IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 58668/2011

In the matter between:

JULIAN CHRISTOPHER STOBBS	**FIRST PLAINTIFF**
KATHLEEN (MYRTLE) CLARKE	**SECOND PLAINTIFF**
CLIFFORD ALAN NEAL THORP	**THIRD PLAINTIFF**

and

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	**FIRST DEFENDANT**
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	**SECOND DEFENDANT**
MINISTER OF HEALTH	**THIRD DEFENDANT**
MINISTER OF SOCIAL DEVELOPMENT	**FOURTH DEFENDANT**
MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION	**FIFTH DEFENDANT**
MINISTER OF TRADE AND INDUSTRY	**SIXTH DEFENDANT**
MINISTER OF POLICE	**SEVENTH DEFENDANT**
DOCTORS FOR LIFE INTERNATIONAL INCORPORATED	**EIGHTH DEFENDANT**

PLAINTIFFS' NOTICE IN TERMS OF RULE 36(9)(a) and (b)
in respect of Dr. Simon Howell

TAKE NOTICE THAT the Plaintiffs intend to call **DOCTOR SIMON HOWELL** (*"the expert"*) to give evidence as an expert in this matter.

1

TAKE FURTHER NOTICE that the expert's *curriculum vitae* is annexed hereto and marked **"A"**. A summary of the expert's relevant qualifications and experience is, *inter alia*, as follows: -

1. The expert holds a PhD in political philosophy and is a senior researcher at the Centre for Criminology in the Faculty of Law at the University of Cape Town.

2. Prior to taking up the aforesaid position, the expert held a University Research Company ("*URC*") Fellowship at the aforesaid Centre, having also held an Andrew Mellon Postdoctoral Fellowship at Rhodes University, and having been both an Andrew Mellon and National Research Foundation ("*NRF*") Prestigious Equity beneficiary at PhD and Masters level.

3. The expert is an executive member of the Drugs Task Team in Khayelitsha, established following the recommendations by the Khayelitsha Commission of Inquiry.

4. The expert has conducted research in a number of domains with a vast array of individuals, including teenage mothers, township youths, drug users, gangsters and police officials. He also works with several agencies, including the Medical Research Council, Durban Metropolitan Police Service and South African Police Service, in developing regulatory mechanisms and procedures pertaining to illegal drugs and gangs.

5. The expert reviews a number of local and international journals and supervises postgraduate students.

6. The expert's research has been widely documented in the media and he has appeared on numerous radio and television shows in this regard.

TAKE NOTICE FURTHER that a summary of the expert's opinions, and his reasons therefor, are set out hereunder.

1. In order to express the opinions and provide the reasons set out hereunder, the expert:

   1.1. has, in addition to his abundance of practically gained knowledge, researched relevant topics and extensively read historical sources, in order to conduct research into and/or participate in and/or author the following papers (which

either have been, or will be, discovered by the Plaintiffs) and are annexed hereto as "**B**" to "**K**":

1.1.1.   Journal article by Berg, J. and Howell, S. (2015), titled *"Civilian oversight of police in Africa: Trends and challenges"* published T. Prenzler and G. den Heyer (eds.), *Civilian Oversight of the Police: Advancing Accountability in Law Enforcement.* CRC Press: London;

1.1.2.   Journal article by Howell, S. (2015), titled *"'We have to start showing who is boss now': Constructions of methamphetamine use and users in the South African media."* published in *Crime, Media, Culture*, 11(2): 137-156;

1.1.3.   Journal Article by Howell, S. and Couzyn, K. (2015), titled *"The South African National Drug Master Plan, 2013-2017: A critical review"* published in *South African Journal of Criminal Justice*, 28(1): 1-24;

1.1.4.   Journal Article by Howell, S., Harker-Burnhams, N., Townsend, L. and Shaw, M. (2015), titled *"A decade of the wrong type of decline: A limited comparison and contextual analysis of fluctuations in the street-level prices of illegal substances in South Africa"*, published in *ISS Crime Quarterly*, 54(1): 43-45;

1.1.5.   Journal Article by Marks, M. and Howell, S. (2016). *"Cops, drugs and interloping academics: An ethnographic justification for harm reduction-based programmes in South Africa"*, published in *Police Practice and Research,* 17(4): 341-352;

1.1.6.   Journal Artcile by Schiebe, A., Howell, S., Muller, A., Katumba, M., Langan, B., Artz, L. and Marks, M. (2016), titled *"Finding solid ground: law enforcement, key populations and their health and rights in South Africa"*, published in *Journal of the International AIDS Society*, 19(3): 1-6;

1.1.7. Journal article titled "*Licking the snake' – The i'khothane and contemporary township youth identities in South Africa*", authored by, *inter alia*, the expert, as appears in South African Review of Sociology, 45 (2): 60-77;

1.1.8. Journal article titled "*West Africa and the transnational trade in illegal drugs: Physical properties, policing, and power*" authored by, *inter alia*, the expert, as appears in Africa Review, 7 (1): 1-14;

1.1.9. Journal article titled "*Foetal images and the regulation of middle class pregnancy in the online media: A view from South Africa*" authored by, *inter alia*, the expert, as appears in Culture, Health & Sexuality, 17(10): 1207-1220; and

1.1.10. Submissions as *amici curiae* to the Western Cape High Court in the matters between Jeremy David Acton et al, Jonathan David Rubin, and Garreth Prince respectively and the National Director of Public Prosecutions et al, titled "*Balancing Harms in Cannabis Policy: Some Consideration for the South African Context*", delivered on or about 30 August 2016 and authored by, *inter alia*, the expert;

1.2. has had regard to, *inter alia*:

1.2.1. the observations and conclusions made by him during the course of the aforesaid studies, papers and experience in-the-field;

1.2.2. the observations and conclusions made by him in reading other studies and papers (as have been, or will be, discovered in this litigation and referred to by the expert in evidence);

1.2.3. the pleadings delivered in the above matter, including any and all requests for further particulars and responses thereto (as at date hereof); and

1.2.4. the First to Seventh Defendants' Notice(s) in terms of Rule 36(9)(a) and (b) in respect of David Bayever and Professor Shabir Banoo, that were delivered on or about **25 January 2016** and **28 January 2016** respectively.

2. A summary of the expert's opinions (incorporating limited reasons therefore, but which are expanded upon in the annexures hereto) follows: -

2.1. **The "*war on drugs*" and balancing of harms**

2.1.1. Countries with more punitive anti-drug policies do not tend to have lower drug prevalence levels than those with more liberal policies, when all relevant variables are accounted for.

2.1.2. Policing may not only be ineffective in itself, but can have the unintended consequence of further driving the systemic parameters in which drug use risk is heightened. Even in instances where policing is effective in terms of the reduction in drug supply, or by the removal of drug users, this *'success'* is only success in terms of measurements which have been shown to be extremely damaging to society as a whole, but especially to marginalized communities and vulnerable cohorts.

2.1.3. Imprisonment is neither an appropriate nor effective tool in dissuading individuals with highly problematic drug use patterns.

2.1.4. Harm reduction efforts and interventions can be multiple and applicable to a number of governmental domains. This can include specifically limited and strategically targeted policing interventions.

2.1.5. In order to manage drugs, a wide and complex range of harms needs to be balanced and in turn, comprehensive intervention at the political level is required.

2.1.6. The harms caused by drug policy necessitate its revision.

2.2. **The relationship between the use of drugs and other crimes**

2.2.1. While a large proportion of individuals arrested for other crimes test positive for alcohol or an illegal substance, this does not equate to a causal link to the end that drugs drive criminality. An individual's background and immediate context may drive both their drug use and criminal acts respectively. Additionally, testing for drugs is fundamentally inaccurate, whereas testing for alcohol tests for both presence and quantity, hence, the reading in alcohol per blood quantity. Testing for substances largely can only test for presence. Considering that some substances can have a half-life of two weeks, one can, therefore, test positive for a substance pharmacologically, yet not be intoxicated.

2.2.2. On the assumption that there is a causal link between drugs and crime (albeit that it is widely-recognised that such link is almost impossible to make), it must be noted that there are 3 (three) manners in which such relationship may come into being: psychopharmalogical effects, economic-compulsive effects and systemic effects:

2.2.2.1. psychopharmalogical effects may make users more likely to commit certain crimes, which are understood to be caused by the physical nature of the particular drug consumed. The psychopharmalogical effects of cannabis are more likely to induce passivity than encourage any criminal behaviour and it is no longer popularly considered that cannabis results in dangerous or uncontrollable "*reefer madness*";

2.2.2.2. economic-compulsive effects relate to drug users' need to regularly access an expensive product, which may result in users using illegal means to access money. There is some tentative evidence to link the aforesaid to cannabis users, although it must be considered that the risk of dependence on cannabis is far lower than that of alcohol or nicotine. Moreover, cannabis is significantly cheaper than other common drugs. Accordingly, the economic-compulsive effects in respect of cannabis likely play a small role, if any role at all, in driving crime in South Africa; and

2.2.2.3. system effects pertain to drugs as a market or economic activity which may have influence in a broader context, such as the use of violence to settle disputes over drug-related 'contracts' or territories for dealing. The legalisation of cannabis and other drugs will reduce systemic violence, allowing for legal mechanisms to manage the market and consolidate the distribution of power.

2.2.3. There is no compelling evidence that partial decriminalisation of cannabis (for medical purposes, for example) has resulted in increases in crime, albeit that this statement must be qualified by the fact that there are only limited cases in which that can be, or has been, observed.

2.2.4. Prohibition is not a desirable policy option. This lesson has been learnt historically, for example, in the 1920s United States' prohibition of alcohol and the unintended consequences thereof.

2.3. **South African policy – presently and looking forward**

2.3.1. Cannabis is classified as a schedule I drug, amongst the most dangerous drugs, which is not an appropriate or proportionate way to manage the harms around it.

2.3.2. The South African Police Service ("*SAPS*") places a high priority on drug-related crimes, which have constituted approximately 15% (fifteen percent) of its arrests over the past 2 (two) years, although very few of these result in convictions.

2.3.3. Performance targeting of drug crimes incentivises indiscriminate arrests and abuse of "*easy*" targets in possession of illegal drugs for arrests, and does not result in effective drug supply reduction. This does not encourage police to thoroughly investigate and dismantle drug producing/selling operations. The wide availability and use of cannabis in South Africa make users, producers and sellers of cannabis a particularly easy target for police.

2.3.4. Police resources would be far better spent on the development of evidence-based drug policy approaches.

2.3.5. Internationally and very recently, a number of countries have found that decriminalisation (in some form) of cannabis is consistent with their commitment to international law. To this, political processes are fundamental and would be appropriate (and necessary) in South Africa, to the extent of integration between different departments, agencies and the non-profit sector.

2.4. **Conclusions**

2.4.1. Given, *inter alia*, all of the above:

2.4.1.1. the expert opines that deregulation and/or a policy shift towards an appropriate space on the spectrum between criminalisation and legalisation of the possession of cannabis constitutes an effective way to manage the potential harms associated with the substance;

2.4.1.2. the prohibition of cannabis has not proven effective in reducing the potential harms associated with cannabis and is not a desirable policy option;

2.4.1.3. ending the prohibition of cannabis will facilitate a more rational, effective, less wasteful and less corrupt criminal justice system which espouses Constitutional values;

2.4.1.4. legislative changes are necessary to successfully manage the potential harms associated with cannabis.

Dated and signed at _Melrose Arch_ on the _30th_ day of _September_ 2016.

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9

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Curriculum Vitae of Simon Peter Howell, BA (Hons), PhD (RU)

Biographical Information:

Name	: <u>Simon</u> Peter Howell		
Age	: 31		
Home Address	: 3 Parade Crescent Constantia 7846 Western Cape, ZA	Postal Address	: P.O. Box 422 Langebaan 7357 Western Cape, ZA
Email	: Simon.Howell@uct.ac.za : SimonPHowell@gmail.com		
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Work Experience:

University of Cape Town; Cape Town [Jan 2016-Present]	**Senior Researcher, Centre of Criminology**	
	Research Projects:	*Status:*
	International comparison of youth violence norms and drivers – South African principle investigator (UCT/Bielefeld University);	Ongoing
	Illegal drug price mapping and coordination – principle investigator (UCT/SAPS);	Ongoing
	Community perceptions of safety and municipal services – co-principle investigator (UCT/DUT);	Ongoing
	Khayelitsha Commission of Enquiry drug task team – secretary (multiple stakeholders);	Ongoing
	Assessment and redesign of community safety structures – project manager (UCT/SUN/WC Dept. of Community Safety);	Completed
	Global city safety framework – co-primary contributor (UCT/UNODC);	Completed
	Safer cities network – contributor (multiple stakeholders);	Completed
	Polysubstance drug use in Cape Town – principle coordinator (UCT/MRC)	Completed
	Teaching/Supervision/Other: Undergraduate: Drugs in social context (lecture series) Postgraduate: Discourse analysis; Post-structural feminism (MA/MPhil seminars); Drugs and Crime Regulation (LLB seminar); Co-supervision of 3 PhD students; Co-supervision of 5 MA students; Sole supervision of 2 MA students	
University of Cape Town; Cape Town [Jan 2014- Dec 2015]	**University Research Council (URC) Postdoctoral Research Fellow**	
	Research Projects:	*Status:*
	Safety and violence initiative – postdoctoral researcher;	Completed
	Khayelitsha Commission of Enquiry drug task team – secretary (multiple stakeholders)	Ongoing
	Teaching/Supervision/Other: Undergraduate: Crime and deviance (lecture series); Postgraduate: Discourse analysis; Post-structural Feminism (MA/MPhil seminars); Drugs and Crime Regulation (LLB seminar); Co-supervision of 2 MA students; Sole supervision of 2 MA student	
Rhodes University; Grahamstown [April 2012-Dec 2013]	**Andrew Mellon Postdoctoral Research Fellow**	
	Research Projects:	*Status:*
	Critical studies in Sexuality and Reproduction – postdoctoral researcher;	Completed
	Township youth identities – postdoctoral researcher	Completed
	Teaching/Supervision/Other: Postgraduate: Africa and drug wars (MA course, sole convenor) Co-supervision of 1 MA student; Communication secretary – postdoctoral committee	

Africa Investor; Johannesburg [Nov 2011-April 2012]	**Research Consultant and Junior Editor** *Duties/Outputs:* Junior editor of monthly magazine; Chief editor of weekly magazine; Primary researcher	
Rhodes University; Grahamstown [Jan 2007-Nov 2011]	*Positions:* Politics teaching assistant (1 year); Politics tutor (3 years); Philosophy tutor (2 years); Research assistant (2 years); Politics web content manager (2 years)	

Education and Qualifications:

Rhodes University	**PhD** – Political Philosophy. Thesis title: The Force of Habit: the Mystical Foundations of Addiction	2012
Rhodes University	**MA (full thesis)** – Political Philosophy. Thesis title: Snow Storm: the Discourses and Rhetoric of the Transnational Cocaine Trade	PhD upgrade 2009
Rhodes University	**BA (Hons)** – Distinction in Philosophy, full Academic Honours	2007
Rhodes University	**BA** – Distinction in Politics and Academic Half Colours	2006
School Certificates	Grade 12 College Entrance with University Exemption. Cape Senior Certificate (-A aggregate). National Christian Schools Certificate, L3. SAT 1.	2003

Awards, Fellowships, Grants, 2004 – 2015:

University of Cape Town	University Research Council (URC) Postdoctoral Research Fellowship; Discretionary Research Fund	2014 - 2015
Mellon Foundation	Andrew Mellon Postdoctoral Research Fellowship	2012 - 2013
NRF; Mellon Foundation	NRF PhD Prestigious Equity Award; Andrew Mellon Foundation PhD Prestigious Scholarship	2010 - 2011
NRF; Mellon Foundation; HB Webb	NRF MA Prestigious Equity Award; Andrew Mellon Foundation MA Prestigious Scholarship; HB Webb Award	2009
Mellon Foundation; Rhodes University	Awarded Mellon Mentors Scholarship; Dean's Merit for Academic Achievement; Full Academic Colours	2008
Rhodes University; WITS University	Awarded "Best Negotiator" at WITS WTN; Graduated with a Distinction in Philosophy	2007
Rhodes University	Awarded Academic Half Colours; Graduated with a Distinction in Politics; Awarded a University Rebate for Scholarship	2006
Rhodes University;	Awarded Dean's Merit for Academic Achievement; Golden Key Membership (No. 3685007)	2005

Journal Reviews, 2014-2016:

South African Review of Sociology (SARS); Australian & New Zealand Journal of Criminology (ANJ), South African Journal of Criminal Justice (SCJ), Acta Criminologica (ACTA), British Journal of Sociology (BJS).

Research Publications:

Peer Reviewed Journal Articles:

Macleod, C. and Howell, S. (2013). "Reflecting on published South African Psychology: 'Relevance', methods, and social issues." *South African Journal of Psychology*, 43 (2): 222-237.

Vincent, L. and Howell, S. (2014). "Embracing racial reasoning: The DASO poster controversy and 'race' politics in contemporary South Africa." *Journal of Southern African Studies*, 40 (1): 75-90.

Vincent, L. and Howell, S. (2014). "'Unnatural,' 'Un-African' and 'Ungodly' – Homophobic discourse in South Africa." *Sexualities*, 17 (4): 472-483.

Howell, S. and Vincent, L. (2014). "'Licking the snake' – The i'khothane and contemporary township youth identities in South Africa." *South African Review of Sociology*, 45 (2): 60-77.

Howell, S. (2014). "Africa and the war on drugs" (Book Review). *Journal of Contemporary African Studies*, 32 (1): 148-150.

Howell, S. and Atta-Asamoah, A. (2014). "West Africa and the transnational trade in illegal drugs: Physical properties, policing, and power." *Africa Review*, 7(1): 1-14.

Howell, S. (2015). "'We have to start showing who is boss now': Constructions of methamphetamine use and users in the South African media." *Crime, Media, Culture*, 11(2): 137-156.

Howell, S. and Couzyn, K. (2015). "The South African National Drug Master Plan, 2013-2017: A critical review." *South African Journal of Criminal Justice*, 28(1): 1-24.

Howell, S. and Macleod, C. (2015). "Foetal images and the regulation of middle class pregnancy in the online media: A view from South Africa." *Culture, Health & Sexuality*, 17(16): 1-14.

Howell, S., Harker-Burnhams, N., Townsend, L. and Shaw, M. (2015). "A decade of the wrong type of decline: A limited comparison and contextual analysis of fluctuations in the street-level prices of illegal substances in South Africa." *ISS Crime Quarterly*, 54(1): 43-45.

Howell, S. (2015). 'Drugs in Africa: Histories and Ethnographies of Use, Trade, and Control" (Book Review). *Rutgers Criminal Law Book Review*. OnlineFirst: 1-4.

Marks, M. and Howell, S. (2016). "Cops, drugs and interloping academics: An ethnographic justification for harm reduction-based programmes in South Africa." *Police Practice and Research,* 17(4): 341-352.

Schiebe, A., Howell, S., Muller, A., Katumba, M., Langan, B., Artz, L. and Marks, M. (2016). "Finding solid ground: law enforcement, key populations and their health and rights in South Africa." *Journal of the International AIDS Society*, 19(3): 1-6.

Townsend, L., Howell, S., Laubscher, R., Shaw, M. and Harker-Burnhams, N. (2016). "Using Respondent-Driven Sampling (RDS) to recruit illegal polysubstance users in Cape Town, South Africa: Implications and future directions." Submitted to *Drug and Alcohol Dependence*. In press.

Marks, M., Howell, S. and Shelley, S. (2016). "The fluidity of 'police culture': Encountering the contextual complexity of policing street-level drug use." *Policing: A Journal of Policy and Practice*. Under review.

Dwela, S. and Howell, S. (2016). "Corrupting Influences: Contrasting Illegal Substance Users' and Police Officers' Perspectives of each other in Cape Town, South Africa." *Policing and Society*. Under review.

Book Chapters:

Berg, J. and Howell, S. 2015. "Running the gauntlet: Police strategies and responses to strike action." In B. Hepple, R. le Roux and S. Sciarra (eds.), *Laws Against Strikes: The South African Experience in an International and Comparative Perspective*. FrancoAngelli: Rome.

Berg, J. and Howell, S. 2015. "Civilian oversight of police in Africa: Trends and challenges." In T. Prenzler and G. den Heyer (eds.), *Civilian Oversight of the Police: Advancing Accountability in Law Enforcement*. CRC Press: London.

Howell, S. 2015. "Systemic vulnerabilities on the Internet and the exploitation of women and girls: Challenges and prospects for global regulation." In H. Kury, S. Redo, E. Shea (eds.), *Women and Children as Victims and Offenders: Background, Prevention, and Reintegration*. New York: Springer, 575-601.

Howell, S. and Marks, M. (2015). "Discounting the disparaged: Insights on the policing of the use and users of illegal substances in South Africa." In G. Monaghan (ed) *Blue Serge and Red Ribbons: Police Services and Harm Reduction – Law, Polices, and Practices from 14 English Speaking Countries*. In press.

Howell, S. and Shearing, C. (2016). "Prisons, tourism, and symbolism: Reflections on hope and its enemies." In J. Wilson, S. Hodgkinson, J. Piché, K. Walby. (eds.) *The Palgrave Handbook of Prison Tourism*. Palgrave Macmillan. In press.

Research Reports (only significant contributions listed):

Howell, S. (2014). "X marks the spot: Drugs, gangs, and community leadership." Published as an independent report for the UCT Safety and Violence Initiative's periodic series, *At the Coal Face*.

Southern African Cities Network (2015). "Indicators of and responses to urban crime." Completed, in press.

Western Cape Provincial Government (2016). "Redesign and structure of Community Police Forums and Neighbourhood Watches." Accepted, acknowledged (not for public dissemination).

United Nations Office on Drugs and Crime (2016). "The development and security nexus: A practical guidebook." Completed, in press.

South African Department of Social Development (2016). "Supply-side management of illegal drugs in South Africa." Contribution to the forthcoming National Drug Master Plan (2017).

Conference Proceedings:

Howell, S. (2013). "Complexity and cocaine: Understanding drug networks." *The Complexity Conferences*, STIAS, Stellenbosch. Paper presented. September 2013.

Howell, S. (2014). "The i'khothane, structure, and power: Consumption and tragedy." *The Conspicuous Consumption Conference,* HUMA, UCT, Cape Town. November 2014.

Howell, S. and Harker-Burnhams, N. (2015). "Preliminary data from a multi-site, mixed methods study of illegal drugs in Cape Town." *The Kettil Bruun 41st Annual Conference*, Munich University, Munich. June 2015.

Howell, S. (2015). "Preliminary pricing data from a mixed-methods, multisite study of illegal substance use in Cape Town, South Africa." *SACENDU Annual* Meeting. Medical Research Council, Parrow, Cape Town. 21 May 2015.

Howell, S. (2015). "Understanding drug prices in the context of treatment." *SACENDU* Regional Meeting Eastern Cape, Port Elizabeth. October 2015.

Howell, S. (2015). "Policing drugs in Durban." *SACENDU* Regional Meeting KwaZulu-Natal, Durban. October 2015.

Howell, S. and Marks, M. (2015). "Police perceptions of drug use, users, and regulation in South Africa: The possibility of harm reduction." *Third Contemporary Drug Problems*. European Monitoring Centre for Drugs and Addiction, Lisbon. September 2015.

Howell, S. and Marks, M. (2016). "Policing drugs differently: Results of an ethnographic study in the policing of illegal substances in a South African city." *International Violence Prevention Conference*, UCT, Cape Town. September 2016.

Lamb, G., Berg, J. and Howell, S. (2016). "Home grown community violence prevention? An analysis of the activities challenges of community police forums and neighbourhood watch organisations in the Western Cape." *International Violence Prevention Conference*, UCT, Cape Town. September 2016.

Howell, S. and Marks, M. (2016). "Law enforcement organisations and the policing of drugs: Changes from within." *Third International Conference on Law Enforcement & Public Health, LEPH 2016*, Amsterdam, The Netherlands, 2016.

