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Private security via road closures

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One of the international debates that occupy academics, policy makers and civil society at large is, undoubtedly, the pluralisation and/or privatisation of security and policing. At the centre of this debate is the inability of states to serve the security needs of their citizens. Perhaps it is just a realisation that, despite perceptions to the contrary, the state has historically never been able to provide adequate security, and that the current inability is by no means unique to modern society. Whatever the reason, the fact remains that the state has become just one of the providers of safety and security – with private security (in its various incarnations) – increasingly assuming more of a role in the provision of security than the state. The role of the state is being toned down from that of the primary provider of safety and security, as anticipated, to that of a 'regulatory' organ. The role of the state has been observed as that of steering the boat rather than rowing it.[1]

South Africa is no exception to this ever-growing phenomenon of private security. Given the transitional and weak nature of the South African state, it is hardly surprising that access to security and justice will be restricted, providing a perfect business opportunity for private security entrepreneurs. It has been estimated that private security in South Africa outnumbers the South African Police Service (SAPS) by four to one in terms of personnel.[2] Moreover, private security companies – owing to the dictates of the market and fierce competition in the field – tend to be more client-orientated, and better equipped, than the SAPS. One example that immediately comes to mind is the number of vehicles available to private security companies, compared to that of the SAPS,[3] let alone the quality of such vehicles. Also worrying is the fact that private security companies 'poach' staff from the SAPS. Many members of the then South African Police – especially those who took retirement packages at the dawn of the new dispensation – joined the private security industry. Moreover, the

SAPS still loses some of its good personnel to the private security industry as the latter offers greener pastures, particularly in terms of remuneration.

It would appear a realistic – if not the only reasonable – option to forge working relations, or strengthen existing ones, between the SAPS, the private security industry, and civil society. This immediately calls for a discussion of boundaries and authority. Core to such a relationship would be the accountability of private security to both the state and the public at large. But a broader question, however, is the commercialisation of security and the potential impact it would have on South African society. At first glance, it seems inevitable that the poor will be marginalised – but this should not necessarily spell disaster. Looking on the positive side, it could be construed as a window of opportunity for creative and innovative ways of using state resources more efficiently, ultimately benefiting the poor, given that the rich can afford their own security. At present, unfortunately, the rich are

double beneficiaries of both private and state security. For example, at present most of the country's poorly staffed and badly equipped police stations are in impoverished areas, while the stations in wealthier areas are relatively better equipped and staffed.

The gated communities
Private security and policing have taken on interesting forms. Currently one of the most topical of these is the 'gated community' – the focus of this article. In recent years we have seen a number of gated communities established in South African cities, among others, through road closures. These gated communities have sparked off a heated debate between those in support of, and those against them.

According to Landman,[4] gated communities can be divided into enclosed neighbourhoods and security villages. She defines gated communities as "...a physical area that is fenced or walled off from its surroundings, either prohibiting or controlling access to these areas by means of gates or booms".[5] This definition, also supported by current literature, will be used in this article.

At the time of writing (July 2003) South Africa did not have a comprehensive national policy regarding gated communities. The private security industry is regulated by the Private Security Industry Regulation Act 56 of 2001 (hereafter 'the Act'). If one were to apply the term private security in its broad sense, the Act should cover gated communities, but it does not. As a result very little can be gleaned from the Act when trying to deal with this issue. In the main, the Act concentrates on the industry itself, and its regulation through the Private Security Industry Regulatory Authority as established in terms of the Act. At most, the Act seems to cover the members of the private security industry who provide the service. This leaves local authorities with the responsibility to regulate gated communities within their respective areas of jurisdiction.

