

⁷ Moncada, Eduardo ‘Varieties of vigilantism: conceptual discord, meaning and strategies’ (2017) 18 *Global Crime* 403.

⁸ Super, Gail ‘Punishment, violence and grassroots in South Africa – The politics of populist punitiveness’ (2016) 18 *Punishment & Society* 329.

⁹ Buur, Lars & Jensen, Steffen op cit note 3 at 140.

¹⁰ Tshehla, Boyane ‘Non-State Justice in the Post Apartheid South Africa – A scan of Khayelitsha’ (2002) 6 *African Sociological Review* 65.

¹¹ Necklacing is a synonymous for vigilantism in South Africa and kills people in a cruel way. A paraffin-doused tyre is put around a person’s neck and set alight.

¹² Super, Gail ‘What’s in a name and why it matters: A historical analysis of the relationship between state authority, vigilantism and penal power in South Africa’ (2017) 21 *Theoretical Criminology* 514.

¹³ De Vries, Amy ‘The Use of Social Media for Shaming Strangers: Young Peoples View’ (2015) 48th *Hawaii International Conference on System Science* 2055.

¹⁴ Laidlaw, Emily B. ‘Online Shaming and the Right to Privacy’ (2017) 6 *Laws* 4.

Portland, Oregon, received online evidence of paedophilia that helped to facilitate over 300 convictions.¹⁵ It is thus not a radical suggestion that the use of the internet (in the case of this paper, by vigilantes), and social media sites in particular, provides fertile ground for enhancing police work and cooperation between the police and communities.

The particular vigilante group under scrutiny in this paper is Operation Wanya Tsotsi. The group patrols the township Galeshewe in Kimberly and metes out non-fatal corporal punishment to alleged criminals. What makes them special amongst South African vigilantes is that before they apply corporal punishment a photograph of the person is taken that shows the person and the alleged wrong committed. This photograph is published on their Facebook page in order to publically shame the alleged perpetrator and warn the community.¹⁶

There is currently no research in South Africa that examines whether the approach of online shaming applied by Operation Wanya Tsotsi is suitable for collaboration with the police. This paper thus responds to this gap in the literature and focuses on the publication of alleged criminals in the public domain on social media sites. The topic of sending photographs of alleged criminals in private groups is not considered given the limited nature of this work. In addition, this paper does not seek to justify the illegal methods applied by vigilantes, but rather to explore the extent to which their methods could be adapted in order to facilitate collaboration with the police and transformation into a legitimate crime fighting group.

Consequently, this paper aims to contribute to understanding vigilantes in the age of social media and establish a legal approach that enables collaboration between Operation Wanya Tsotsi and the police. To achieve this goal the method of Operation Wanya Tsotsi is analysed in the context of criminal offences under South African criminal law. A content analysis of Operation Wanya Tsotsi's Facebook site is conducted.

Having established the context and importance of this study in chapter one, the second chapter defines the concept of vigilantism, thus showing the peculiarities of vigilantism in South Africa as impacted by that country's recent history. Subsequently, the specific features and method of the vigilante group Operation Wanya Tsotsi is introduced. Thus, the third chapter deals with a comprehensive analysis of Operation Wanya Tsotsi's Facebook page with their focus on the methodology of public shaming. A discussion of whether this approach violates

¹⁵ Kohm, Steven A. 'Naming, Shaming and Criminal Justice: Mass-Mediated Humiliation as Entertainment and Punishment' (2009) 5 *Crime, Media, Culture* 192.

¹⁶ Clark, Christopher "“People call us before they call the police”: a vigilante group's quest for legitimacy" (2017) available at <https://www.groundup.org.za/article/people-call-us-they-call-police-vigilante-groups-quest-legitimacy/>, accessed on 10 October 2019.

South African law, as well as why public shaming has currently become so prominent, follows in chapter four. Finally, chapter five presents a proposal as to how Operation Wanya Tsotsi could render their approach lawful and thereby facilitate collaboration with the police. At the same time, the chapter explores the advantages and disadvantages of the presented proposal in order to illustrate that the approach is suitable for the future.

1.1 A comment on ethics

The analysis of photographs that show alleged criminals published by Operation Wanya Tsotsi raises ethical concerns. It was not necessary to obtain ethical clearance to conduct this research because the page is part of the public domain. The data used for the paper was accessible to every user of Facebook as Operation Wanya Tsotsi created an open group. This even means that every user of the internet can access the material relied on for this paper by searching the group on google. The decision to use social media and give access to the posted content can be referred to data that is available in public spaces.¹⁷ Operation Wanya Tsotsi has almost 20 000 followers and shares information with them therefore; the privacy of Operation Wanya Tsotsi is already restricted.¹⁸ The privacy of the subjects of the photographs is not further invaded as no images are reproduced in this paper that reveal a subject's face without their consent.

¹⁷ Flicker, Sarah; Haans Dave & Skinner, Harvey 'Ethical Dilemmas in Research on Internet Communities' (2004) 14 *Qualitative Health Research* 130.

¹⁸ Eysenbach Gunther & Till, James E Till 'Ethical issues in qualitative research on internet communities' (2001) *BMJ* 1104.

CHAPTER 2: VIGILANTISM IN SOUTH AFRICA

In order to understand why vigilantes and the police are viewed in an oppositional light and why collaboration seems to be impossible, the concept of vigilantism must be explored. Therefore, this chapter will define the term vigilantism in an international context and discuss the special features of vigilantism in South Africa. South Africa's unique history primarily shaped the specific kinds of behaviours that are included in the term vigilantism. The term is associated with illegal activities, which makes collaboration with the police impossible. Taking into account that the term could have changed through digitalisation, it is important to understand the different contexts at play.

2.1 What constitutes vigilantism?

The roots of the word “vigilante” are in Latin.¹⁹ “Vigil” means “awake” or “observant”.²⁰ The Lexico legal dictionary defines vigilantism as ‘[I]law enforcement undertaken without legal authority by a self-appointed group of people’.²¹ Therefore, vigilantism is defined in terms of illegal action. Vigilantism is a reaction to real or perceived criminal behaviour²² and is a movement that typically occurs on a local basis, which means that people who reside together in a neighbourhood try to keep their living environment safe.²³ The phenomenon occurs primarily in developing countries, but it is not limited to those countries.²⁴

Furthermore, certain characteristics need to exist in order to define an action as vigilantism. First, the people who are part of the group need to plan their action and have intentions to combat crime.²⁵ Therefore, any action of legitimate self-defence cannot be vigilantism.²⁶ Secondly, the vigilantes need to be private citizens who participate on a voluntary basis.²⁷ Thirdly, it has to be a social movement.²⁸ In other words, the people who combat crime

¹⁹ Häefele, Benjamin op cit note 3 at 2.

²⁰ Ibid.

²¹ <https://www.lexico.com/en/definition/vigilantism>, accessed on 30. November 2019,
<https://dictionary.cambridge.org/de/worterbuch/englisch/vigilantism>, accessed on 28 December 2020;
<https://legal-dictionary.thefreedictionary.com/Vigilantism>, accessed on 28 December 2020;
<https://www.oxfordlearnersdictionaries.com/definition/english/vigilante>, accessed on 28 December 2020;
<https://www.merriam-webster.com/dictionary/vigilante#:~:text=%3A%20a%20member%20of%20a%20group,from%20Merriam%20Webster%20on%20vigilante>, accessed on 28 December 2020.

²² Johnston, Les ‘What is Vigilantism’ (1996) 36 *The British Journal of Criminology* 229.

²³ Johnston, Les op cit note 22 at 234.

²⁴ Moncada, Eduardo op cit note 7 at 403.

²⁵ Johnston, Les op cit note 22 at 220.

²⁶ Johnston, Les op cit note 22 at 222.

²⁷ Ibid.

²⁸ Ibid.

do not profit from it and the state or agencies do not support them.²⁹ Vigilantes are thus independent.³⁰ Fourthly, participants have to use force or the threat thereof because violence is a common feature of vigilantism.³¹ Fifthly, it occurs when people do not follow institutionalised norms.³² That means that vigilantism occurs as a reaction to real or perceived deviance to crime or social norms.³³ Social norms as rules that are taken for granted in a community. For instance, smoking weed as a bad habit. Therefore, scholars agree that vigilantism can already occur when vigilantes have the feeling that justice or the good of society is in danger.³⁴

Vigilantism can be divided into two forms: ‘crime control’ and ‘social control’.³⁵ Crime control refers to people that use illegal methods in order to harm other citizens suspected of having committed a crime.³⁶ In their opinion these suspects escape justice due to governmental inefficiency, corruption, or the leniency of the juridical system, therefore, private persons have to execute punishment in order to gain justice.³⁷ This is the most common form of vigilantism.³⁸ On the other hand, ‘[e]stablishment violence directed against groups that are competing for, or advocating a redistribution of, values within the system can be considered social group control vigilantism’.³⁹ ‘This is based on the recognition that not all violence perceived as supportive of the status quo is exercised against “normal” criminal activity. Rather, illegal coercion is often the response of those who feel threatened by upwardly mobile segments of society or by those who appear to advocate significant change in the distribution of values.’⁴⁰ These two concepts can overlap.⁴¹ Overlapping happens especially in close communities in particular in neighbourhoods and religious communities. For example, adults of the London Jewish community try to banish drug pushers, muggers and skinheads in order to protect the Jewish youth.⁴² This behaviour can involve both forms of vigilantism. The members of the Jewish Community try to preserve the Jewish social identity by banning people that threaten the existence of the community.⁴³ This is social control. At the same time, they exert crime control

²⁹ Johnstone, Les op cit note 22 at 226.

³⁰ Dumsday, Travis ‘On Cheering Charles Bronson: The Ethics of Vigilantism’ (2009) 47 *The Southern Journal of Philosophy* 51.

³¹ Johnstone, Les op cit note 22 at 226.

³² Johnstone, Les op cit note 22 at 220.

³³ Johnstone, Les op cit note 22 at 229.

³⁴ Dumsday, Travis op cit note 30 at 55.

³⁵ Johnstone, Les op cit note 22 at 228.

³⁶ Rosenbaum, H. Jon & Sederberg, Peter C. ‘Vigilantism: An Analysis of Establishment Violence’ (1974) 6 *Comparative Violence* 548.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Rosenbaum, H. Jon & Sederberg, Peter C. op cit note 36 at 551.

⁴⁰ Ibid.

⁴¹ Johnstone, Les op cit note 22 at 229.

⁴² Ibid.

⁴³ Ibid.

by banning illegal behaviour (dealing with drugs, robbery, and assault) or by punishing these people on their own.

The state often has a significant impact on which form the occurrence of vigilantism takes.⁴⁴ Enacted laws and the way they are enforced by the state are fundamental factors that determine whether vigilantism occurs.⁴⁵ Crime control vigilantism is more likely to occur in areas where the state has been ineffectual in protecting persons and property either because the state has failed to enact good laws or the state fails to enforce them.⁴⁶

It is clear from the definition of vigilantism that the phenomenon is characterised by violence and illegal activities. Furthermore, the definition specifies that vigilantes are not supported by the state, which implies that collaboration between the police and vigilantes is excluded. Although it is clear that the motivation behind vigilantism may be positive, namely the fight against crime, the approach taken to achieving this positive aim is characterised as negative.

Nonetheless, caution should be taken in defining the phenomenon of vigilantism broadly and then applying this general definition in broad brush strokes to every extra-legal, non-state sponsored action, thereby automatically painting them all in a negative light. Each group that tries to combat crime without the support of the state needs to be separately analysed to ascertain whether the group actually wants to work with the police and whether the group can positively contribute to the fight against crime. Any other approach could result in the state missing critical opportunities to enhance public participation in crime control and thereby forgoing opportunities to enhance the capacity of the police through such collaboration.

That is the exercise that this paper seeks to perform with regard to the group Operation Wanya Tsotsi. However, before this exercise can be performed it is necessary to consider the definition of vigilantism not only on a global level but on a local level too. Operation Wanya Tsotsi operates in South Africa. Crime and reactions to crime differ in every country. For the purpose of this paper, the contours of the term 'vigilantism' must thus be explored in a South African context.

⁴⁴ Dumsday, Travis op cit note 30 at 58.

⁴⁵ Ibid.

⁴⁶ Rosenbaum, H. Jon & Sederberg, Peter C. op cit note 36 at 549.

2.2 The context of vigilantism in South Africa⁴⁷

South African researchers use a similar definition of vigilantism to that given in the previous section. A broad definition of vigilantism used by South African researchers could be a phenomenon that occurs in areas where formal law enforcement is absent⁴⁸ and the motive is purportedly to achieve justice.⁴⁹ This definition covers a wide range of actions and makes it easier to underline the various forms of vigilantism in South Africa.⁵⁰ Vigilantism has deep roots in South Africa and already existed before colonisation.⁵¹ The history of South Africa has changed the nature and shape of vigilantism over time, which is explored below.⁵² The history of apartheid and the transition to democracy are given particular focus in order to understand the contemporary contours of vigilantism.⁵³

What has not changed over time is that the level of violence of vigilantism is often extremely high and often results in death.⁵⁴ Corporal punishment, sometimes with the intention to kill, was and still is a key component of vigilantism.⁵⁵ Vigilantism significantly infringes citizens' rights and a brutal and illegal approach is not suitable for collaboration with the police.⁵⁶ Thus, before considering the manner in which digitisation has impacted vigilantism and the prospects it may yield for collaboration with the police, it is first necessary to understand why the method of vigilantes in South Africa has been characterised by brutality.

2.2.1 Vigilantism during apartheid

Apartheid was a period of South African history characterised by white suppression over the black majority and was very violent. Incidents that appeared in areas where black people lived were differently defined. The incidents that fit the characteristics of today's vigilantism were not called vigilantism. For instance, 'people's courts' entailed black citizens who took the law

⁴⁷ Most of this paragraph contains information from the following paper: Kral, Svenja Julie 'The Efficiency of Publishing Pictures of Suspects on Facebook and Corporal Punishment with regard to the Theory of Deterrence to decrease Crime Rates - An Analysis of the Approach to Combat Crime based on Operation Wanya Tsotsi' (2019) unpublished paper handed in for the completion of the course PBL5815S Punishment and Human Rights at University of Cape Town.

⁴⁸ Martin, James 'Vigilantes Unmasked: an Exploration of Informal Criminal Justice in Contemporary South Africa' (2009) *Australian & New Zealand Critical Criminology Conference* 142.

⁴⁹ Harris, Bronwyn "'As for Violent Crime that's our Daily Bread": Vigilante violence during South Africa's period of transition' (2001) 1 *Violence and Transition* Series 6.

⁵⁰ Ibid.

⁵¹ Martin, James op cit note 48 at 142.

⁵² Nina, Daniel 'Dirty Harry is back: Vigilantism in South Africa – The (re)emergence of the "good" and "bad" community' (2010) 9 *African Security Review* 21.

⁵³ Nina, Daniel op cit note 52 at 18.

⁵⁴ Martin, James op cit note 48 at 142.

⁵⁵ Harris, Bronwyn op cit note 49 at 4.

⁵⁶ Buur, Lars & Jensen, Steffen op cit note 3 at 140.

into their own hands and sentenced other citizens who in their mind broke the law.⁵⁷ However, these actions were never called vigilantism.⁵⁸ Vigilantism during the apartheid era were actions against anti-apartheid activists.⁵⁹ These actions were always political motivated, which nowadays is not necessarily a characteristic of vigilantism.⁶⁰

a. Community policing in townships – a misunderstood context of vigilantism

In order to understand shifts in the meaning of vigilantism in South Africa, it is important to understand the nature of the relationship between the police and black communities during apartheid. The apartheid regime forced people of different colours to live separately, with black people forced to settle outside of the centre of metropolitan areas. These areas were and still are commonly known as townships. Townships were not serviced by the apartheid regime.⁶¹ Black people were left behind without rights and therefore became easy targets for crime.⁶² Additionally, the police – largely staffed by white officers⁶³ – were repressive and authoritarian towards black people.⁶⁴ White people were protected, whereas black people were controlled.⁶⁵

Policing was very poor in townships.⁶⁶ The police delegated surveillance to ‘black elites’.⁶⁷ The ‘black elite’ were older males with land and property whom the white government trusted and therefore allowed to act as informal judicial authorities as long as they followed the aims of the government.⁶⁸ In order to regulate townships these black elites formed modes of ‘community policing’.⁶⁹ ‘Anti-crime street committees’⁷⁰ and ‘people’s courts’ dealt with deviant behaviour.⁷¹ Township communities decided on their own which behaviour was considered deviant.⁷² This form of community policing was also known as ‘popular justice’ or ‘community justice’.⁷³ For instance, people alleged to be witches were punished.⁷⁴ Corporal

⁵⁷ Buur, Lars & Jensen, Steffen op cit note 3 at 143.