"B"

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RESEARCH ARTICLE

Civilian oversight of police in South Africa: from the ICD to the IPID

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South Africa's transition to a democracy brought with it a holistic accountability system geared toward aligning the South African Police with democratic principles. This article focuses on one component of this accountability system – the Independent Complaints Directorate (ICD) and its recent successor, the Independent Police Investigative Directive (IPID). It aims to critically review the mandate and operations of the ICD; reflect on the shift from the ICD to the IPID; and discuss the IPID's mandate in light of past difficulties. The article concludes with a discussion of the theoretical implications of this shift and current challenges of police oversight.

Keywords: police accountability; civilian oversight; South Africa; independent complaints directorate; independent police investigative directive

Introduction

A significant component of South Africa's political transition to a democracy in the 1990s was the reform of the Apartheid police known for its racist ideologies, violent oppression and gross violations of human rights. With South Africa's first democratic elections in April 1994, an architecture of police accountability was systematically created within broader processes of legal reform. This was to ensure that the then South African Police (SAP) would operate in a democratic and human rights-orientated manner and so too acknowledged the fundamental linkages between policing and democracy (Bayley, 2001; Sammonds, 2001). This new architecture of accountability included a range of laws and mechanisms by which to directly and indirectly hold the SAP to account. The most fundamental legal tools being the Bill of Rights (1996) and the Interim (1993) and final Constitutions (1996) as well as the South African Police Service Act (1995) which sought to transform the SAP (both in name and in principle) from a *force* to the South African Police *Service* (SAPS). Other mechanisms created included, for instance, the Human Rights Commission, Public Protector, and a National Secretariat of Safety and Security (now known as the Civilian Secretariat for Police). However, it can be argued that one of the most direct attempts to instill practices of accountability within the police was the creation, in 1997, of an independent complaints mechanism in the form of the Independent Complaints Directorate (ICD). The ICD was an independent and external mechanism created specifically to receive serious complaints of abuse against the SAPS and thus formed an integral component of this system of accountability created to shape police reform in South Africa's new democracy (Pigou, 2002).

Given the commendable but complex system of accountability created in South Africa, it is not within the scope of this paper to deal with all of its components. The

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article will instead critically discuss the ICD and its recent successor – the Independent Police Investigative Directive (IPID) – as just one component of this accountability architecture, focusing specifically on whether the new IPID can overcome the challenges faced by its predecessor. Therefore, the aim of the article is to firstly undertake a critical review of the normative framework informing the creation of the ICD. It will then undertake a thematic discussion of the main operational and structural challenges faced by the ICD in practice, including a brief discussion of the political context in which it operated. The article will then discuss the shift from the ICD to the IPID, through briefly reflecting, again, on the political context in which this took place and providing a critical analysis – in light of the challenges faced by the ICD – of the new normative framework designed to mandate and empower the IPID. The theoretical implications of the shift to the IPID will then be discussed, with a specific focus on the possibility that the IPID has undergone a paradigm shift with respect to how regulation and accountability is envisaged. The article will conclude with brief comments on the challenge of police oversight in South Africa in the future.

The Independent Complaints Directorate (1997–2012)

Normative framework and critique

The ICD was officially created through section 222 of the 1993 Interim Constitution, which states that

> There shall be established and regulated by an Act of Parliament an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the Service are investigated in an effective and efficient manner (in ICD, 2012, p. 3).

Although the final Constitution of 1996 makes provision for a civilian secretariat, it does not contain the above provision (Manby, 2000). However, the final Constitution does contain the following: 'On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province' (Constitution of the Republic of South Africa, 1996).

The South African Police Service Act of 1995 is the main legislation outlining the functioning of the ICD to be headed up by an Executive Director (Republic of South Africa, 1995). It also emphasizes the independence of the ICD (that it is an offence to interfere with its duties) and stipulates how the ICD will be funded. The mandate of the ICD is outlined in section 53, which stipulates that it *may* of its own accord or upon receiving complaints 'investigate any misconduct or offence allegedly committed by any [police] member, and may, where appropriate, refer such investigation to the [police] Commissioner concerned' (there is thus no obligation on the ICD to investigate these offences itself) (Republic of South Africa, 1995). Similarly, it *shall* on its own accord or upon receiving a complaint 'investigate any death in police custody or as a result of police action' (meaning that it must investigate these instances) (Republic of South Africa, 1995). The Act also allows for matters to be referred to it by the Minister of Safety and Security (now Minister of Police) or a provincial executive (Republic of South Africa, 1995). The ICD was thus tasked to deal with four classes of police misconduct: Class 1 offences, as mentioned, had to be investigated and included all deaths in custody or as a result of police action. Class 2 offences could be investigated by the ICD or

referred to the SAPS to investigate and were cases referred to it by the Minister or a provincial executive. Class 3 offences could be investigated by the ICD or referred to SAPS and included criminal offences not resulting in death such as torture, rape, serious corruption and serious injury while in police custody or as the result of police action, for instance. Class 4 offences were referred to SAPS for investigation and included less serious misconduct and service delivery issues (Burger & Adonis, 2008; Manby, 2000).

The powers conferred to the ICD for this purpose were the same powers afforded to any police officer and included the power to request any information and co-operation from any police official as well as to monitor and set guidelines for the investigations that it referred to the police (Republic of South Africa, 1995). It was also mandatory for the police to report all deaths in police custody or as a result of police action (Republic of South Africa, 1995).

Yet, the powers referred to in the legislation are not spelt out – the wording of the legislation is vague with respect to the types of, and limitations to, its powers (Manby, 1996). A particular bone of contention with the legislation was that the ICD could only make *recommendations* to the police commissioner or to the Minister (Republic of South Africa, 1995). And furthermore, with respect to requesting any information and co-operation from the police the wording of the provision is 'open to the interpretation that the Executive Director of the ICD is merely competent to request and receive the co-operation of members, but that there is no obligation on police members to co-operate.' (Bruce, Savage, & de Waal, 2000, p. 76). There was no sanction to ensure that the police *did* co-operate and the ICD had no input into the disciplinary procedures of the police – even where it referred a case back to them to investigate (Bruce et al., 2000; Manby, 1996, 2000). In other words, according to the Act, the ICD has no power to enforce recommendations made either to the Minister, the police commissioner or to the attorney-general (now the National Prosecuting Authority) for consideration whether or not to prosecute (Republic of South Africa, 1995). There are no provisions in the Act which indicate if or how the recommendations should be addressed. Thus, there is no compulsion for either of the three to respond to and/or give reasons for non-implementation of recommendations (Bruce et al., 2000; Manby, 1996). Furthermore, the ICD is also directly answerable to the Minister of Safety and Security (Republic of South Africa, 1995). It is not fully independent in terms of its relationship with the Minister of Safety and Security also charged with the very organization the ICD is meant to oversee. The Minister appoints the Executive Director (who in theory could be a police officer) and can in turn remove him or her (Manby, 1996). What is also interesting about the provisions of the Act is that the ICD can draw in the 'resources and logistical support or engage the services of experts' to assist it in achieving its objectives (Republic of South Africa, 1995). At the outset, this begged the question as to whether the ICD would have to rely on the SAPS to effectively fulfill its mandate, again impacting on its independence (Manby, 1996). These provisions have thus been criticized as the power and independence of the ICD was called into question even before its establishment (Manby, 1996).

Operations and challenges

The ICD officially came into operation in April 1997, and it is clear that many of the concerns expressed about the weaknesses in the legislation also extended to the operations of the ICD over the years. In other words, the two key issues with the legislation – lack of power and lack of independence – have also been the main issues experienced in practice, as well as lack of capacity and resources.

Lack of capacity and resources

At the start of its activities, the ICD had no budget and, as was predicted earlier, had to rely heavily on SAPS for resources and logistical assistance (i.e., investigators) (Manby, 2000). However, national and regional offices were established and the ICD began recruiting its own civilian investigators who began their work in late 1997 (Manby, 2000). In 2011, the ICD had 10 offices (one national and nine regional). Initially, part of the police budget, the ICD eventually secured its own budget (Du Plessis & Louw, 2005). Its budget has increased eightfold from 1997 to 2011 and its staff almost tripled, yet it never attained a full contingent of staff and, despite these increases in personnel and resources, the demand always seemed to outweigh the capacity to deliver, particularly with the steady rise in cases received (Hendricks & Musavengana, 2010). In the 1998/1999 period, for instance, the ICD received just under 3000 cases, and by 2011 (not accounting for fluctuations in load), it received just under 6000 cases but due to backlogs, it was actually dealing with almost 8500 cases (Independent Complaints Directorate, 1999, 2011). The ICD itself admitted, in almost all of its Annual Reports, that resource and capacity constraints hampered its effectiveness.

Their lack of capacity and resources over the years has meant that the ICD's mandate to investigate *all* deaths in police custody or due to police action was not fulfilled (Manby, 2000). As mentioned, most of the Classes of offences could be referred to SAPS for investigation but it was found that the ICD had tended to investigate as many of the cases as possible, even though the SAPS also receives and investigates public complaints (Bruce, 2006). 'We had a vision where one of our top management must take each and every case within the mandate. That killed us. So in the end, we could not really provide an excellent service to the public …' (ICD representative, Western Cape Office, personal communication, March 2007). This broad reading of its mandate, coupled with under-resourcing, lack of capacity and broader logistical challenges (for instance, travelling long distances to get to rural cases) has meant that the ICD could not cope with its case loads (Bruce, 2006). This, it is argued, spread its limited resources too thinly resulting in a lower quality investigation, a less thorough investigation and a failure to adequately address issues that are far more prevalent than deaths in custody or as a result of police action (such as corruption and torture) (Bruce, 2006; Du Plessis & Louw, 2005; Pigou, 2002). This is compounded by the claim that the ICD had difficulty in recruiting quality investigators (Manby, 2000; Pigou, 2002).

Lack of power

Although evidence suggests that the ICD and the police were generally on good terms, it has also been found that police would not co-operate with the ICD in terms of answering the questions of ICD investigators or that there was a general lack of co-operation to protect police officers under investigation (Bruce, 2007; Bruce et al., 2000). Similarly, as predicted by critiques of the legislation, the SAPS apparently did not generally provide feedback to the ICD on internal investigations or recommendations (Bruce, 2007; Burger & Adonis, 2008; Manby, 2000). Also, as mentioned the SAPS were only obligated to report deaths in police custody or as a result of police action, meaning that it had no obligation to report on other serious offences, such as torture (Pigou, 2002). Where the SAPS had reported deaths, there were also claims of SAPS not referring cases to the ICD or not reporting deaths timeously (Manby, 2000). When the ICD initiated ad hoc visits to police stations, a strong negative reaction from the police and the Ministry caused it to

suspend this activity – it thus had no automatic right to visit police stations unannounced (Manby, 2000; Pigou, 2002). These issues thus speak to broader concerns about the ICD lacking the power to compel SAPS to provide certain types of information and access.

Lack of independence

As mentioned, concerns were raised initially about the independence of the ICD relative to its relationship with the Minister. According to Manby (2000, p. 212): 'In practice, there has been no direct interference in the work of the ICD, and the fears raised by the legislation relate rather to the public perception that the ICD is not fully independent of the police ...' This is compounded by the fact that the ICD was housed in the Ministry of Safety and Security (later known as the Ministry of Police) presenting a potential conflict of interests. But also due to more localized aspects of the ICD's operations, such as the fact that the ICD had to remain dependent on SAPS during the course of an investigation (Burger & Adonis, 2008). For instance, the ICD made use of the SAPS photographer, SAPS officers to collect evidence on their behalf, the SAPS-run ballistics laboratory and/ or the DNA laboratory (jointly run by SAPS and the Department of Health) (ICD representative, Western Cape Office, personal communication, March 2007; Manby, 2000).

Overall purpose

In light of these concerns, the overall purpose of the ICD has also been called into question. 'For an oversight body to be really effective in bringing about the desired changes in police culture and practices, it is essential that it also have the capacity to identify the underlying systemic problems.' (ICD as cited in Manby, 2000, p. 213).

This is a concern raised by many. The ICD had not attempted to address broader reform issues within the SAPS, but operated on an ad hoc, case-by-case basis (Pigou, 2002). It did not therefore make recommendations related to changing the institutional culture of the police so as to reduce complaints, but only recommendations to the National Prosecuting Authority to prosecute, or recommendations to SAPS (which it was not compelled to take up) (Newham, 2005).

Decline in importance of civilian oversight

It is important to reflect also on the political context in which the ICD operated. As is apparent, in the mid- to late-1990s the newly formed democratic government was very committed to the creation of an accountable police institution respectful of human rights and due process, as is evidenced by the period of legislative reform in this regard. However, with growing concerns about crime – particularly violent crime – and a shift in political leadership in 1999, the rhetoric and practice of community policing which had dominated policy up until then shifted to a war-on-crime approach (Bruce & Neild, 2005). Indicative of this shift in thinking was the increased emphasis on effectiveness of police over and above a human rights approach. This resulted in a weakening of political support for, and interest in, police accountability demonstrated, for instance, by the disbanding of the SAPS own Anti-Corruption Unit in 2002 and the downgrading of the powers of the National Secretariat of Safety and Security (Du Plessis & Louw, 2005; Newham, 2005; Sammonds, 2001). This shift in rhetoric is perhaps articulated in the following quote from the Deputy Minister of Safety and Security, Susan Shabangu on 9 April 2008, who received a standing ovation after her talk to an anti-crime forum

I want to assure the police station commissioners and policemen and women from these areas that they have permission to kill these criminals. I won't tolerate any pathetic excuses for you not being able to deal with crime. You have been given guns, now use them. I want no warning shots. You have one shot and it must be a kill shot. If you miss, the criminals will go for the kill. … The constitution says criminals must be kept safe, but I say No! (Hosken, 2008)

Prior to this, the National Commissioner of Police in 2006, Jackie Selebi, stated that the ICD had 'outlived its usefulness' and that it needed to be disbanded to allow the police to deal with their own issues (Hartley, 2006).

The Independent Police Investigative Directorate (2012–)

In spite of the political pressure to resolve high crime rates through tougher policing, South Africa seems to have entered a new phase with respect to how civilian oversight is envisaged. The appointment of a new Minister of Police in 2009, emphasizing the need for a strengthened civilian oversight system seems to have been the catalyst for the enactment of a recent tranche of new legislation aimed at tightening up the accountability framework. The new phase reflects a desire to balance police effectiveness and accountability rather than allowing one to trump the other. This has included the creation of a Civilian Secretariat for Police (to replace the National Secretariat of Safety and Security/ Police) mandated to fulfill a policy development and networking role (to improve SAPS service delivery) (Republic of South Africa, 2011a). However, what is perhaps even more symbolic of this new phase is the fact that the IPID, created to replace the ICD, has its own legislation. In other words, whereas the ICD, as mentioned, was created through the South African Police Service Act of 1995, the IPID is mandated through the Independent Police Investigative Directorate Act (1 of 2011) (hereafter the IPID Act) and the Regulations for the Operation of the Independent Police Investigative Directorate, 2012. This is a move toward ending the 'uncomfortable connection to the SAPS Act' (Faull, 2011, p. 5). The IPID Bill was tabled in Parliament in September 2010 with the IPID Act eventually signed off by the President in May 2011 and enacted in April 2012.

Mandate of the IPID

The new legislation has considerably extended the mandate of this oversight body, in that it is *compelled* to investigate any deaths in police custody or as a result of police action, but now, unlike the ICD, also a list of other offences, including: complaints related to the discharge of a firearm; rape by a police officer (whether on or off duty); rape of any person while that person is in custody; complaints of torture or assault; corruption (which the Executive Director can initiate); and any referred matter (by the Minister or the Secretary of the Civilian Secretariat for Police) (Republic of South Africa, 2011b). It *may* also investigate any offences on receipt of a complaint (which it can refer to SAPS) or cases relating to systemic corruption (but with service delivery complaints generally the responsibility of the Civilian Secretariat for Police) (Republic of South Africa, 2011b). The new mandate and name change reflect a desire to reinvent the ICD from one focused on complaints and the processing thereof, to one focused on investigations (Beukman, 2011).

Under the IPID Act, the Executive Director is still appointed by the Minister of Police and the IPID still housed within the same Ministry (Republic of South Africa, 2011b). Much of the changes in the new legislation lie rather in the granting of new powers to the IPID as compared to the ICD.

New powers

The IPID Act clearly outlines for the first time the powers of its investigators – the ICD did have police officer power, but now the Act stipulates what this entails (Republic of South Africa, 2011b). However, a clear boost in its powers comes from Chapter 7 of the IPID Act, in which the SAPS is mandated to report the offences listed 'immediately after becoming aware' of them (whereas previously the timing of reporting offences to ICD was not stipulated) and also submitting a written report to the IPID within 24 h (Republic of South Africa, 2011b). Similarly, the IPID Act compels the SAPS to co-operate with the IPID in other ways, through giving identity parades, if necessary, within 48 h; making officers available for taking affidavits; giving evidence or producing any document and providing any other information or documentation required for IPID to investigate (Republic of South Africa, 2011b). The most important provision in the IPID Act is the fact that the National Commissioner of the Police is now compelled to initiate disciplinary recommendations made by the IPID within 30 days, submit a quarterly report on progress regarding disciplinary matters to the Minister of Police (and copied to the IPID's Executive Director and Secretary of the Civilian Secretariat for Police) and similarly report to them when a disciplinary matter is finalized and report on the outcome thereof (Republic of South Africa, 2011b). Although the previous legislation stipulated that no one could interfere with the workings of the ICD, the IPID Act explicitly mentions that police officers who fail to comply with the requests of the IPID will be liable for conviction (Republic of South Africa, 2011b).

IPID responsibilities

The Regulations for the Operation of the Independent Police Investigative Directorate, 2012, clearly articulates IPID's own responsibilities. For instance, regulations now give input into: the logistics around receiving complaints and providing feedback to complainants (the IPID must give feedback within seven days of receipt of the complaint and thereafter regular, monthly input as to the progress of the case); attending the scene of a death in police custody or as a result of police action and the finalization thereof (that is, within 90 days); the types (and timing) of activities that investigators must fulfill at the outset of a case (procedures for investigating the different offences; securing crime scenes; procedures related to identity parades, taking affidavits and so forth).

Networking

An interesting inclusion in the IPID Act is the fact that the IPID is now legally obligated to strengthen its relationship with the Civilian Secretariat for Police, in that the IPID Executive Director and the Secretary of the Civilian Secretariat for Police are compelled to meet on a regular basis (Republic of South Africa, 2011b). This may have happened in the past but the inclusion of this provision in the legislation is perhaps indicative of an attempt to cement relations between two civilian oversight bodies which should be complementary in their duties toward holding the SAPS accountable, thereby closing gaps in oversight.

Future prospects

Thus far, within a few months of official operation, the IPID has already begun to utilize its new powers by, for instance, laying criminal charges against all police officers failing to report to it (South African Press Association, 2012b).

The IPID's annual budget has been topped up by 36 million Rand (approximately three million Euro) and there are hopes, at the time of writing, that the number of investigators and satellite offices will be increased (South African Press Association, 2012a, 2012b). However, the increased mandate essentially translates into a much bigger mandatory case load than the ICD, requiring more specialized skills, more time devoted to crime scenes and testifying in court and more access to resources (such as forensic support), as well as a bigger case load per investigator (Faull, 2012; Prenzler & Ronken, 2001). It remains to be seen whether the increased budget will be able to cope with the inevitable surge in cases which IPID is compelled to investigate.

Shifting paradigms of regulation?

In light of the new powers afforded to it, it can be argued that the IPID is by no means a minimal model of oversight but represents a civilian control or civilian external investigative model of oversight which entails excluding police from investigations and having '*final* control' over the whole process (Clarke, 2009; Prenzler, 2004; Prenzler & Ronken, 2001, p. 170). It now has considerable power to investigate and influence the police as an institution.

Further to this, in statements made by the Minister of Police and the Executive Director of the IPID, it seems that there is an intention for the IPID to be more focused on general, systemic issues, or 'defects' as the Minister of Police calls them, within the SAPS – despite the legislation only suggesting that the IPID may (voluntarily) look at systemic *corruption* issues (Beukman, 2011; Independent Complaints Directorate, 2011, p. 8). This is an interesting shift from a case-by-case complaint's mechanism with a predominantly punishment-orientated outlook to one that is now also problem-orientated (Braithwaite, 2002).

Civilian oversight systems have generally been criticized because of the fact that they have predominantly focused on punishing individual transgressors on a case-by-case basis rather than focusing on deeper, systemic organizational problems (Bayley, 1995; Goldsmith, 1995). There have thus been calls to 'fix the police barrel' or the rotten orchards rather than simply focusing on the rotten apples (Bayley, 1995, p. 96; Punch, 2003). What is essentially at stake here is a paradigm shift from a deterrence approach to an opportunity-focussed approach. A deterrence approach is how many criminal justice systems operate, focusing on individual offending through a case-by-case basis in order to punish individuals so as to deter would-be offenders. It operates in a reactive way, focusing on breaches of the law after they have occurred (Reiss, 1984).

An opportunity-focused model focuses on opportunities for offending rather than just on individual offenders and will ask a different set of questions. For instance, instead of asking who is to blame, it will ask questions about how offences can be prevented from recurring in terms of the conditions that were present to allow the problem to take place (Berg & Shearing, 2011). It is a more proactive strategy focused on controlling *opportunities* for breaching the law and it is more reflective, in terms of problem-solving (Shearing & Stenning, 1982). It also requires a more networked approach in order to uncover deeper issues (Wood & Shearing, 2007). An optimal system would be one in which there is a balance of the two paradigms as both have benefits and harms (Braithwaite, 2002).

However, there are challenges to adopting a more systemic approach. One of which is the ability of independent, civilian oversight mechanisms to penetrate police institutions 'given the strength of the police culture and police knowledge of how to evade prosecution.' (Prenzler & Ronken, 2001, p. 168). Another challenge is the political will to enable such mechanisms to fulfill their mandates.

> Even with the indications of some complaints bodies exhibiting a more systemic approach to the analysis of complaints, the structural location of these bodies and the degree of political influence they can exercise, which are the product of their resources as well as their constitutional and legal status, constrain the degree to which they can highlight, let alone have an impact on, the wider considerations that frame the debates on police accountability. (Goldsmith, 1995, p. 126–7)

Linked to this concern, is the age-old problem of resources, no matter how strong a legislative framework, enforcement relies on capacity, expertise and resources (Clarke, 2009).

In light of this, Goldsmith (1995) calls for a realist perspective which acknowledges that complaints mechanisms can only do so much. They need to operate within a broader framework of accountability functioning at all levels – internal, governmental and societal – with multiple mechanisms in a mixed, holistic system (Clarke, 2009; Stone, 2007).

Conclusion

The IPID has only been in operation since mid-2012, it remains to be seen how its new mandate is fulfilled and whether capacity and resource constraints will still hamper effectiveness given its now larger mandatory case loads. Adopting two paradigms of oversight will be a challenge but the legislation has gone some way in addressing this through compelling a more networked approach and granting considerable powers to the new IPID. In this regard, the call by Goldsmith (1995) for a realist perspective and by many others for a networked system of accountability is an important consideration within the South African context. What will a more networked approach look like and how will the IPID engage with other players within the accountability system, such as the Human Rights Commission (which may investigate the same cases) and other mechanisms not specifically mentioned in the legislation? Will a networked approach build in some redundancy thus reducing gaps in oversight? Or will it be beneficial in terms of drawing in resources and capacities to boost the effectiveness of oversight agencies overall? The key question is really how to operationalize a networked approach and also to create one which will be of benefit to the project of oversight, rather than a liability.

However, besides the operational aspects of creating a more networked approach, one of the greatest obstacles to oversight is not the police institution itself, but a political system ill-disposed to strengthening police accountability. As mentioned, South Africa has gone through waves of police reform. There has been a movement from building up systems of oversight within a human rights framework, to favoring tough on crime responses and now to a possible new phase in which the architecture of accountability is given new life to perform its task effectively.