The lack of a uniform national policy on gated communities leads to different approaches in various provinces throughout the country. Kwazulu-Natal and Gauteng, for example, seem to have adopted a tough stance on the issue of creating gated communities through road closures. Gauteng at present has resolved to tear down all illegal booms in Johannesburg. Community and residents associations have been given a chance to apply for permission to create or keep such gated communities. But on 22 July 2003 – five days after the deadline – it was estimated that only 300 applications had been received.[6]

Gauteng, which leads the other provinces in its number of gated communities, has a clear policy on this subject, spelled out in the Rationalisation of Local Government Affairs Act, 10 of 1998. This is clearly a move in the right direction, from reliance on the Local Government Ordinance No 17 of 1939 (whose applicability is suspect even on legal grounds) and the prevalent *ad hoc*, application-based, discretionary approach of many local authorities, to a clear comprehensive legal framework. While this initiative by the Gauteng Province is welcome – notwithstanding the teething problems – there are a number of issues that remain unresolved in the oft-heated debate on the appropriateness or otherwise of gated communities. The remainder of this article focuses on some of the core issues that characterise the debate.

New Apartheid?
There can be little doubt that gated communities result in segregation by excluding certain people from, or controlling access to, such gated places. While the practice of gated communities, or fortified cities, has been taking place worldwide for centuries, the problem starts when such road closures are done in public spaces and affect other members of society not party to such arrangements. The second problem – a more serious one – arises when a code is used (or is perceived to be used) to deny certain people access to the gated places. This denial of access is principally based on financial means.

Moreover, the debate takes a new and worrying twist in the South African context. In South Africa gated communities have been criticised for being a new form of apartheid,[7] and racist in their approach. The argument suggests that these communities are a subtler version of the blatantly racial, pre-1994 dispensation.

There have been allegations that some of the guards who man entry points into the gated communities display racist attitudes in dealing with people who

pass through. This is clearly an illegal practice – as will be discussed in more detail later, no one has a right to stop another person on a public road or in any way interfere with their freedom of movement. Yet many people who have made use of these entry points bear witness to the fact that the guards wield tremendous powers in deciding who to let in, and on what basis – and that, in the final instance, black people are the ones who are turned away.[8] Proponents of the 'new apartheid' thesis believe that gated communities affront the post-1994 South African ethos, and are therefore unacceptable.

The legal argument
It is common cause among many involved in the debate that many gated communities and barricades have been set up illegally. The law of the country does not allow people – acting independently – to tamper with public property by creating booms and gates. If there is a need to do so, permission has to be sought from the authorities. The South African authorities have, until recently, adopted a very lax (if not indifferent) attitude towards these road closures. This attitude sent out the message that it was fine to create these booms without permission, and to operate them with impunity.

In instances where members of the community raise no objections, the attitude of local authorities has largely been to turn a blind eye on road closures, despite the unlawfulness of such closures. In Gauteng, until recently, as pointed out above, the law did not specifically provide for road closures by members of the community. In terms of the 1939 Ordinance only the local authority could close a public road. In the absence of specific legislation that would authorise road closures by members of a community, such closures are unlawful because they contravene both the Ordinance that requires the local authority to keep the public roads open, and the Road Traffic Act, which prohibits closure of public roads. This, however, is changing, and Gauteng province has taken the lead in providing for gated communities in its legislation.

The illegality of road closures is hard to comprehend, given the impunity with which such closures have been operating throughout the country. There does not seem to be any significant

difference between the so-called 'vigilante' groups and the communities that bring about road closures. For one, both groups claim high crime rates as the reason for their activities. There is no significant difference other than the reaction of the South African government to these two types of activities.

The question is: why do people who make road closures happen, get away with it? We know that the South African state prides itself for respecting the rule of law. Indeed, authorities take action when vigilante groups take the law into their own hands. When individuals close public roads it should then surely also be construed as taking the law into their own hands? Road closures, even if legal (as will now be the case in Gauteng) remain constitutionally challengeable, as it is a phenomenon that encroaches on the human rights of citizens, including the right to freedom of movement (Section 21) and the right to privacy (Section 14), as entrenched in the Constitution.[9]

The urban planning argument
Gated communities have also been criticised for the inconvenience that they cause in the areas concerned. Common complaints are that such areas are not freely accessible to emergency and other necessary services, and that the closures cause traffic congestion. As a result of the road closures, the areas next to the gated communities have to cater for traffic that has been diverted. It is argued that this may have dire consequences, as these roads may not have been designed to cater for the number of vehicles forced to take alternative, and often inconvenient, routes.