⁵⁸ Ibid.

⁵⁹ Martin, James op cit note 48 at 144.

⁶⁰ Harris, Bronwyn op cit note 49 at 7.

⁶¹ Tshehla, Boyane op cit note 10 at 47.

⁶² Schärf, Wilfried ‘Community Policing in South Africa’ (1989) *Acta Juridica* 206.

⁶³ Minaar, Anthony ‘The Changing Face of “Community Policing” in South Africa, Post-1994’ (2010) 2 *Acta Criminologica* 191.

⁶⁴ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 189.

⁶⁵ Tshehla, Boyane op cit note 10 at 48.

⁶⁶ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 190.

⁶⁷ Super, Gail ‘What’s in a name and why it matters’ op cit note 12 at 516.

⁶⁸ Martin, James op cit note 48 at 143.

⁶⁹ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 189.

⁷⁰ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 190.

⁷¹ Buur, Lars & Jensen, Steffen op cit note 3 at 143.

⁷² Ibid.

⁷³ Nina, Daniel op cit note 52 at 18.

⁷⁴ Ibid.

punishment was often conducted and was seen as legitimate punishment.⁷⁵ Beatings, whipping with a sjambok, expulsion and banning from an area were punishments that were carried out.⁷⁶

The apartheid regime tolerated ‘people’s courts’ because they were not a political threat.⁷⁷ Thus, the abovementioned behaviour was not considered vigilantism during the apartheid era.⁷⁸ Although this behaviour matches the technical definition of vigilantism it does not accord with the understanding of vigilantism during that time.⁷⁹ Nonetheless, in retrospect the so-called ‘peoples justice’ is often described by researchers as vigilantism of the pre-1994 era. This is misleading and stems from transplanting our current understanding vigilantism onto that of the past.⁸⁰

An accurate understanding of community policing in townships during apartheid reveals a deeply fractured relationship between the police and township communities. It not only laid the foundation for citizens to enforce their rights, but it also created the circumstance in which brutal methods could flourish as police turned a blind eye. This period is primarily responsible for the perceived distance between the police and many communities, which has contributed to the oppositional stance between the police and community vigilante groups. Which actions were considered as vigilantism during apartheid explores the next chapter.

b. Violence in support of the apartheid regime

In literature vigilantism during apartheid included actions directed against black leaders of the resistance movement against the apartheid regime.⁸¹ Therefore, the term vigilantism also comprised actions of specialised police or military units, which were formed by the white government in order to destabilise and intimidate political opposition.⁸² The political opposition hence had to face the white government and its own people. Any action against them was called vigilantism. The people in the townships started fighting brutally, either to support the government or to weaken it.⁸³ This fighting was favourable to the regime because political

⁷⁵ Nina, Daniel op cit note 52 at 19.

⁷⁶ Minaar, Anthony ‘The new vigilantism in Post-April 1994 South Africa: Crime Prevention or an expression of lawlessness?’ (2001) *Institute for Human Rights & Criminal Justice Studies* 7.

⁷⁷ Super, Gail ‘What’s in a name and why it matters’ op cit note 12 at 514.

⁷⁸ Buur, Lars & Jenson, Steffen op cit note 3 at 143.

⁷⁹ Harris, Bronwyn op cit note 49 at 10.

⁸⁰ Ibid.

⁸¹ Martin, James op cit note 48 at 144.

⁸² Schärf, Wilfried ‘Community Justice and Community Policing in Post-Apartheid South Africa’ (2001) 32 *Institute of Development Studies* 78.

⁸³ Martin, James op cit note 48 at 144.

opponents were killed without the visible participation of the government.⁸⁴ This is evident in certain definitions of vigilantism during apartheid, such as that vigilantes are ‘potentially murderous gangs, intent on intimidating, injuring or killing anti-apartheid activists’.⁸⁵ Vigilantism, therefore, was politically motivated.⁸⁶ People, who killed in favour of the regime, tried to destroy any threat against the regime and their social norms. Consequently, this form of vigilantism belongs to the category of social control vigilantism and was characterised by brutality.

Interestingly, this historical understanding of vigilantism shows that, despite the oppositional characterisation of police and vigilantes, the police and vigilantes already pursued the same goals during apartheid. The current argument for more constructive cooperation is therefore not without basis. The brutality of vigilantism during apartheid was mirrored by the brutality of the state, which was characterised by oppression and cruelty. It is thus unsurprising that as the state transitioned to a democratic order, characterised by the promotion and protection of human rights, the acquiescence by the state to the brutal methods of vigilante groups was no longer sustainable.

Thus, the transition to democracy saw the oppositional relationship between the state and vigilante groups cemented. However, this oppositional relationship is not inherent – it is contingent on and a product of the brutal methods employed by vigilante groups and the states movement away from such methods.

c. Violence against supporters of the apartheid regime

The regulation of townships by black elites who supported the regime made them objects of hate by anti-apartheid activists.⁸⁷ The resistance movement to the apartheid regime thus started targeting apartheid supporters.⁸⁸ This movement is often referred to being ‘counter-vigilantism’.⁸⁹ This wording must be approached with caution as it limits the meaning of vigilantism to only those groups supporting the apartheid regime.⁹⁰

⁸⁴ Ibid.

⁸⁵ Super, Gail ‘What’s in a name and why it matters’ op cit note 12 at 518.

⁸⁶ Harris, Bronwyn op cit note 49 at 7.

⁸⁷ Oomen, Barbara ‘Vigilantism or alternative citizenship? The rise of Mapogo a Mathamaga’ (2004) 63 *African Studies* 159.

⁸⁸ Martin, James op cit note 48 at 144.

⁸⁹ Ibid.

⁹⁰ Super, Gail ‘What’s in a name and why it matters’ op cit note 12 at 520.

Anti-apartheid activists used brutal methods to kill people – methods that became characteristic in South Africa.⁹¹ The most infamous method is ‘necklacing’, during which a paraffin-doused tyre is put around a person’s neck and set alight.⁹² Necklacing is torture as the victim suffers excruciating pain.⁹³ Death can be caused by the burns or by asphyxiating as toxic substances are released by the burning rubber and by the fire itself.⁹⁴ The media started calling the people who were brutally killing apartheid supporters ‘the mob’.⁹⁵ The image of the angry mob running around and brutally killing people became iconic.⁹⁶

However, the terms ‘vigilante’ and ‘mob’ were used to denote distinct political categories.⁹⁷ The former, the group that fought for the apartheid regime and the latter, the group that rejected the regime, which was exploited by the apartheid government and their supporters to feed into fear among white people of black people.⁹⁸ Both groups acted brutally and illegitimately.

Although the media mixes up the meaning of vigilantism in South Africa during apartheid and the action of the mobs, it can be said that both movements had one thing in common. Everyone took the law into their own hands to fight for their rights. The groups just had different understandings of their rights; therefore, the motivation behind the actions was different. The methods of the mob significantly shaped the meaning of vigilantism after apartheid, which obscured the distinction between the aim of fighting crime and the methods employed. The section below examines why it is important to distinguish between different groups of vigilantes, as their methods and intentions in fact vary widely.

2.2.2 *Vigilantism after apartheid*

After apartheid ended, the first institutions that became targets for far-reaching changes were the police and the judicial system.⁹⁹ This had a great impact on the meaning of vigilantism. Many people believed that the police and the courts were corrupt.¹⁰⁰ That mainly resulted from

⁹¹ Martin, James op cit note 48 at 144.

⁹² Super, Gail ‘What’s in a name and why it matters’ op cit note 12 at 519.

⁹³ Häefele, Benjamin op cit note 3 at 3.

⁹⁴ Häefele, Benjamin op cit note 3 at 3.

⁹⁵ Super, Gail ‘What’s in a name and why it matters’ op cit note 12 at 514.

⁹⁶ Buur, Lars & Jensen, Steffen op cit note 3 at 143.

⁹⁷ Harris, Bronwyn op cit note 49 at 8.

⁹⁸ Super, Gail ‘What’s in a name and why it matters’ op cit note 12 at 519.

⁹⁹ Tshehla, Boyane op cit note 10 at 47.

¹⁰⁰ Oomen, Barbara op cit note 87 at 156.

the fact that all former police staff were taken over to the ‘new’ democratically formed police.¹⁰¹ Furthermore, many citizens were uneducated about the new legal system.¹⁰² This resulted in suspects being punished or killed by the community after the police released them on bail¹⁰³ because they believed that no justice had taken place.¹⁰⁴ The methods of policing also had to change as the police concentrated on suppressing political opponents during apartheid.¹⁰⁵ This explains why the police were poorly equipped in terms of crime control and prevention.¹⁰⁶ All of which contributed to mistrust in the police and as a result, many people avoided the police and did not report crimes to them.¹⁰⁷

Community policing was thus introduced in part to remedy the image of the ‘uncaring and abusive’ police.¹⁰⁸ The historic divide between the police and many communities meant that the police lacked knowledge about community needs. Furthermore, the communities understood that they would have to help the police in order to gain safety and security.¹⁰⁹

The acknowledgment by the government that a partnership in the form of community policing was needed also opened up opportunities for civilians to create community-initiated policing, which refers to community policing without police partnership.¹¹⁰ The concept of community policing entailed the community handing over information/ reporting criminals to the police, whereas community-initiated policing entailed performing the duties of the police. Considering the extent to which justice in the townships had been pre-dominantly a non-state matter during apartheid, it was predictable that community-initiated policing would follow in the transition to democracy.¹¹¹

The pervasive high crime rates and the uncertainty in townships caused by the absence of state regulation thus opened a gap for self-regulation.¹¹² The absence of the police in townships was in part a result of officers fearing for their safety.¹¹³ After apartheid ended police

¹⁰¹ Schärf, Wilfried ‘Community Justice and Community Policing in Post-Apartheid South Africa’ op cit note 82 at 75.

¹⁰² Martin, James op cit note 48 at 145.

¹⁰³ Bail means that people can leave police custody after paying a certain amount of money and walk freely until the trial against them begins.

¹⁰⁴ Martin, James op cit note 48 at 145.

¹⁰⁵ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 191.

¹⁰⁶ Ibid.

¹⁰⁷ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 190.

¹⁰⁸ Schärf, Wilfried ‘Community Justice and Community Policing in Post-Apartheid South Africa’ op cit note 82 at 75.

¹⁰⁹ Ibid.

¹¹⁰ Schärf, Wilfried ‘Community Justice and Community Policing in Post-Apartheid South Africa’ op cit note 82 at 74.

¹¹¹ Tshela, Boyane op cit note 10 at 47.

¹¹² Tshela, Boyane op cit note 10 at 65.

¹¹³ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 190.

officers were often targets for killings because after they were seen as corrupt, consorted or thought to be involved with criminals.¹¹⁴ Certain non-white communities tried to get rid of officers and justified their attacks with their low level of trust.¹¹⁵ In order to have some control residents started taking the law into their own hands.¹¹⁶ The meaning of vigilantism thus changed, corresponding more closely to the general definition of vigilantism at the beginning of this chapter. The rising violence in communities was no longer politically motivated, differentiating it from vigilantism during apartheid.¹¹⁷

This post-apartheid shift in vigilantism was more comparable to what had previously been the people's courts, although not as structured and conducted by private citizens of the community on a voluntary basis.¹¹⁸ The motivation behind vigilantism in this era is to correct immoral and anti-community behaviour.¹¹⁹ The conduct involved is illegal, although it is often not perceived as wrong in the community.¹²⁰ For instance, 'one bullet, one peddler'¹²¹ was one slogan of PAGAD (People Against Gangsterism and Drugs), a vigilante group that was formed in 1996 in Cape Town with the stated aim of eradicating drug dealers.¹²² This form of self-regulation by citizens in order to provide security for their community is called 'everyday policing' by Buur and Jensen and is categorised as crime control vigilantism.¹²³

From the above discussion, we can now attempt to identify the various forms that vigilantism in South Africa currently takes. It is important to do so in order to be able to identify acts of vigilantism and properly categorise them for the purposes of research. Actions that are called vigilantism in South Africa occur in various forms, as exemplified below:¹²⁴

1. Like Operation Wanya Tsotsi, organisations that proceed with planned, organised and structured crime fighting activities. These organisations see themselves as guards for the community and perform on the spot punishment.¹²⁵
2. Kangaroo courts that operate like 'people's court'. An irregular court established in neighbourhoods where suspects appear before a neighbourhood committee, which

¹¹⁴ Minaar, Anthony 'The Murder of Members of the South African Police Service: Some Findings on Common Causes and Practical Preventative Steps' (2003) 16 *Acta Criminologica* 6.

¹¹⁵ Ibid.

¹¹⁶ Buur, Lars & Jensen, Steffen op cit note 3 at 142.

¹¹⁷ Martin, James op cit note 48 at 145.

¹¹⁸ Nina, Daniel op cit note 52 at 21.

¹¹⁹ Buur, Lars & Jensen, Steffen op cit note 3 at 148.

¹²⁰ Harris, Bronwyn op cit note 49 at 7.

¹²¹ Peddler is a slang word for drug dealer.

¹²² Nina, Daniel op cit note 52 at 18.

¹²³ Buur, Lars & Jensen, Steffen op cit note 3 at 142.

¹²⁴ Minaar, Anthony 'The new vigilantism in Post-April 1994 South Africa' op cit note 76 at 3.

¹²⁵ Ibid.

applies the punishment after hearings.¹²⁶ The applied punishment can be lethal. For example, a murderer released on bail by the police was sentenced by a kangaroo court in Debe Nek to death. His arms were cut off and they crushed his skull.¹²⁷

3. 'Caught in the act' citizen response. This form of vigilantism occurs when citizens catch suspects while committing a crime in public. The citizens often do not belong to a crime-fighting organisation. They often apply corporal punishment before they hand the suspect to the police.¹²⁸ Sometimes people are also beaten or stoned to death.¹²⁹
4. Small, organised groups that target one specific individual for execution-style killing.¹³⁰
5. Vengeance activities by victims.¹³¹
6. Vengeance activities by people that were not the victim of the original crime. For instance, a farmer that killed a suspect because he was believed to have attacked a farm in his area.¹³²

The media has had a significant impact on the meaning attributed to vigilantism in the democratic era in South Africa. In particular, the media has sustained the image of the angry mob targeting criminals and killing them brutally.¹³³ However, this brutal violence resonates more with the activities of anti-apartheid activist's necklacing supporters of the regime rather than with efforts to provide safety and security in townships although it also matches the characteristics of vigilantism.¹³⁴ A result of this media representation is that currently the terms 'vigilantism' and 'mob-justice' are often used interchangeably¹³⁵ – fear of the mob has merged with fear of vigilantism through the media.¹³⁶ The mixing obscures positive aspects of vigilantism from being appreciated and explored. All vigilante actions are lumped together and portrayed as people walking around and arbitrarily killing others. It is undeniable that vigilantism exists in a diversity of forms, using various methods, stemming from different

¹²⁶ Ibid.

¹²⁷ <https://mg.co.za/article/1994-09-16-return-of-the-kangaroo-court/>, accessed on 01.03.2021.

¹²⁸ Minaar, Anthony 'The new vigilantism in Post-April 1994 South Africa' op cit note 76 at 3.

¹²⁹ Lancaster, Lizette 'Is mob violence out of control in South Africa?' op cit note 3.

¹³⁰ Minaar, Anthony 'The new vigilantism in Post-April 1994 South Africa' op cit note 76 at 3.