Yet, a recent prediction by Moeletsi Mbeki (the brother of former South African President Thabo Mbeki) is a stark warning for what the IPID has to face in the future. He has stated that the re-militarization of the SAPS, among other things, was in fact a preparation by the government to suppress increasing civil unrest arising because of the deepening of inequalities generated by a capitalism system designed to cater to minority elites (Mbeki, 2012). Testimony to this predicted future of government suppression is the tragic incident that occurred in August 2012 at a platinum mine at Marikana (two hours north west of Johannesburg). Called the Marikana Massacre it involved the SAPS killing 34 miners involved in an illegal strike – some had been shot at close range or crushed with police vehicles (Marinovich, 2012). At the time of writing, investigations were underway involving a Commission of Enquiry appointed by the President and the IPID. In line with

Moeletsi Mbeki's predictions, the Marikana incident speaks to broader issues of poverty, class disparities and pressures from the global market economy. The role of the SAPS in dealing with these types of unrest, particularly when using excessive force, necessarily raises the very systemic issues that the IPID and other oversight bodies may have to confront. However, these issues also extend far beyond the ambit of policing and speak to the system of economic governance in its entirety. The Marikana Massacre investigation may be the litmus test of this new phase of commitment to oversight but it raises broader questions too, which bodies like the IPID may not be equipped to address, even within networked arrangements.

Notes on contributor

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'We have to start showing who is boss now': Constructing methamphetamine use and users in the South African print media

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Abstract

This paper critically engages with media representations of the use and users of methamphetamine, or 'tik', in South Africa. It makes two primary claims. First, the paper argues that the media has drawn on the themes of criminality, pathology and victimhood in articulating the 'tik' phenomenon. Second, it is argued that these themes intersect with much deeper discourses, discourses that are especially pertinent to the South African context – such as race, sex and HIV/AIDS – in order to make meaning. The resulting moral framework encourages punitive approaches to the regulation of 'tik', while undermining reductive or rehabilitation-orientated regulation strategies. This occurs despite punitive efforts having never been consistently effective in the country. Consequently, the paper argues that media constructions of 'tik' oversimplify a complex socio-political, economic and historically rooted phenomenon, frequently encouraging stigma and the exclusion of the 'tik' user from society. This not only prevents more effective measures being thought possible, but frequently also serves to exclude those who already live at the very margins of society.

Introduction

Methamphetamine has increasingly become the most loathed illicit substance in South Africa. Known colloquially as 'tik', its widespread use was first noted in 1996. By 1998, however, it was recognised as one of the most commonly used illegal and as a 'dangerous dependence producing substance' in the country (Berg, 2005). Relatively easy to produce, profitable to distribute, and pharmacologically addictive, 'tik' has come to capture the public imagination, generating

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numerous media articles and images detailing (among others) emaciated women (Rohwer, 2013), tattooed gangsters (Bailey, 2007), and vulnerable street children (Sephali, 2013). The South African media has, moreover, frequently articulated the spread of the use of the drug in pathologi-cal terms – it is a 'scourge', 'epidemic', or 'plague' (see, for instance, Caelers and Bailey, 2006). In confluence, 'tik' users are conceptualised as the carrier of a contagion: diseased, deviant (both morally and sexually), and importantly, *predatory* on the mores and norms of contemporary soci-ety (Caelers and Bailey, 2006).

While concerns with the rapid spread and use of 'tik' are in no way unfounded – 'tik' *is* an extremely dangerous and frequently addictive drug (Morris and Parry, 2006: 471) – it is the *manner* in which it has been articulated in the press that is of concern. The South African media, in short, has played a pivotal role in constructing and proliferating a moral panic concerning 'tik' which has ultimately served to legitimate some responses – heavy-handed policing and the drafting in of the military – and negated others – concerns with the structural conditions (such as endemic poverty) that have contributed to the rapid spread of the drug. Echoing the fear of 'crack' during the 1980s in the US, these discourses have, as a consequence, served to constrain reduction and rehabilitation orientated approaches as (ironically) outlined by South Africa's newest National Drug Master Plan.[1] While similar in tone to the moral panic concerning 'crack' (and indeed many other drugs), the moral panic constructed by the media concerning 'tik' has been made meaningful by drawing on familiar yet deeply seated and uniquely South African distinctions and prejudices – concerning crime, race, and sexual behaviour – that have underpinned socio-economic and racial understand-ings of the continuing differences in the country post-apartheid (see, for example, Boyd and Carter, 2010; Ayres and Jewkes, 2012).

The resulting themes, descriptions, and tropes are of course nothing new to understandings of psychoactive chemicals and drugs. From the 'yellow peril' that narrated North America's concern with Chinese immigrants (Lyman, 2000), to the hypersexualised 'cocaine girl' of London during the First World War (Kohn, 2001), and the public loathing of the 'crack whore' during the 1980s in the US (Reeves and Campbell, 1994), discourses concerning drugs are a potent tool with which to engage with, and articulate, axiomatic societal concerns. Indeed, the morally charged fears, panics and outcries concerning specific drugs, and drug users, that periodically emerge are often reflections of deeper tension, turmoil, and transition.

So too, in South Africa, has the use of 'tik' become a powerful means of articulating the coun-try's increasingly worrisome growing pains, pains that stem from the lack of substantive change to South African society since the fall of apartheid over twenty years ago (Leggett, 2002). As shall be demonstrated below, 'tik' has become a formidable tool with which the media can describe and comment on the country's violent crime rates (Dawson, 2006), the HIV/AIDS 'pandemic' (Burchardt, 2013), and the continuing salience of various politico-economic inequalities (Seekings, 2008). In the process, the use and abuse of 'tik' has become a convenient scapegoat on which South Africa's pressing, but far more complex, politico-social problems and anxieties can be blamed. Indeed, while concerns with illegal drugs have been understood through the lenses of criminality, contagion, and victimisation in numerous other countries, including the US, UK, and Canada, they find particular and unique resonance in South Africa. This is because South African society remains deeply stratified, complex, and (at times) tumultuous – it is colloquially known, for instance, as the 'strike capital' of the world, remains notorious for its levels of violent crime, and is extremely unequal. These divisions and fears have themselves been articulated through

specific – and deeply embedded – discourses and assumptions. The themes used in articulating the 'tik' phenomenon have fed off these far deeper concerns, creating a highly emotive (and particularly newsworthy) 'siege paradigm' (Reeves and Campbell, 1994: 129). 'Tik', it is argued, has become one of the symbolic metaphors used to articulate these concerns. Thus while one may be able to draw parallels between contemporary articulations of 'tik' in South Africa and a number of previous studies – all of which have highlighted the recurring themes of criminality, infection, and victimisation (Ayres and Jewkes, 2012) – the South African example is also unique, especially considering the historical and contemporary problems that the country faces. Moreover, understanding how these discourses operate is important in developing more effective strategies and policing protocols, as these discourses both inform understandings and set the parameters of what can be thought possible – the individual study of these discourses, thus, is an important task hereto not undertaken in the literature.

This is not to deny that 'tik' is dangerous and damaging, or that it may play a causal role in exacerbating at least some of these problems. This article argues that the stereotypical discourses and constructions used by the media (a) do not serve to represent the far more complex reality of drug use in the country, and (b) frequently encourage moral condemnation, blame and stigma, the result of which limits or prevents effective reduction or rehabilitation efforts (Gough, 2012). As such, while this paper may be critical of the way in which the use and users of 'tik' have been articulated and positioned, *it is not* an attempt to justify or mitigate the harm that the production, distribution, and use of the drug can cause. Numerous studies have shown methamphetamine's potential for physiological, psychological and social harm, both internationally and in South Africa (see, for example, Morris and Parry 2006: 471). However, South African drug policy has hereto been fruitless and ineffective, frequently serving to further isolate those communities most heavily affected by the drug (Parry et al., 2004). Moreover, general descriptions of 'tik' users have given new life to age-old racial stereotypes, resulting in disparate incarceration rates (Provine, 2007).

In exploring these issues, it is argued that concerns with 'tik' have drawn on three deeper discourses, which are unique in their placement and prominence in South Africa, and thus are of particular importance in conceptualising state and non-state responses to the 'tik' phenomenon. The first, in which 'tik' is seen as pervasive criminal problem, makes use of a rhetoric that draws on fears of the spread and intractability of violent crime in the country. This legitimates, for instance, the deployment of the military in impoverished communities, a strategy that not only has shown itself to be ineffective, but further antagonises relationships between the state and affected communities. This then plays a prominent role in preventing the successful deployment of other policing strategies, such as those that rely on community cooperation. In the second, 'tik' is seen as a social and personal contagion. In South Africa, this particular discourse harnesses already deeply embedded understandings of HIV/AIDS in order to make meaning. The use of 'tik' is thus not only seen as a disease, but one that is incurable, pervasive, and that can be spread by users. Finally, the third focuses on the discourses of victimisation that are frequently used in articulating 'tik' use. These discourses draw on pervasive understandings of inequality, in which impoverished communities are seen to self-replicate their victimhood – Africa is seen to persist as the 'dark continent', and many of the communities associated with 'tik' use become seen as paradigmatic exemplars of such an understanding. It must be remembered that in South Africa, economic inequality is also very much racially characterised (Durrheim et al., 2011). As a result, it is argued that the media has helped foster an environment in which it has become difficult to think of widely

acceptable, alternative or different responses to the drug, even though the criminal justice framework has increasingly shown itself incapable of effectively dealing with the phenomenon (UNWDR, 2012: 10–12). Thus while the utilisation of these tropes viz. illegal drugs have been shown elsewhere, in South Africa they have found particular resonance with some of the most fundamental worries and concerns to have arisen in the post-apartheid dispensation. They are hence deserving of focused analysis, especially considering their implications for policy, policing, and treatment strategies.

Methodological concerns

This study uses a discursive lens with which to critically view the plethora of metaphors, themes, and signifiers that have been used by the South African English-speaking print media in describing the production, distribution, and use of methamphetamine in the country. There have been numerous discursive analyses of drug-related phenomena before, albeit not with regard to methamphetamine in South Africa (see, for example, Reeves and Campbell, 1994; Brook and Stringer, 2005; Moore, 2008). With this in mind, the study has two primary analytical concerns. The first focuses on making visible the specific discursive strategies that have been used by the media in articulating the 'tik' phenomenon –the analogy of disease in the context of South Africa's overarching HIV/AIDS polemic, for instance, invokes specific understandings of disease itself. As shall be explored, the net effect is the production of a system of meaning very different than, for instance, typical understandings of the 'disease model' (Marlatt, 1996) or 'British system' (Strang, 1989) of drug regulation, which invariably invokes medical rehabilitation. In South Africa the association of 'tik' with HIV/AIDS produces a discourse that draws on an understanding of drug use as a subversive and incurable pathology. Consequently, the second methodological concern is with *how* these discursive strategies have been interwoven with pre-existing (and in many instances, powerful) discourses and rhetorical strategies that have played a significant role in narrating life in post-apartheid South Africa. The linking of the use of 'tik' with deviant sexual behaviour and the overarching HIV/AIDS discourse, for instance, provides fertile breeding ground for a fear-mongering rhetoric pandering as moral concern.

Neither the phenomenon of drug user nor the media exist in isolation from broader social mores, values, norms, and views. Indeed, the media plays a pivotal role in their reproduction and dissemination. As Blackman and Walkerdine (2001: 20) argue,

> The media is viewed as part of a wider apparatus, reproducing and producing, through the particular organisation of signs within the media text, wider cultural values and beliefs. Media texts are 'intertextual' in that the meanings created within the text always contain within them reference to a wider system of meaning.

The media, as such, often acts as a mirror with serves to refract concerns and problems in a society. Of course, the media, especially in highly politicised countries such as South Africa, is in no way neutral – specific intentions and purposes narrate the media's engagement with drugs, as in other matters. Consequently, as both a source and communicator of information, the media frequently plays a prominent role in shaping understandings and views of what constitutes a drug or drug user.

Drugs, moreover, are also a useful well of horror stories and tragedies, often reported on by salacious journalists. Indeed, it has been previously shown that 'exaggeration, distortion, inaccuracy, sensationalism; each of these labels has been consistently applied to the reporting of drug related issues in the print and other media over the last 40 years and beyond' (Coomber et al., 2000: 217). Karim Murji (1998: 69) has further argued that 'the media is often the prominent vehicle through which drug users are ostracised and demonised'. By presenting drug users as diseased, predatory, immoral, sexually perverse or deviant, 'politicians and other moral entrepreneurs are able to launch and wage drug "wars"' (Murji 1998: 69). The media thus plays a central role in (mis)representing and sensationalising the use of drugs, overemphasising their effects, constructing 'typical' or 'prone' users. Murji (1998: 69) further argues that the media, through its various channels, helps to define what 'orthodox' society may view as a drug, depending on the focal lens, public attitude, and responses to the drug problem.[2]

While the contemporary South African media industry disseminates information across multiple platforms, using a variety of mediums, this analysis is limited solely to print/text media, and to those articles that have been posted online by news sites that also publish physical papers. The reasons for these limitations are: (1) the state broadcaster's television channels do indeed have very high (self-claimed) penetration rates, but as a result of their diversity and multilingual basis the impact of individual shows or content is arguably limited; (2) satellite-based services are prohibitively expensive for the majority of the population; (3) social media and personal platforms may play host to extensive debate, but are open to manipulation and are not consistent in terms of verifiability, accountability, and/or content standards.

Print media, however, is far cheaper, more broadly disseminated and, arguably, more influential in shaping public attitudes towards emotive issues such as illegal drug use. Using a simple monetary comparison, many of the local or community newspapers in circulation are free, sensationalist tabloid papers such as *The Sun* are very cheap (costing, at the time of writing, R3.20 [27 cents US] per issue), while the broadsheet papers range in cost from R6.50 (55c US; for the *Cape Argus*) to R25 (US$2.10; for the *Sunday Times*). While television channels are broadcast at specific times of day – thus potentially excluding, for instance, those who may be at work – print media can be consumed more freely. Moreover, and as already touched upon, the communities with the highest prevalence rates of methamphetamine use/abuse are also those with some of the lowest montly household incomes, limiting the uptake of satellite-based services, TV licences, and indeed television sets.

In building the database on which this analysis is based, all of the print/text media articles published by the English-speaking mainstream South African national press concerning 'tik', since 2008, were gathered together.[3] Print articles were sourced from SA Media[4] (which has digitalized all of the major South African print publications) by using a Boolean search phrase query (tik AND/OR methamphetamine) in the South African version of Google.[5] Online articles were primarily drawn from the two largest media stables – 24.com and Independent Online – but were cross-referenced with the print articles to avoid duplication. As a result, 278 online news articles and 266 print media articles, comprising a raw data set of 544 individual articles, were collected. Some articles were of no relevance, consisting mostly of adverts, TV guides, or other sundry wording, and were excluded. As a result, 411 articles came under analysis.

In reviewing the articles, it became apparent that a thematic analysis would be useful in organising the data into individual categories. Virginia Braun and Victoria Clarke's (2006) model was

followed, primarily because it 'organises and describes [the] data set in (rich) detail' (2006: 79). Accordingly, their '6 phases of thematic analysis' (Braun and Clarke, 2006: 87) structured the initial analysis: 'familiarising yourself with your data; generating initial codes; searching for themes; reviewing themes; defining and naming themes; and producing the report' (Braun and Clarke, 2006: 87). In reviewing the data, nine initial codes became apparent: disease/scourge/plague, gangs, victims, abused children, 'tik' babies, sex crimes, immorality, criminal involvement, and hypersexualisation. Once the source material had been reviewed, three dominant discourses emerged, which are explored below.

Finally, while the use of drugs often transcends social or racial categories, the metaphors and images generated by the media frequently highlight the use of specific drugs by specific groups of people. In South Africa, as shall be explored below, the production, distribution and use of 'tik' has been indefinitely associated with the 'coloured' prison and street gangs which are said to exist in large areas of the Western Cape province (McComb, 2011). In turn, racial disparities in arrest rates in the country have been frequently noted (Nunn, 2002). Ironically, South Africa now plays host to some of the largest EDM (electronic dance music) outdoor festivals in the world. These multi-day events, attended by up to 7000 people, have hereto received almost no sustained attention by the media or from scholars, Considering their scale, their frequency (every weekend during the summer), levels of attendance, and the pervasive use of drugs (most prominently in the form of LSD), one must question why they have been almost completely ignored by the media. The answer, of course, is that attendance is expensive (high entrance fees and self-subsistence in terms of food, beverages, and drugs) and thus not accessible to the wider population. As race and income continue to find congruence, They are generally only accessible to white, middle-class South Africans, the very people *not* understood by the media to be frequent consumers of drugs. Their lives lack the tragic setting, not to mention the ontological drama, frequently used by the media in articulating 'tik' users. The discursive differences can be seen in a further instance – 'tik' is the colloquial name for methamphetamine when associated with impoverished areas or peoples, but it is termed 'crystal meth' – are far more congenial term – when consumed by the higher economic strata, which are also predominantly *not* black or 'coloured'.[6]

Finally, South African law makes allowance for immediate searches, based on 'reasonable suspicion'[7] – 'reasonable suspicion' is, of course, informed by the various discourses that construct certain users or groups as more 'prone' to drug use. Moreover, neither the media nor the police sufficiently acknowledge these implicit assumptions, choosing rather to focus on the accessible, convenient, or generalised stereotypes of drug use and users (Taylor, 2008: 370). As such, an analysis of media representations of drug use and users is a useful means of further revealing how specific discourses have informed our understandings of what constitutes a drug or drug user.

Methamphetamine in three guises
'Tik' and crime

While the production, distribution, purchasing, and selling of 'tik' *is* illegal in South Africa, media representations of the drug's use and users have drawn on a specific set of assumptions, profiles, and themes. This has been done both positively – by painting a specific picture of whom the stereotypical 'tik' user *is* and how they are likely to behave – and negatively – by outlining who does not use 'tik'. This is the result of a process in which quotes, announcements, and reference

materials are selectively used, and which often self-referentially support other claims made by the press.

With particular reference to drugs, these 'default' assumptions are of course nothing new; criminal understandings of psychoactive drugs can be traced back to the very beginnings of the 'war on drugs' discourse (Lenson, 1995; Israel, 1993; Fellingham et al., 2012: 78–79). Frequently, these narratives harbour a moral concern. As Jacques Derrida argues, 'as soon as one utters the word "drugs," even before any "addiction," a prescriptive or normative "diction" is already at work, performatively, whether one likes it or not' (Israel, 1993: 2). For instance, when methamphetamine (and specific precursor chemicals) were found in a church, one police officer commented that "'I don't think you can put anything past criminals these days," [said Superintendent Mary Martins-Engelbrecht] "But the church was the last place we thought we'd find drugs"' (Nare, 2005: 3). It was thought that the church, as both physical place and concept, would be 'the last place' drugs would be found because the officer assumed that there is a clear moral distinction between the two. So much so, that the two are simply incompatible. As such, the church becomes tainted: 'It is *bad* that someone is making drugs inside the church' (Nare, 2005: 3). The moral concern acts as a justification for the continued criminalisation of illegal drugs, their production and use.

As shall be shown in all three themes, the criminalisation of psychotropic substances, and their use, has been supported by an understanding that these drugs are a threat to, or are actively parasitic on, 'orthodox' society. Considering South Africa's very high crime rates, and increasing antagonism between state representatives (such as the police) and citizens, positioning 'tik' users as violent and/or criminal is a particularly effective strategy for homogenising communities. Such understandings create a demand for defensive measures and actions, especially for those security or policing forces tasked with local community protection. The media plays an additional role in documenting these engagements. Problematically however, they too presuppose the centrality of the criminalisation discourse, self-referentially justifying the actions of the security sector. In one article, for instance, it was reported that one school principal argued that 'the arrogance of these thugs knows no limits. They infiltrate and cripple every domain, including the institutions responsible for law and order' (van der Rheede, 2009: 9). Activities such as the 'infiltration' and the 'crippling' of the organs of state by 'thugs' serves to justify interventions by the security sector, supported by the rhetoric pandered by the media. Indeed, the need for the formation of a social body tasked with the policing of society grew out of a fear of 'the other', embodied variously by foreigners, women and, in contemporary South Africa, the 'tik' user. As Allan Silver (2005: 8) notes,

> … people often saw themselves as threatened by agglomerations of the criminal, vicious, and violent – the rapidly multiplying poor of the cities whose size had no precedent in Western history. It was much more than a question of annoyance, indignation, or personal security; the social order itself was threatened by an entity whose characteristic name reflects the fears of the time – the 'dangerous classes'.

The development and formal entrenchment of the modern police force was itself then not only a result of increasing crime levels, but a function of an increasing concern with the dissolution of the traditional order of society, the rigorous defining of different populations, and a means by which the fear of these new and encroaching 'masses' could be managed. 'Tik', systematically

associated with 'coloured' criminals, has homogenised an entire racial cohort. This shall be deal with more extensively in the final section.

Traditional policing measures and reactions by the state to drug-related phenomena have at times (and in limited instances) been shown to be effective (Mazerolle et al., 2006: 419). However, in many examples, especially when the interventions occur in isolated, marginalised, or impoverished communities, the ubiquitous deployment of the police or military can be counter-productive and problematic (Mazerolle et al., 2006: 427–428). Indeed, forceful police responses may actually create the conditions necessary for the further proliferation of drugs, by increasing the levels of violence in the affected communities, by further isolating and stigmatising them, and by increasing the antagonism between the community and the police force (for a full overview of these concerns, see Malamud-Goti, 1992). In South Africa, there is already a deep-seated distrust of the police in many of the communities most heavily affected by the drug trade (Gordon, 2001: 122) with the responses to the trade by the police and military having been shown to be ineffective in impoverished settings (Berg, 2005). The media frequently helps justify these actions, even in the face of their continued ineffectiveness.

Similarly, when the methamphetamine 'scourge' had become a noticeable problem in Cape Town, the press reported that '[then] Premier Ebrahim Rasool has declared war on the new drug craze, "tik-tik", saying "ons moet nou begin wys wie is baas'" [We have to start showing who is boss now] (Ajam, 2004: 3). In so doing, Rasool articulates the 'war' through a dialectical lens, in which there is a 'we' (society) who needs to show 'them' (drug users/distributors) who is 'boss'. The masculinised concept of a 'boss' is combative, invoking imagery in which the drug user/distributor is forcefully 'put in their place'. By homogenising both society and drug users as two distinct entities, and by assuming that 'they' must be physically combated, little scope is left for healthcare or rehabilitation – the sovereign discourse is one of forceful engagement in which a clear 'winner' or 'boss' must be declared. As a result, and while South Africa's official position with regard to its response to psychoactive drugs is one of reduction (of supply, demand, distribution) and rehabilitation (of both communities and individuals),[8] it is the police and military who are drawn upon by the state in its responses to the drug problem. Indeed, even purportedly liberal leaders, such as Helen Zille (the present Premier of the Western Cape province in which Cape Town is situated), have sanctioned the use of military personnel and armaments against civilian targets deemed to be involved in drug-related activities (Zille, 2012). The resulting homogenisation of groups of people is particularly pernicious in South Africa, considering that the apartheid system relied on the artificial categorisation of people according to five 'race' divisions: black, white, coloured, Indian, and other.

The South African media frequently also employs a number of visual and spatial metaphors in the narration of the self-referential 'conflict'. The metaphors are not however simply descriptive; they convey specific normative assertions that have come to inform the discourse concerned with illegal drugs. For instance, one article noted that 'children selling drugs to their peers could be one of the main reasons why the "in-drug" tik-tik, or crystal methamphetamine, has in a relatively short period spread like *wildfire* across the Western Cape' (Smith and Kemp, 2004). In another example it was reported that '"Tik" thieves *plague* Paternoster [a small fishing village]' (Dolley, 2008) while another argued that 'Tik *epidemic* sparks rise of girl gangs' (Naidoo, 2008). Methamphetamine *is* an extremely dangerous and addictive drug, and one that has had a serious and detrimental effect on a number of communities and a multitude of citizens across the

country. However, speaking of 'wildfires', 'plagues', and 'epidemics' crudely distances drug use and users from the 'orthodox'. The rhetoric serves to construct a dialectical scenario that can only be answered with force directed against an imagined community of homogenised deviants, a response that has repeatedly been shown to be largely ineffective (Spooner and Hall, 2002; Rowe, 2006; Wisotsky, 1990).