The criminological fallacy argument
The issue of space, place, and crime has been of concern to criminologists for a very long time. The South African National Crime Prevention Strategy (NCPS) also prioritised 'crime prevention though environmental design'.[10] Despite the apparent ease with which proponents of gated communities link crime and physical accessibility of space, that link is, from a criminological point of view, suspect. Indeed, some criminologists argue that these boom gates are not effective as crime control measures,[11] but in fact tend to give people a false sense of security.[12]

The question therefore begs answering: if these boom gates – being erected at a rapid rate – are not effective in controlling crime, why should they be tolerated, given the problems associated with their presence? The main justification for the existence of these gated communities is crime control. It therefore follows that if they are not effective in that regard, they are unwarranted, and pointless. Furthermore, other criminological arguments suggest that gated communities tend to displace crime to other areas, thereby not solving the overall crime problem.

Conclusion

Despite the concerns raised above, it is clear that gated communities are destined to remain part of our society. It must be emphasised that the gating of communities is a response to the high levels of crime in South Africa today. People – rightly so – feel vulnerable to crime. The state fails, or is seen to be failing, to protect its citizens, driving ordinary people to take extraordinary measures to protect themselves – such as gating their communities. Proponents of gated communities – rightly or wrongly – perceive these enclosed spaces as secure and safe.

This necessarily calls for a balancing act between the constitutional rights of citizens on the one hand, and those of the community as a whole on the other. The Gauteng legislature is indeed trying to keep these forces in balance. It would appear that the legislature and its different local authorities tend to discourage road closures. Their policy is that road closures should be used as a measure of last resort to deal with crime, but even then there are conditions to be met.

This approach is laudable. It appeases those who believe gated communities to be safe havens, and equally addresses the concerns of the many other people adversely affected by the closures. This said, however, it is worth reiterating that gated communities as a crime control measure does not stand up to close scrutiny. The bulk of evidence in the literature suggests that gated communities are only effective in dealing with opportunistic, often petty, criminals. They are not as effective in dealing with the more organised criminals who commit serious crimes.

While crime – especially violent crime – should rightly concern all of us, gated communities do not seem to be the answer. The main problem with gated communities is that they only cater for a selected few and therefore leave the majority of people outside those spaces. They also make life more difficult for those left outside, rerouting traffic and displacing crime.

What is needed is a joint effort between the criminal justice system (the SAPS in particular) and the communities that it serves. Instead of campaigning for road closures, communities could participate in crime prevention as police reservists or as members of neighbourhood watches. This would be a long-term solution to the problem, especially if these communities are willing to pour resources into fighting crime.

Endnotes

1   E Osborne & T Gaebler, *Reinventing Government*, New York: Addison-Wesley. 1992.
2   M Schonteich, *Unshackling the Crime Fighters - Increasing Private Sector Involvement in the South African Criminal Justice System.* Johannesburg: SAIRR. 1999.
3   Ibid.
4   K Landman, *An Overview of Enclosed Neighbourhoods in South Africa.* Pretoria: CSIR. 2000
5   Ibid.
6   K Mabuza, *'Boom Removals May Blow Cover'*, The Citizen, Tuesday, 22, July 2003.
7   See C Shearing & M Kempa 'The Role of "Private Security" in Transitional Democracies', *Crime and Policing in Transitional Societies.* Konrad-Adenauer-Stiftung. 2001. A similar view is also held by C Spinks, *A New Apartheid? Urban Spatiality, (Fear of) Crime, and Segregation in Cape Town, South Africa.* 2001 Available online: www.lse.ac.uk/depts/destin/workpapers/Spinkswp.pdf.
8   One example here is the article written by Salgado with the title: 'Charges of Racism as Town Fathers Moot St Lucia Ltd', in *Sunday Times,* 28 November 1999.
9   Constitution of the Republic of South Africa Act 108 of 1996.
10 See ISS *Safer by Design-Towards Effective Crime Prevention Through Environmental Design in South Africa.* Monograph 16, November. 1997.
11 B Naude, 'The Effectiveness of Public Road Closures in Suburban Areas as a Crime Reduction Measure', *Security Focus,* July (pp34-36). 2003.
12 Ibid.