¹³¹ Ibid.

¹³² Minaar, Anthony 'The new vigilantism in Post-April 1994 South Africa' op cit note 76 at 4.

¹³³ Buur, Lars & Jensen, Steffen op cit note 3 at 142.

¹³⁴ Ibid.

¹³⁵ Super, Gail 'What's in a name and why it matters' op cit note 12 at 523.

¹³⁶ Buur, Lars & Jensen, Steffen op cit note 3 at 143.

motivations and causes, as illustrated above.¹³⁷ However, what vigilantes have in common is that they try to intimidate criminals with their behaviour.¹³⁸

The police do not always target vigilantes, tending to accept them in the form of patrolling areas and even small violent acts.¹³⁹ Only when their methods become too brutal do the police start investigating.¹⁴⁰ This is because '[t]he regime cannot spend more energy on fighting the crime fighters than it does fighting the criminals'.¹⁴¹ This could be a fallacy because vigilantes do break the law and can thus be considered criminals. Nevertheless, without crime, vigilantism would not occur and therefore, it makes sense to fight the cause.

In summary, the desire to have safe and secure townships was the reason for the rise of vigilantism after the transition to democracy. This is comparable to people's justice during apartheid and conforms to the globally accepted definition of vigilantism. Communities tried to fill the gap created by the inability of the police to secure townships.¹⁴² As a result, many different groups were formed with different methods and intentions, which makes the exact meaning of vigilantism difficult to ascertain.¹⁴³ The media often focusses on lethal actions because they are more newsworthy, which exacerbates the negative image of all vigilante groups by harking back to the height of necklacing during apartheid.¹⁴⁴

However, any action that enforces the law without legal authority is vigilantism. This includes many different groups, formed with different motives and using different methods. Rather than automatically painting them all in the same negative light, we should be exploring whether certain groups could actually collaborate with the police by being encouraged to change their behaviour thus being drawn into the bounds of the law. The police cannot stem the tide of crime alone. Cooperating with like-minded vigilantes could provide a valuable mechanism to enhance the work of the police. This is not an extreme suggestion. As will be seen below, it would simply be an expansion of the existing examples of police/ community partnerships.

¹³⁷ Harris, Bronwyn op cit note 49 at 6.

¹³⁸ Nina, Daniel op cit note 52 at 21.

¹³⁹ Super, Gail "'Three warnings and you're out": Banishment and precarious penalty in South Africa's informal settlements' (2019) *Punishment & Society* 17.

¹⁴⁰ Super, Gail 'Three warnings and you're out' op cit note 139 at 17.

¹⁴¹ Schärf, Wilfried 'Community Justice and Community Policing in Post-Apartheid South Africa' op cit note 82 at 79.

¹⁴² Schärf, Wilfried 'Community Policing in South Africa' op cit note 62 at 225.

¹⁴³ Harris, Bronwyn op cit note 49 at 6.

¹⁴⁴ Harris, Bronwyn op cit note 49 at 20.

2.3 Other forms of community policing in South Africa

The benefits of collaboration between citizens and the police are evident in the various forms of community policing that have already arisen in South Africa in an attempt to enhance police capacity to fight crime. This section explores the essential features of community policing in order to determine whether police could benefit from including vigilante groups in a similar model.

In the Community Policing Policy Framework and Guidelines ‘community policing is presented as a collaborative partnership-based approach to (local level) problem solving’.¹⁴⁵ These partnerships allow citizens to perform similar roles to those of the police and are often encouraged by the state.¹⁴⁶ The collaboration should help to identify and solve problems together.¹⁴⁷ In certain instances community policing is understood as a community initiative to order and control the population with different degrees of co-operation with the police, which could go as far as excluding them.¹⁴⁸

Although not formally established, community policing did already exist during apartheid.¹⁴⁹ ‘Anti-crime street committees’ and ‘peoples courts’ can be considered as forms of community policing.¹⁵⁰ Poor service delivery and the virtual absence of visible policing explain the formation of these different community policing initiatives.¹⁵¹ Originally, during the transition to democracy the state encouraged community policing and thought it could help them to fight crime.¹⁵² The democratic ANC government even tried to centralise vigilante groups by giving them a formal structure with a liaison to close the security loophole that had caused vigilantism and give the community more protection.¹⁵³ What follows is a brief description of various community-policing institutions and their frameworks, namely: Community Policing Forums; the private security industry and Neighbourhood Watches. Considering that collaboration between the police and vigilante groups would need a legal framework, it is instructive to consider existing frameworks.

¹⁴⁵ Marks, Monique *et al.* ‘Who should the police be? Finding a new narrative for community policing in South Africa’ (2009) 10 *Police Practice and Research: An International Journal* 146.

¹⁴⁶ Schärf, Wilfried ‘Community Policing in South Africa’ op cit note 62 at 207.

¹⁴⁷ Van Graan, Johan ‘Multi-sector cooperation in preventing crime: the case of a South African Neighbourhood Watch as an effective crime prevention model’ (2016) 17 *Police Practice and Research* 140.

¹⁴⁸ Schärf, Wilfried ‘Community Policing in South Africa’ op cit note 62 at 208.

¹⁴⁹ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 189.

¹⁵⁰ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 190.

¹⁵¹ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 203.

¹⁵² Minaar, Anthony ‘The Changing Face’ op cit note 63 at 196.

¹⁵³ Minaar, Anthony ‘The Changing Face’ op cit note 63 at 197.

2.3.1 Community Policing Forums

According to Chapter 7 of the South African Police Service Act, Community Policing Forums (hereinafter referred as CPF) should be a liaison between the police and the community to establish partnerships between the community and the police, to promote the community, and to improve transparency.¹⁵⁴ Hence, the aim is to promote communication and co-operation between the community and the police.¹⁵⁵ The needs of the community should be fulfilled regarding policing by promoting this relationship.¹⁵⁶

The act provides an entire chapter with six subsections regulating CPFs. The CPF office is based in the local police station.¹⁵⁷ Each Station Commander of a police station is responsible to establish CPFs for their station.¹⁵⁸ Members of CPFs are elected citizens of their respective areas.¹⁵⁹ Election takes place at an Annual General Meeting.¹⁶⁰ Representatives of community-based organisations and representatives of Community Safety Structures and Victim Support structures are the members of the community who choose.¹⁶¹

The work of members of CPFs are limited to mutual identification and solution of local problems.¹⁶² Therefore, members of CPFs are supposed to conduct monthly executive meetings with the police in order to get information about crimes.¹⁶³ With that information crime preventive initiatives are created.¹⁶⁴ Besides that, people of the community come to CPFs to report problems and seek guidance.¹⁶⁵ Criminal as well as civil problems are reported.¹⁶⁶ Members of CPFs help the community with writing complaints or try to mediate the two parties.¹⁶⁷ The police hoped that this initiative would bring the community and the police together in fighting crime,¹⁶⁸ whereas the primary goal of the community appears to have been to have a check on police negligence and abuse of power.¹⁶⁹

¹⁵⁴ South African Police Service Act 68 of 1995.

¹⁵⁵ Brown, Richelieu Stefanie Louis 'Performance Management of Community Police Forums in the Western Cape: A Case Based Analysis' (Master thesis, University of Stellenbosch, 2016) 1.

¹⁵⁶ Ibid.

¹⁵⁷ Buur, Lars 'Sovereignty & democratic exclusion in the new South Africa' (2005) 32 *Review of African Political Economy* 256.

¹⁵⁸ Brown, Richelieu Stefanie Louis op cit note 155 at 66.

¹⁵⁹ Buur, Lars 'Sovereignty & democratic exclusion in the new South Africa' op cit note 157 at 256.

¹⁶⁰ Ibid.

¹⁶¹ Brown, Richelieu Stefanie Louis op cit note 155 at 66.

¹⁶² Buur, Lars 'Sovereignty & democratic exclusion in the new South Africa' op cit note 157 at 255.

¹⁶³ Brown, Richelieu Stefanie Louis op cit note 155 at 73.

¹⁶⁴ Ibid.

¹⁶⁵ Tshela, Boyane op cit note 10 at 50.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Tshela, Boyane op cit note 10 at 48.

¹⁶⁹ Buur, Lars 'Sovereignty & democratic exclusion in the new South Africa' op cit note 157 at 256.

2.3.2 Private Security Industry

The failure of the police to protect communities was seized upon by the private security industry for profit.¹⁷⁰ The private security industry in South Africa quickly grew exponentially and has more officers than the police service does.¹⁷¹ The 2019/2020 annual Police and Private Security Industry Regulatory Authority Reports show that the private sector has more employees while the numbers of employees in the public sector is falling.¹⁷² The police have a total number of 187,358 employees;¹⁷³ the private industry has a total number of 2,495,899 registered officers but only 548,642 are active employees.¹⁷⁴ It is thus not surprising that the private security industry is now legally regulated in an Act – the Private Security Industry Regulation Act.¹⁷⁵

Security providers need to be registered, according to subsection 20(2)(a) of the Act.¹⁷⁶ There is also an existing code of conduct for security service providers, which provides binding rules for security service providers and their employees.¹⁷⁷ Subsection 6 states that security services have to work with the police and assist them in all matters so that they are able to fulfil their duties. Additionally, employees of service providers are not allowed to infringe any rights contained in the Bill of Rights of suspects. This applies to, for example, conducting searches, arrests or detaining, restraining, threatening and harming a suspect, unless permitted by the law.¹⁷⁸ Private security officers have a duty to prevent crime.¹⁷⁹

Private security companies are ‘primarily concerned with internal security that focus on police-like activities, such as guarding, access control and surveillance.’¹⁸⁰ Their main aim is to get paid for preventing crime on individual properties and company properties.¹⁸¹ The crime

¹⁷⁰ Bodnar, Julie ‘The Private Security Industry’ (2012), available at https://cisp.cachefly.net/assets/articles/attachments/42981_cplo_bp_313_the_private_security_industry_dec_2012.pdf, accessed on 26. November 2019 1.

¹⁷¹ Ibid.

¹⁷² South African Police Service ‘Annual Report 2019/2020’ available at https://www.saps.gov.za/about/stratframework/annual_report/2019_2020/annual_report_2019-2020.pdf accessed on 21. January 2020 322.

¹⁷³ Ibid.

¹⁷⁴ Security Focus Africa ‘The Private Security Industry Regulatory Authority (PSIRA): some key takeaways from the 2019/2020 Annual Report’ (2020) 38, available at https://issuu.com/contactpublicationsza/docs/security_focus_africa_november_-_december_2020/s/11505640, accessed on 09 February 2020.

¹⁷⁵ Private Security Industry Regulation Act 56 of 2001.

¹⁷⁶ Ibid.

¹⁷⁷ Code of Conduct prescribed under the Private Security Industry Regulation Act 56 of 2001.

¹⁷⁸ Ibid at 8(2)(b).

¹⁷⁹ Bodnar, Julie op cit note 170 at 3.

¹⁸⁰ Diphoom, Tessa ‘Who do you call? Private security policing in Durban, South Africa’ (2017) 90, available at https://www.researchgate.net/profile/Rita_Abrahamson/publication/323783485_Golden_Assemblages_Security_and_Development_in_Tanzania's_Gold_Mines/links/5aaab26faca272d39cd7a210/Golden-Assemblages-Security-and-Development-in-Tanzania's-Gold-Mines.pdf#page=100, accessed on 26 February 2021.

¹⁸¹ Minaar, Anthony & Ngoveni, P ‘The Relationship between the South African Police Service and the Private Security Industry: Any Role for Outsourcing in the Prevention of Crime’ (2004) 17 *Acta Criminologica* 47.

prevention that is exercised is no different from that of the police, but they protect different groups.¹⁸² Whereas the Private Security Industry protects their customers, the police protects everybody who lives in South Africa.¹⁸³ Combatting crime also belongs to their functions when a customer or his or hers property is assaulted.

2.3.3 *Neighbourhood Watches*

Neighbourhood Watches are organised groups of concerned neighbours that work voluntarily to make their area safer.¹⁸⁴ The concept of Neighbourhood Watches was not invented in South Africa.¹⁸⁵ The police encouraged middle-class residents to form Neighbourhood Watches after they observed the concept in other countries.¹⁸⁶ The concept was introduced in white neighbourhoods in 1985.¹⁸⁷ After a while, the coloured suburbs adopted the concept.¹⁸⁸ Currently, a total number of 322 Neighbourhood Watches have been formally accredited in the Western Cape.¹⁸⁹

Members should be vigilant and report suspicious persons in their area to the police.¹⁹⁰ Members organise their own patrols and have communication amongst each other via phones to rapidly spread information about suspicious activities and crime incidents to other neighbours, the police and security services.¹⁹¹ Therefore, their purpose is to safeguard their members and properties against crime.¹⁹² The concept of Neighbourhood Watches is framed in the Western Cape Community Safety Act.¹⁹³

The SAPS Amendment Bill tries to include the registration of Neighbourhood Watches as Neighbourhood Watches are only legally regulated in the Western Cape.¹⁹⁴ Section 6 of the Act stipulates that organisations that operate voluntarily and comprise members who are residents in the area of operation for the purpose of safeguarding must be officially accredited

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Van Graan, Johan op cit note 147 at 136.

¹⁸⁵ Schärf, Wilfried 'Community Policing in South Africa' op cit note 62 at 219.

¹⁸⁶ Ibid.

¹⁸⁷ Van Graan, Johan op cit note 147 at 136.

¹⁸⁸ Fourchard, Laurent 'The politics of mobilization for security in South African townships' (2011) *African Affairs* 616.

¹⁸⁹ <https://www.westerncape.gov.za/general-publication/neighbourhood-watch-nhw>, accessed on 10 February 2021.

¹⁹⁰ Ibid.

¹⁹¹ Minaar, Anthony 'The Changing Face' op cit note 63 at 205.

¹⁹² Western Cape Community Safety Act 3 of 2013 6(1)(c).

¹⁹³ Western Cape Community Safety Act 3 of 2013.

¹⁹⁴ <https://www.gov.za/speeches/minister-fritz-concerned-about-neighbourhood-watch-amendments-saps-amendment-bill-2-nov>, accessed on 25 February 2021.

by the Provincial Minister.¹⁹⁵ Each accredited Neighbourhood Watch must be listed in the register of Neighbourhood Watches.¹⁹⁶ The Western Cape Department of Community Safety offers training and funding for officially registered Neighbourhood Watches.¹⁹⁷ Furthermore, a code of conduct exists that comprises rights and duties of members.¹⁹⁸ The code provides that members act in accordance with the principles enshrined in the Constitution. Members are not allowed to take the laws into their own hands and any action of vigilantism is forbidden.¹⁹⁹

2.3.4 *Comparison of existing community policing structures and vigilantism*

This section analyses the difference between existing legal community policing organisations and vigilantes in order to determine whether other vigilante groups, for the purposes of this paper Operation Wanya Tsotsi, could work with the police.

All of the structures reviewed share a desire to fight crime in their area, including vigilantes. However, unlike existing community policing organisations, there is no legal basis for vigilantism – the concept is by definition illegal as it entails law enforcement conducted without legal authority. In order to collaborate with the police a vigilante group would thus have to change their approach. Their methods need to be legal and the state has to monitor them. Consequently, collaboration with the police means that the group can no longer be classified as vigilante.

However, it is questionable if framing the approach of a vigilante group within the law would prevent illegal actions. For example, scholars claim that the lines between Neighbourhood Watches and vigilantes are blurred,²⁰⁰ as is the line between private security companies and vigilantes.²⁰¹ Some of the Community police structures also work illegally. Like vigilantes, neighbourhood watches and private security companies patrol their streets looking for suspicious activities. They are known to cross the line of their legal competencies and rather than reporting activities to the police, ‘handle’ the situation on their own.²⁰²

¹⁹⁵ Western Cape Community Safety Act 3 of 2013 6(1).

¹⁹⁶ Western Cape Community Safety Act 3 of 2013 6(6)(a)(i).

¹⁹⁷ <https://www.saferspaces.org.za/be-inspired/entry/neighbourhood-watch-accreditation-and-support-programme>, accessed on 25 February 2021.