'Tik' and HIV/AIDS

The South African media has also articulated the use of drugs as a pathological disease – one that is infectious, one that actively undermines society's moral norms and mores, and (as a result) one that spreads both addiction and crime. In this vein Pat O'Malley (2008: 459) has noted that 'the categories of "drug addict" and "drug abuser" are both morally charged in ways that render the drug consumer alien and pathological … the category of "drug user" … creates a "criminology of the self"'. This inveterate pathological understanding of drug use and users stands, ironically, in sharp contrast to the traditional 'disease' or 'medical' model of psychotropic drug regulation, reduction, and rehabilitation. Also referred to as the 'British system', the model gained currency in the 1960s and 1970s, especially when shown to be more effective than the punitive/criminal model employed in the US (Strang, 1989). As has been shown, however, the efficacy of the model may have been contingent on the environment and context in which it was used (Haden, 2004) – something equally as important to consider in South Africa. As such, it is argued that local understandings and conditions have served to create a pathological rather than rehabilitative understanding of addiction-as-disease, primarily through the conflation of drug use with South Africa's ever-present HIV/AIDS discourse.

South Africa has an extremely high HIV/AIDS prevalence, the rates of which typically vary between socio-economic disparate communities. While infection rates have now begun to stabilise, for much of the history of post-apartheid South Africa, HIV/AIDS has been a primary health concern (for a paradigmatic overview, see Hunter, 2010). Moreover, government responses to the (traditionally termed but equally problematic) 'pandemic' have been characterised by bungling, mismanagement, and corruption, all of which have served to keep the topic relevant and newsworthy – President Thabo Mbeki reportedly denied the existence of the virus while President Jacob Zuma once declared that taking a shower after sex can prevent the spread of the virus (for an overview of the many, many controversies and cases, see Cullinan and Thom, 2009). Consequently, understandings of the pathological nature of disease are politically expedient and at the forefront of the public consciousness, providing a potent political bedrock on which to justify descriptions of other issues (Black, 2013). In instances where the use of 'tik' is articulated as a 'plague' or 'epidemic', and in which users or addicts are thought of as 'diseased' or 'sick', the discourse *does not* invoke treatment or rehabilitation, but stigma, exclusion, and moral judgment. As one journalist noted, inadvertently invoking a well-worn logic perhaps best explored by Foucault (1973), 'our young addicts are like cast-out lepers' (Mabandu, 2012).

As with the use of drugs and acts of crime, this is *not* to say that users of 'tik' are somehow immune from HIV/AIDS or that the drug plays no role in the complex socio-political, economic, spatial, and historical factors that have contributed to the extremely high prevalence of HIV/AIDS in South Africa. It has been shown that the drug *does* encourage promiscuous and risky sexual behaviour, and that there is at least a casual correlation between HIV/AIDS rates in local

communities and the use of the drug (Morris and Parry, 2006: 471). The discourse of pathology used in the articulation of 'tik', however, is one of *moral* condemnation and exclusion, relying on an understanding of infectious disease that has been 'acquired by *unacceptable* behaviours' (Madru, 2003: 43, emphasis added). As a result, attempts to control, mitigate, or rehabilitate drug users or communities affected by 'tik'-related phenomena are not only undermined, but actively opposed. Indeed, this has been recognized by the founder of a drug 'hotline' in the Western Cape: 'Wouter Grove, chief operating officer of Vuvuzela, said: "The biggest problem is that no one is talking about tik [in the affected communities] because of fears of victimisation and public shame"' (Powell, 2005). Presenting a further problem, and much like HIV/AIDS concerns, this discourse is also gendered.

In South Africa, poverty and teenage motherhood are frequently associated with one another, as is a lack of parenting ability. Methamphetamine use provides a moral framework in which this association can be condemned. As a result, the media frequently articulates teenage mothers who use methamphetamine as incompetent, lacking the skill set (Macleod, 2001) seen necessary for good mothering:

> Two days after the interview in mid June she gave birth to a baby boy called Clintino. At the age of six weeks baby Clintino died of unknown causes. 'I don't know what happened,' she said. 'The Friday he was still okay, but Saturday when I woke up he was blue in the face… I miss him a lot… every day, every hour.' (Health-e News Service, 2012)

The reports on 'tik babies' and teenage 'tik mothers' (mirroring, almost to the letter, the discourse concerned with 'crack' mothers and babies) not only condemn the use of drugs, but also define what is considered bad mothering. As Macleod (2001: 502) argues, 'marginal, "bad" mothers (including poor and teenage mothers) provide the pathologised backdrop against which the characteristics of the "good" mother are defined'. Following Macleod's analysis, teenage 'tik mothers' and their infants are presented in a dyadic relationship in which 'the mother's influence on the child is foregrounded, and isolated from its contextual background' (p. 498). For instance:

> At the meeting, Anina Peterson said she was unable to help her 19-year-old son, who is addicted to tik, because of a lack of support services. 'I very much want to help my child, but it will cost R35 000 to send him to a rehabilitation centre. I don't have that kind of money.' (Gwatyu, 2004)

As Macleod notes, 'this pathologisation of the teenage mother-infant dyad is made possible by the taken-for-granted absent trace of the idealized "good" mother' (p. 499). There is a generalised discourse that assumes that the methamphetamine-using teenage mother will be a 'bad' mother because of the way in which teenage mothering, poverty, and drugs have been pathologised by the media. Such is the strength of the pathologisation of the teenage mother that it does not simply end if the woman no longer consumes drugs – 'Though the young Tafelsig woman is a recovering addict, she still suffers from the harsh effects of the drug that is devouring her *from the inside*' (Mathys, 2005, emphasis added). Fathering and the fathers of 'tik babies' are rarely mentioned in these articles – they are 'the absent trace' (Macleod 2001: 504). Finally, the use of drugs is also seen to disrupt what Macleod (pp. 503–504) identifies as 'motherhood as a pathway to womanhood'. For instance,

> Her 19-year-old mother, a tik (methamphetamine) addict, smoked at least twice daily while she was pregnant. And although she's been clean for more than a year now, she lives in constant fear of the potential damage she has done. (Solomons, 2013)

The use of methamphetamine, to quote another article, is '[t]he cancer gnawing at the heart of our city' (Meyer, 2010: 10). The pathologisation of the pregnant drug user continues even when they have actively renounced their use of drugs. It is children, however, that are frequently presented as newsworthy victims of the drug 'scourge'. Again, it must be emphasised that the use of methamphetamine may very well affect the ability of a young mother to provide the necessary care, attention and resources for the child's development. However, the *discourse* extends far beyond this, serving to condemn and exclude the young mother, which in turn, has very real effects on her ability to access the resources and services that both she and the children may need. This further excludes and undermines those who may need public health services the most, the limiting of access to which may generate further problems, There is a cyclical logic and violence at work here that is justified and reinforced by the discourses noted above.

Moral concerns with the 'infectious' (Thom, 2011a) nature of the spread of 'tik' provide a basis for the criminalisation of the drug and the user's exclusion from society. Understood through South Africa's largely punitive legal framework, both paths lead to extremely overcrowded 'correction centres' (or what are known elsewhere as prisons). The South African media plays an important role in providing a frame of reference in which this process can be understood. It does so by drawing on meaningful images and commonly understood examples, metaphors, and themes, many of which are the result of far deeper concerns and problems. For instance, one newspaper article, entitled 'Teenage drug abuse – A heartbreaking reality', declared the following:

> Drug abuse is a big problem among teenagers in South Africa and it increases daily. One only has to page through newspapers to see how big the problem really is. Almost every day, newspaper headings read: 'Girl saved from drug hell – She became a prostitute and was raped by Nigerian man', '17-year-old girl died after overdose at rave party', 'Slave of drugs at age of 9' and 'Drug abuse blamed as youth get in conflict with the law'. (Geldenhuys, 2006: 12–13)

Each of the examples are imaginary, but examples that are nonetheless made meaningful by very real occurrences and concerns in South African society – the first draws on the many instances of violent xenophobia that have occurred (Harris, 2002), the second on a frequent concern with youth activities (Swartz, 2009), the third on concerns with sexual violence (Niehaus, 2005), and the fourth on the rise of youth criminality (Swartz and Scott, 2014). In each sentence (and instance), the use of drugs is not only offered as an explanation, but a *justification*.

The rhetoric of victimisation that is employed by the South African media in articulating the use and abuse of methamphetamine is positioned in a complex relationship to the discourses of criminalisation and victimhood. For instance, one op-ed piece stated: 'earlier this week a Cape Town newspaper carried a report on how drug dealers prey on schoolchildren in playgrounds to recruit tik users' (Stephen, 2009: 27). By 'preying on' schoolchildren, 'drug dealers' are constructed as serving the role of victimising them. However, they do so in a specific manner: they 'recruit' the schoolchildren. There is a tension between the signifiers 'preying on' and 'recruiting' that serves

to illuminate the relationship between the discourse of victimisation and criminalisation. The former presupposes that the schoolchildren have no agency – they are preyed upon. The latter, however, does presuppose agency, however diminished – 'recruitment' requires the consent of both a recruiter and recruit. The schoolchildren, by being 'recruited', are both victims (of the structural conditions in which they find themselves) and perpetrators (in allowing themselves to be recruited by drug dealers). This tension, between the structural conditions that define the parameters of the discourses concerned with drugs and individual agency will be further discussed below; it is a tension that may actually offer some solutions in moving beyond this critique. In a further example, it was reported that "At the office here we're seeing more and more young addicts coming in. They arrive here in a very bad state, far into their addiction … It's really bad" … In one area alone there were 23 suspected tik dens' (Dolley, 2008). Again there is a tension between the structural conditions ('here') that contribute to 'tik' use and individual complicity ('their addiction'). The addiction may be pathologised, but it is a disease in which the sufferer is complicit in acquiring, much like the HIV/AIDS discourse (Madru, 2003: 43). The discourses used to describe 'tik' use and abuse in the country are frequently terse and ambiguous, often oscillating between the recognition of structural concerns, complicity, and agency. It is this tension that gives rise to the discourse of victimhood.

Tik and (Racial) Victimhood

While the use and users of 'tik' have predominantly been articulated through the discourses of criminality and pathology (or a combination of both), there is a third discourse frequently drawn upon by the South African media, that of racialised understandings of victimhood. While this discourse may be more attentive to the local conditions and structures that have played a role in the rapid rise in the use and abuse of 'tik' in specific areas of the country, it can still be used in problematic ways. The South African media is frequently apt, for instance, to both generalise and sensationalise reports of drug victimhood. One feature report stated, for example, that 'every night on the streets of Eldorado Park, the addicted and desperate begin their search. What they find is killing a generation' (Smillie, 2013). Eldorado Park, while in Johannes is consistently articulated as an impoverished and morally problematic area. Media representations, however, frequently present inaccurate and misleading 'facts' that in the process serve to construct a specific understanding of addiction and drug use that can serve to further marginalise the very people being presented as victims.

The communities frequently mentioned in articles focusing on 'tik' – Mitchell's Plain, Hanover Park, and Elsiesrivier – were developed by the apartheid state as 'coloured' areas,[9] a consequence of urban planning projects intent on physically separating ontologically distinct races, as defined by the state and previously mentioned (Kapp, 2008: 193). The mass displacement of 'coloured' communities from, for instance, District Six, to the 'Cape Flats' and Mitchell's Plain, performed under the Group Areas Act of 1950, effectively marginalised those communities from the socio-economic development of the rapidly growing city of Cape Town, further stunting their ability to accrue the monetary means by which to access many of the city's new places of leisure and entertainment. As Neil Dewar (2004: 93) notes, 'one of the direct consequences of [the Group Areas Act] was the relocation of thousands of relatively poor Coloured and Black families from newly designated White areas to new suburbs and townships on undeveloped land on the Cape Flats'.

The land these displaced families were forced to occupy lacked development, resources, and an effective infrastructure. Coupled with other apartheid social policies, such as the Prohibition of Mixed Marriages Act (preventing marriages across the racial 'categories'), the Immorality Amendment Act (further preventing any sexual contact between the races), and the group of Acts known as the Pass Laws (requiring 'black' citizens to carry a 'pass book' that authorised their entrance into the city, and which was used in the enforcement of curfews), the apartheid system forcefully broke the community, familial, and interdependent ties that had hereto defined many people's lives. Having a 'very destructive consequence to family structure' (Jacobs and Jacobs, 2013: 1), the forced removals not only displaced people, but broke apart their support structures and networks (often constituted by systems of patronage and by extended family networks). Into this void, as has been shown in numerous other instances across the world, stepped criminal activity, gangsterism, and drug use (Jacobs and Jacobs, 2013). While the destruction of District Six has played a prominent role in official post-apartheid narratives of liberation, the *consequences* of these events, consequences felt to this day, continue.

From the perspective of agency, impoverished 'coloured' individuals and communities are frequently articulated as lacking not only the resources to fulfil various functions, such as parenting, but the *ability.* For instance, one report argued that 'the [poor] parents don't seem to worry about the age of their children; they just give them alcohol and turn them into potential alcoholics' (Dolley, 2008) while in another it was documented:

> Meggan has been living in the streets of Cape Town since she was a child, and despite her pregnancy, prefers to sleep out in the street. According to her, she doesn't like spending time at home and would rather roam around, begging for money to buy food. (Health-e News Service, 2012)

Reports like these draw on the assumption that poverty and good parenting are mutually exclusive. While there have been numerous studies linking poverty with increased parental difficulties (see, for instance, Spaull, 2013) and with methamphetamine abuse (Watt et al., 2014) affecting parenting ability, the idea that 'poor parents don't seem to worry' is not only frequently incorrect, but is a thoroughly condemnatory and damaging discourse. Moreover, the reports also play a role in shaping public opinion, which itself plays a role in determining the legitimacy and likelihood of reduction and rehabilitation programmes being established, being used, and being effective. In another report, for instance, it was highlighted that:

> Mothers who use tik generally lead unhealthy lives with poor personal hygiene, irregular and poor diet and weight loss. If they still use tik, they are not emotionally present to bond with their baby. These women are often at risk of contracting sexually transmitted diseases and often exposed to violence, which can also affect the unborn baby. (Rohwer, 2013)

Drug using mothers are seen as dirty and defiled, and while the report attests to be descriptive, there are implicit normative assumptions here that not only shape the use of language but draw on deep prejudices, the history of which has once again been well shown by Foucault (1973). Victimisation and stigma serve to reinforce the cyclical nature of addiction, itself reinforcing the distance and difference between drug users and 'orthodox' society. The confluence of the

discourses of criminality, disease, and victimhood (all of which are embedded within a specific morality understood through the prism of race) serve not only to create 'scourges' or 'epidemics' but also to directly undermine the ability of governments and societies to effectively 'deal with' the 'problem'. This is expressed, directly, by an 'ex-addict':

> 'Going to a public clinic and having to deal with the stigma, the judgement, sitting among such very sick people who are coughing, having to deal with doctors and nurses who hold it against you that you have had unprotected sex or used drugs', says Smit, shaking his head. (Thom, 2011b).

Considering South Africa's history and contemporary social, economic, and political dynamics, the 'rise' of 'tik', especially in the Western Cape, is not simply the result of the addictive potential of the drug, but continues to be driven by the structural problems that define the city.

Problematically, the South African media has constructed impoverished 'coloured' communities and residents as somehow more ontologically 'prone' to the use of methamphetamine, even in spite of the fact that hospitals and addiction centres across the city have all shown a consistent rise in methamphetamine-related cases, including those in traditionally 'white' areas (Caelers, 2005). Indeed, even the previous Western Cape Premier, Ebrahim Rasool, declared that 'tik is a coloured problem' (Oliver, 2007). In one article linking 'boredom' with 'a rampant drug problem' one interviewee was quoted as saying that 'with the coloured community, you often see parents don't support their children in doing something good. They just give them money and don't ask where it goes' (SAPA, 2013). In another, 'tik' was seen by an author to be fundamentally at blame for 'The Coloured Social Genocide'.

The result is that the use of 'tik' is conceptualised by the South African media, first, as a 'coloured' problem. Second, it is particular 'types' of 'coloured' people that consume methamphetamine – impoverished, uneducated, prone to criminal activity *and yet also* victims of their circumstances. This has the effect of both victimising a homogenised (and imagined) group of 'coloured' people, while assuming that those affected by 'tik' will be pathological criminals. In turn, the perpetuation of these discourses undermines and delegitimises sustained attempts to reduce and rehabilitate individuals and communities – stigma, fear, and blame, instead, become the order of the day. The South African news media, as explored above, has contributed to the creation of a 'siege paradigm' (Reeves and Campbell, 1994: 129) that not only does *not* reflect the complexity of drug issues in the country, but perpetuates cycles of violence and blame which ultimately serves no real purpose in attempts to effectively control, reduce, or rehabilitate 'tik' users, or the communities affected by the drug.

Conclusion

In summation, the media's creation of a siege paradigm, conceptualised through the lenses of race, sex, and poverty, necessitates specific policy parameters and policing protocols. Such an understanding further serves to limit alternate governmental responses to the use and users of 'tik', at the very least by reducing public sympathy for anything less than state-sanctioned force. As a result, the paradigm contributes to a culture of violence in both the police service and society at large, as has been noted by a number of authors (see, for instance, Fry, 2013; Bradford et al.,

2014). Of course, there *are* dangerous and/or criminal 'tik' users, some of whom may be under the psychotic effects of the drug, the containment of which may justifiably require a forceful response by the police. However, this form of response should be seen as one among many, and *not* as the default or necessary action.[10] Media articulations of 'tik' have served, in part, to justify a culture of fear and antagonism in which citizens have come to demand violent retribution by the state. In one headline, for instance, it was reported that 'Tik [is] turning people into barbarians' (Gosling, 2007). 'Barbarians' invokes images of a homogeneous collective of superhumans, hell bent on the destruction of society. Moreover, such a construction draws from a deep well of fear in which 'civilised' 'Europeans' are at the mercy of the marauding 'native', as has been seen in numerous other examples in the South African context (see, for example, Bornman, 2014; Crush, 2013; Evans, 2011). The need for the use of force when faced with such a collective becomes seen as both obvious and mandatory. While individual cases of arrest or containment may require the use of force in the constraint of a violent criminal who has used 'tik', individual examples or cases certainly *do not* translate into useful or effective policy measures. Indeed, aggressive reprisals by the state perpetuate cycles of violence and animosity between it and the country's citizens which can prevent effective policing or regulatory measures from being established (Fry, 2013). In South Africa, this is borne out by a simple statistic – while the seizure rates for methamphetamine have more than tripled in the last decade, the use of the drug has increased even more dramatically. There has, in short, never been a period in the last ten years in which methamphetamine use has decreased, in spite of increased police surveillance and attention, not to mention the deployment of the military (SAPS, 2013).

While the apartheid system was overthrown nearly two decades ago, with regard to drugs little has arguably changed. The communities highlighted in this paper still experience higher than national levels of violent crime, alcoholism and illegal drug use (Harker et al., 2001). As has been shown, the South African media have consistently portrayed these social ills not as a consequence of larger historical and contemporary events, but as moral, legal, and criminal quandaries.

The displacement of these communities led to the silencing of their political voice. While in this respect much has changed in the 'new' South Africa, many adolescents and young adults (the group statistically most likely to use methamphetamine), burdened with spiralling unemployment and a lack of a substantive education, live in a 'wounded' reality. As Swartz and colleagues note (2013: 5232):

> The ubiquitous image of South Africa's townships could be understood as representing the physicality, the historical manifestation, of South Africa's woundedness against which the hope and prosperity of the 'New South Africa' is defined. Township youth are among those most wounded, most excluded, from the new South Africa.

The dialectic continues. Again, the 'dream deferred' (Swartz et al., 2013: 5232), the lived reality of many South African adolescents growing up in these communities, provides fertile breeding ground for the use of drugs, and especially stimulants such as methamphetamine. The Western Province government has responded by using military troops and equipment to 'combat' the use of methamphetamine in these communities. Once more the vehicular symbol of apartheid's oppression – the 'Casper'[11] – has been seen 'on the streets' of these areas, a military strategy vocally supported by the province's political leaders, such as Helen Zille (Zille, 2012).

The media have consistently displayed the use and abuse of methamphetamine as a 'scourge', 'epidemic' or 'disease'. There can be no doubt that the drug is extremely detrimental to both individuals and the communities in which they live. However, South African media representations of methamphetamine serve to pathologise, victimise, criminalise, and ultimately morally condemn stereotypically-defined people and communities. This is highly detrimental and serves to limit healthcare and rehabilitation services and efforts by transforming addiction into a criminal problem. The discourses used to articulate the use of methamphetamine are furthermore gendered, and serve to isolate teenage women and mothers from both government services and the communities they live in. Consequently, and in opposition to many of the media reports analysed above, South Africa is firmly 'losing' the 'war' it is raging against the use and abuse of methamphetamine. Methamphetamine, in short, *is* an incredibly dangerous drug. But so too are the ways in which the media constructs those affected by it.

Funding

Notes

1. The plan is available from the Department of Social Development's website, as discussed: http://www.dsd.gov.za/index2.php?option=com_docman&task=doc_view&gid=414&Itemid=3
2. I use the term orthodox here to denote what is implicitly assumed to be 'normal' or 'standard', as manifest through law and societal convention – my concern is with the relationship or difference between this and the rarefied 'drug' user, and not with an actual definition of what constitutes the orthodox.
3. It must be noted that the South African media is constantly generating news articles concerning methamphetamine. Considering this, the analysis focuses on articles published between 1 January 1998 and on or before 20 December 2013.
4. For an overview of the database, see http://www.samedia.uovs.ac.za/
5. http://www.google.co.za. The local version of Google was used to generate more relevant search queries.
6. Personal conversation with anonymous police member, 21 September 2014.
7. Drugs and Drug Trafficking Act No. 140 of 1992: 7. Available at http://www.justice.gov.za/legislation/acts/1992-140.pdf
8. These two central strategies are presented and explored in the most recent National Drug Master Plan (NDMP 2013–2017), which is the country's central strategy document and the basis for policy and practice over a (often loosely defined) four-year period. The plan is available from the Department of Social Development's website: http://www.dsd.gov.za/index2.php?option=com_docman&task=doc_view&gid=414&Itemid=3
9. The apartheid state delineated between four main racial groups – white, black, coloured, and Indian. The designation of 'coloured' was generally applied to the Cape Malay population group descended from the initial slaves in the Cape. There is some disagreement in the literature as to whether the descriptor 'coloured' has now been reclaimed as Coloured, or if it continues to be a problematic term (Wicomb, 1998: 92-93). The word is used cautiously here for purposes of explanation, and because the racial categories are still used officially, in South African identity documents, passports, licenses, and so on.
10. Indeed, the South African Police Service (SAPS) has recognised this, deploying a number of officers whose sole concern is community development. The project has, however, been undermined by a lack of cooperation from other government departments, which is needed in order for it to be effective.

Moreover, the SAPS have been subject to numerous budgetary constraints, undergoing two restructuring programs driven by politics rather than a concern for effectiveness. In short, one cannot simply blame the SAPS for failing to adequately engage with the 'tik' phenomenon – the 'plague' is one that is a product of structural, historical, political, economic, and social factors, including for instance, the geopolitical organisation of the country's cities (discussion with Lieutenant Major Jeremy Veary, University of Cape Town, 16 May 2014).

11. The 'Casper' was the ubiquitous military vehicle used by the apartheid security forces to transport personnel tasked with quelling the violent uprisings during the system's demise, and has come to be a symbol of violent oppression in contemporary South Africa.

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The South African National Drug Master Plan 2013-2017: A critical review

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ABSTRACT

In August 2013 the South African government released the newly revised National Drug Master Plan 2013-2017. The plan is intended to provide a central reference for the country's drug regulation and elimination efforts. As this article documents, the plan is however riddled with internal inconsistencies and impractical resolutions. As a result, it will be extremely difficult to implement and unlikely to find utility in many South African cities and communities. The authors further argue that the plan has been designed in such a way that it absolves the government of any responsibility should it fail. It does so by subtly ensuring that blame for drug use can continue to be placed on the individual. This requires a punitive understanding of drug use, which is in direct contrast to the stated framework of the plan. As such, we argue that while the plan speaks the language of reform, it is actually far more concerned with continuing to treat drug regulation in South Africa as a matter of criminal justice.

1   Introduction

In August 2013 the South African government released the newly revised National Drug Master Plan 2013-2017 (hereafter NDMP).[1] Barring some government news agencies, the NDMP's release was all but ignored, including by the vast majority of the country's popular news media and legal literature.[2] Indeed, the plan has hereto received minimal critical commentary. Considering the plan's importance – it outlines the manner in which the state intends to regulate and police the production, distribution and use of illegal drugs in the country for the next four years, as well as document national treatment measures – this is both surprising and troubling. The lack of responses by the media, and in

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[1]   Department of Social Development. Central Drug Authority 'The National Drug Master Plan 2013-2017' (2013).

