

Promises and lies?

Elections, commissions of inquiry and the state of criminal justice in 2019

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<http://dx.doi.org/10.17159/2413-3108/2019/v0n67a6348>

The start of 2019 has seen a number of revelations made before the Zondo Commission of Inquiry into state capture. Criminal justice agencies have been at the forefront of many shocking disclosures which have included — as if coming off the pages of a crime novel — Russian assassination squads, rogue police units, prostitution rings operating inside prisons, break-ins at non-governmental organisations, and slush funds. Robert McBride, the former Director of the Independent Police Investigative Directorate (IPID), has given testimony that paints the South African Police Services (SAPS) as a corrupt organisation where members of the rank and file are forced to carry out unlawful orders at the behest of senior, powerful officers. There are virtually no corners of the criminal justice machinery that have been left untouched by the allegations. The Hawks (the Directorate of Priority Crimes), SAPS, the National Prosecuting Authority, the Department of Correctional Services and the Department of Justice have been implicated in astonishing depth in the corruption and scandals that have regaled the Commission.

Although the testimony before the Commission has felt, perhaps, like a torturously slow vindication of the disquiet that had built up in the public discourse during the last years of Jacob Zuma's presidency, the allegations that have emerged should be enormously worrying for those of us concerned with crime and justice in South Africa. If our law enforcement and justice agencies across the board have been compromised and crippled to the point of dysfunction, how do we protect the rule of law promised as a cornerstone of democracy in 1994? Of course, these are not new problems, and it would be foolish to overlook the wide similarities to the systems of patronage, corruption and illegal activities perpetrated by public servants under apartheid. Yet, in our up-to-the-minute news cycles through which we (prefer to) consume news in smartphone-friendly portions, the arc of the similarity between the 'then' and 'now' of corruption in the criminal justice system seems less present. I think this is a significant oversight. We are more focused on the 'whodunnit' of officials who classify documents or rig statistics to keep them out of the oversight of organisations like IPID, or who collude to ensure that potential whistleblowers are silenced. Being caught up in the scandal and the detail in this way makes it much easier to gloss over the larger questions we should be tackling about how to demand the accountability and legitimacy of state agencies, particularly those we entrust with the critical task of maintaining law and order. In essence, to borrow a phrase used by John van Maanen¹ to describe his ethnographic work with police, we should be asking ourselves who is 'watching the watchers?'

With the national elections set for 8 May almost upon us, questions of crime, safety and security have been prominent among the talking points of parties and politicians. Parties have promised to improve police-community relations, deploy anti-crime volunteers to high-crime areas, better use technology in policing, increase support for neighbourhood watch initiatives, increase police resources, create modern professional provincial police forces and deploy specialised task teams focused on (variously) gangsterism, drugs, farming areas, sexual offences and violence against women and children. Most of the parties have promised a version of getting tough on crime, imposing stricter penalties for offences, and improving the quality of policing and the detection of crime. These strategies make sense given their electioneering context and may provide a sense of promise to potential voters who feel the immediacy and threat of South Africa's crime problem. But they overlook the crisis of dysfunction that runs much deeper in our criminal justice system and that undermines the work of committed street-level practitioners who do good work under difficult conditions across the system. We will have to see what else will emerge as the Zondo Commission continues to unfold, and whether the victors in the elections stand by their promises.

This issue

Social media-savvy readers of *South African Crime Quarterly* may recall a video that did the rounds on Facebook and Twitter earlier in the month that showed a traffic official spectacularly failing a breathalyser test after eating a hot cross bun. Entertainment value aside, the video appears to raise questions about the rigour of breath alcohol tests. Jade Liebenberg, Lorraine du Toit-Prinsloo, Gert Saayman and Vanessa Steenkamp address the admissibility of these kinds of tests in their article entitled *Drugged driving in South Africa: An urgent need for review and reform*. The authors highlight that, while it is common practice in South Africa to test drivers for alcohol levels, testing for additional substances (like drugs of abuse) is rarely performed. Current legislation only prohibits driving under the influence of alcohol and a 'drug having a "narcotic" effect', but excludes several impairing psychoactive drugs that are not classified as narcotic substances. The authors discuss issues and/or limitations that affect the detection of drugged driving and propose revisions of the National Road Traffic Act to include a comprehensive statutory definition and detailed provisions for drug testing to deter impaired driving.

The policing of protest has been a regular feature on the pages of *South African Crime Quarterly* since our December 2017 special edition. Heidi Brooks adds to this conversation by providing an account of an often-silent constituency: the police who are tasked with the dual obligation of ensuring the safety and security of communities on the one hand, and protecting democratic rights and freedoms on the other. Brooks examines protest from the perspective of rank and file officers in the South African Police Service (SAPS) and shows not only the importance of recognising bottom-up perspectives in constructing appropriate responses to protest, but the complexity of SAPS members' own identities as both officers and citizens. She shows how, for many officers, protest seems to straddle their police and private lives, conferring on them a duty to enforce law and order, while experiencing the shortcomings of democracy themselves.

The Zondo Commission, which I referenced earlier in this editorial, has heard evidence of corruption on a grand scale committed by the now-infamous Gupta brothers. Despite this evidence, bringing the Guptas to book through the criminal justice system has been complicated by the fact that they have relocated to another country to evade prosecution. The intricacies

of extradition are therefore pertinent. Untalimile Crystal Mokoena and Emma Charlene Lubaale discuss extradition where states do not have extradition treaties with one another. State sovereignty dictates that states exercise authority over all persons and things within their territories, including people who are suspected of committing or charged with crimes in foreign states. International law generally imposes no obligation to surrender individuals suspected of or charged with committing crimes in foreign states and as such, states are increasingly ratifying international treaties mandating cooperation to ensure that individuals responsible for certain categories of crimes are brought to justice. Mokoena and Lubaale discuss whether, in cases where there are no treaties to provide for extradition, states can rely on the United Nations Convention Against Corruption (UNCAC) to extradite individuals for corruption-related crimes.

Irvin Kinnes reviews Marie Rosenkrantz Lindegaard's book *Surviving gangs, violence and racism in Cape Town: Ghetto Chameleons* published by Abingdon: Routledge Advances in Ethnography in 2017. Kinnes concludes that *Ghetto Chameleons* provides its reader with a new way of seeing and understanding the current gang discourse by showing what young men in gangs on the Cape Flats do, how they associate, and how they use mobility to move and change their cultural repertoires in gang and suburban spaces. A deep dive longitudinal ethnography undertaken with 47 young men, the book shows us that gangsters are much more than just gangsters: not homogeneous, mobile, and with perspectives about themselves that they use flexibly, depending on their environment. Kinnes concludes that the book is required reading for any scholar of crime and mobility, and for those interested in exploring the links between gangs, cultural repertoires and mobility.

Note

1 J van Maanen, *Policing: A view from the street*, Santa Monica: Goodyear, 1978, 309.