¹⁹⁸ https://www.westerncape.gov.za/files/code_of_conduct_-_final_-_nhw_2020.pdf, accessed on 25 February 2021.

¹⁹⁹ https://www.westerncape.gov.za/files/code_of_conduct_-_final_-_nhw_2020.pdf, accessed on 25 February 2021.

²⁰⁰ Fourchard, Laurent op cit note 188 at 612.

²⁰¹ Schärf, Wilfried ‘Community Justice and Community Policing in Post-Apartheid South Africa’ op cit note 82 at 78.

²⁰² Schärf, Wilfried ‘Community Policing in South Africa’ op cit note 62 at 208.

An example of this is the group Mapogo a Mathamaga. The group offers a crime-fighting service for a fee.²⁰³ Yet, there is disagreement on how to classify them. It could be a private security company, a social movement or a vigilante organisation with a fund-raising bent.²⁰⁴ What is problematic about Mapogo a Mathamaga is their method of punishment.²⁰⁵ The group is implicated in murders and assaults and there is no legal basis for any community policing to be involved in crimes like these.²⁰⁶ Mapogo a Mathamaga serves as an example that every vigilante group must be analysed individually, as it may be complex to determine the nature of any particular group. Furthermore, it is necessary to examine whether the group actually has the intention to fight crime or whether they use their network to spread fear in order to gain power. The latter precludes collaboration with the police.

This section shows that there is widespread existing precedent for collaboration between the police and private citizens in fighting crime. Collaboration leads to the loss of vigilante status, as the relationship needs to be legally framed. However, it is also clear that a legally compliant status does not prevent groups from applying illegal methods and careful monitoring by the police is required.

2.4 Operation Wanya Tsotsi

This paper chooses the vigilante group Operation Wanya Tsotsi (hereinafter OWT) as its focus and whether their approach can qualify for collaboration with the police. OWT's distinguishing feature is that they use the internet as their primary mode of operation. The method, aim, and intention of OWT is examined by analysing their Facebook page, newspaper articles and documentaries about them. Discussion thereafter establishes why OWT is classified as a vigilante group rather than as a forum of community policing to show that their methods are not currently legally compliant and to find out in what ways their approach needs to change.

²⁰³ <http://mapogoamathamaga.co.za/>, accessed on 10.02.2021.

²⁰⁴ Schärf, Wilfried 'Community Justice and Community Policing in Post-Apartheid South Africa' op cit note 82 at 78.

²⁰⁵ Ibid.

²⁰⁶ Martin, James op cit 48 at 147.

2.4.1 Method, aim, and intention²⁰⁷

The lack of police resources to fight crime²⁰⁸ and 17 gang-related murders that happened within a couple of weeks in Galeshewe, Kimberley was the reason that Operation Wanya Tsotsi was formed in March 2015.²⁰⁹ According to OWTs Facebook page, the group is '[a]n anti-crime initiative by Galeshewe communities taking back their streets from the escalation of [g]angsterism and senseless killing of innocents'.²¹⁰

The group refuses to use the word vigilantism²¹¹ because for them this term is used to describe people that have lost faith in the justice system and therefore kill other people brutally.²¹² Killings are not supported by Operation Wanya Tsotsi and the group refrains from using lethal methods.²¹³ One of their central methods in fighting crime is to shame suspects online on Facebook.²¹⁴ This method distinguishes OWT from other vigilante groups, although the shaming of people on social media is not a method invented by OWT.²¹⁵ Black bars, which cover the eyes and make it harder to identify someone, are not used.²¹⁶ Instead, the entire face of the suspect is shown which makes it easy to identify the person displayed.²¹⁷

The power of spreading information quickly through social media has become popular, not only to reveal the identities of criminals but also to seek justice for victims.²¹⁸ Almost 20 000 people are following OWT on Facebook, providing OWT a wide reach.²¹⁹ In addition, the

²⁰⁷ Most of this paragraph contains information from the following paper: Kral, Svenja Julie 'Publishing Pictures on Facebook without Consent – A criminal Legal Comparison of South Africa and Germany based on Operation Wanya Tsotsi' (2019) unpublished paper handed in for the completion of the course PBL5848F Law & Society in Africa at University of Cape Town.

²⁰⁸ McKaiser & Obusitse 'The Rise of Vigilantism in SA on the Eusebius McKaiser Show with Tebogo "Pantsi" Obusitse' (2017), available at <https://www.kimberley.org.za/rise-vigilantism-sa-eusebius-mckaiser-show-tebogo-pantsi-obusitse/>, accessed on 28. November 2019.

²⁰⁹ Clark, Christopher 'People call us before they call the police' op cit note 16.

²¹⁰ https://www.facebook.com/pg/OperationWanyaTsotsi/about/?ref=page_internal, accessed on 29 November 2019.

²¹¹ Clark, Christopher 'Wanya Tsotsi "not assaulting people" but "blessing them" instead' (2017) available at <https://www.all4women.co.za/1206805/news/south-african-news/wanya-tsotsi-not-assaulting-people-blessing-instead>, accessed on 10. October 2019.

²¹² Sankolla, Reitemetese 'Operation Wanya Tsotsi' (2019) available at <https://www.youtube.com/watch?v=Yb1Njc3jeQ>, accessed on 11 October 2019.

²¹³ Clark, Christopher 'Wanya Tsotsi "not assaulting people" but "blessing them" instead' op cit note 211.

²¹⁴ Clark, Christopher & Swingler, Shaun 'South Africa's Reluctant Vigilante' | Witness' *Al Jazeera English* 21.10.2018, available at <https://www.youtube.com/watch?v=EiEX4Bmz5pM>, accessed on 11 May 2019 at 6:59.

²¹⁵ Goldman, Lauren M. 'Trending now: The Use of Social Media Websites in Public Shaming Punishments' (2015) 52 *Criminal Law Review* 427.

²¹⁶ See for example Habibia Neighbourhood Watch, Kenwyn Neighbourhood Watch.

²¹⁷ https://www.facebook.com/pg/OperationWanyaTsotsi/about/?ref=page_internal accessed on 29 November 2019.

²¹⁸ Wood, Mark *et al.* 'Viral Justice? Online justice-seeking, intimate partner violence and affective contagion' (2019) 23 *Theoretical Criminology*.

²¹⁹ https://www.facebook.com/pg/OperationWanyaTsotsi/about/?ref=page_internal accessed on 29 November 2019.

reach of OWT is extended through the fact that the group is open, which means that every single member of Facebook has access to the content.

Over 700 images of alleged criminals have been posted by OWT from 2015 until end of 2019.²²⁰ The way in which the suspect is photographed remains consistent.²²¹ The focus of the photograph is the upper body, with the face of the person forward facing in order to enable identification.²²² Moreover, the suspect is holding an item in front of their body. According to OWT the photographed items get used in the commission of criminal offenses or are objects obtained through crime.²²³ That the method enables identification can be seen in the comment section below the posts, where followers reveal the names and addresses of alleged criminals.

To locate suspects, members of OWT patrol Galeshewe during the day and at night.²²⁴ Removing weapons (especially knives), drugs and stolen goods from their streets is their focus. To this end, they look for suspicious activities and people, and even search them.²²⁵ OWT believes that these items are the reason why criminal offenses happen²²⁶ and that knives could be the reason for the high number of murders.²²⁷ Therefore, it is an aim of OWT to remove these items from their streets to make them safer.²²⁸

Furthermore, in addition to exposing suspects online, OWT applies corporal punishment. Every suspect is punished with several lashes from a sjambok.²²⁹ For OWT this



The picture shows a member of Operation Wanya Tsotso sjambokking a suspect

²²⁰ Ibid.

²²¹ Ibid.

²²² https://www.facebook.com/pg/OperationWanyaTsotsi/about/?ref=page_internal accessed on 29 November 2019.

²²³ Ibid.

²²⁴ Sankolla, Reitumetese op cit note 212 at 9:45.

²²⁵ https://www.facebook.com/pg/OperationWanyaTsotsi/about/?ref=page_internal accessed on 29 November 2019.

²²⁶ Clark, Christopher & Swingler, Shuan op cit note 214 at 7:30.

²²⁷ Sankolla, Reitumetese op cit note 212 at 14:49.

²²⁸ Clark, Christopher & Swingler, Shuan op cit note 214 at 4:50.

²²⁹ Clark, Christopher & Swingler, Shuan op cit note 214 at 142 at 2:50-3:10.

process is a ‘blessing’ for the suspect as they learn that their behaviour was wrong.²³⁰ The item is confiscated and handed over to the police.²³¹ The group believes that their approach has advantages in the fight against crime. First, public shaming is a powerful punishment as the shaming can have great impact in a small community like Galeshewe where the community knows each other very well.²³² Secondly, they believe that people have to feel pain in order to be disciplined and stay away from committing crimes, therefore the corporal punishment should be seen as a lesson.²³³

The handing over of confiscated items shows that there is already an existing collaboration between OWT and the police. This collaboration is not formalised or framed in a legal act. The usage of illegitimate methods makes it impossible to extend or to formalise this existing collaboration, although the police state that they are willing to work with OWT.²³⁴ Consequently, OWT’s method needs to be analysed in order to determine how their approach can be legally adapted and lay the foundation for a formalised collaboration.

2.4.2 Comparison between Operation Wanya Tsotsi and various forms of community policing

Unlike legal community policing, OWT includes corporal punishment as a core part of their modus operandi. This excludes them from being legally recognised. Furthermore, it is problematic that OWT does not like the approach of existing forms of community policing. For instance, Community Policing Forums, while largely positive in their eyes, fail to be the mediator between the police and the community, because they just sit behind desks and they are not outside dealing with the problems of the community.²³⁵ However, some of their methods still match the approaches of community policing forums. Patrolling streets is what Neighbourhood Watches and private security companies do. The difference between OWT and private security companies lies in the members being bound by the law and not being allowed to infringe rights, as OWT does by committing assault.²³⁶ Furthermore, members of OWT are not being paid for their work, they patrol the streets voluntarily.²³⁷ Nonetheless, appeals for

²³⁰ Clark, Christopher ‘Wanya Tsotsi “not assaulting people” but “blessing them” instead’ op cit note 211.

²³¹ News24 ‘Operation Wanya Tsotsi –On night patrol with an SA vigilante group’ (2018) available at <https://www.all4women.co.za/1616206/news/south-african-news/operation-wanya-tsotsi-on-night-patrol-with-an-sa-vigilante-group>, accessed on 11 October 2019.

²³² Ibid.

²³³ Clark, Christopher & Swingler, Shuan op cit note 214 at 11:56.

²³⁴ Sankolla, Reitumetese op cit note 212 at 11:18.

²³⁵ Sankolla, Reitumetese op cit note 212 at 5:53-6:10.

²³⁶ Code of Conduct prescribed under the Private Security Industry Regulation Act 56 of 2001 at 8(2)(b).

²³⁷ Sankolla, Reitumetese op cit note 212 at 4:23.

donations to contribute towards petrol costs are regularly found on their Facebook page. Furthermore, OWT operates in a poverty-stricken area. Most people do not have the financial means to hire a private security company.

Although OWT's work is very similar to what a Neighbourhood Watch does, the group does not belong to a Neighbourhood Watch because they are not officially registered. Moreover, their use of illegitimate methods goes against what Neighbourhood Watches are allowed to do.²³⁸ They cannot handle criminals and must inform the police. Even if many groups do not stick to the rules, a group has to be registered to officially be a Neighbourhood Watch.

As the comparison shows, OWT cannot be classified as a form of community policing. They have to be classified as vigilantes. As previously mentioned, vigilantism can take different forms. OWT matches all the characteristics of a vigilante group. First, the group plans to go on patrols and fight crime intentionally. Secondly, private citizens work voluntarily for the group. Thirdly, OWT is autonomous; they work independently and they are not regulated by an Act. Fourthly, OWT uses force by sjambokking alleged criminals or threatening them with sjambokking the next time, they catch them. Fifthly, the group emerged because of a rise in crime and the state was inefficient in responding. Lastly, the aim of OWT is to make their community a safer place and protect its citizens and property.

OWT definitely does not match the characteristics of mob justice, as the actions of mob justice often ends up deadly for the suspect. In addition, mob justice is often a sporadic action that forms after a crime was committed. OWT is well organised and they try to fight crime on a long-term basis. OWT does infringe the rights of citizens but still accepts the authority of the police. This is underlined by the fact that they hand over all confiscated items to the police. Consequently, OWT is clearly a vigilante group. The method of OWT can be put in the category of crime control and social control because they fight criminals on their own and try to ban knives from their streets as it is against their social norms. Considering that OWT is a vigilante group, their approach will have to change in order to operate legally and maximise co-operation with the police. Their modus operandi of corporal punishment needs no analysis as this is clearly forbidden. In order to find out to what extent the publishing of pictures is illegal the modus operandi of OWT will be analysed in the following chapter.

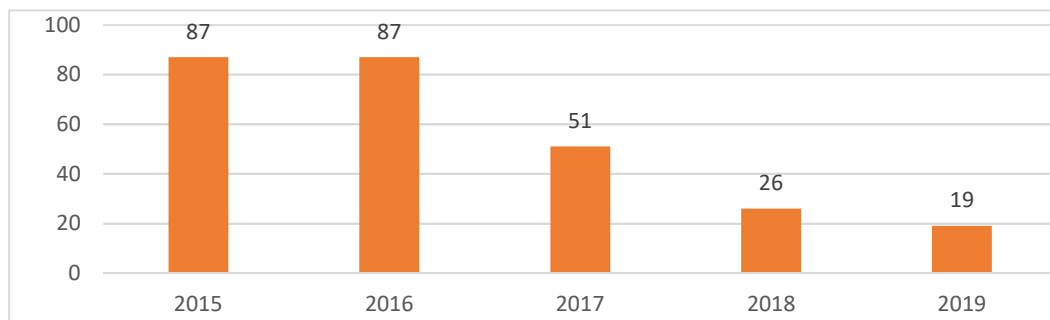
²³⁸ https://www.westerncape.gov.za/files/code_of_conduct_-_final_-_nhw_2020.pdf, accessed on 25 February 2021.

CHAPTER 3: PICTURE ANALYSIS OF OPERATION WANYA TSOTSI'S FACEBOOK PAGE

As already stated, the method of public shaming taken up by vigilantes is new. Consequently, the method needs to be examined in more detail as this could be the point of intersection for formalised collaboration with the police. This chapter analyses the method of publishing photographs of alleged criminals without consent. An overview of the content of OWTs Facebook page is given. This is important to illustrate to what extent OWT uses Facebook. It underlines that OWT could undertake an online presence for the police. The next part is a photograph analysis. First, the photographs are described in detail to demonstrate what the work of OWT looks like. Secondly, the chapter traces how OWT have changed their method in order to evaluate whether these changes were positive. Thirdly, it is examined to what extent coercion can be seen in the photographs. Indeed, coercion already exists by photographing suspects involuntarily, but it will be analysed if there is additional coercion by, for example, holding the suspect. The last part of the analysis will show how OWT has to adapt their online presence to enhance legitimacy and effectiveness so that their method can be reliably and consistently applied. This could lay foundations for a formalised collaboration with the police and may be an example for collaboration of the police and vigilante groups in other towns too.

3.1 Background information about Operation Wanya Tsotsi and their Facebook Page – what could be of use to the police?

Operation Wanya Tsotsi started operating on Facebook in March 2015. Since the end of 2019, they have published 270 posts. The posts have different content: invitations to meetings, reports about meetings, and crime reporting. They publish images of alleged criminals, confiscated items, news about crimes that have happened and share other posts that have information about crimes or suspects. Additionally, they ask for contributions towards petrol costs and have publicised a member who was nominated for the “South African Man of the Year 2018” award. As shown in the diagram below, the frequency of their posting has decreased over the years. In the beginning, OWT had many posts that explained who they are and what they are doing. Those posts vanished over time as people got to know OWT. The decrease in posts from 2016 to 2017 is accounted for in a pause in operations from the 4th of January 2017 until the 9th of March 2017.