[2]   G Khumalo 'National Drug Master Plan to be approved in April' *SA News*, 13 March 2013, available at *http://www.sanews.gov.za/south-africa/national-drug-master-plan-be-approved-april*, accessed on 7 August 2014.

the academic literature, is even more disconcerting when it is taken into account that the plan is intended to inform all of South Africa's current drug-related responses, practices and programmes, many of which depart significantly from previous regulatory customs and measures.

The previous policy paradigm, arguably informed by the international laws and legislative framework that supported the now defunct transnational 'war on drugs',[3] was aimed primarily at prohibiting and criminalising the production, distribution, use and users of illegal drugs.[4] This policy framework has historically served to provide the parameters in which the police actively monitor and enforce the country's drug-related laws and statutes, and has been seen as a criminal justice matter.[5] The primary piece of legislation directly dealing with drug regulation (the Drugs and Drug Trafficking Act),[6] for instance, is limited to outlining policing measures, fines, and sentencing. It is not concerned with the implications of these measures, or with their long-term effectiveness. Moreover, preventative measures and efforts that specifically target illegal drug use have been marred by numerous cases of unfair or discriminatory policing,[7] including many instances of individual and community harassment.[8] These efforts have also contributed to desperately overcrowded prisons, where illegal drug use is rife, and an overwhelmed judicial system.[9] Beyond this, the overall use of drugs in the country has never consistently declined in

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[3] While the 'war on drugs' was dominated by US efforts to reduce the quantities of, and demand for, illegal substances in the US, the policy repercussions were global. As a function of US hegemony, the international legislative framework used to regulate the production, distribution and use of illegal substances was heavily informed by US understandings and objectives. These assumptions and understandings then filtered into national policy frameworks of individual countries adopting the various resolutions. South Africa is signatory to the vast majority of international anti-drug and narcotic legislation, being an integral member of the United Nations, United Nations Office on Drugs and Crime, and Interpol.

[4] R Fellingham, A Dhai, Y Guidozzi and J Gardner 'The "war on drugs" has failed: Is decriminalisation of drug use a solution to the problem in South Africa?' (2012) 5 *SAJ Bioethics L* 78-82. See, also, S Wisotsky *Beyond the War on Drugs: Overcoming a Failed Public Policy* (1990).

[5] C Parry, A Plüddemann, A Louw and T Leggett 'The 3-metros study of drugs and crime in South Africa: Findings and policy implications' (2004) 30 *Am J of Drug Alcohol Abuse* 167-185.

[6] Drugs and Drug Trafficking Act 140 of 1992.

[7] J Rauch 'Police Reform and South Africa's Transition' Paper presented at the South African Institute for International Affairs Conference' (2000) 4.

[8] A Faull '"When I see them I feel like beating them": Corruption and the South African Police Service' (2010) 34 *SA Crime Q* 33-40.

[9] J Steinberg 'Prison Overcrowding and the Constitutional Right to Adequate Accommodation in South Africa' Paper commissioned by the Centre for the Study of Violence and Reconciliation (2005) 1-25.

the last ten years.[10] In contrast, the production, distribution and use of illegal drugs (such as methamphetamine) has steadily increased in a number of areas, in congruence with the spreading of gangsterism, smuggling and poaching (such as abalone in the Western Cape).[11]

These 'spinoff' effects have been shown to be a direct product of policies that emphasise criminalisation and prohibition, both in South Africa and elsewhere. The quandaries that the 'war on drugs' has generated for the United States, for instance, are now well documented and widely accepted in the academic literature. Examples that resonate particularly strongly with South Africa include the racial disparities in incarceration rates, police corruption, and the state securitisation of low-income communities.[12] In response to the ineffectiveness of such measures, there has been a sustained effort from global governments and civil society organisations to develop new understandings and policies so as to effectively reduce the harm associated with the production, trade and use of illegal drugs.[13] The NDMP for instance, and as stated in the document itself, uses a 'whole-of-society' approach and a reduction-orientated approach.[14] Both of these approaches have been widely utilised elsewhere, from interventions targeting teenage pregnancy to reductions in petty theft. With reference to the NDMP, it is intended that these approaches will minimise the impact of drug production, distribution and use in South African society more holistically, instead of simply understanding drug use/users as a criminal problem. It hopes to do so by engaging various government departments, civil society groups, communities, and individuals in a cooperative and holistic framework. As a result, the framework the NDMP suggests seeks to supplement the criminal justice legislation with a raft of programmes and strategies intended to minimise the demand for illegal drugs.

With this in mind, this article's purpose is threefold. Firstly, it aims to provide an outline and overview of the new plan. The intention here is to highlight the plan's major features, directives and policy recommendations – something that has not hereto featured prominently in the literature. In so doing, the authors secondly, situate the plan in the broader context of the country's contemporary socio-economic and political climate. The legalisation of cannabis, for instance, has

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[10] United Nations 'United Nations World Drug Report' (2013) 10-12.

[11] K Peltzer, S Ramlagan, B Johnson and N Phaswana-Mafuya 'Illicit drug use and treatment in South Africa: A review' (2010) 45 *Subst Use and Misuse* 2221-2243.

[12] See, for instance, D Baum *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (1997).

[13] C Parry and B Myers 'Beyond the rhetoric: Towards a more effective and humane drug policy framework in South Africa' (2011) 101 *SAMJ* 704-706.

[14] Parry & Myers op cit (n13) 705.

become a socially and politically debated contemporary topic in South Africa in recent years, as it has in other countries.[15] Thirdly, the article aims to critically engage with the NDMP's stated intentions and the current legislative framework in the country, highlighting the dissonance between the two. There is, in short, a disparity between the plan's prescribed steps for reduction- and rehabilitation-orientated programmes and the present criminal justice framework. The former is stated to be preventative and proactive, while the latter is punitive and reactive. The plan makes reference to an implicit normative framework that emphasises the importance of the volition of the rights-bearing individual in the use of drugs. By focusing on the individual, the plan may serve to legally absolve the government of its own responsibilities and roles in the regulation and policing of illegal drugs – responsibilities which, the authors argue, would need to be upheld if the framework is to be considered 'holistic'. As such, rather than fulfilling its purpose (to reduce the harm associated with drug use), the plan may in practice perpetuate the targeting of individual illegal drug use, a problematic response which has been well documented.[16] This, among other problems, brings into question the purpose of the plan, how operationally effective it could be, and whether or not it is merely a ruse for the continued use of a punitive criminal justice system in dealing with drug problems in the country.

In critically analysing the NDMP, a disparity between the plan's stated intentions and its pragmatic realisation becomes clear. As is discussed below, the plan's primary focus is on the reduction and ultimate elimination of illegal drugs from South African society.[17] In outlining the intended steps to reach this goal, the plan subtly furthers the reach of the criminal justice system by placing an emphasis on the legal responsibilities of the individual. The practical outcome, which shall be outlined, is the development of a criminal justice system that specifically targets individuals and which stands in direct contrast to the reduction- and community-orientated goals of the plan, which are frequently and explicitly mentioned.[18] With this in mind, this article asserts two central claims. Firstly, the authors argue that the NDMP is fraught with internal tensions and conflicts that will have a direct bearing on its effectiveness, legitimacy and practicality should it be fully deployed. Secondly, and as documented below, the authors argue that the NDMP speaks the language of 'reduction' and 'rehabilitation'

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[15] JP van Niekerk 'Medical marijuana and beyond: Guest editorial' (2014) 104 *SAMJ* 387.

[16] See, for instance, RE Booth and TK Watters 'How effective are risk-reduction interventions targeting injecting drug users?' (1994) 8 *AIDS* 1515 at 1515-1517.

[17] NDMP op cit (n1) 3.

[18] NDMP op cit (n1) 28.

but actually serves to place even more emphasis on individual volition and guilt. To avoid these conflicts, the authors conclude, a responsive policy framework would have to take into account *both* punitive and rehabilitative measures while being sensitive to the environment in which it is deployed.

Consequently, rather than seeking a 'real partnership'[19] between citizens and their government (a partnership to which the plan makes frequent reference) in a quest to reduce drug use in the country through a preventative approach, it is argued here that it is the punitive criminal justice system which is instead further perpetuated. This subtle re-invocation of the attendant notions of blame and guilt is not only contrary to the plan's intended aims, but may also serve to contribute to the punitive policy framework that has thus far proven ineffective in the reduction of drug-related crime and the illicit economy to which the drug trade contributes.[20] Furthermore, knowing of South Africa's worrying levels of corruption,[21] mismanagement,[22] and inability to provide basic services,[23] the NDMP will prove difficult to implement effectively. Minimally, high levels of corruption would prevent the effective utilisation of any funds directed towards the various programmes mentioned in the document. As a result of the challenges and consequences mentioned above, it is thus argued that prevention subtly masks a continuing emphasis of individual prosecution.[24]

2 Outline of the plan

The Central Drug Authority, under the auspices of the Department of Social Development, released the National Drug Master Plan 2013-2017 in August 2013. The 167-page document outlines the South African government's proposed future approach to the regulation and policing of the production, distribution and use of illegal drugs in the country. The plan also extensively outlines various policies, campaigns and directives intended to reduce the use of illegal drugs in South African society, while detailing numerous drug use treatment strategies. The document outlines an extensive and 'holistic' approach to the question

[19] Ibid.

[20] See, for instance, L Vetten, R Jewkes, R Sigsworth, N Christofides, L Loots and O Dunseith 'Worth their while?: Pursuing a rape complaint through the criminal justice system' (2010) 32 *SA Crime Q* 19-25.

[21] J Berning and M Montesh 'Countering corruption in South Africa: The rise and fall of the Scorpions and Hawks' (2012) 39 *SA Crime Q* 5.

[22] Berning & Montesh op cit (n21) 5.

[23] P Alexander 'Rebellion of the poor: South Africa's service delivery protests – A preliminary analysis' (2010) 37 *Rev African Polit Econ* 25 at 26.

[24] B Bradford, A Huq, J Jackson and B Roberts 'What price fairness when security is at stake? Police legitimacy in South Africa' (2014) 8 *Regul Gov* 246 at 248-249.

of drugs and their use/abuse in the country. The release of the document comes at a time when numerous debates are taking place in South Africa concerning how best to approach the problem of illegal drugs.[25] The 'scourge' or 'epidemic' of methamphetamine (or 'tik' as it is locally known) use, for example, has been widely condemned and linked to the proliferation of gang activity in the Western Cape,[26] increases in sexual and violent crimes,[27] and other forms of organised crime, such as abalone poaching.[28] At the same time, social and political debates concerning the possible legalisation of cannabis have become increasingly prominent in the media. Some activists, such as the 'dagga couple' have made an attempt to bring the issue before the Constitutional Court (the highest court in the country).[29] At first glance, the plan's stated aim is to position itself between the divergent positions of criminalisation and legalisation, seeking to implement reduction- and rehabilitation-orientated strategies that would supplement the punitive criminal justice framework.

The plan frequently makes mention of its primary aims, the comparative difference between these and the NDMP 2006-2011, and its desired impacts.[30] Given the centrality and importance of these three concerns, each needs to be discussed individually. The plan has seven primary aims, which have been set out below:[31]

1. Reduction of the bio-psycho-social and economic impact of substance abuse and related illnesses on the South African population
2. Ability of all people in South Africa to deal with problems related to substance abuse within communities
3. Recreational facilities and diversion programmes that prevent vulnerable populations from becoming substance abusers/ dependents
4. Reduced availability of dependence forming substances/drugs, including alcoholic beverages

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[25] Fellingham et al op cit (n4) 78-82.

[26] C Kapp 'Crystal meth boom adds to South Africa's health challenges' (2008) 371 *The Lancet* 193-194.

[27] L Simbayi, S Kalichman, D Cain, C Cherry, N Henda and A Cloete 'Methamphetamine use and sexual risks for HIV infection in Cape Town, South Africa' (2006) 11 *J Subst Abuse* 291-300.

[28] J Steinberg 'The Illicit Abalone Trade in South Africa' 1SS Paper 105 (2005) 1-16.

[29] 'Fields of Green for All' *Fields of Green NGO*, 2013, available at *http:// fieldsofgreenforall.org.za/*, accessed on 6 August 2014.

[30] NDMP op cit (n1) 23.

[31] As is noted in the following section, the plan is littered with spelling and grammatical errors. It is for this reason that the verbatim copying of quotes is emphasised.

5. Development and implementation of multi-disciplinary and multi-modal protocols and practices for integrated diagnosis and treatment of substance dependence and co-occurring disorders and for funding such diagnosis and treatment

6. Harmonisation and enforcement of laws and policies to facilitate effective governance of the supply chain with regard to alcohol and other drugs

7. Creation of job opportunities in the field of combating substance abuse.

From the outset it is clear that the plan focuses on the reduction of drug use. This is in contrast to previous governmental policies, and the Drugs and Drug Trafficking Act mentioned above,[32] which have utilised punitive strategies based on arrests and prosecutions. One might therefore assume that the South African government is attempting to answer to the failures of the approach taken by the 'war on drugs' (and the associated policies of prohibition, criminalisation, and the militarisation of state responses to the production, distribution and use of illegal drugs).[33] Indeed, in justifying its preventative and treatment-orientated approach, the NDMP 2013-2017 spends some time detailing the strengths and failures of the previous National Drug Plans, specifically focusing on the NDMP 2006-2011.[34] A review reveals that the NDMP 2013-2017 differs from the NDMP 2006-2011 in the following key respects, as quoted within the NDMP 2013-2017 itself:[35]

• Devising solutions from the bottom up rather than from the top down;
• Shifting from a national to a community approach to devising strategy (from one size fits all to a community-specific solution);
• Shifting from supply reduction to primary prevention in an integrated strategy;
• Developing and applying evidence-based solutions wherever possible;
• Introducing a monitoring and evaluation (M&E) approach to the formulation of the results to be achieved, i.e. impact, outcomes, outputs and targets;
• Aligning the NDMP and national and provincial department drug master plans with and M&E approach;
• Applying research and development to meet the predicted needs and future changes in the field of substance abuse;

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[32] Drugs and Drug Trafficking Act 140 of 1992.
[33] Fellingham et al op cit (n4) 78-82.
[34] NDMP op cit (n1) 26-9.
[35] NDMP op cit (n1) 4-6.

- Reporting in terms of M&E needs instead of activities carried out; and
- Extending the reporting base beyond the CDA and its supporting infrastructure by including non-CDA sources and linked databases.

As the document states, '[i]n analysing the substance abuse challenges facing South Africa, the CDA identified a country free of substance abuse as the ultimate goal'.[36] While this is an admirable aim, in the context of a heterogeneous, socio-economically unequal South African society, its achievement seems fraught with difficulties. Minimally, divergent normative understandings of drug use and users will frame what is seen as a 'legitimate' response to them. Some of these problems will be explored below.

The NDMP 2013-2017 states that it has five desired impacts. These are listed as:[37]

- South Africans who have the knowledge, skills and attitudes needed to combat the substance abuse problems;
- South Africans who have a value system in terms of which they reject out of hand the use dependence-forming substances;
- A strategic approach to substance abuse that involves prevention, treatment, aftercare and the re-integration with society as a means of enabling the population to deal with the problem;
- A strategic approach that involves the balanced integration of demand reduction, supply reduction and harm reduction; and
- A measured level of substance abuse in the country that is less than that of generally accepted international norms, and tends to decrease annually until the country is free of substance abuse.

There are a number of normative claims here, many of which presuppose that the South African legislative framework's definition of and distinction between illegal and legal substances is accurate. In considering that drugs such as cannabis and khat[38] have historically been understood through multiple legal and moral lenses, such definitions and distinctions can be easily problematised. Cocaine, for instance, was considered a 'medical miracle' in the United States for some 22 years, from 1884 to 1906. It presupposes, furthermore, that these distinctions are not just legally correct, but that they are

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[36] NDMP op cit (n1) 6.
[37] NDMP op cit (n1) 73.
[38] Khat is a mild stimulant, chewed in its raw vegetative form. The practice is common in East Africa. It is defined as 'quasi legal' as its status and regulation varies widely between states. See D Anderson and N Carrier 'Khat: Social Harms and Legislation: A Literature Review' Occasional Paper 95. Home Office, UK (2011).

morally correct.[39] It is for this reason that South Africans will 'have a value system in terms of which they reject out of hand the use of dependence-forming substances'.[40] The details of this 'value system' and its founding tenets are not discussed. Given that South Africa has a secular constitution, this seems an unlikely extension of its mandate, unless the NDMP is in the business of prescribing moral, as well as legislative and punitive frameworks. As is argued below, this may be the case – the inscription of moral codes can be used to further legitimate social sanctions. The NDMP itself gives no account of this moral framework, drawing instead on deep-seated (albeit implicit) understandings of drug use and users, which have been shown elsewhere to rely on the normative prescriptions that helped inform the 'war on drugs'.[41]

Broadly, the plan is defined by three central strategies: demand reduction, supply reduction, and harm reduction. Each requires distinct but interlinked policy approaches.[42] As such, the plan also recognises the interdisciplinary (and interdepartmental) nature of the regulation of the production, distribution and consumption of illegal drugs.[43] Moreover, the plan emphasises the decentralisation of drug regulation, recognising that effective management should occur at the community level.[44] This has been previously documented as a useful prospective strategy, especially in South Africa, with its diversity of cultures, eleven official languages, and widely varying patterns of drug consumption.[45] Despite the plan's focus on localised and community-orientated approaches to the elimination of illegal drugs, the overall focus of the document is national. The plan makes many branches of government responsible for the implementation of the strategies it suggests, from the education sector to civil society and healthcare structures. It further requires their continual and successful interaction. Indeed, 34 government departments are documented by the plan in the pursuit of the reduction and eventual elimination of the use of illegal drugs.[46] In so doing, the plan pays particular attention to the abuse of alcohol, the rampant distribution of illegal tobacco products, 'designer drugs' (which were also highlighted in the United Nations

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[39] While these normative concerns are far beyond the scope of this article, it is to the consequences and outcomes that the authors turn.
[40] NDMP op cit (n1) 73.
[41] T Linnemann and T Wall '"This is your face on meth": The punitive spectacle of "white trash" in the rural war on drugs' (2013) 17 *Theor Criminol* 315-334.
[42] NDMP op cit (n1) 4.
[43] Ibid.
[44] NDMP op cit (n1) 32-47.
[45] Parry et al op cit (n5) 167-169.
[46] NDMP op cit (n1) 24-5.

Office on Drugs and Crime 2013 World Drug Report),[47] cannabis, and the increasing prevalence of methamphetamine.

The plan further highlights the need for effective monitoring, evaluation and reporting. Four key aspects are identified by the report in this regard: programme performance, organisational performance, financial performance, and community needs.[48] Programme and organisational performance are to be monitored within the context of the NDMP itself (for which it provides a few brief and inconclusive structures). Financial assessments of the various programmes outlined by the plan are to be monitored by the Central Drug Authority, with Parliament playing the role of annual overseer.[49] With regards to assessing community needs, the report is characteristically vague: 'it is essential that the degree of satisfaction with need fulfilment be assessed'.[50] In this regard, the NDMP also suggests the use of 'quick analysis of substance abuse reports' or a 'QuASAR', which[51]

> '[c]alls up the vision of a real "quasar", a massive and remote (celestial) object that emits exceptionally large amounts of energy, contains large black holes and represents a stage of evolution (of a galaxy). The link rests on the fact that the QuASAR questionnaire is designed to evaluate the results of the massive amount of energy being emitted by departments, PSAFs and other entities in combating substance abuse and to identify black holes or gaps in their quarterly and annual reports so as to assist in the evolution of the CDA's supporting structure'.

As to how the QuASAR reports will be reflected at a national level, or how the 'black holes' will be filled, the report is silent. The report does make provision for multiple forms of evaluation, ranging from municipal 'Local Drug Action Committees' to ministerial reports to Parliament.[52] It is not explained what these reports would document, nor who would compile them. The Central Drug Authority is not represented in every municipality in the country. One can only assume, then, that the task will fall to local police officers, who are often the state's only representatives in far-flung and rural communities. Additionally, the plan does not explain the organisational process through which issues identified at a local level can be heard upstream. This is, as explored below, symptomatic of the plan's almost complete reliance on highly imaginative 'community-based' approaches, reflected in the use of 'QuASARs', with scant regard for the necessary practical work and

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[47] United Nations 'United Nations World Drug Report' (2013) 61-3.
[48] NDMP op cit (n1) 108.
[49] NDMP op cit (n1) 109.
[50] NDMP op cit (n1) 110.
[51] Ibid.
[52] NDMP op cit (n1) 112.

changes that will have to be completed at national and international levels.

Finally, the report identifies numerous institutional roles and responsibilities, ranging from the Department of International Relations and Cooperation to the Correctional Services Department. As noted above, 34 government departments are mentioned. This speaks to the plan's emphasis on interdisciplinary and interdepartmental projects that aim to provide a 'holistic' approach to the regulation and reduction of the production, distribution and use of illegal drugs in the country. While the plan does detail the roles envisioned for many of the departments, it does not explain how these relationships should be fostered, or how cooperation will be achieved. Unsurprisingly, it does not detail the operational processes that will have to be established to ensure effective communication and the monitoring of the various projects and programmes suggested by the plan. As has been shown elsewhere, South Africa's governmental departments are notoriously poor at communicating and working together, with bureaucratic squabbling frequently undermining effective service delivery.[53]

In brief, the NDMP 2013-2017 presents an extensive and detailed approach to eradicating the production, distribution and use of drugs in South Africa. The plan details numerous operations and programmes that should be undertaken by various departments, institutions and civil society. The plan is not without substantial problems though. In the following section of this article the plan's contextual deployment and associated problems are considered before we engage with some of the more substantive concerns that may arise as a result of its deployment in the contemporary South African politico-economic and social environments.

3   Contextual concerns and application

In reading the report, one is immediately struck by a discrediting number of spelling, stylistic and formatting errors. While this does not undermine the meaning and intention of the plan, it does raise obvious questions related to competency and thoroughness. If the Central Drug Authority cannot ensure that the very document that will dictate policy of such an important nature for the next four years is free of grammatical errors, how can it expect to initiate, control and monitor the vast plethora of strategies, initiatives and mechanisms that the plan suggests? The mistakes undermine the validity and legitimacy of the plan, especially at an international level.

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[53]   Alexander op cit (n23) 26-7.

The plan is extremely ambitious. Moving on from the history of South African drug legislation and policy, the plan suggests a substantive epistemological re-prioritisation of regulation- and rehabilitation-led strategies intended to eventually supersede punitive measures.[54] While these are in line with contemporary understandings of drug regulation elsewhere, questions of implementation, monitoring and delivery immediately arise. Taking into account the number of service delivery protests that have plagued the country over the last two years as a result of the failure of the state to provide education, housing, and other basic provisions, how does the government intend to implement such a complex plan?[55] Will it receive much attention in a country still battling to provide basic services to a large number of its citizens?[56] With this in mind, the plan's strengths and weaknesses need to be contextualised. The authors validate our claims by focusing on concerns related to the plan's construction of the individual, the state, and the relationship thereof.

In reading the plan, it is immediately apparent that it seeks an integrated approach to the regulation and policing of the production, distribution and use of illegal drugs in South Africa. The integrative approach is expressed not only in the number of departments that are involved in the plan's fulfilment, but in the many strategies it envisages.[57] The plan shifts emphasis away from the use of punitive measures in the regulation and policing of illegal drugs, and mandates the creation of a number of rehabilitation and preventative measures and programmes.[58] These include, but are not limited to, adequate healthcare facilities, diversion programmes (such as football clubs and church groups), rehabilitation strategies, and educational undertakings.[59] Consequently the plan can be seen as taking a 'holistic' approach that seeks to undermine the production, distribution and use of drugs at all levels of society, primarily by reducing the demand for them. Comparative to the punitive approach of previous policy paradigms, which were frequently supply-orientated and placed emphasis on the criminal status of drug use, the NDMP 2013-2017 strikes out in a new direction. The plan's emphasis on monitoring, evaluation, and the ability to adapt to new knowledge and research

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[54]   Fellingham et al op cit (n4) 78-9.