Number of Facebook postings by Operation Wanya Tsotsi

The pause in operations occurred along with a petition calling for all charges against members of Operation Wanya Tsotsi to be dropped and that OWT should be recognised as a crime-fighting organisation that should work with the police.²³⁹ Members of OWT often face charges for different offences.²⁴⁰ They are charged for example with assault²⁴¹, kidnapping²⁴² or harassment²⁴³. In one case, they report about charges of kidnapping laid because they brought an alleged thief to the police station.²⁴⁴ In another case, they report about charges for harassing school children, because OWT tried to intervene in schools and stop stabbings.²⁴⁵ Unfortunately, OWT does not report what become of the charges. They just state that members are not allowed to participate in crime fighting actions while out on bail.²⁴⁶

In terms of formalised potential co-operation with the police, the posts that focus on crime reporting are important. The police do not really report on crimes extensively. They gather and publish statistics about crime²⁴⁷ and sometimes report about important happenings on their Facebook page²⁴⁸ but they do not report about every crime on a daily basis. OWT also uses their website to post warnings about dangerous situations, requests for help or advice regarding crimes. The police could do the same in order to improve their image in communities. Even postings about meetings would be useful as they could inform citizens about events that might help to fight crime.

²³⁹ <https://www.facebook.com/OperationWanyaTsotsi/posts/1796146983959910>, accessed on 13 February 2021.

²⁴⁰ <https://www.facebook.com/OperationWanyaTsotsi/posts/1796146983959910>, accessed on 13 February 2021.

²⁴¹ <https://www.facebook.com/OperationWanyaTsotsi/photos/a.1531940537047224/1670343446540265/>, accessed on 13 February 2021.

²⁴² <https://www.facebook.com/OperationWanyaTsotsi/posts/1793714380869837>, accessed on 13 February 2021.

²⁴³ <https://www.facebook.com/OperationWanyaTsotsi/posts/1983131215261485>, accessed on 13 February 2021.

²⁴⁴ <https://www.facebook.com/OperationWanyaTsotsi/posts/1793714380869837>, accessed on 13 February 2021.

²⁴⁵ <https://www.facebook.com/OperationWanyaTsotsi/posts/1983131215261485>, accessed on 13 February 2021.

²⁴⁶ <https://www.facebook.com/OperationWanyaTsotsi/posts/1793714380869837>, accessed on 13 February 2021.

²⁴⁷ <https://www.saps.gov.za/services/crimestats.php>, accessed on 13 February 2021.

²⁴⁸ <https://www.facebook.com/SAPoliceService>, accessed on 27 January 2020.

3.2 Image description

It is necessary to analyse OWT's photographs of alleged criminals in order to consider if this approach could be legal and to explore to what extent the police could make use of this method. All images displayed are photographs taken by members of Operation Wanya Tsotsi. The photographs were uploaded on Facebook between March 2017 and December 2019. The photographs show alleged criminals who were accused because they were allegedly carrying items with them that are believed to promote crime. For instance, OWT particularly seeks out knives.²⁴⁹ It does not matter what kind of knife the suspect is carrying. Kitchen knives as well as machete knives will be displayed.²⁵⁰ The item and the person are shown together to publicly shame them in an attempt to prevent future crimes and to stop them using these items.

The photographs are taken in colour and in portrait layout. In the foreground is the person holding the item. The person is most often photographed with their torso visible, sometimes it is a full body shot. The confiscated items vary between knives, sharp objects like scissors or hammers, everyday objects, and drugs, as well as drug accessories. Depending on how the item is held, the line of sight goes from the item to the face of the person or the other way around. It depends on how far the item is held away from the body. When the item is closer to the body, the first thing to catch the eye is the face. However, when the item is in the foreground the item catches the eye as it is bigger and dominates the photograph. This description shows that the alleged criminal and the item are of interest to OWT. It is important that the viewer can identify the person and the item. The person should be identified in order to warn the community that this person could be dangerous. The item on the one hand shows the wrongdoing of the suspect and on the other hand makes clear which items are not tolerated by OWT.

The person and the item are in the centre of the photograph. Either only one person is photographed or a group of people. In addition, the number of items varies too. One person can have more than one item and some of the group photographs show people that share one item. Therefore, the way the item is held varies. Smaller items are mostly held with one hand, whereas bigger items are held with two hands. This shows again that OWT wants to place attention on the items. Another reason why emphasis is placed on items could be that OWT wants to show

²⁴⁹ <https://www.facebook.com/OperationWanyaTsotsi/photos/pcb.2208421432732461/2208420339399237>, accessed on 13 February 2021.

²⁵⁰ <https://www.facebook.com/OperationWanyaTsotsi/photos/pcb.2208421432732461/2208420209399250>, accessed on 13 February 2021.

how successfully they work. Alleged criminals are thoroughly searched and all items will be found by OWT.

The subject of the photograph is facing the camera and in most photographs, the accused looks straight into the camera. Sometimes the suspects eyes are looking to the side or are closed. Sometimes the head is slightly turned towards the side or is lowered down. The facial expression of the photographed persons sometimes indicates possible feelings of fear, anger and apathy. Furthermore, the photographs often show one or more hands belonging to others. The hands are either holding the item for the accused, holding the item and the accused or holding onto the body of the accused person. The photographs sometimes show members of Operation Wanya Tsotsi. This demonstrates two things. First, OWT wants to ensure that suspects cannot hurt them. Secondly, it shows that most people are forced to take pictures.

The background shows the surrounding area where the person was photographed. There are four different situations – inside or outside, and day or night. The background is rather unimportant. Photographs that were taken at night show that the person is illuminated by a light source. Reflections are visible on the items or in the background. This underpins OWT's statement that they can be reached during day and at night.

It appears that OWT has two intentions with the photographs. They want to shame the person on the photograph in public and ensure recognition within the community. In addition, they want to deter others from carrying the same items around and show that OWT works effectively. The latter point is especially important for formalised collaboration with the police. It could be helpful if somehow OWT could manage to show the success of the police online rather than their own success. This could also have a deterrent effect on other criminals, as policing would be more visible.

3.3 Methods

This section focuses on the pictures that OWT has published in order to find out more about OWT and their online behaviour. A foundation for formalised collaboration with the police could be online work. Therefore, it is necessary to analyse their online method legally. Before an analysis can take place, the basis of their methods needs to be examined. The questions below aid in the analysis:

1. What do the photographs show about OWT's approach and has it changed over time?
2. What patterns can be seen in the photographs?
3. To what extent could the photograph be useful for collaboration with the police?

NVivo, a qualitative data software, was used to code photographs posted by OWT. The software enables one to build their own categories – nodes.²⁵¹ Additionally, areas of the photograph that are deemed important can be marked and assigned to nodes. All photographs posted by OWT that show the alleged suspects on Facebook were codified into different categories. Photographs that showed confiscated items or photographs that clearly stated that the rightful owner got their goods back were not considered. Indeed, the return of stolen goods and the recording of the return on a photograph are important steps of documentation that should not be missing in a formalised collaboration and will be discussed later on. Nevertheless, these pictures do not need to be legally analysed as the rightful owner gives consent for the photograph to be taken. In total OWT published 47 albums filled with alleged criminals. The albums have differing numbers of photographs. Seven hundred and thirty-nine photographs were codified into twelve categories with subcategories. The categories were: extraordinary photographs, photograph format, background, time of the day, items, coercion, quantity of items, number of persons, gender, facial expression, viewing direction of the suspect, and hand. These categories are explained below.

It was first checked, whether the photograph corresponds to the standard representation described under ‘3.2. Image description’ above. If the photograph did not match the description, it was coded as extraordinary. The photograph was also coded as extraordinary when it appeared that OWT was giving an object back to the rightful owner, as it was sometimes not possible to differentiate between alleged criminals and rightful owners.

Secondly, the photograph layout was checked. A distinction was made between portrait photographs and collages. Whereas portraits only show one person or a group of persons, a collage shows a collection of more than one photograph. Collages were not further codified as some of the people were not easily identifiable, and some of the collages included photographs of confiscated items or group photographs of meetings. Collages were coded as one photograph.

The categories ‘background’ and ‘time of the day’ were added. Those categories were divided into inside and outside as well as day and night. The division helps to show when and where OWT operates, and enables patterns of where and when OWT finds items to emerge. The category of coercion analysed to what extent members of OWT obviously used force and if the alleged criminals showed any external forceful impact. Therefore, the category was divided into the following subcategories: another hand holds the item, which means that a hand other than that of the suspect is holding the item in front of the suspect’s body. Additional hand

²⁵¹ Richards, Lyn *Handling Qualitative Data: A Practical Guide* 3 ed (2005) 112.

holds item was used when the suspect holds the item with someone else. Arm gets held, shoulder gets held, and clothes get held include cases where a member of OWT holds the suspect. In addition, subcategories were used where the use of force by members of OWT is not necessarily visible. Blood and water were used when the alleged criminal was bleeding or wet. The last three subcategories are pinned, person sitting on the ground and no force. No force was used when members of OWT did not touch the person and no other force was visible. The person stands staring straight at the camera.

The items with which the suspects are photographed were scrutinised. The category was subdivided into:

- alcohol,
- drugs,
- drugs accessories,
- objects,
- money,
- knives,
- other weapons,
- not identifiable, and
- no item.

Drugs included any type of pills, powders, and marihuana. The accessories for the use of drugs subcategory was used when the accused had a pipe, rolling papers, bottlenecks, or spoons. Objects are items that are allegedly stolen. Knives are any knives with no distinction made regarding size or self-made knives. Any other sharp item that is able to hurt someone was categorised as weapons. This includes firearms, hammers, screwdrivers, scissors, axes, truncheons, shovels, knuckledusters, razor blades, and whips.

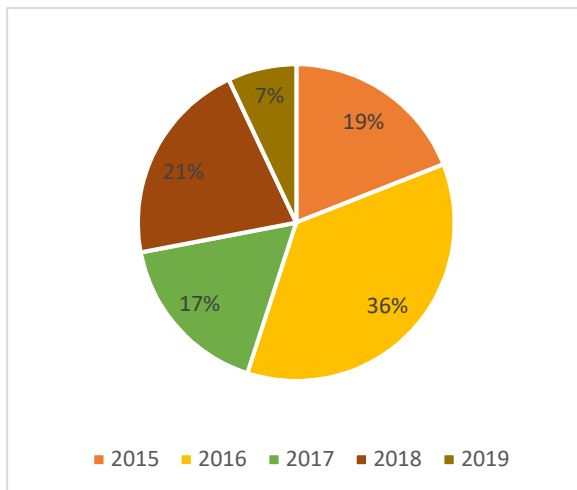
As a control and to prevent pattern misuse the categories 'quantity of items' and 'number of people' were used. These categories counted how many items and persons could be seen in the photograph. For the same reason the categories gender, facial expression, viewing direction, and hand were created. All of those categories are concentrated on the alleged criminal. The gender category differentiated between men and women. An attempt was made to classify facial expression. The category was subdivided into neutral expression, smiling, and crying. The viewing direction looked at whether the person was looking into the camera or to the side. However, to be codified as looking to the side the person had to turn his head to the side or

down. Closed eyes and eyes that did not look in the camera were still coded as into the camera if the head was straight. Lastly, there was the hand category. The category analysed with which hand the person held the item and was therefore divided into left hand, right hand, both hands, and no hands.

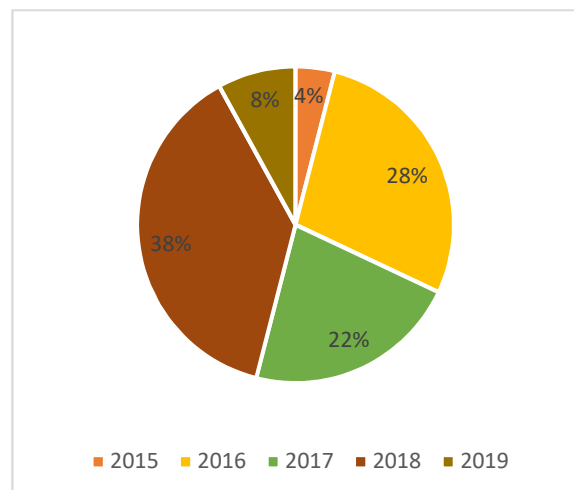
Now that the research method and coding has been explained, the analysis follows below.

3.4 Discussion

Operation Wanya Tsotsi started to shame suspects at the end of June 2015, although they started operating during March 2015. Since then they have regularly posted photographs of suspects on Facebook.



Number of albums posted by Operation Wanya Tsotsi



Number of posted photographs by Operation Wanya Tsotsi

In 2016, OWT posted the most albums as shown in the pie chart above. It should be noted that OWT was not operating at the beginning of 2015 and that they only started posting photographs in the middle of the year. Therefore, it can be said that the frequency of posting suspects was the same in 2015 and 2016. In 2017 and 2018 the frequency was lower than the years before and eventually reached a minimum in 2019. However, the number of photographs they have posted over the years needs to be interrogated.

This slightly changes the pie chart, because in 2018 OWT posted the most photographs. In 2015, they posted the fewest photographs, in stark contrast to the previous chart. The years 2017 and 2019 almost stay the same. An explanation for the difference in 2015 is the different approach of OWT. When OWT started operating, they used collages and explained every single

photograph that was shown in the collages. As previously mentioned, the collages were a mash-up of photos of alleged criminals, rightful owners and meetings of OWT. In between OWT also posted some portrait photographs but they were never explained. They stopped using collages and explaining them in April 2016. However, in the posts following April 2016 OWT explained some of the portrait photographs, but again that approach stopped after three posts.

After that, they only provided general explanations that described where and how members of OWT work. The general explanation states that OWT confiscates dangerous weapons and drugs during patrols and that they manage to give items back to the rightful owner.

In order to enhance formalised police collaboration, it would be helpful to explain what the alleged criminals have supposedly done. It is not necessary to report crimes on Facebook; however, it could restore trust between the population and the police. The media tends to only report about serious crimes. There are no source reports about daily crimes. Thus, aside from serious crimes, it will show that the police and the community are working intensively on all crime. It is very time consuming to explain all the photographs, which could explain why OWT stopped doing so. As seen in the pie chart, the number of portrait photographs grew over time. In numerical terms 96,4 % of all photographs are portrait photographs. The decline in 2019 can be explained by the fact that OWT started to face more problems, especially with the police.²⁵² OWT states that they get arrested for their work. They do not provide any information about the charges.

Another possible explanation as to why OWT changed their approach could be due to more emphasis being placed on public shaming, rather than showing a few suspects with explanations of their accusation, as explanations are time consuming. OWT has stated that public shaming is important to them.²⁵³ Identification of people is easier when they are shown in portrait photographs because they are the focus of the photograph. The fact that online shaming is a type of punishment that OWT attaches importance to is also supported by the use of perspective. OWT uses a forward-facing perspective to photograph a person. This perspective gives the viewer of the photograph the impression of facing the person being photographed. Therefore, it is easier for the viewer to identify and recognise the person.

Indeed, further analysis reveals that identification is very important to OWT. They use colour photographs and all photographs are sharp and not blurred. Persons that are

²⁵² <https://www.facebook.com/OperationWanyaTsotsi/posts/2356729831234953>, accessed on 29. November 2019.

²⁵³ Clark, Christopher & Swingler, Shuan op cit note 214 at 11:56.

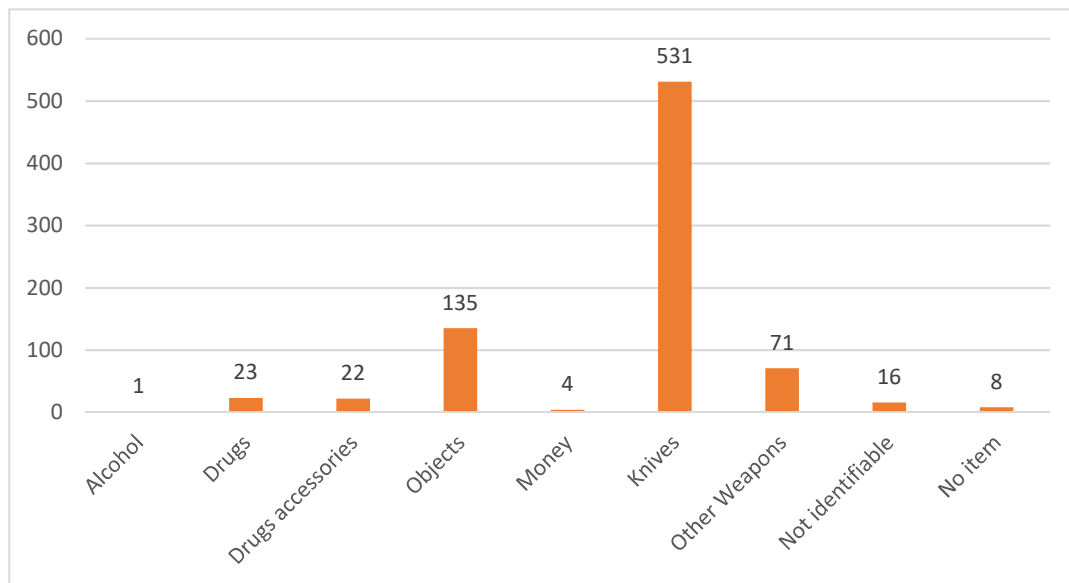
photographed during night patrols are illuminated by a light source. Clearly, it is important to OWT that social media followers recognise the alleged criminal. Furthermore, suspects are made to take their hats, caps, and beanies off, presumably to aid in identification. The alleged criminals often hold their headgear in their hands. Eighty-seven percent of all suspects are looking straight at the camera, enhancing identification. Even when a suspect is looking to the side, identification is still possible. Public shaming is clearly the intention of OWT. It is questionable whether this identification of people prevents co-operation with the police and the next chapter discusses whether this method breaks the law.

OWT states that they confiscate 60 knives per day.²⁵⁴ This number indicates that not every suspect is photographed by OWT as only 739 photographs were taken from their Facebook page over a period of four years. If OWT confiscates 60 knives per day, it would take about two weeks to reach 700 photographs. It is unclear why not all suspects are shamed online. A possible explanation could be that the posting is time-consuming and that not every member of OWT has admin access to Facebook. Ten albums (21.3%) are shared posts that were posted originally through the private Facebook account of the chairperson and a founding member of OWT.²⁵⁵ It is possible that he is responsible for the postings. Furthermore, the same people are not always on every patrol. It is possible that people forget to send photographs to admins or that some members are not taking photographs on their patrols.

In total OWT has published 739 photographs of suspects, 35 photographs of the 739 were not considered, because they were coded as extraordinary for different reasons. 628 photographs (89.2 %) were photographs where only one person was shown and 76 photographs (10.8 %) contain groups of two to five persons. With group photographs, it is striking that either each person holds an item or they hold an item together.

²⁵⁴ Sankolla, Reitumetese op cit note 212 at 6:50.

²⁵⁵ Clark, Christopher 'Wanya Tsotsi "not assaulting people" but "blessing them" instead' op cit note 211.



Number of items photographed by Operation Wanya Tsotsi

Regarding the items, the graph above demonstrates that the focus of OWT is on dangerous items. Of all the items, 74 % are dangerous weapons, whereby the category of knives alone counts for 65.3 %. That conforms to OWT's belief that knives and other sharp weapons are a cause of killings due to stabbings, and that they try to target these items in order to decrease crime rates. Some weapons are even altered in order to be more deadly. For instance, scissors with one handle removed in order to have a better grip for stabbing.

It is interesting that only a few suspects are photographed with drugs (2.8 %). OWT only started to take photographs of suspects with drugs in 2017, although they confiscated drugs and handed them over to the police when they started operating. OWT photographed people with pills, possibly tik or mandrax, and marijuana. Tik belongs to the group of methamphetamines,²⁵⁶ mandrax to the group of methaqualone²⁵⁷ and both are known for a growing drug problem, especially in the Western Cape.²⁵⁸ People that consume tik or mandrax have to smoke it.²⁵⁹ That explains why suspects carry pipes and broken bottle necks.²⁶⁰ There are proven connections between the addiction or the consumption of these drugs and crime.²⁶¹

²⁵⁶ Berg, Julie 'The Rise of Tik and the Crime Rate' (2008) 18 *South African Journal of Criminal Justice* 306.

²⁵⁷ Peltzer, Karl *et al.* 'Illicit Drug Use and Treatment in South Africa: a review' (2010) 45 *National Institutes of Health* 2223.

²⁵⁸ Weybright, E H *et al.* 'The state of methamphetamine ('tik') use among youth in the Western Cape, South Africa' (2016) 106 *South African Medical Journal* 1125.

²⁵⁹ Berg, Julie *op cit* note 256 at 311.

²⁶⁰ Peltzer, Karl *et al.* *op cit* note 257 at 2224.

²⁶¹ Legget, Ted *et al.* 'Drugs and Crime in South Africa A Study in Three Cities' (2002) *Africa Portal*.

In addition, the side effect of tik is that it causes violent behaviour, which can also lead to crime.²⁶² Thus targeting people that carry drugs or drugs accessories is in keeping with the aim of OWT to fight crime in their community.

The second-largest group (16.6%) are those photographed with objects that are allegedly stolen. There is a great variety of objects. Electronic equipment like phones, stereos, laptops and televisions, but also bags, shoes, kitchen equipment and gas. Certainly, electronic devices are the most photographed ones (65.6%). Within electronic devices, mobile phones were the most popular ones with 32.1%, after which televisions with 14.4% and laptops with 10.7%. Electronic devices can generally be easily sold and are thus an easy target for theft. OWT tries to make sure that the rightful owner gets his or her belongings back. However, it is interesting that 16.8% of these photographs are taken inside. Arguably, members of OWT photographed inside buildings may indicate that they get tip-offs from the community. This suggests that the community trusts OWT and calls them after an incident has occurred.

A limitation of analysis on the category of objects and drugs was that sometimes suspects had a number of alleged stolen items or a bag with pills, therefore, it was impossible to mark all of them and count every object or pill as a single one. Some items were not identifiable because they were wrapped in plastic or in newspapers.

Three of the eight photographs without items are suspects sitting in a car. It may be that these people were tracked down because they had already committed a crime. OWT states on their Facebook page that they hand over wanted people to the police. That illustrates that OWT wants to work with the police and underlines that they do not usurp all police duties.

What is striking about the category of gender is that the majority of suspects are men. Only 3.1 % of all coded suspects are female. Most of the female suspects are photographed with a stolen item. The other items were knives and drugs. No pattern has emerged as to why OWT photographed more men than women. It could be that men are mainly the targets of OWT or it could reflect that women, in general, are engaged in less criminal conduct than men are. The 2017/2018 annual report of the Department of Correctional Services stated that only 2.5 % of the sentenced offenders were female.²⁶³

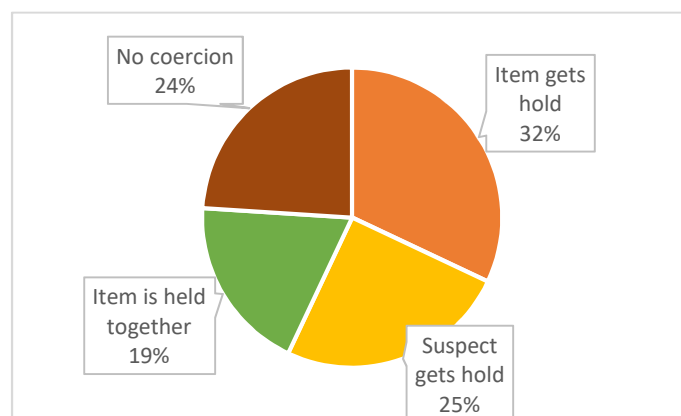
More information can be found when concentrating on the background of the photographs. First, 58.5% of the photographs are taken during night time and 41.5% during

²⁶² Berg, Julie op cit note 256 at 324.

²⁶³ Department of Correctional Services 'Annual Report 2017/2018' (2018) 28.

daytime. It confirms that OWT is patrolling during the day and at night. Furthermore, cars and minibuses are often seen in the background. Minibuses in the background indicates that OWT stop and searches people who get out of the vehicle, or that they in general stop and search people at transport stations. A number of photographs show the same background, showing that OWT conducts multiple searches at single locations.

The category of coercion shows how aggressively OWT operates in order to take photographs of alleged criminals. The pie chart shows only 24% of all photographs show no coercion. Force was applied to over three-quarters of all photographs. This proves that the suspects do not take the photographs voluntarily. In 25% of all photographs, the suspect gets held by at least one member of OWT. The way the suspect is held differs. Mostly the arm of the suspect gets held. The approach of OWT appears more aggressive when they grab the clothes of the suspect. That can indicate that the person resisted taking a photograph or even tried to run away. In some of the photographs it appears that the OWT member is trying to position the suspect the right way for the photograph.



Coercion accomplished by Operation Wanya Tsotsi

The largest block (32%) is the item getting held by a member of OWT. This is either because the suspect has too many items to hold or because the suspect was carrying a dangerous weapon. Only 7.4% of the items that get held by members of OWT are not dangerous weapons. Nevertheless, it can be noticed that in the beginning OWT held the item together with the suspect or the suspect held the item. OWT started holding the item for the suspect in 2017. This may be an indication that an incident occurred. Indeed, in one of the collages, it is alleged that a member of OWT was stabbed in the head.²⁶⁴ OWT also posted at the beginning of 2016 that

²⁶⁴ https://www.facebook.com/pg/OperationWanyaTsotsi/about/?ref=page_internal, accessed on 29. November 2019, posting from 29.09.2015.

members of OWT suffered injuries.²⁶⁵ They do not say whether the attacks happened during patrols or when members were off duty. The first time that OWT held the item with the suspect was in February 2016. However, still 36.7% of all photographs show no coercion. In those photographs, the suspect is holding a dangerous weapon alone. There is no recognisable pattern indicating when OWT pursues a coercive approach.

OWT's approach changed slightly in the middle of 2017. Members of the group started wearing gloves when they held the item, but once again, there is no recognisable pattern to when they are wearing gloves and when they are not. It is possible that they started wearing gloves to prevent their DNA being on the item, as the items could be used as evidence in court.

The number of photographs that show that the suspect was subjected to coercion before the photo was taken is small (14). In three photographs, the suspect is bleeding. In two cases, the person is bleeding in the face and in the third photograph; the person has a wound on their arm. Although OWT's approach towards punishment includes corporal punishment, it is not necessarily OWT that caused the wounds. In three photographs, the person is wet. In two cases the person is also sitting on the ground and in the last photograph, the person is standing. It appears that the person standing only had a wet spot on his shirt, and it looks likely that he poured water on himself. In the other cases, it seems more likely that members of OWT wet the person, because they have water in their face and on their shirts.

In general, it is evident that all people who were photographed while sitting were photographed after receiving their punishment. In three photographs, a person is clearly tied up. In one photograph, only the hands of the suspect are tied and in two others, the person is tied to a mast. Again, there is no pattern to be seen as to why OWT uses harder remedies in these particular cases. Two suspects have an allegedly stolen item on hand, whereas the other has a knife.

The category of coercion is limited, as there were many photographs that could not be completely identified. For instance, in some photographs, the hands of the suspect were behind their back. While it could mean that the person was standing like that while a member of OWT holds the item in front of their body, it is possible that OWT handcuffed the person and it is not visible in the photograph. There are photographs where the arms of the person are not visible

²⁶⁵ <https://www.facebook.com/OperationWanyaTsotsi/posts/1639865512921392>, accessed on 29. November 2019.

because they are stretched to the side. Therefore, it could be that the person is being held by members of OWT.

Among all the photographs there was only one that showed the suspects from behind. OWT explained that they had raped someone and due to their age, they cannot show their face. While OWT show other young suspects, they cannot show the faces of alleged rapists. The actual reason why OWT cannot show their faces is not the age of the suspects; it is existing law that requires anonymity in rape cases.



Alleged rapist shown from behind

In summary, the photograph analysis clearly shows that OWT wants to expose people online, thereby deter criminals, and fight crime. The way they try to achieve their goals has changed over time. Changes that include handing over alleged criminals to the police or wearing gloves are positive for collaboration with the police. On the other hand, the coercion that is applied by OWT stands in the way of collaboration, as may their publication of images without consent.

3.5 Necessary changes to method

Besides the legal ramifications of their methods, which are explored in the next chapter, there are required changes to improve OWT's efficiency and reliability. First, it is not clear whether the person was carrying the item or whether the person was forced to take a photograph with the item that was provided by OWT. Bringing back explanations about the suspects could prevent people from thinking that OWT wrongly suspects people. Explanations about allegedly stolen objects would be very helpful but would also only give an impression of legitimacy. Working with the police would be necessary, because instead of a member of OWT a police officer could gather the evidence, which would give the approach actual legitimacy. Some of the photographs make it clear that the item was stolen. For instance, it is unusual for a person to innocently carry multiple mobile phones. However, the fact that they photograph people with allegedly stolen objects can be an indication that the community turns to OWT when crimes take place. If OWT did not receive information about stolen goods or suspects it would be

almost impossible for them to trace down suspects and the stolen goods. This trust in OWT could help the community to trust the police again, if for instance OWT provides the police with received information.

Secondly, OWT wants to show that their work is efficient by returning allegedly stolen items to the rightful owner. OWT thus photographs the rightful owner with their goods. However, the rightful owner is photographed in the same way as suspects. Even the posts mix up rightful owners and suspects. To avoid confusion, it would be helpful to bring back explanations and separate posts of rightful owners and suspects. Publicising the return of items to their rightful owners helps show the community that OWT is efficient and on the side of the community. The police could benefit from adopting the same approach to improve community relations.

Thirdly, OWT should clearly distinguish their members in photographs from alleged criminals. Usually, OWT members wear reflective vests or only a certain part of their body can be seen. When this is not the case, they risk labelling themselves as suspects on their Facebook page as not all followers know who are members of OWT.

Fourthly, not every item is obviously meant for criminal ends. For instance, it is not a crime when someone carries a scissors as long as it is not used as a weapon. Obviously, the aim of OWT is to prevent a crime, but it is problematic to target someone for something that is not overtly criminal. Even the police would only be allowed to confiscate scissors if the context allowed for it. It is also possible that people carry dangerous items for self-defence.

Furthermore, it is also not clear why OWT photographs multiple people with only one item. One possibility is that OWT caught a gang, and because they do not support gang behaviour, they expose them to warn the community. Another argument that relates to stolen items could be that the persons stole the item together and therefore should all be exposed online. Again, explanation of the photographs could prevent confusion.

It was noted that OWT posted some photographs twice in different albums. This also slightly falsified the results as the same photograph was coded twice. The number of images that were posted twice was so small that nothing was done about their double evaluation. The results were so clear that even omitting these images did not significantly change the result, but it should be noted. It could be that it was a mistake that OWT posted the photographs twice. However, when a photograph was posted twice there were always months in between. For example, two photographs were published on the 29th of February 2016 and the same

photographs were found in the album of the 9th of June 2016. One photograph was even reposted almost a year later. It seems unlikely that a photograph is reposted because of a mistake when there are months in between.

A possible explanation could be that they caught the same person again and that is why they published the photograph again. Nevertheless, this mistake raises doubts about OWT's approach. It is unclear whether OWT intentionally posted the same person twice to give a skewed impression of their success rates. Followers see so many photographs of different suspects that they would not recognise when a photograph is reposted.

This chapter underlines that OWT exposes people on their Facebook page in a manner that maximises identification of the suspect. Furthermore, their method has undergone several changes. Changes that include holding suspects carrying dangerous weapons and wearing gloves are positive. Another positive change is that OWT concentrates more on people who carry illegal drugs. As already mentioned drugs can have an enormous influence on crime. These changes serve security and make their work more credible. On the other hand, OWT stopped explaining their pictures, which undermines what they are trying to achieve. Nonetheless, the online approach to their work may still yield opportunities for formalised collaboration with the police, if it meets the requirements of the law. Whether it does so, and if not, whether it could, will be discussed in the chapter below.