[55]   A Banjo and N Jilli 'Youth and service delivery violence in Mpumalanga, South Africa' (2013) 48 *J Public Admin* 251-266.

[56]   For an overview with regards to the example of education, see MT Sehoole *Democratizing Higher Education Policy: Constraints of Reform in Post-Apartheid South Africa* (2005).

[57]   NDMP op cit (n1) 4-5.

[58]   NDMP op cit (n1) 82-4.

[59]   Ibid.

may also increase its relevance to current South African society. This is especially important given that South African society is rapidly urbanising, while also changing in its racial, economic, political and social make-up.[60]

The plan focuses on a number of deliverables that are primarily aimed at the community and individual levels. The plan cites 12 key factors in this regard.[61] These factors are cited at length because of their centrality to the plan and because they highlight the key strategic domains in which the plan is intended to operate:

1. Better parenting or the development and application of parenting skills and competencies that will enable community members to deal with substance abuse;
2. Recreation or providing facilities and opportunities for especially the youth so as to occupy the time and resources that might otherwise be devoted to substance abuse;
3. Tavern closure or a plea, related to the availability of alcohol and drugs, to remove this source of dependence-forming substances;
4. Law enforcement or the application of policies, laws, protocols and practices designed to reduce the threat of substance abuse;
5. Spiritual care or the provision of facilities and opportunities for spiritual or religious observance;
6. Availability or reducing the availability of dependence-forming substances such as alcohol or cannabis;
7. Knowledge or knowledge of the process of identifying and dealing with the problems of prevention, treatment, aftercare and re-integration with the community of those affected by substance abuse;
8. Rehabilitation or provision of access to and application of detoxification, rehabilitation, aftercare and re-integration with society for those suffering from substance abuse/dependence;
9. Influence or the ability to persuade community members to become involved in the process of dealing with substance abuse;
10. Healthy mind or the ability to resist the temptation to abuse substances, coupled with the concept of bipolar problems;
11. Employment or lack thereof; and
12. Poverty or the lack of adequate means of support.

In reviewing these concerns, the plan highlights a number of disruptive strategies aimed at breaking the cyclical nature of addiction. To do this, the plan recommends an approach that actively engages with

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[60] For a far more extensive analysis see O Barbarin and L Richter *Mandela's Children: Growing Up in Post-Apartheid South Africa* (2001).

[61] NDMP op cit (n1) 45-6.

people's lives, and aims to decrease the demand for illegal drugs by displacing temptation with recreational, spiritual and educational pursuits. Contrarily, the South African state has come under increasing fire for its failure to effect substantive changes in the vast majority of the population's lives.[62] Poverty and unemployment levels remain endemic,[63] with levels of violent and sexual crimes among the highest in the world.[64] Resultantly, there is an increasing antagonism between the state, its representatives, and the citizens.[65] Seen in such diverse examples as strikes by platinum miners and community-led programmes aimed at undermining gangsterism, the state has consistently been seen as unable, and at times unwilling, to help the plight of many of its citizens. As a result, state-led interventions and programmes are frequently viewed with suspicion, if not outright hostility.[66] The above interventions, then, presuppose a working relationship between the state and the population, one that evidently does not exist in a number of areas. Without such a cordial relationship, any of the interventions will not only be met with suspicion, but may even be rejected outright. Once more, the NDMP imagines a South Africa that indicates it is out of touch with the lived reality of many of its citizens.

4   A wolf dressed as a sheep?

Berg and Shearing argue that while South Africa has had a national crime policy for a number of years, the most recent incarnation of which is the 1996 National Crime Prevention Strategy, little thought has been given to preventative measures.[67] At present, as they argue, 'the business of criminal justice is fundamentally the business of blaming, and blaming and prevention do not make easy bedfellows'.[68] As such, retributive justice – state sanctioned punishment – has dominated the South African legal and criminal justice systems, as seen in the Drugs and Drug Trafficking Act.[69] The lack of a focus on prevention seems to be oddly unique to the criminal justice system – the finding and blaming of a guilty party often forestalls any enquiry into *how* the

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[62]   See S Swartz and D Scott 'The rules of violence: A perspective from youth living in South African townships' (2014) 17 *J Youth Stud* 324-342.

[63]   For a paradigmatic overview, see O Barbarin & Richter op cit (n60).

[64]   Barbarin & Richter op cit (n60).

[65]   Alexander op cit (n23) 26-8.

[66]   Bradford et al op cit (n24) 246-249.

[67]   J Berg and C Shearing 'The practice of crime prevention: Design principles for more effective security governance' (2011) 36 *SA Crime Q* 23-30.

[68]   Berg & Shearing op cit (n67) 24.

[69]   Drugs and Drug Trafficking Act 140 of 1992.

crime might be prevented in the future. Indeed, as Berg and Shearing continue,

> '[o]ne of the interesting things about the assemblages of institutions we refer to as the "criminal justice system" is that they are one of the few sets of governance institutions that consider a problem to be solved when someone has been blamed and punished for a harm'.[70]

As the authors point out, the emphasis on blame and punishment is unique in that the criminal justice system will only very rarely seek out *preventative* measures, beyond their imagining in individual court cases. However, to effectively and predicatively legislate against crime, as is well recognised,[71] requires legislation that speaks not only to singular acts of blame, but enables a whole host of structures and projects that undermine criminal acts at their root. These are frequently systemic, including a diverse assemblage of concerns that include 'soft' measures, such as education, healthcare and employment. Historically, the South African criminal justice system has been content to mete out punishment in the name of justice, while paying little attention to the structural, motivational and extraneous factors that play a role in enabling various criminal acts.[72] One might argue that this is enough – the threat of state-sanctioned violence through imprisonment or other measures should adequately, albeit implicitly, regulate crime. In reality, this is rarely true – crimes are infrequently prevented because of the fear of punitive or retributive measures offered by the state.[73]

   In South Africa the prevention of crime, including drug-related crime, has come under analysis from a variety of perspectives.[74] Even though the guiding criminal justice policy document, the National Crime Prevention Strategy, highlights prevention in its very title, concerns with the enablers and motivations for crime are not adequately discussed, and are not of primary concern in policing procedures and measures. One might go further still:

> 'The label "crime" and the meaning it brings with it constitute a problem for prevention. This meaning stands in the way of prevention within criminal justice. More specifically, it is the linking of the terms "crime" and "prevention" within the expression "crime prevention" that is a source of the problem. When "crime" and "prevention" are tightly coupled, prevention tends to be sidelined.'[75]

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[70] Berg & Shearing op cit (n67) 24.
[71] E Pelser and A Louw 'Where did we go wrong? A critical assessment of crime prevention' (2002) 2 *SA Crime Q* 1-4.
[72] Berg & Shearing op cit (n67) 24-5.
[73] D Nagin 'Deterrence: A review of the evidence by a criminologist for economists' (2013) 5 *Ann Rev Econ* 83-105.
[74] See, for example, Pelser & Louw op cit (n71) 2221-2243.
[75] Berg op cit (n67) 25.

There seems to be, in short, a disharmony between the intent of criminal justice frameworks, their rhetoric, and the deployment of preventative interventions. This dissonance is especially pertinent to drug-regulation policies and legislation, as has been documented in a number of countries.[76] It is a disaccord that has very real effects – in South Africa there is an increasing anger at the failure of the government to bring crime under control.

As Berg and Shearing further highlight, the attribution of blame and guilt are of key concern in South Africa's criminal justice system.[77] Additionally, there is always a tension between the recognition of the structural and environmental antecedents that may have played a contributory role in an act of crime and the recognition of individual volition, both of which are necessary for the establishment of guilt and blame. The formulation and articulation of policy is integral in defining the parameters of the context in which blame can be placed, especially with regard to drug regulation policy.[78] For instance, there are innumerable cases in which the complacency of state agencies has been found to be an important factor in providing the opportunity in which a criminal act could be committed.[79] However, in South Africa, the balancing of these structural antecedents and the role of individual volition is also frequently political. For example, the state's failures to safeguard its citizens' constitutional rights, to provide resources, or effective protection, have all played a role in the attribution of blame.[80] In such an environment, the state will attempt to safeguard its legitimacy, such as by implementing policies and procedures that absolve it of responsibility. Considering the crisis of legitimacy that the contemporary South African state is experiencing, it is no surprise that it will attempt to formulate policies which undermine voices of criticism, which have no legal ramifications, and which do not hold it procedurally accountable in the event of failure.

The NDMP, it may be argued, is just such a policy framework. It does so by cloaking punitive and criminal justice measures in the language of rehabilitation and reduction. The ultimate result is that the NDMP practically empowers the criminal justice system while speaking only very generally to the state's responsibilities, such as

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[76]   R Coomber and N South 'Fear and loathing in drugs policy: Risk, rights and approaches to drug policy and practice' in BC Labatem and C Cavner (eds) *Prohibition: Religious Freedom, and Human Rights: Regulating Traditional Drug Use* (2014) 235-248.

[77]   Berg & Shearing op cit (n67) 25-7.

[78]   Coomber & South op cit (n76) 235-236.

[79]   See, for example, N Joseph 'Cops told me "We're sleeping", victim says' *IOL News*, 20 June 2003, available at *http://www.iol.co.za/news/south-africa/cops-told-me-we-re-sleeping-victim-says-1.108447*, accessed on 6 August 2014.

[80]   Faull op cit (n8) 33-40.

would be invoked in the deployment of effective reduction-orientated policies. Contrary to the language used in the document, then, it may be argued that the NDMP is an *extension* of the criminal justice system, rather than a holistic attempt to substantively engage with reduction- and rehabilitation-orientated measures. There are two key indicators contained in the NDMP itself that allow one to draw this conclusion. The first is found in the language that is employed by the plan, while the second lies in the plan's unnecessary avoidance of any concrete, actionable measures or oversight mechanisms.

Speaking to the latter first, the report is extremely comprehensive yet provides no concrete forms of accountability or action. In short, it outlines a number of ideas (many of which are drawn from current 'progressive' understandings of drug regulation), while denoting very few actual procedures by which the state may be held accountable should it fail. These will be further discussed below.

With regards to the former, the plan's problematic use of language is best seen in the 'key factors' cited above.[81] They can all be seen as enabling or antecedent concerns that address the demand for illegal drugs. Crucially, they are all articulated in a very general manner, even though their effective realisation would require specific strategic responses. For example, specific forms of 'bad parenting', such as neglect or abuse, have been shown to increase the statistical likelihood of an adolescent or young adult using illegal drugs.[82] However, the NDMP makes no mention of *how* it envisages effective interventions in the short and long term, how these interventions would be deployed, and who would pay for them. By not documenting these details, should the state not provide (or be able to provide) the social services necessary in identifying instances of 'bad parenting', nor have a rigorous adoption policy, it cannot be held legally liable should an adolescent who has experienced 'bad parenting' resort to the use of illegal drugs. In the same manner, the knowledge of the effects of drugs does not preclude their use. Thus, while the plan highlights the importance of education, it is done in a manner that does not provide any specific recommendations or practices, despite the complexity of the subject. Indeed, of the twelve factors, education and poverty are positioned last and most generally, with no substantive explanation despite their importance in reduction-orientated strategies. The paradigm to which the NDMP subscribes, a school of thought that prioritises reduction and rehabilitation, takes these two factors very seriously, having originated out of the medically orientated 'British

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[81] NDMP op cit (n1) 45-6.
[82] For the latest findings, see L Scheier and W Hansen *Parenting and Teen Drug Use: The Most Recent Findings from Research, Prevention, and Treatment* (2014).

System'.[83] They are the two factors that would require the most input from the state, and the two factors that the South African government has failed most dismally at providing.[84] Those factors that involve or require the actions of individual citizens, however, are discussed in far more detail. Moreover, at no time are punitive or criminal procedures discredited – they are simply not mentioned. If the recommendations were to be legally implemented, the criminal justice system would play a central role.

It must be remembered that the NDMP was drawn up and released at a time when the South African government was under heavy criticism for its inability to provide adequate education or employment, to use two factors drawn from the plan.[85] The education department has been marred by an inability to provide basic textbooks to many schools.[86] Instead, the national curriculum pass rate has been continually lowered – at the time of writing it stands at 33.3%.[87] A 'learner', in other words, is required to be familiar with only one-third of the syllabus. Indeed, the NDMP may be caught in a political tension. It has to recognise the importance of education and employment in reduction/rehabilitation-orientated policies. Yet if it were to outline specific responsibilities, it could also be held responsible for failing to meet them. With such a close relationship between the state and government, the highlighting of such frequent failings a few months before national elections (which occurred in April of the following year) would not have been beneficial. It is, furthermore, a governance document that focuses on an issue that is notoriously hard to control – drugs impact individuals and communities in myriad ways, ranging from the socio-economic to the psychological. Indeed, concerns with drug use have played a central role in the toppling of governments elsewhere.[88] Considering this, the NDMP is written in a manner that pays lip service to a flagging government but does not outline any real and actionable programmes or strategies with which the government could be seen or held responsible. The result is an imaginative but vacuous document, one that spends ample time imagining a brave new world while barely mentioning how this ideal may be reached, how long it will take, or who will pay for it.

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[83] J Strang "'The British System": Past, present and future' (1989) 1 *Int Rev Psychiatry* 109-120.

[84] N Spaull 'South Africa's Education Crisis: The Quality of Education in South Africa, 1994-2011' Report commissioned by the Centre for Development and Enterprise (2013).

[85] Spaull op cit (n84).

[86] Spaull op cit (n84) 36.

[87] Spaull op cit (n84) 32.

[88] For an overview of the complexity of the problem in Colombia, see N Richani *Systems of Violence: The Political Economy of War and Peace in Colombia* (2002).

Continuing with the 'key factors' as an example, it is also important to note the implicit assumptions on which they draw. The plan speaks of better parenting, the provision of recreational spaces, increasing spirituality, and a reduction of the sources of alcohol attainable by the typical South African citizen. These concerns are framed in a specific *moral* framework. For instance, they 'will enable community members to *deal with* substance abuse', 'to occupy time and resources that *might otherwise be devoted* to substance abuse', 'to *resist the temptation* to abuse substances', and so on.[89] The use of drugs is constructed as a symptom of weakness and irrationality. Both of these are individual 'faults' and not systemic vulnerabilities, as much recent literature has outlined. This is not to reprioritise the latter over the former, but rather to say that drug use and addiction emerge as a result of complex interactions between individuals and social structures, making it very difficult to attribute blame so simply.

Interestingly though, neither employment nor education concerns have any moral justification attached to them. Conversely, the factors that focus on the role of individuals in the new NDMP are justified through claims to responsibility – as such, it is the responsibility of individuals or communities to '*resist* the temptation to abuse substances'.[90] The action of resistance is situated at the level of the individual. Empowering citizens by making them responsible for their behaviour is a positive and useful strategy for governance. Notably, in articulating the forms this responsibility should take, there is the implicit understanding that the failure of responsibility is an individual concern. This is justified through an implicit moral framework, thereby legitimating measures that target individuals. Punitive responses have historically been the first port of call by the state in such instances. If individuals fail to fulfil their responsibility, they may be held accountable – they are *to be blamed* for *their* failure. In instances where the lapse of judgement also involves the breaking of the law, such as in the instance of illegal drug use, the criminal justice system is once more called upon and equipped to restore justice through punitive measures. The punitive system of drug regulation, which is framed by the criminal justice system, it might be added, is already in place. This is in contrast to the vast majority of recommendations made by the NDMP. Furthermore, if individuals are to blame, and are found guilty, the state is absolved of any crime or lapse of duty. The criminal justice system, as noted above, is concerned with retributive justice and not with attempting to prevent the same acts being committed by other individuals.

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89 NDMP op cit (n1) 45-6.
90 NDMP op cit (n1) 45-6.

As was specifically noted at the beginning of this article, it *is not* being argued that the individual has no responsibility with regard to the production, distribution and (most importantly) use of illegal drugs. Absolving individuals wholesale would be as ineffective as divorcing the subject from the environment in which they operate. The concern, rather, is the way in which the NDMP surreptitiously shifts the *blame* and legal accountability of drug use back on to the individual, in spite of its overarching rhetoric of 'reduction' and 'rehabilitation' through 'community-orientated' approaches. Again, this is not to say that individuals are blameless – in many instances, far from it. Rather, by semantically shifting blame on to the individual, the NDMP re-invokes the criminal justice system as the consequent framework needed to 'deal with' the 'problem' of drug use in the country. As explored above, this is in direct contrast to the NDMP's primary aims.

There is then a contradiction between the plan's stated aims and its intended outcomes, the effect of which is to emphasise the responsibilities of the drug-using individuals while slowly absolving the government from its own part in and responsibility for drug use and abuse amongst the country's citizens. As has been shown by a number of authors, the likelihood of an individual using, or being 'predisposed' or 'vulnerable' to using illegal drugs is a function of *both* individual volition and environmental conditions.[91] Accordingly, reduction and rehabilitation will require that *both* individuals and governments are held *equally* responsible. The NDMP fails to do this by highlighting the roles of the individual and by downplaying the roles of government. Considering that education and unemployment are two of the most pressing concerns in the country, it seems questionable that the NDMP should barely mention them. Education and employment (and the lack thereof) are central structural explanations for the use of drugs in communities.[92] Both are also the primary mandate of the South African government. The NDMP, in short, not only plainly ignores this, but also consciously attempts to re-write the individual as the primary unit of analysis. It thus discursively absolves the government of its duty to provide these important services, services necessary in the reduction of drug use.

The second problem speaks to the above points, and concerns accountability in practice. The NDMP, as noted in the previous two sections, outlines an extensive number of projects, undertakings and

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[91] See, for example, A Badiani 'Substance-specific environmental influences on drug use and drug preference in animals and humans' (2013) 23 *Curr Opin Neurobiology* 588-596.

[92] For an overview, see M van Heerden, A Grimsrud, S Seedat, L Myer, D Williams and D Stein 'Patterns of substance use in South Africa: Results from the South African stress and health study' (2009) 99 *SAMJ* 358-366.

initiatives. As stated, the plan calls for the involvement of numerous government departments, civil society institutions, NGOs, and private groups. It is intended that various government departments oversee all of these stakeholders and their resulting interactions. Yet the plan dedicates just nine pages to outlining the actual processes and parties involved in accountability and oversight.[93] As a result, the plan is nearly completely silent on how, in the day-to-day running of the operation, it intends to monitor the progress, successes and failures of the various parties involved. While cost is never mentioned, if the plan were fully implemented it would be an extremely expensive operation. Surely, then, it would be in the government's best interest to closely monitor and evaluate the various stakeholders' involvement and performance?

The South African government has experienced a crisis of legitimacy brought on by its continued failure to deliver on the promises it has made; its inability to stem the (very public) tide of corruption, and, importantly, its continued failure to implement measures of substantive accountability.[94] The recent passing of the 'Secrecy Bill', for instance, has undermined the popular press's ability to report on the government, while state-spending on the private palatial residence of President Zuma, Nkandla, has been continually silenced.[95] Numerous government-led projects, such as Gauteng's highway tolling system, 'e-Tolls', the Limpopo education system, and the Eastern Cape's infrastructure collapse, have led to frequent outcries and engendered public mistrust. Police legitimacy and the public's trust in the service is extremely low.[96] It is in this climate that the NDMP outlines the country's drug policy for the next four years. It is also in this climate that it makes, as outlined above, almost no substantive claim to accountability – the NDMP calls for accountability, but does not detail *how* the various stakeholders are to be monitored and held accountable. There is, once more, a dissonance between the stated aim of the plan and its practical implementation.

If the NDMP were fully implemented, it would make many government departments responsible. Drug regulation and rehabilitation policies are notoriously difficult to implement and manage successfully.[97] Should the plan fail, despite having been closely monitored, the

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[93] NDMP op cit (n1) 139-147.

[94] See H Marais *South Africa Pushed to the Limit: The Political Economy of Change* (2011).

[95] P Vecchiatto and N Marrian 'Pay back Nkandla spending, public protector tells Zuma' *Business Day Live*, 24 March 2014, available at *http://www.bdlive.co.za/national/2014/03/19/pay-back-nkandla-spending-public-protector-tells-zuma*, accessed on 6 August 2014.

[96] Bradford op cit (2013) 1-24.

[97] A Daemmrich and G Krücken 'Risk versus risk: Decision-making dilemmas of drug regulation in the United States and Germany' (2000) 9 *Sci as Culture* 505-534.

government could be held proportionally accountable. If, however, the NDMP were to make mention of accountability but provide no realistic or concrete measures of how or who is to be held accountable, the plan can speak the language of democratic governance without needing to take seriously the attendant obligations. Coupled with the plan's focus on the role of individuals, the plan directs attention away from the government's responsibilities in this way.

As has been briefly noted, a glaring further omission to the plan is that of cost. In comparing the NDMP to plans and policies originating from other countries, it will clearly be an expensive enterprise.[98] The plan is constructed as the centrepiece of the country's present and future drug regulation policy. It suggests numerous initiatives, and indeed, specifies that the government will take a 'bottom-up' approach to drug regulation and reduction, which empowers communities and individuals to make localised changes. Consequently, for the plan to be effectively implemented it will require the participation and action of many of South Africa's communities. Numerous budgetary concerns and questions arise here. Are these local projects, and the municipalities that are charged with running them, expected to pay for the various endeavours that the plan stipulates? From where will these funds come? Who will monitor the deployment, implementation and performance of these projects to ensure that they are cost effective? What is the overall budget of the plan, and how will this budget be allocated? All of these questions, once again, hinge on the need for accountability, and all require effective and concrete strategies and answers to ensure that the project and people tasked with the NDMP's success remain accountable. The plan makes little to no allowance for these practical considerations.

5   Conclusion

The NDMP, by speaking the language of accountability without providing the necessary mechanisms, pays lip service to the democratic necessity of oversight without actually specifying how it would manifest. The South African government, perhaps for fear of being held liable for yet another failed project (of which there have been numerous instances), has surreptitiously written itself out of being accountable for the failure of the NDMP. If the NDMP fails, the government can blame the lack of interest or resourcefulness of individuals – the primary agents in the plan – especially those who continue to produce, distribute or use illegal drugs in the country. If the plan is successful, it could claim that it was the originator and key

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[98] Ibid.

facilitator of the idea. The NDMP thus allows for the *possibility* that its failure will be blamed on individuals, while any successes can be easily claimed as having derived from government-led initiatives. This is because the NDMP does not stipulate, in any concrete way, how any of the mechanisms and policies that would be needed to hold the government to task are to take shape. The individual, in this way, can always be brought to book through South Africa's criminal justice system – a system that is never discredited by the plan. Ultimately, then, while the NDMP speaks the language of reform, reduction and reconciliation, it actually continues the logic of prohibition; individuals are held accountable to the state by the courts and police. Drug regulation, therefore, will likely continue to be a concern of the police and courts rather than any real 'development agenda'.

The NDMP 2013-2017 thus seems, at first glance, to be a progressive and extensive plan of action for the South African government, various institutions and individuals to effectively reduce the production and distribution of illegal drugs, while providing new and meaningful forms of rehabilitation for drug users. The plan borrows from a growing body of literature that recognises that the punitive measures that defined prohibition have not only failed, but may have been counter-productive. As such the plan disavows criminalisation, seeking rather to implement community-orientated projects that effectively provide alternatives to the recreational and habitual use of drugs, especially in 'high-risk' communities. The plan emphasises the need for the provision of recreational, spiritual, educational and health-orientated spaces to mitigate and (as intended) eliminate the *desire* and *demand* for the use of drugs.

The plan does not explain *why* these communities are more at risk or seek to address these systemic issues. The plan does not mention that even though it has been over 20 years since the collapse of apartheid, the politico-economic and social landscape of South Africa is still divided by economic and racial inequalities. It is this racial and economic disparity that frequently defines the borders of what constitutes a 'vulnerable community'. Instead, the NDMP employs a discourse that absolves the South African government of blame while emphasising the individual guilt of citizens who produce, distribute and use illegal drugs. The NDMP, in short, provides the legal and moral framework in which the criminal justice system can continue to act as the primary port of call in the regulation and policing of illegal drugs. However, the system is already extremely strained, and has proven ineffective in changing the practices that systemically contribute to drug-related phenomena in the country.