CHAPTER 4: PUBLISHING PICTURES WITHOUT CONSENT - LEGAL ANALYSIS AND CONSIDERATION OF PUBLIC SHAMING

The main modes of punishment employed by OWT are corporal punishment and public shaming. The police will not support vigilantes that enforce corporal punishment. This method is illegitimate. Consequently, in order to work with the police OWT has to abandon corporal punishment.

This leaves the method of public shaming. Public shaming is a ‘form of internet vigilantism in which targets are publicly humiliated for actions done privately or without wanting intended public broadcast using technology like social and new media’.²⁶⁶ This definition positions public shaming as a form of vigilantism, which, as stated previously, is by definition illegitimate behaviour. This chapter analyses the legality of public shaming in South Africa through the lens of *crimen iniuria*, criminal defamation and harassment, in order to establish whether prospects for collaboration with the police remain for OWT.

4.1 Legally protected good ²⁶⁷

In order to punish a certain behaviour, it needs to infringe a legally protected interest. Human dignity and privacy are rooted in the Constitution of South Africa²⁶⁸ and therefore, protected by the law. The Bill of Rights is contained in chapter two of The Constitution, which includes s 10 (human dignity) and s 14 (privacy):

‘Human dignity

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

Privacy

14. Everyone has the right to privacy, which includes the right not to have—

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or

²⁶⁶ https://en.wikipedia.org/wiki/Online_shaming, accessed on 14 January 2020.

²⁶⁷ Most of this paragraph contains information from the following paper: Kral, Svenja Julie ‘Publishing Pictures on Facebook without Consent – A Criminal Legal Comparison of South Africa and Germany based on Operation Wanya Tsotsi’ (2019) unpublished paper handed in for the completion of the course PBL5848F Law & Society in Africa at University of Cape Town.

²⁶⁸ Constitution of the Republic of South Africa, 1996.

(d) the privacy of their communications infringed.²⁶⁹

Crimen iniuria, criminal defamation and harassment are remedies that protect the rights to dignity and privacy. *Crimen iniuria* explicitly protects the interest of human dignity, an aspect of the human personality.²⁷⁰ Whereas criminal defamation aims to protect the reputation of a person.²⁷¹ Harassment provides protection of the victim's security, privacy and dignity by giving victims the opportunity to gain protection orders.²⁷² The remainder of this chapter considers these offences to analyse whether the behaviour of OWT falls under any of them.

4.2 Crimen Iniuria

Crimen iniuria is part of the common law²⁷³ and is defined as 'unlawfully, intentionally and seriously violating the dignity or privacy of another'.²⁷⁴ Burchell's definition, on the other hand, excludes the element of seriousness.²⁷⁵ Consequently, the offence has three essential elements:

- (a) impairment of dignity/dignitas,
- (b) unlawfulness, and
- (c) intention.

OWT publishes photographs of alleged criminals without their permission. This could violate the dignity or privacy of the photographed person because the identity of a person is revealed involuntarily. The identity of a person is part of personal information and protected by *crimen iniuria*.²⁷⁶ All followers of OWT's Facebook page are able to see the person. Furthermore, personal facts are given to the followers. The photographs intend to show alleged criminals and consequently, reveals the alleged criminal history of a person, which can have negative effects in terms of the reputation of that person. Photographs can constitute *crimen iniuria*, as words or conduct can form the basis of the crime.²⁷⁷

²⁶⁹ Constitution of the Republic of South Africa, 1996.

²⁷⁰ Watney, Murdoch 'Crimen Iniuria: Its Role vis-a-vis Sexual Offences Legislation' (2017) 2 Journal of South African Law 407.

²⁷¹ Ibid.

²⁷² Kemp, Gerhard (ed) *Criminal Law in South Africa* 3 ed (2018) 342.

²⁷³ *R v Umfaan* 1908 TS 62 at 67; *R v Kobi* 1912 TPD 1106; *R v Jacob* 1924 JS § 29 (T); *R v M* 1915 CPD 334; Burchell, Jonathan 'Protecting dignity under common law and the Constitution: The significance of *crimen iniuria* in South African criminal law' (2014) 27 *South African Journal of Criminal Justice* 261.

²⁷⁴ Synman, C R *Criminal Law* 6 ed (2014) 461.

²⁷⁵ Burchell, Jonathan *Principles of Criminal Law* 5 ed (2016) 648.

²⁷⁶ Burchell, Jonathan 'Protecting dignity under common law and the Constitution' op cit note 273 at 257.

²⁷⁷ Snyman, C R op cit note 271 at 462.

Furthermore, in order to determine what kind of act can constitute *crimen iniuria* the South African courts have developed an objective test.²⁷⁸ A reasonable person, rather than the accused or the complainant, must feel that their dignity has been impaired.²⁷⁹ Surely, no person wants to be the focus of a photograph with the allegation of being a criminal and shown on the internet. Many people do not want to have any photographs of themselves online.

South African case law shows that humiliation can violate someone's dignity or privacy.²⁸⁰ These cases involved extreme humiliation because the complainants were made to walk around naked²⁸¹ or carry their own excrement.²⁸² These are extreme cases but as already stated above the standard does not require extreme facts. OWT's photographs have to be humiliating. In general, all photographs posted by OWT are humiliating because they show a person that is alleged to be a criminal. The accusation is humiliating, especially when the statement is false.

There are photographs that stand out as particularly humiliating. For instance, photographs are shown of an adult man who urinated on himself, some men are crying and some photographs show persons not completely dressed. These photographs are humiliating as it is considered disgraceful for men to show weakness in public. The habit of urinating on oneself exists primarily in small children because they have to learn how to use the toilet. Moreover, urinating on oneself is a sign of fear and anxiety, as is crying. Crying and being in a state of undress are usually private or intimate. The photographs invade the intimate sphere of the subjects. They did not choose to share these moments publicly, they were forced into this situation. Consequently, the photographs are mortifying and comparable to earlier cases.

Another aspect that needs to be examined are comments under photographs that include the names and addresses of the persons being photographed. The name and address of a person is linked to their personal identity and therefore, protected by *crimen iniuria*.²⁸³

*'Lmfao those to I know very well left one is Clive lives in mondile street right one is sonwabo lives in gwele street'*²⁸⁴

²⁷⁸ Watney, Murdoch op cit note 270 at 410.

²⁷⁹ Burchell, Jonathan 'Protecting dignity' op cit note 273 at 258.

²⁸⁰ *R v Sethunsa* 1945 EDL 128; *S v Van der Merwe* 2011 (2) SACR 509 (FB).

²⁸¹ *S v Brereton* 1971 (1) SA 489 (RA).

²⁸² *R v Sethunsa* op cit note 215 at 128.

²⁸³ Burchell, Jonathan 'Protecting dignity' op cit note 273 at 257.

²⁸⁴

<https://www.facebook.com/OperationWanyaTsotsi/photos/a.1531940537047224/2186271744947430/?type=3&heater>, accessed on 28 May 2019.

It is the followers of OWT revealing this personal information and not OWT. It is therefore not necessary to scrutinise in this case whether OWT is guilty of *crimen iniuria*. However, it will be discussed in Chapter 5 whether OWT could prevent this behaviour.

The behaviour of OWT is also not justified. It is acknowledged ‘that limits had to be set to this action for invasion of privacy and that the public benefit, or the public interest in freedom of expression, might override the individual’s right to privacy in certain circumstances.’²⁸⁵ For instance, the media does not conduct *crimen iniuria* when their publication is reasonable, which is mostly applicable when celebrities are shown.²⁸⁶ Crime prevention, which is the intention of OWT, is not a ‘reasonable publication’. People are interested in crime and their perpetrators but revealing the names of alleged criminals can have tremendous effects on the person as can be seen in vigilante behaviour.

Ultimately, Maat concluded in her dissertation that the case of publishing photographs of someone on websites violating the person’s dignity could constitute *crimen iniuria*.²⁸⁷ However, she did not explain in detail why *crimen iniuria* was committed in this case.

In summary, OWT committs *crimen iniuria* every time they publish a photograph of an alleged criminal because the person’s identity and (alleged) criminal history is revealed. Some photographs are extremely humiliating. In order to work with the police, OWT has to adapt their method so that *crimen iniuria* is not committed. An adaption has to make sure that the identity of a person is not revealed. For instance, blurring the face of a suspect or using black bars could help to adapt the method.

4.3 Criminal Defamation²⁸⁸

While it has already been shown that the approach of public shaming amounts to *crimen iniuria*, it is nevertheless important to examine whether OWT commits further crimes to be able to analyse how far their method needs to change to be legal. Publishing photographs without permission could constitute criminal defamation, because the individual’s right to an

²⁸⁵ Burchell, Jonathan ‘The Legal Protection of Privacy in South Africa: A Transplantable Hybrid’ (2009) 13 *EJCL* 19.

²⁸⁶ Burchell, Jonathan ‘The Legal Protection of Privacy in South Africa’ op cit note 285 at 22.

²⁸⁷ Maat, Sandra Mariana *Cyber crime: a comparative law analysis* (Dissertation, University of South Africa, 2009) 54.

²⁸⁸ The analysis in this chapter bases on the assumption that Criminal Defamation is constitutional. Burchell assumes that the balance between freedom of expression and the protection of reputation is distorted and therefore unconstitutionality could exist.

unimpaired reputation could be affected.²⁸⁹ As mentioned earlier the legally protected interest is the good name or reputation of fellow people.²⁹⁰ Criminal defamation is defined as an ‘unlawful and intentional publication of matter concerning another which tends to injure the reputation of another.’²⁹¹ Therefore, the elements of the crime are the following:

- (a) Publication
- (b) Defamatory matter
- (c) Unlawfulness
- (d) Intention²⁹²

OWT publishes photographs on Facebook in a group that is accessible for every user of Facebook. Therefore, the element of publication is met because the photographs are shown to those other than the person defamed.²⁹³

Furthermore, it has to be examined whether the publication is a matter that exposes the subject to ‘hatred, ridicule or contempt’.²⁹⁴ Publishing a person’s identity with claims that they are criminals could be contemptuous. The allegation of being a criminal can have a tremendous effect on a person’s reputation. Once the title of being a criminal exists, it is very difficult to get rid of it. Communities do not want criminals in their neighbourhood and therefore, it is difficult to make social contacts. Furthermore, the reputation can have a negative impact on the search for accommodation and jobs. Consequently, it is clear that publishing photographs with the allegation of being a criminal diminishes the esteem of someone in the eyes of a reasonable person.

However, it could be disputed whether the publication of photographs by OWT contains the allegation that these people are criminals. In the case where OWT explains the photographs and what the persons did, the claim is clearly met. The situation is different where OWT publishes photographs without explanation. In this case, it is up to the viewer whether they assume that these peoples are alleged criminals. Nevertheless, OWT makes the claim indirectly. OWT wants to fight crime. The people who are published by OWT hold certain items that can be linked to crime. As a result, it is obvious that OWT wants to shame people online with the

²⁸⁹ Burchell, Jonathan *Principles* op cit note 275 at 641.

²⁹⁰ Synman, C R op cit note 274 at 467.

²⁹¹ *S v Hoho* 2009 (1) SACR 276 (SCA) para 23.

²⁹² Kemp, Gerhard op cit note 272 at 339.

²⁹³ Burchell, Jonathan *Principles* op cit note 275 at 643.

²⁹⁴ *R v Shaw and Fennell* supra at 324.

allegation that they are at least suspects in a crime. Therefore, OWT commits defamation by publishing photographs without permission.

The elements of the offence could be excluded if the act of OWT is justifiable. The action of OWT is justified where the content is true and for public benefit. For the justification, it is important to distinguish the items the persons are holding. There is no way to verify from the photographs or from OWT's methods whether alleged suspects actually posed the threat OWT claims – the claim is based off an assumption and only a successful police investigation could show the claim to be true. However, once OWT have interfered with witnesses and evidence this would damage a subsequent police investigation. Although, there is public benefit in exposing dangerous people in the community, OWT cannot provide evidence that the persons photographed are indeed dangerous.

Conversely, photographs that show stolen goods could be beneficial, as the stolen item is located and displayed and could help in locating the rightful owner. However, there is no proof whether the person being photographed stole the objects. It is only an allegation by OWT. The person may also have been forced to hold the item or may not have stolen it. An allegation cannot reflect the truth. Therefore, there cannot be a justification since all photographs are allegations by OWT. To sum up, OWT commits the offence of criminal defamation.

4.4 Harassment

It is important to know that harassment is not a criminal offence itself but victims of harassment can apply for a protection order against the harasser.²⁹⁵ The protection order is to provide protection of the victim's security, privacy and dignity.²⁹⁶ Violations of the legal protection order constitute a criminal offence.²⁹⁷ Therefore, it is important to analyse whether photographed people can gain a protection order against OWT, as a breach against the order is a criminal offence.

The Protection from Harassment Act²⁹⁸ includes cyber-harassment.²⁹⁹ Subsection (a)(ii) states that online harassment is any direct or indirect behaviour through electronic communication that causes damage to the complainant, while the respondent knows that the

²⁹⁵ Kemp, Gerhard op cit note 272 at 342.

²⁹⁶ Ibid.

²⁹⁷ http://www.justice.gov.za/forms/form_pha.html, accessed on 28 May 2019.

²⁹⁸ Protection from Harassment Act, 17 of 2011.

²⁹⁹ De Wet, Annamagriet 'Understanding harassment and bullying of learners in school: An education law perspective' (2016) 17 *Child Abuse Research in South Africa* 26.

engagement is damaging.³⁰⁰ Direct harassment is an action, which is persistent, repeated and directed at the person himself or herself, indirect harassment is not directed at the person.³⁰¹ For instance, spreading rumours about a person and embarrassing them online would refer to indirect online harassment.³⁰² Cyberbullying is equivalent to harassment and the Harassment Act protects victims.³⁰³ The publication of photographs is an electronic engagement because the platform used is on the internet.

As previously discussed, OWT's method causes the impairment of a person's reputation. OWT spreads the rumour that the photographed persons are alleged criminals. This allegation harms the person. As aforementioned, the allegation can even have economic consequences, which is also protected by the Harassment Act.³⁰⁴ The photographs are not sent to the person, they are uploaded online and visible to every user on Facebook. Therefore, OWT harms the photographed person indirectly. Furthermore, OWT wants to expose those people online in order to fight crime, deter other criminals and warn the community. They are clearly aware that their behaviour can be harmful for the alleged criminal.

However, it is questionable whether publishing a photograph of a person once is harassment. While, OWT publishes photographs of a person, indirectly spreading the rumour that this person is a criminal, this behaviour is not consistently directed against the same person. The aim of a protection order is to prevent damaging behaviour that is consistently applied.³⁰⁵ It should prevent the same behaviour being repeated. The behaviour violates the reputation of the person who is photographed; however, this behaviour is already legally protected through other criminal offences. Nonetheless, should OWT upload photographs of the same person repeatedly that person would be able to apply for legal protection in order to stop OWT from uploading photographs of them.

The photograph analysis showed that OWT sometimes publishes the same photograph twice. However, arguably even publishing the same photograph twice would not be enough to gain a protection order. Consequently, it is unlikely that OWT commits harassment, as long as they do not target the same person repeatedly.

³⁰⁰ Protection from Harassment Act, 17 of 2011.

³⁰¹ Burton, Patrick & Mutongwizo, Tariro 'Inescapable violence: Cyber bullying and electronic violence against young people in South Africa' (2009) *CJCP* 2.

³⁰² Badenhorst, Charmain 'Legal responses to cyber bullying and sexting in South Africa' (2010) *CJCP* 2.

³⁰³ Rachoene, Matjore & Oyedemi Toks 'From self-expression to social aggression: Cyberbullying culture among South African youth on Facebook' (2015) 41 *Communicatio* 317.

³⁰⁴ De Wet, Annamagriet op cit note 299.

³⁰⁵ Burton, Patrick & Mutongwizo op cit note 301 at 2.

4.5 Public shaming – a popular form of peer group punishment

The legal analysis showed that the method of public shaming is illegitimate in South Africa. The fact that the persons are identifiable infringes their dignity and privacy. OWT likely commits the criminal offence of *crimen iniuria* and possibly defamation. Considering that the police can only work with legally compliant groups, they cannot work with OWT if they use their current method. In order to establish formalised collaboration, the approach of OWT has to change. This section of the chapter explores why the method of public shaming has become so powerful, despite being illegal. The meaning of public shaming needs to be examined in order to understand why it is necessary to use a method that is similar to the one used by OWT as a crime fighting tool.