The wrong type of decline "E"

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This article documents and contextualises fluctuations in the street-level prices and values of selected illegal substances over a 10-year period in Cape Town, South Africa, by drawing on recent empirical research and past reports. The contemporary prices are compared and contrasted with each other, as well as with those previously documented. We show that when adjusted for inflation, the value of these substances has decreased over the last decade, making them more affordable, even though their nominal prices have remained more stable. In beginning to provide explanations for these changes, we outline some of the mechanisms that shape the market and point to the primary structural drivers of substance use in the country.

While illegal drug pricing surveys are conducted routinely elsewhere,[1] in South Africa almost nothing is presently known of how illegal substances are sold, what quantities they are sold in, what prices are paid, how prices vary between areas, what patterns of consumption exist, and how the distribution processes are organised. This is surprising, considering that data from both treatment centres and elsewhere have shown a rapid escalation in the prevalence and (ab)use rates of specific substances in a number of communities, such as methamphetamine and a highly adulterated opiate-based mixture known as 'whoonga'.[2]

Moreover, various studies have shown that an increasing number of African countries now play an important role in the transnational trade in illegal substances,[3] while the production capacity of South Africa and Nigeria to synthesise substances such as methamphetamine has increased.[4] It seems that a) the illegal substance economy has grown in sophistication, and that b) many of the criminal organisations that control the distribution networks are including a broader range of substances and products, such as those derived from poaching activities.[5] The expansion of this illegal economy may have an impact, among others, on the reported arrest rates relating to illegal substances, which in South Africa have increased 181.6% over the last 10 years.[6] However, the country's policy framework is tentatively shifting from punitive regulatory approaches to harm reduction-based strategies.[7]

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While there may be an ever-growing literature on the multiple and diverse impacts of illegal substances on individuals, communities and South African society as a whole,[8] there is little empirical information on the illegal substance economy itself. What does exist invariably focuses on public health concerns, such as treatment centre data, and does not engage with the criminal economy itself. This is especially true in the instance of polysubstance use/users, an increasingly important cohort of the South African illegal substance economy, not just because they habitually consume more than one illegal substance, but also because they are more vulnerable to disease and are more likely to be arrested.[9]

With these deficits in mind, we present here an analysis of the results drawn from the first phase of a drug-pricing study conducted in Cape Town in 2014 and 2015.

The article's purpose is to a) document the reported prices and units of sale in a systematic way, b) compare these prices and their relative worth (where possible) with previous reports, and c) begin examining their relevance to and meaning for policy and research. While geographically limited, we have systematically compared these data with the findings of the single previous study to have undertaken such a structured review of street-level substance prices in the past, published in 2010.[10] In so doing we show that while the nominal prices of many illegal substances have remained relatively resilient, the real value of these products has greatly decreased. Illegal substances, in short, are more easily available and more affordable than ever. By documenting these trends, we tease out some of the implications that they may have for consumption patterns, regulatory frameworks and policing strategies in the city. While many authors have independently reached similar conclusions to our own, the evidence-based data presented here seems to indicate that not only is the regulatory system currently used ineffective, but it may be counter-productive.

The study

The nominal prices and real value of the illegal substances presented here are derived from data gathered by a larger mixed-methods, multisite study conducted in Cape Town, South Africa between

2014 and 2015, which specifically focused on polysubstance use/users. Reports by respondents from three socially and economically diverse sites were recorded, all of whom used a combination of the various substances documented in Table 2. The study comprised three phases, the first and third of which utilised semi-structured focus group discussions (FGDs) as a means of gathering information. This article is primarily based on information collected in the first/formative phase, and will not speak to the processes or results of the other two phases unless explicitly stated. It should be noted that results from the larger study (n=374), while still under analysis, *do* indicate that these prices are accurate.

The purpose of the formative phase was a) to explore the acceptability and feasibility of the methodology/survey instruments needed in the second phase and b) to begin building relationships and gathering data from participants. Resultantly, six FGDs (three with men and three with women) were conducted in the three selected communities where polysubstance use was thought to be prevalent. A total of 42 respondents participated in the FGDs, and it is their experiences that underpin the research documented here, and which informed the larger study.

The selected communities are all socio-economically and ethnically disparate, and were targeted to provide as broad a representative sample as possible from a geospatially diverse range of locations (see Table 1). Potential participants were recruited by outreach fieldworkers and invited to take part in the FGDs, having self-identified as polysubstance users. Once identified, they had to pass a verbal test to clarify whether they met the requirements of the study. In order to meet these requirements, they had to have used more than one of the preselected substances in the last seven days, had to have resided in the location for more than one year, and had to agree to the study's ethical requirements. The resulting discussions lasted approximately one hour and were audio recorded. While unintended, the information that emerged from these discussions was sufficiently important and original to be presented separately from the broader study, as is documented here. It should, however, be noted that the figures cited here have been collated from individual responses, and thus not every respondent provided

input on every substance in each area. This being said, all of the prices are based on figures cited by at least three respondents.

Table 1: Municipal area by size and income (based on 2011 census data)

Municipal area	Population size	Median monthly household income
Area 1	391 749	R 1 301
Area 2	152 030	R 1 601
Area 3	9 301	R18 801

The study included six illegal substances – methamphetamine, heroin, mandrax, cocaine, ecstasy and methcathinone – and excluded alcohol, tobacco and cannabis. Alcohol and tobacco were excluded because they are still legal. Cannabis was excluded because of the large variety of types and forms available (reflected in the prices of individual strains, the price of which can vary drastically, from as little as R10 to R350 per unit) and because of its ubiquity of use – it is not seen or (importantly) policed as a 'hard' drug, which the broader study was more concerned with. The list of substances that were included in the study was derived from reports based on information from the users themselves, with urine-based screening measures for the substances occurring in the second phase of the study.

Reported prices and method of comparison

The preliminary findings of the study are tabulated in Table 2. While noteworthy in themselves, a comparative analysis with previous results creates an opportunity for a more nuanced assessment of any fluctuations and, as discussed below, offers an opportunity to indirectly assess those forces acting on the market. It is for these reasons that we have contextually situated the prices by juxtaposing them with those reported between 2002 and 2006, as found in Peltzer et al.[11]

In order to provide as accurate a comparison as possible, we aggregated the nominal unit prices per measure of weight, one unit of which equals one gram, as was done in the previous study.[12] Such comparisons are at best generalisations, but even so reveal that there have been movements

in the prices and, perhaps, the illegal economy as a whole. As we show, for instance, the street-level prices have decreased slightly in nominal price, which may point to an increase in supply, suggesting that past interventions aimed at limiting this have not been successful.[13] These prices are, however, comparatively resilient to their real values, which speaks to broader changes in the economic environment in which they are sold. Indeed, these fluctuations are perhaps more important to consider than the nominal price, as their real value gives an indication of their *affordability*. If illegal substances are more affordable, more people can access them, which appears to be the case in South Africa today.

That the information is contextual and locally limited is revealing of the structural dynamics shaping the illegal substance economy and the way this economy operates. These forces shape the local economy, we believe, to such an extent that it is not possible to accurately generalise the results to the level of a region or continent, as is often done in the literature (as seen, for instance, in the United Nations (UN) World Drug Reports. Considering that illegal substances have become more affordable, and noting that state-level interventions and regulations have been primarily focused on law enforcement, we question their continued utility or purpose. This is supported by much of the contemporary literature, as we discuss below.

Limitations

To what extent individuals can afford illegal substances is not only dependent on their economic position but is also relative to their spending patterns, the most essential of which would be on basic foodstuffs. Basic food prices have fluctuated quite widely in the last decade, such as that in March 2008 wheat prices increased by some 93% year-on-year.[14] Energy prices have also consistently increased, affecting public transport costs. The overall impact on the use of illegal substances is very difficult to determine, a) because these fluctuations have not been consistent, and b) because individuals will not be consistently affected by these. Some of the respondents in this study, for instance, lived in formal housing, some were homeless, some begged for money, some had semi-formal forms of

employment, and so on. One can, once more, only use such information to provide a general reflection of trends, which are more accurate at the level of communities rather than individuals.

It should also be noted that the comparisons with information reported in Peltzer et al. are made because it is the only other study to have previously documented the individual prices of illegal substances in a systematic and comparative way.[15] This study did not, however, draw on empirical data, but rather collated and presented the results from a number of individual studies published between 2002 and 2006.[16] Moreover, and with the exception of Plüddemann et al.,[17] not much attention is given to the methodological tools and methods used in producing the quoted figures, and thus they may be the product of data sourced from different areas of the country, and/or bi-products of epidemiological research.

The studies cited by Peltzer et al. were also not all conducted at precisely the same time, and therefore small pricing discrepancies were already likely to have existed in the market.[18] To the best of our knowledge, however, it remains the only previous study to systematically document the street prices of illegal substances in the peer-reviewed literature, and thus the sole reference point when trying to conduct an accurate comparison of figures.[19] Despite these constraints, the comparisons presented here indicate that state responses to drug use have not limited the affordability or availability of illegal substances in Cape Town.

Comparisons and relevance

In the following section we compare the nominal prices of the individual substances, as reported by the participants in the different sites in our study, with those from Peltzer et al.,[20] which are positioned as national averages but are based on sporadic primary data. These are presented in Table 2. In an attempt to formulate as accurate a comparison as possible, we have aggregated the data in this study to create an inclusive, single total figure for each substance. This aggregation is done for comparative purposes, although the limitations noted above should be kept in mind. While the comparisons are at best estimations, they do serve to tentatively illustrate the primary congruencies/disparities that exist between

the present-day nominal prices of the substances, and, importantly, their relative value to consumers in the context in which they are bought. We have focused on affordability rather than just nominal price, because while South Africa's macroeconomic changes have fluctuated, the rand has weakened and inflation increased more consistently. Determining what is *affordable* to consumers may thus more accurately reflect the present *impact* that substance use may have on their lives.[21]

In Table 2, columns 1 and 2 detail the names of the substances, columns 3 and 4 the reported prices by unit of sale and site, and column 6 reproduces the prices detailed in the Peltzer et al. study.[22] In column 5 we provide two separate prices for the individual substances. The first is the aggregated present-day nominal price at street level, as reported by respondents (formatted in *italics*). The second (formatted in **bold**) presents the nominal figures reported in Peltzer et al.,[23] but adjusted so as to take into account the annual cumulative Consumer Price Index (CPI) inflation rate reported between 2004 and 2014 (calculated between 1 January 2004 and 1 January 2014).[24] Using these rates, the year-on-year annual CPI increase stands at an average of 5.8%, with the cumulative CPI increase at a total of 75.7% over the 10 years.[25]

Even though the street prices of illegal substances are not themselves subject to formal economic regulations, review or taxation, their retail price would still be influenced by the purchasing power and income increases of users. The CPI is thus an illustrative means of calculating the real value of illegal substances historically, as it determines their affordability relative to nominal price. In summary, then, in column 5 of Table 2, the first price (in *italics*) is the user-reported nominal price of the individual substances in 2014–2015, the second (in **bold**) the real value of the substances reported if adjusted for the CPI fluctuations over the past 10 years, while in column 6, the original nominal prices reported in Peltzer at al. are reported.[26]

Speaking more broadly, pricing studies of this nature are of relevance to a number of broader concerns, including regulation strategies, governance policies, policing protocols, and in determining prevalence/

Table 2: Substance variants by unit, quantity and price in comparison

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Substance	Street name(s)	Quantities of units of sale	Average reported price per unit (by area)	Mean price/gram – 2014 (2004 inflation-adjusted price in bold)	Mean price/gram – 2004
Methamphetamine	Tik	≤ 200 mg	1=R30 2=R20–R25 3=R20–R25	*R217.50* **R395.24**	R225
		≤ 500 mg	1=R150–R170 2=R100–R120 3=R100–R120		
		1 gram	1=R250–R300 2=R150–R170 3=R150–R170		
Heroin	Whoonga Uunga Nyaope	≤ 100 mg	Free (all areas)	*R119* **R377.67**	R215
		≤ 250 grams	1=R25–R30 2=R18–R25 3=R22		
		1 gram	1=R100–R150 2=R100–R125 3=R100–R125		
		9-10 grams	1=R800–R1 000 (unmentioned in other areas)		
Mandrax	Buttons	125 mg	3=R15 (not available in other areas)	*R60* **R114.18**	R65
		250 mg	1=R30 2=R25–R30 3=R25–R30		
		500 mg	1=R60 2=R60 3=R60		
Cocaine	Coke Powder	500 mg	1=R120–R150 (not readily available in other areas)	*R275* **R439.16**	R250
		1 gram	1=R250–R300 (not readily available in other areas)		
Ecstasy/MDMA	E Mandies	±50 mg (sold as half a pill)	1=R35–R50 (not readily available elsewhere)	*R95* **R105.40**	R60
		±100 mg (sold as a full pill)	1=R70–R120 (not readily available in other areas)		
Cathinone	CAT	500 mg	1=R150 (not readily available in other areas)	*R300* **NA**	NA
		1 gram	1=R300 (not readily available in other areas)		

usage rates. They may also reflect public health concerns insofar as they may have an impact on treatment and prevention strategies.

While we speak specifically to the South African context, it is useful to keep in mind that previous studies have also used pricing data as:

- Indirect indicators of movements and fluctuations in the illicit economy, such as in determining the effects of regulatory interventions and policy prescriptions.[27]

- Markers of supply/demand levels, transnational flows and consumption patterns, such as those

found in the UN's annual World Drug Reports (the latest of which, at the time of writing, is 2015).[28]

- Useful benchmarks for the indirect mapping of structural trends in the illicit economy, such as its growth, decline and broader movements; whether the result of direct intervention or as a function of changing patterns in public health.[29]

- As a barometer of the successes/failures of policing and regulatory efforts, in so far as they may undermine or enable the supply or availability of the substances.[30]

These indirect assessments are strengthened when market indicators, such as street-level prices, are repeatedly sampled at regular intervals over longer periods of time. By temporally and spatially overlaying this information with pre-existing knowledge of the points and periods during which regulatory and/or operational efforts occurred, the resulting pricing fluctuations can be used as an indirect measurement of these interventions' successes and/or failures.[31] For example, should it be known that policing efforts were focused on production facilities in an area or for a specific substance, price increases at street level may indirectly indicate their success, as limiting supply may drive up prices.[32] While the utility of the research still requires further reflection, the data presented here will be greatly strengthened by iterative sampling strategies.

Nominal price fluctuations and variations

In reviewing the information presented in Table 2, we first discuss the individual substances and the pricing variances before highlighting the comparative fluctuations. This information is contextually situated in the next section.

Individual substance results

Following the table order, the reported street-level price for methamphetamine or 'tik' reveals two important trends. The first is that quantity and unit price are inversely related – the larger the quantity purchased, the less the nominal price per weight unit. This is a familiar marketing strategy, employed in everything from methamphetamine to mobile data deals.[33] Such variations, assumedly, may also indicate

that the larger the quantity of illegal drugs purchased, the more likely that the 'order' will be passed on to distributors at a higher level, thus beginning the process of minimising the number of transactions from producer to consumer.

Secondly, price variances can exist even in areas that are close to one another. Respondents in area 3, for example, reported much higher nominal unit prices than those in areas 1 and 2. These areas are little more than 25km apart, precluding explanations relating to distance or distribution costs. Moreover, the respondents were neither foreign tourists nor naïve youngsters, unfamiliar with the rituals of illegal substance purchasing, but regular users familiar with the local distributors. It is therefore unlikely that the participants would be frequent victims to nefarious pricing tactics or scams. This variance can, however, be explained when placed within the broader socio-economic and geopolitical differences that structure the city of Cape Town. As a product of attempts to socially engineer the country's major urban areas during apartheid, socio-political disparities between many of the city's suburbs continue to exist. These historical differences remain relevant in many facets of daily life, such as the type/availability of housing, crime levels and employment opportunities that exist in different parts of the city.

Such differences also find realisation economically. For instance, the first site, a peri-urban township, has, according to the 2011 census, a population of 391 749 and a median monthly household income of R1 301. The third site, a middle-class suburb, has a population of 9 301 and a median monthly household income of R18 801. These differences deeply influence the ways in which people understand themselves, others, and indeed drug use. While these are not the only indicators that will affect illegal substance prevalence rates or distribution patterns, they are indicative of the vast disparities between areas in the same city, and that continue to define contemporary Cape Town life.

It is also important to note that the resilience of the nominal prices may indicate that distributors are loath to increase their prices. This could be due to competition or because buyers are likely to bring the exact amount of money they need to each deal

so as to hasten the process. Waiting for change when completing an illegal transaction increases the risk of being seen or arrested, and dealers are unlikely to accept bank cards, although some will accept credit if buyers have a familiar relationship with them. To offset small nominal increases in the face of decreasing real value, the most obvious strategy would thus be to further 'cut' or adulterate the products, decreasing the cost to the supplier. Iterative, long-term toxicological analyses would be needed to confirm this.

Speaking to each of the subjects individually, we follow the order found in Table 2. Methamphetamine has previously been reported to be the most widely used drug in the city, and the data confirm that it is available across the sites surveyed. The contemporary nominal price can, however, vary by as much as 100%, for reasons that are still to be understood. At R217.50 per gram, the mean nominal price itself occupies a median position in relation to the cost of other illegal substances. Moreover, and at first glance, a nominal decrease of just R7.50 over the last 10 years does not seem to be particularly extensive. However, when adjusted for CPI, the decrease in real value is some 104.65%. In other words, had a gram of methamphetamine been purchased 10 years ago, using the current value of the rand, the substance would have cost R395.24. As we explore below, such a large decrease in value is not only a function of inflation but may also be driven by a growth in local production capacity, as indirectly indicated by users consistently reporting five different forms of the substance, for which they also showed preferences.

With regards to heroin, present-day nominal prices between the areas were consistent, although, similarly to methamphetamine, bulk sales frequently attracted discounted price rates. The nominal price decrease has, however, been much larger, from R215 in 2004 to R119 in 2014, a reduction of 180.67%. Based on anecdotal evidence this decrease seems to be the result of a shift from the distribution of actual heroin or 'sugars' to that of 'whoonga', which is highly adulterated. By containing so little heroin, the production costs per unit have dramatically decreased. In terms of real value, the result is that the drug has become much more

affordable and thus more widely used. Participants also commented on heroin sales being bolstered by the use of 'specials' or 'freebies' by distributors, particularly on Sundays and public holidays. This marketing strategy indicates that distributors are using the physiological characteristics of opiate addiction to their own advantage. Pharmacologically, opiate-based substance users develop a tolerance to the substance's actions, so that the frequency of dosages and their size increase over time. By providing 'specials', distributors ensure increased dosages, which over time may hasten tolerance levels and thus create a form of customer 'loyalty' that ensures repeat custom.

Mandrax, from the perspective of pricing, was the most stable of the substances investigated, with little variance between sites. The unit of sale did, however, vary, with the smallest 'quarter' only available in site 1. This is congruent with the socio-economic differences of the sites, with site 1 also having the highest levels of poverty and the least formal structures/resources in place. In this impoverished 'township', the demand for smaller units seems anecdotally linked to consumption patterns. Because of the ease of availability, and the innumerable warrens and coves in which users may seclude themselves, the consumption of smaller quantities of mandrax is easier despite its preparation process being more complex than that of the other substances. Its use also creates large plumes of acrid smoke, easily detectable in developed areas that are more heavily policed. Inversely, its consumption in the other sites may be limited by a lack of suitable places in which to smoke it, and because law enforcement agents might easily detect it. In terms of pricing, a nominal decrease of R5 may be small, but because of the low overall cost it translates into a real value reduction of 108.38%. This supports the anecdotal evidence, itself consistent with recent research.[34]

Cocaine was frequently described by participants as the 'white people's drug', a reflection of its cost and because of their daily experiences in which 'white' people are the predominant purchasers of the substance. Cocaine is simply too expensive and its effects too short lived to be economically attractive to users for whom the use of illegal substances is not recreational. In a country

saddled with racially charged economic conflicts, such distinctions become normative, as much an observation on socio-economic difference as it is on use. The participants did not regularly consume cocaine, although all of them knew how and where to purchase it. In subsequent FGDs, held after the main survey, some reported that they would operate as 'runners', purchasing and delivering illegal substances on behalf of others so as to mitigate the risk taken by the purchaser. This explains why they knew the price of cocaine and could access it. The reported pricing fluctuations seemed to be contingent on individuals' familiarity with distributors, and whether they bought cocaine in tandem with another substance, thus increasing the total amount of the 'order'. A comparison with the information in the Peltzer article is especially difficult,[35] as it does not differentiate between crack cocaine and cocaine hydrochloride, which are priced differently in markets across the world, regulated differently, and consumed differently.

Reported levels of ecstasy use and its price variances were low, possibly as a result of the high levels of methamphetamine use, which is also a stimulant. Indeed, and in contrast to the other substances, it seems to have become much more expensive, with previous research indicating a nominal price of R60 per pill in 2004, and present users reporting a price of R95. Adjusting for CPI indicates that the real value has increased by 63.18%. In conversation with the respondents, it seems that there is comparatively little demand and little local production, and therefore most is imported. The low demand may be explained as a function of its typically being associated with the electronic dance music (EDM) subculture and nightclubs, which in South Africa may be limited to individuals with more disposable income. Only a few of the participants had engaged with the subcultures in which ecstasy use has been prevalent.[36] They did, however, know of the substance, many had previously used it, and could still obtain it.

Cathinone (CAT), finally, has seen rapid increases in use in Europe and North America.[37] In exploring whether this is the case in Cape Town, especially considering the city's large tourism industry, the substance was included in the study. However, participants did not report frequent use of the

substance, with some respondents not even being familiar with it. Its novelty also prevents any comparison with the past study. Broadly, and retrospectively, it seems that knowledge of and experience with the substance tended to follow urban development patterns – those in the city centre knew more about the substance than those in outlying areas. This, again, is consistent with reports in the literature from elsewhere, which have found its use to be propagated by specific youth subcultures that are mostly economically inaccessible to the majority of participants in this study.

Comparative/contextual placement

As was noted above, the street-level prices presented here are limited to the time and places that they were documented in. While further research would be needed to paint a broader picture of the production, distribution and use of illegal substances in the country, the results do have implications for policy and practice. It is hoped that they may also act as an evidence-based baseline for further research.

Adjusting for CPI-based value, a comparison of the reported prices with those documented 10 years ago reveals two very important fluctuations. Barring ecstasy – and disregarding cocaine and cathinone because of a lack of comparative data – all of the substances' nominal prices and real values have decreased. In explaining this, these changes may be understood as the product of the decreasing nominal value of the rand, CPI increases, socio-economic/ structural variances in the city, changing consumption patterns, localised production increases, and policing practices. We draw attention to these factors as a result of the analysis and literature survey,[38] but also because they were frequently highlighted by respondents in the descriptions and explanations that they provided of their own experiences.

When comparing the average street-level prices reported by users in each site and the site's broader economic markers, there seems to be a correlation between drug prices and household income. For example, the highest reported nominal prices for cocaine, methamphetamine and heroin per gram were found in the area with the highest average household income of all the sites. In reverse, the lowest reported nominal prices for mandrax per

'button' mirrored the sites with the lowest average household income. Moreover, there may be a correlation between average household income and the availability and cost of individual substances. For instance, users reported that the availability of the smallest unit of sale of mandrax (worth R15) was only available in the poorest area, while cocaine (with a unit price of R250–R300 per gram) was only readily available in the richest area. Correlation is of course not causation, and further research is needed to understand these symmetries.

Changing consumption patterns, as noted in the FGDs and broader literature, were also often used to explain fluctuations, although these were invariably implicit. The dramatic decrease in the price of heroin reported here is probably the result of the users reporting on the price of 'whoonga' (a particularly low-grade and highly adulterated mixture) rather than relatively purer 'sugars'. The decrease in price could partly be a reflection of the decrease in purity, which is consistent with studies based on toxicology tests elsewhere in the country,[39] and mentioned anecdotally by the participants in this study. The price of cocaine per gram has also decreased, tentatively indicating an increase in supply, which is congruent with studies indicating the growing importance of South Africa in the international cocaine economy.[40] Moreover, information derived from extensive interviews with law enforcement officials and the (increasing) discovery of numerous production facilities indicate an increase in the production capacity and the concomitant decrease in distribution costs of methamphetamine in the city.