Public shaming is a punishment method that has existed for a long time and started as a form of state punishment.³⁰⁶ In early America, for example, public shaming was the most popular punishment for criminals.³⁰⁷ Exposing criminals due to pillorying, flogging, and with signs and brands that displayed the wrongful behaviour were common methods.³⁰⁸ The punishment was powerful because people lived in small communities and were unlikely to move away therefore the wrongdoing of the person was widely known.³⁰⁹ The shaming effect vanished due to industrialisation and the movement of people around the world. People did not stay in their town of birth therefore; neighbourhoods no longer knew each other well.³¹⁰ Eventually incarceration became a popular punishment in the 19th century and public shaming was banned.³¹¹

However, public shaming received a new lease of life with the advent of the internet. The internet, especially social media, created a platform where people could communicate and share information, without being dependent on geography.³¹² Unlike traditional public shaming executed by the state, online shaming is ‘a form of peer surveillance manifested via user posting of photos, videos and text on websites, blogs, forums and portals capturing inconsiderate, uncivil and illegal behaviours of citizens with the purpose of exposing and shaming such

³⁰⁶ Gallardo, Kristine ‘Taming the Internet Pitchfork Mob: Online Public Shaming, the Viral Media Age, and the Communication Decency Act’ (2017) 19 *Vanderbilt Journal of Entertainment & Technology Law* 725.

³⁰⁷ Goldman, Lauren M. ‘op cit note 215 at 418.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Gallardo, Kristine op cit note 306 at 725.

³¹¹ Goldman, Lauren M. op cit note 215 at 421.

³¹² Hou, Yubo; Jiang, Tonglin & Wang, Qi ‘Socioeconomic Status and Online Shaming: The Mediation Role of Belief in a Just World’ (2017) 71 *Computers in Human Behavior* 20.

behaviours.³¹³ In other words, online shaming is social policing via the internet.³¹⁴ The online community uses the punishment to enforce social norms by publishing perceived misdeeds online.³¹⁵ Companies can also be targets of public shaming but this often has less impact because they have access to resources like social media departments, which handle their public relations.³¹⁶

Online shaming is popular because of its effectiveness; it can have tremendous consequences for the shamed person. Targets often suffer from serious disruptions of their personal lives and social orders.³¹⁷ For instance, people have had to withdraw from university, lost their jobs and could not find a new one, or have had to leave their community.³¹⁸ The largely indelible effect of the internet can cause long-term harm to exposed persons.³¹⁹

Apart from the consequences that online shaming can have, there are many different reasons why people take part in online shaming. People have ubiquitous and instant access to the internet via their mobile phones, often at low cost.³²⁰ Secondly, the internet offers anonymity to users. This anonymity can lead to unregulated behaviour.³²¹ People's inhibitions are lowered as the possibility of accountability is significantly lessened by anonymity.³²² Thus, engagement in online shaming can easily spin out of control.³²³ Anonymity also makes prosecution of crimes committed on the internet difficult. Either individuals cannot be identified or there are too many people engaged in the shaming, making it impossible to prosecute all of them.³²⁴

Online shaming is often used to punish behaviour that is illegal.³²⁵ Therefore, people often view online shaming not as a form of punishment, but a contribution to society.³²⁶ Moreover, an online community may want to use online shaming to exert pressure on law enforcement into taking action against offenders when minor criminal offences are

³¹³ Skoric, Marko M. *et al.* 'Online Shaming in the Asian Context: Community Empowerment or Civic Vigilantism?' (2010) 8 *Surveillance & Society* 187.

³¹⁴ Skoric, Marko M. *op cit* note 313 at 181.

³¹⁵ Laidlaw, Emily B. *op cit* note 14 at 1.

³¹⁶ Gallardo, Kristine *op cit* note 306 at 723.

³¹⁷ Hou, Yubo *op cit* note 312 at 19.

³¹⁸ Cheung, Anne S.Y. 'Revisiting Privacy and Dignity: Online Shaming in the Global E-Village' (2014) 3 *Laws* 305.

³¹⁹ Gallardo, Kristine *op cit* note 306 at 728.

³²⁰ Klonick, Kate 'Re-Shaming the Debate: Social Norms, Shame and Regulation in an Internet Age' (2015) 75 *Maryland Law Review* 1029.

³²¹ Hou, Yubo *op cit* note 312 at 20.

³²² Gallardo, Kristine *op cit* note 306 at 728.

³²³ Klonick, Kate *op cit* note 320 at 1031.

³²⁴ Laidlaw, Emily B. *op cit* note 14 at 7.

³²⁵ Laidlaw, Emily B. *op cit* note 14 at 2.

³²⁶ Hou, Yubo *op cit* note 312 at 20.

committed.³²⁷ In addition to these more obvious explanations of why people engage in online shaming there are also more complex explanations. For example, negative personal experiences may be a motivating factor³²⁸ – victims of crime may seek to overcome their own victimisation by seeking vengeance on all perpetrators of a particular crime.³²⁹

Ultimately, the internet has made information about crime entertainment. The lines between entertainment and information are blurred.³³⁰ However, this phenomenon is also visible in other spheres, for example, television shows dramatizing true or fictional crime stories and the commercialising of serial killer stories.³³¹ People are more and more interested in crimes and their outcomes.

People engaging in online shaming anticipate a deterrent effect.³³² One of the goals of OWT is to have a deterrent effect, but the other characteristics of public shaming as discussed earlier can also be seen. Through online shaming OWT tries to enforce their social norms. They want to create a community where sharp weapons, especially knives and drugs are eradicated. The photographed suspects have often not even committed a crime.

This section has underlined why public shaming has become so powerful. The curiosity of people to gather information about crime should not be underestimated. Furthermore, the aspect that people want to share information and talk about crimes on social media should not be ignored. The movement of digitalisation, and fast and inexpensive access to the internet, should be harnessed by modern police forces as it can yield new frontiers for progress in law enforcement, just as it has in other fields. The internet could be the interface between OWT and the police.

³²⁷ Skoric, Marko M. op cit note 313 at 195.

³²⁸ Ibid.

³²⁹ Kohm, Steven A. op cit note 15 at 192.

³³⁰ Kohm, Steven A. op cit note 15 at 189.

³³¹ Kohm, Steven A. op cit note 15 at 194.

³³² De Vries, Amy op cit note at 13 at 2054.

CHAPTER 5: COLLABORATION BETWEEN THE POLICE AND OPERATION WANYA TSOTSI - ADVANTAGES AND DISADVANTAGES

The previous chapters have shown problems and potential for cooperation between the police and OWT. This chapter examines what a legal approach for OWT could look like. Furthermore, it elaborates on the advantages and disadvantages of collaboration with the police.

OWT is categorised as a vigilante group, thus collaboration with the police is fundamentally excluded because the methods they use are illegal. As discussed in Chapter 1, every vigilante group has to be individually analysed in order to determine their intention. It should be questioned whether they just want to violate the law under the cover of fighting crime or are they really interested in their communities and want to create a safer place. OWT wants to fight crime to enable living in a safe community. Although their approach does not conform to the law, OWT does attempt to collaborate with the police by taking suspects to them. They tried to be recognised as a crime-fighting organisation,³³³ which based on their methods was denied by the provincial government.³³⁴ Despite this, OWT still hands over confiscated items and suspects to the police. Furthermore, they support the police in the search for alleged criminals, even if they have not been asked for help. This intention makes OWT suitable for collaboration with the police.

In order to have collaboration with the police, the approach of OWT has to be legal. Chapter 3 discussed the changes that OWT has to make to their approach to improve efficiency and professionalism. Considering the legal analysis contained in this paper, OWT has to make further changes. Most importantly, OWT has to relinquish all forms of corporal punishment.

The legal analysis of public shaming shows that OWT's current approach constitutes the crimes of *crimen iniuria* and criminal defamation. This is exacerbated by the fact that in OWT's posted photographs the alleged criminal is completely identifiable. This infringes privacy. Therefore, OWT must adjust the photographs so that the person is not recognisable. There are several ways to achieve this. First, OWT could change the position of the subjects, who could be shown from behind. Furthermore, covering the eyes of the subject with a black bar or pixelating the face of the accused person are options. The media uses the same methods to prevent charges when they do not have the right to reveal a person's identity. OWT could also use their brand to cover the face. That would advertise their work at the same time. The

³³³ <https://www.facebook.com/OperationWanyaTsotsi/photos/pcb.1801644083410200/1801644046743537/>, accessed on 18 February 2021.

³³⁴ <https://www.facebook.com/OperationWanyaTsotsi/photos/pcb.1825426487698626/1825426457698629/>, accessed on 18 February 2021.

photograph on the bottom shows some examples of how OWT could edit their photographs. This editing is easy as many applications in mobile telephone camera applications offer simple



Example of how Operation Wanya Tsotsi could edit their pictures in order to prevent identification

editing programs. Eyes are the most important feature for identification.³³⁵ This minor change in their method would have a major impact on their legality.

Two further problematic aspects of OWT's method are the comments on their Facebook page and the fact that they perform stop and searches while patrolling the streets. In order to prevent comments that reveal private information or defame the suspect, OWT could either deactivate the comment function of Facebook or delete all undesirable comments. Often it is useful to post a warning that all comments that are unacceptable will be deleted. This can help to regulate comments. However, before photographing people, OWT patrols the streets and performs random stop and searches. Private citizens are not allowed to perform stop and searches as this also infringes on citizens' rights. Consequently, OWT must cease this conduct unless they are granted formal status as a Community Policing Forum.

For a successful collaboration in compliance with the law, OWT should be stationed in the Kimberly police station, supporting the online presence of the police and start operating as a Neighbourhood Watch group. Positioning OWT at the police station enables OWT to photograph arrestees. After making the suspect unidentifiable, OWT can publish the photograph with an explanation of the accusation against them. OWT could also keep doing patrols as an approved Neighbourhood Watch. This would allow them to patrol their streets, report any suspicious person or situation to the police and even arrest people if they catch them committing a crime. Furthermore, they could help the police to return stolen goods to their rightful owner.

³³⁵ <https://www.facebook.com/OperationWanyaTsotsi/photos/pcb.1825426487698626/1825426457698629/>, accessed on 18 February 2021.

5.1 Advantages of collaboration

The South African Police Service already has a Facebook page where they publish criminals and an explanation of their offence.³³⁶ However, this account applies to all of South Africa and therefore concentrates on serious crimes or achievements of the police. OWT could take over the reporting for Kimberley. This would allow OWT to localise communication of police work and achievements to the community. It could also enhance and help to build good relationships and trust between the community and the local police while freeing up the police to concentrate on their duty to fight crime.

Extensive crime reporting could help to rebuild trust between the police and the community because the community can see what the police are doing every day. Media reports the most serious crimes and courts are open to the public, but this does not reflect the work of the police. Concentrating on one location helps to build trust between that community and their associated police station. In addition, OWT has already gained the trust of the community as shown in their being known by and popular in their community.

The collaboration gives the police the opportunity to concentrate on policing. They do not have to have a worker that takes care of their online presence as OWT works voluntarily. OWT would lose their status as a vigilante group because their work would be compatible with the law. As long as the work of OWT remains legal, members will not have to fear cases being opened against them. This is an advantage for both sides as they can stop fighting against each other and work together in the fight against crime, which is already an objective shared by both organisations.

Their recognition as a Neighbourhood Watch would enable OWT to continue street patrols, for which they could receive government support in the form of further training. Furthermore, OWT would then improve crime fighting visibility on the streets, which would also be a benefit to the police. A further benefit OWT could offer the police could be to deliver stolen goods to their rightful owners. Alternatively, they could accompany the rightful owners to the handover at the police station. With the consent of the rightful owners, they could take a photograph of the successful handover without obscuring faces. That would clearly differentiate those photographs from suspects. That would in turn increase trust in police work due to visible successes.

³³⁶ <https://www.facebook.com/SAPoliceService/>, accessed on 27 January 2020.

Ultimately, the concentration on the online presence by OWT could have a deterrent effect. Besides posting about criminals and the successes of police work, OWT could share information about recent crimes and warn the community about dangerous situations. The consistent posting could deter other criminals, as police work is more visible. OWT's work could even be expanded to include post-punishment reports if that information is available to the police.

This chapter shows that collaboration between OWT and the police is possible and has many advantages. In order to achieve this, OWT must be prepared to refrain from their previous method and concentrate more on an adapted online presence. A trial project would help to determine if this approach could prevail and could be the model for other such collaborations.

CHAPTER 6: CONCLUSION

This paper showed that the internet and the increased use of social media has spawned an adaptation of an old form of punishment. Public shaming in the form of online shaming has become a popular form of punishment among peer groups. It enables the shaming of behaviour that is not punishable under the law. Therefore, the method is attractive for vigilantes.

The data collected underlines that the methods used by vigilantes in South Africa are characterised by brutality. This brutality stems from the history of the country and is the main reason why the state does not support these activities. In addition, the media supports the image of brutal vigilantes by mainly reporting about mobs of angry people that have killed someone. However, the paper showed that the media mixes concepts of vigilantism that makes it more difficult to understand the current meaning of vigilantism in South Africa. Nonetheless, the inability of the police to secure safety in townships has resulted in a growth of vigilante groups that aim to keep their community safe. These groups have the intention to fight crime just like the police. The methods that are used to achieve their goals vary between the existing groups. The importance of examining each vigilante group independently was thus highlighted.

This paper analysed the approach of OWT. The investigation has shown that a major component of their method is public shaming. A method that is not common for South African vigilantes but that is already practiced in other countries. OWT uses the method to enforce social norms. They try to clean their community of dangerous weapons and drugs. Furthermore, OWT applies the method to show that their work is successful by reporting that rightful owners retrieved their stolen goods.

The analysis of OWT's Facebook page gave interesting insights into their work. It illustrates that identification of the photographed person is the aim of the photographs. In addition, the data collected demonstrates that the method of public shaming is coercive. The full extent of corporal punishment that is applied while taking the photograph is not apparent and requires further research. It also showed to what extent OWT's method requires improved efficiency, as for instance the same photograph was published twice.

The South African crimes of *crimen iniuria* and criminal defamation show that besides the use of corporal punishment, OWT's method of public shaming is illegal. The law vigorously protects dignity and privacy. The bottom line that results from this analysis is that the police cannot work with OWT as long as they apply illegitimate methods.

Nonetheless, room for possible collaboration between OWT and the police still exists. OWT could undertake the online presence of the South African Police Service in Kimberley. To maintain a legal approach, OWT can use simple tools to prevent the suspect from being identified. Black bars and pixilation are tools that can be used. In order to take the photograph OWT would not need to use coercion anymore as they could photograph the alleged criminals that are taken to the police station by officers. The collaboration would have many advantages. So far, both groups have pursued the same goal. Collaboration enables a common achievement of the goal without having to fight each other.

The aim of this paper was to find a way that the police and OWT could collaborate. In doing so, an approach was proposed that excludes the illegal activity of OWT. The collaboration would have many benefits for both parties, but OWT would have to narrow the scope of their work. OWT could only carry out their original approach to a limited extent – patrolling their community as a neighbourhood watch without carrying out stop and searches as well as online work without exposing people.

This study has revealed new insights into vigilantism. It shows that, like most industries, vigilantism has adapted with technology to develop new methods and frontiers. Furthermore, considering the good intentions that certain vigilante groups have to enhance community safety, it is important to analyse modern vigilante groups individually. Often their methods are illegal, because they have no other form of punishment available to them. However, rather than simply quashing them due to their illegal methods, the police could benefit from a more nuanced approach to different vigilante groups and looking for opportunities to forge partnerships. Well-targeted partnerships with groups like OWT would not only have the benefit of eradicating these groups' illegal conduct, but it could also help the police alleviate their stretched resources and help them strengthen ties with communities. This would be in the best interests of the police, the communities and OWT.

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