Economic differences also affect how the illegal economy is policed and the consumption patterns of specific substances. For instance, those substances that require longer preparation times or that can be more easily detected may be less attractive to users in areas where policing is more visible. Wealthier areas are probably patrolled more frequently by both government law enforcement agencies and private security firms, making these drugs harder to use without being noticed. Further research would be required to determine what correlations exist between the operational activities of both private and public security operatives and consumption patterns of specific substances.

With reference to, and in support of, the related conclusions reached by a large number of previous studies it is clear that illegal substances are, in total, cheaper, more affordable and more readily available in South Africa now than they were 10 years ago.[41] This conclusion has serious implications for the regulation and policing of the production, distribution, use and users of illegal substances in the country.

Implications for policy and research

Over the course of the last decade there have been substantial changes to South Africa's substance-related policy frameworks and perspectives. Indeed, the most recent National Drug Master Plan (NDMP) (2013–2017) considers numerous public health orientated and community-based options, such as education initiatives, aftercare services and youth development programmes, and includes a somewhat tentative review of harm-reduction approaches.[42] However, there is a rather large dissonance – perhaps even disjuncture – between these more socially reflective policy approaches and the actual regulation of illegal substances and their use, which remains the primary concern and mandate of law-enforcement agencies. While new and revised NDMPs are released every three to four years, the central act by which substances are demarcated as illegal, and which determines how substances and those who come into contact with them are policed, is the Drugs and Drugs Trafficking Act of 1992 (Act 140 of 1992).[43] Barring a single amendment in 2002, this act is now over two decades old and is a product of an internationally sanctioned regulatory discourse that promoted fundamental prohibitionist and exclusionary strategies of control, such as those characterised by the now largely defunct 'War on Drugs'.

The regulation of illegal substances, using a predominantly punitive model, has repeatedly been shown to be not only ineffective, but in some instances actively counterproductive to the goal of the reduction and/or elimination of illegal substances.[44] In the Western Cape, for example, the total number of substance-related 'crime detection' events recorded by the SAPS in 2004 stood at 30 432. In 2014, the number recorded was 85 463, just shy of a two-thirds increase over the 10 years.[45] While these statistics are not disaggregated

for individual substances, it is clear that there has been a large overall increase in substance-related policing efforts, and from the data presented here, a decreasing trend in nominal price and increase in the affordability of the included substances. If these price decreases are related to increases in supply that have occurred in the context of greater efforts by law enforcement bodies to contain substance-related crimes, these efforts can be characterised as nothing short of a failure.

The 2014/2015 SAPS crime statistics indicate that from 2005 until 2015 the number of drug-related arrests nationally has increased by 181.6%.[46] These increases, while national, mirror almost exactly the real value decreases of both methamphetamine and heroin. Such decreases make these substances more affordable to more people in the country, some of whom will be arrested. It might be tentatively argued, then, that the increases in drug-related arrests are indicative of a growing population of users, rather than lacklustre policing. That this population is growing cannot solely be the responsibility of policing, but is rather symptomatic of a broad range of social ills, as well as the tendency to rely on the criminal justice system to remove, rather than rehabilitate, substance users. Often such removal practices are more akin to a revolving door than structured process.

While the South African media continues to draw on hackneyed and prejudiced understandings of substance use and users – frequently using, for instance, the metaphors of disease, irrationality and moral degeneracy[47] – research both in South Africa and in many other countries has found that there are central *drivers* related to the statistical frequency, potential and depth of substance (ab)use levels in individual communities. These include, but are not limited to, poverty, education levels and economic opportunity. Dealing in illegal substances, for instance, becomes more attractive in environments where access to legitimate forms of income is limited. In South Africa it is increasingly clear that we might add to this list concerns with the geospatial design of major urban areas, high levels of unemployment, frequent (and frequently accepted) instances of violent behaviour, systemically entrenched corruption, political disenfranchisement and social

stigma.[48] As such, and even though policing has not been effective, many of the country's urban areas present ideal environments in which these drivers become potent and meaningful. Indeed, it is these environmental and structural issues described above that policy might look to remedy in the long term in endeavouring to address substance-related issues.

Conclusion

This article has a) documented the reported street-level prices of a number of illegal substances in Cape Town, b) provided a systematic comparison of these prices in relation to those reported some 10 years ago, and c) briefly explored just some of the implications that this comparison has for policy and policing in the country. In short it is clear, at least in the areas that came under analysis in this study, that there are market fluctuations that are not divorced from the context in which they occur. This is congruent with much of the literature on these topics, whether drawn from the domains of public health, criminology or history.

Considering the complexity of the illegal substance economy, the complexity of substance use, and the continuing socio-economic and political disparities in South Africa, it would be premature to suggest an 'answer' or 'path' by which substance (ab)use might be more effectively controlled. If anything, the results reported in this article show that looking for such definitive 'answers' might be unwise when the drivers, changes and dynamics of drug use in the country are still so poorly understood. The prices reported here reveal a brief snapshot of a complex market, which appears to be on the rise.

With this in mind, the formulation and implementation of policies and regulations that are responsive to the illegal economy will require accurate information that is reflective of contemporary trends *in situ*. Pricing data generate a 'snapshot' of that economy, with comparative analyses providing the means by which the results of interventions and regulatory practices can be indirectly monitored and judged. However, to do so requires new information to be contextually situated, economically, politically and socially. Substance use does not occur in isolation from broader society and substance users invariably live within communities. The regulatory system, as it

pertains to illegal substances, is thus in dire need of a substantial and systematic review.

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Cops, drugs and interloping academics: an ethnographic exploration of the possibility of policing drugs differently in South Africa

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RESEARCH ARTICLE

Cops, drugs and interloping academics: an ethnographic exploration of the possibility of policing drugs differently in South Africa

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ABSTRACT

This article presents an ethnographic exploration of the policing of illegal substances in a city in South Africa. Situated contextually, we show how specific illegal drug policing practices are reinforced both institutionally and in the daily practices and activities of law enforcement officials. We explore the tension resulting from the demand for police officers to enforce punitive forms of regulation, despite their own awareness of the ineffectiveness of such strategies. Drawing on the experiences of the officers we engaged with, we show that policing aimed more at harm reduction than tough enforcement is possible. This, we argue, is the result of shifts in the structural field of policing (particularly at the policy level) and contradictions in the basic assumptions that police officers have about drug users, drug markets and what constitutes 'real' police work.

Introduction

Many of the police in South Africa have some deeply ingrained habits that inform their policing street level drug users and the drug market. However, and as is the case elsewhere in the world, such practices have not had the intended outcome of reducing or eliminating illicit drug supply and demand – a concern acknowledged even by the police. Ironically, it could be argued that current strategies have led to the growth of numerous drug-related problems as well as the specific individual and collective harms associated with their use. In this vein, such policing habits lend themselves to the continuation of the very environment in which the drug trade flourishes.

This article seeks to understand what informs and shapes habitual police tactics and responses to drug-related phenomena, even in the face of mounting doubts about their efficacy, a concern noted both in the literature and by many police officers. Utilising an ethnographic approach, we endeavoured to grasp the sense-making of the police by accompanying a unit of a city-based police agency on their daily drug operations, during which numerous informal individual and group conversations with police officers took place. The article demonstrates that there is a general – but often unvoiced – understanding on the part of the police that their existing habits are producing unintended and negative consequences. This, together with shifts in the policy environment, could provide the impetus for a radically different way of policing street-level drug use. We argue that this other side of sense-making

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provides the space for police to embrace a harm reduction-based approach in dealing with drug use. However, we contend, this possibility depends on making the necessary changes to the structural field in which the police operate as well as providing a space for the police to reflect on their deep-seated (and somewhat contradictory) assumptions about drug use, drug markets and their own role.

The impact of drug law enforcement on illicit drug-using behaviour in South Africa

The primary legislative tool used to define and police the production, distribution, use and users of illegal substances in South Africa is the Drugs and Drug Trafficking Act (no. 140 of 1992). Supplemented by additional acts, such as the Prevention of Organised Crime Act (no. 121 of 1998), the Financial Intelligence Centre Act (no. 38 of 2001) and the Pharmacy Act (no. 53 of 1974), the Drugs Act defines which substances are deemed illegal, the permissible boundaries of policing activity, and the sentencing structure for crimes relating to production, supply, and possession. While amended somewhat in 2002, this policy framework is fundamentally punitive in nature, and relies on policing agencies and the criminal justice system as enforcers.

While clear in demarcating which chemical substances are deemed illegal and which are not, its regulatory prescriptions and operational guidelines remain (perhaps purposefully) vague. This is not a specific South African problem however, but the spaces created for operational discretion (evident in the story we relay below) always need to be understood contextually. While the Act mandates police officers to prevent and control crime, these officers are not isolated from, or immune to, broader societal understandings of drug use and drug users. In South Africa, public understanding of what a drug is, and who is likely to 'do' them, is heavily shaped by a partisan media that denigrates users through stereotypical characterisations (Howell, 2015, pp. 137–156). Relevant specifically to the discussion below, these include a fear of contagion and moral degradation as well as a strong prohibitionist standpoint.

In a racially charged and economically stratified society like contemporary South Africa, the result is that representative individuals and groups are targeted, harassed, and detained (Murray, 2003, pp. 440–466). The frequency of arrests pertaining to substance use is further influenced and encouraged by the performance index used by law enforcement agencies, which is specifically concerned with the numeric frequency and total number of arrests made by officers, per sector, over defined periods of time (Faull, 2010, pp. 18–25). This has led to an environment in which users (or those thought to be users) are targeted as an easy way to achieve targets, while the more difficult to 'catch' distributors remain impervious.

Recently released statistics indicate that over the past decade, drug-related arrests have increased by 181.6%. Research conducted in Cape Town by one of the authors has shown that over the same time period, the real value of methamphetamine and heroin has decreased by 103.44 and 180.67% respectively (Howell, Harker-Burnhams, Townsend, & Shaw, 2015, pp. 43–54). By becoming so much more affordable, economic access to these substances increases, and prevalence levels can increase, as has been seen in South Africa. Thus while the total cohort of drug users in the country has increased, so too has the number of arrests, placing further strain on limited police resources and time, while also bringing the criminal justice system to a near-standstill.

Such trends are both perturbing and ironic. The punitive model of regulation used in South Africa, drawn from international regulations and enforced through the Drugs and Drugs Trafficking Act, is expressly concerned with curtailing this supply. Yet it is clear that such efforts have failed, and the police, while somewhat fixed in their habits, are aware of this. Interestingly, then, in enforcing these laws the police are pivotal in drug regulation, yet it must be remembered that it is the laws themselves that are deeply problematic.

Alternative measures, such as harm reduction efforts, are beginning to gain currency and there has been a paradigmatic shift in broader policy as it pertains to drug use and markets. This is most clearly reflected in the National Drug Master Plans (NDMPs), first released in 2006 and reiterated approximately every four years by the Central Drug Authority (which has no policing

powers and falls under the auspices of Department of Social Development). While the Plans are intended to harmonise and direct illegal substance regulatory efforts across multiple government departments (including law enforcement agencies), their influence and utility remains debatable. Indeed, the plans have invariably failed to bridge an ever increasing distance between the operational parameters of the stakeholders frequently cited as important. However, the strategies and rhetoric of the last two NDMPs reveal the beginning of a shift towards more developmental and community-orientated approaches. Indeed, and while tentative, the concept of harm reduction is given clear consideration in the NDMP 2013–2017, for the first time in so far as public policy goes. The plans are, however, not well distributed, and are often completely unknown to the very officials (the police in particular) who are tasked with the regulation of illegal substances and users on a daily basis. No real guidelines for harm reduction programmes/strategies exist within the plans either, limiting the implementation of programmes, particularly from government. However, the NDMP is indicative of an important policy shift and should be viewed as an enabling policy document for the introduction of harm reduction programmes, even by the police. Shifts in policies can be important catalysts for changing police approaches in the policing of drugs and drug scenes (Houborg, Frank, & Bjerge, 2014, pp. 261–291).

To date in South Africa, despite the NDMPs, in terms of actual harm reduction programmes there have been only isolated attempts by individuals and groups (predominantly non-governmental organisations funded by international agencies) to implement regulatory and rehabilitative strategies beyond the criminal justice system. In addition, to date, and to the best of our knowledge, the police in South Africa have not been bought into existing harm reduction programmes as partners or as advocates, some of the reasons for which are discussed later in this article. The primary role of those engaged in the low-level policing of drugs remains the forceful removal of substance users from the places where they are found, while those involved in high-level policing investigate drug manufacturing and large-scale distribution (Shannon et al., 2008, pp. 140–147).

In an attempt then to paint a more nuanced picture of the policing of drugs in South Africa – including the conflictive meanings that police officers assign to their role in this picture – we now discuss our ethnographic journey with the police in Durban. Following this we turn to the possibilities we believe exist in South Africa for the police to find a key place in the emerging harm reduction movement as everyday practitioners and as advocates.

Academics in the mix: an invitation to the streets of Durban and its police

Worldwide, academic researchers who write about the policing of drugs have invariably been heavily critical. The police are viewed as having 'false assumptions' about the effectiveness of hard law enforcement techniques, such as that 'coming down strong' makes drugs less available and therefore more expensive, thus reducing the net size of the drug economy. Police officers are viewed as blind to reality, while their strategies and approaches to dealing with illegal drug activity are condemned as profoundly flawed (Maher & Dixon, 1999, pp. 488–512).

While we acknowledge that these criticisms of the policing of drugs are well founded, we decided to take a different approach to understanding these dynamics. Rather than looking at police action from the perspective of users, human rights organisations and documentary sources, we felt that it was important to craft an understanding from the engaged perspective of operationally active police officers themselves. We believed this was the only way to gain insight into the police's assumptions (false or not), but also to understand the various factors that lead them to particular sets of tactical responses. To do this we decided to become part of the mix by getting into police vans, accompanying them on operations, and by engaging with the police in fairly informal conversations.

The complexities of taking an ethnographic approach to understanding the policing of drugs were obvious to us. We had to find a police agency that was prepared, from the top down, to take the risk of allowing us into the world of everyday street-level policing (Marks, Wood, Ally, Walsh, & Witbooi,

2010, pp. 112–118). We also had to consider two further prerequisites. Firstly, we had to select a geographic area where street level drug use is a known 'problem'. Secondly, we had to identify a police agency in that space that was willing to engage in a collaborative endeavour. We found such opportunities to exist in the South African city of Durban, with one of the city's law enforcement agencies.[1]

Why Durban? In recent years there has been a flurry of public concern – from Durban residents and local government – about the rapid spread and visibility of street level drug use/users and dealing/dealers. A drug commonly known as 'whoonga' – a highly adulterated concoction of B-grade heroin, purportedly mixed with a range of additives including rat poison and a variety of other toxic chemical compounds – has rapidly increased in prevalence in many local Durban communities over the past decade, yet has only garnered public attention in the last few years when its use, and users, became very apparent in the inner-city and surrounding suburbs. Large 'communities' (up to about 400 at a time) of whoonga users started living in a public park and were increasingly deemed responsible for the growth of petty crime and grime in and around that area (Coppen, 2014). Part of the moral panic that resulted from the public face of whoonga was centred on a generalised belief (with very little supporting evidence) that antiretroviral medications were being added to the whoonga mix, an association that has been seen in other parts of the country with regard to 'nyaope' (Grelotti et al., 2014, pp. 511–518).[2] Not only is whoonga cheap and easily available, but according to South African drug experts it is also highly addictive with severe withdrawal symptoms, often leading to violent outbursts (Farley, 2014). While a city level inter-governmental task team was established in mid-2014 to deal with the 'whoonga crisis', the police were tasked with getting users and dealers out of the park and off the streets. Thus began the 'whoonga wars'. Importantly, the law enforcement agency that took the lead on these concerns was the one whose main responsibilities are normally the enforcement of bylaws, traffic regulation and crime prevention.

In early 2015 the authors began a negotiation process with high-ranking officers in the agency so as to facilitate a short term ethnographic study of the policing of street-level drug use. Access was given, largely we believe due to fairly long term and constructive engagements between one of the authors and these officers. While no prescriptions were made with regard to the nature of the data that we collected nor how this data was used, there existed an implicit understanding that no harm would be done to the police (individually or organisationally) as a result of this research. The authors were required to sign indemnity forms drawn up by the organisation, and were required to wear bullet proof vests at all times during the police operations. Aside from this we were given fairly unconditional access to the crime prevention team involved in 'drug operations'.

Before we climbed into the back of the police van, the head of the crime prevention team that we were to be joining invited us to a briefing conversation and group discussion. He explained the operational goals and tactics of his team in policing drugs, and we were able to have an open conversation with the entire team before heading out onto the streets. Our 'in-and-out' ethnographic journey with the police lasted two days and two nights in early May 2015. Our conversations with police officers on the subject of policing street level drug users and markets have continued since, both in Durban and in Cape Town. The team we joined, all of which were men, wore plain clothes (although they were often so familiar to some users that this did not serve to make them inconspicuous), and all would be broadly categorised as 'people of colour' – five of Indian origin, one mixed race and one black African to use the South African classificatory schedule. On appearance, their ages ranged from 25 to 45. Importantly, they all performed their identity very much in a manner similar to many of the drug users, wearing very informal clothes, sporting earrings, tattoos, and 'grills' (gold plates covering their front teeth).

The ethnographic experience not only helped us to observe (and make sense of) the tactics used by the police, but also to unravel the assumptions that street level officers hold and to explore where these assumptions come from. These assumptions pertained to how they understood their work as police, as well as their interpretations of drug use and drug markets. Assumptions are incredibly important; they are the building blocks of subcultural patterns of behaviour (or habits),sustained through a multiplicity of discreet practices and actions, and structured and reinforced by policy frameworks, organisational rules and reward systems. Collectively, assumptions provide the scaffolding on which

broader narratives, such as specific institutional cultures, are built. Policing the streets on an everyday basis provides new layers and lenses to police understandings of street level drug use, often reinforcing the field but occasionally subverting it. Indeed, fundamental changes in police cultural practices ultimately require shifts in basic assumptions, supported by the structural field in which policing takes place (see Chan, 1996; Marks, 2008, pp. 866–888).

In addition to the moment-immersed understanding that was acquired, the ethnographic voyage provided us with the 'credibility' to engage in further conversations with police officers at all levels. The ethnographic journey allowed us to understand both the discretionary agency and the structural constraints that make up the behavioural matrix in the policing of street level drug use. It is to this matrix that we now turn.

The day-to-day policing of street-level drug use and trafficking in Durban

All seven members of the team, and their Captain, were part of the briefing meeting. A number of contradictory assumptions emerged here. For the most part, the officers spoke of how controlling and rescinding the street-level dealing/use of illegal drugs was part of their mandate as law enforcement officers. They used a number of tactics to achieve this, the most common being 'buy and bust' manoeuvres. In essence, the police drove around in their vehicle keeping a close eye for any street-level drug sales. This, they believed, would lead them to the runners and dealers, who interested them far more than the actual users. Yet while users were not viewed as the key targets of arrest, the clear message from the rank-and-file in this meeting was that users were degenerate members of society who needed to be 'fixed' and removed from public spaces. They believed that this 'fixing' could take place in prison, both as a function of their confinement and forced detoxification.

During the debriefing meeting, the Captain in charge made an important declaration. He stated, with his members present, that the policing tactics employed were having no discernable positive effect. The market continued unabated, and dispersal tactics simply made the job of the police more difficult. Previously confined to a public park, users were now scattered throughout the city, creating what he described as a 'policing nightmare'. By his own admission, the police had no means of mapping where users (mostly of whoonga) now lived, generated money, and transacted. However, he explained, dispersal tactics were forced upon him and his line managers by city politicians who were themselves under public pressure to 'clean the streets of drugs'.

With the debriefing meeting complete, we got into the back of the police vehicle – two academics with seven officers uncertain about what to expect. The first thing we were asked was whether we wanted to wear rubber gloves. We were told that this was a good idea as the street users were 'dirty' and 'diseased' and that touching them would not be a good idea. They were viewed, in the police mind, as low class 'scum' (Loftus, 2007, pp. 181–204) who paid scant attention to health and hygiene. As the unmarked police van pulled out, the cops knew exactly what they were looking for. They had an eye for the subtlest of interactions, most of which took us completely by surprise. Shortly after we left the police station a fairly well-dressed woman was spotted at a distance. The police felt she looked out of place in the area, and pronounced that she had bought whoonga through a hole in a fence. Neither of us had seen this, and we were doubtful that a chase would amount to anything. Despite the maze of buildings and people in the vicinity, the team was determined to find her and eventually two of the police officers apprehended her. She had money in her hand but, on seeing the officers, the seller had run away. Once apprehended, the police proceeded to interrogate her about her activities. Initially she denied that she had been in the process of buying whoonga but eventually admitted that this had been the case. Tearfully she revealed that she was a user but was trying to come off the drug as she was fighting for custody of her young children. She claimed that she had started using methadone to replace the whoonga but that she was running out of methadone and she did not think that she would be able to afford to buy more from a local private pharmacy. Opioid substitution is not available from the public health sector, and methadone is only privately dispensed at expensive rates. Whoonga was

cheaper. Knowing that she was about to experience serious withdrawal symptoms, she had made the choice to buy whoonga on the streets despite the known risks.

The police officers' responses were ultimately dismissive. One of the officers gave her a lecture about making bad life choices, and told her she could change her life if she wanted to, just as he had given up smoking for the sake of his children. Believing that she made bad life choices, as stated a few times in their interaction with her, the police related to her in a harsh manner. The young woman was clearly upset and somewhat disoriented. In the end, and with some coaxing from the researchers, the police drove her to a taxi rank and put her on a minibus (public) taxi home, but not without telling us, with a dose of police cynicism, that we should not take her claims as truth.[3] In reflecting retrospectively on this incident, the police were probably correct about her lack of authenticity in the telling of her 'story'. She seemed unfazed when she got into the minibus, and it was clear that this was not her first (or last) encounter with the law – when asked to produce identifying information she immediately and without prompting listed this information in the format it is usually asked. Regardless, this experience undoubtedly reinforced police beliefs that users are unreliable 'witnesses', even of their own lives. Yet despite this they were able to see the mother behind the user, and this seems to have contributed to their decision to steer her homeward.

As our time together continued, we became increasingly aware of how the police used their individual (and group) discretion to determine how to respond to particular situations and persons. The 'law' and organisational rules did not always trump situational decision making. While more than ten people were apprehended during the time we spent with them – either for possession of illegal substances or for suspected dealing in these – only a minority of these suspected 'offenders' were actually formally processed at the police station. On one occasion a foreign national suspected of dealing was released after being held for many hours in the van. His release was fortuitous: it was lunchtime and there was nobody to watch over him during the team lunch break. Aside from the inconvenience of holding the suspect, it was also apparent that the evidence against him was thin. A hasty, bothersome arrest was, the police seemed to think, not likely to yield any positive results.

In another case the police arrested an under-age male who was smoking crack cocaine on the outside steps of a building in the late hours of the night. This homeless 16-year-old was treated with very little respect or dignity. The police kept him on the floor of the van for about two hours, taunting him the entire time.[4] He was visibly anxious and scared. Eventually he too was thrown out of the police van after being held for about an hour, but only because of the arduous requirements of processing under-age arrestees. A due process arrest of this young person would have required social services to be brought on board, and since it was night time, the police would have had to keep him in custody until the next morning. This conflicted with the end time of their shift.

The last arrest case we discuss here is that of a 24-year-old man who was picked up at a taxi rank. The police had been unobtrusively observing him for about twenty minutes and suspected that he was carrying a substantive amount of whoonga on his person. It turns out they were correct. He too was literally thrown into the police van. Initially timid, he became talkative when the police (misleadingly) promised that they would pay him if he provided information about his dealers, and that he would be released. An 'agreement' was struck. Winston (a pseudonym) took us to a dilapidated building and went to see if he could find his dealer. He could not, but he provided the police with what they appeared to think was useful information about the precise location of the dealers within the building.

In conversing amicably with him while he was in the van, Winston shared with the cops that he was a young father desperate to ditch his habit and provide a decent life for his baby and wife. He too had bought methadone, but had not yet used it as he had been told that taking both methadone and using whoonga could be fatal. The methadone was in his flat, untouched. He said that he had acquired it from a doctor who was selling it without asking for (or providing) a prescription, and with no proper support or oversight for using the methadone. What he was telling us, in short, was that medical professionals were involved in the facilitation of an active illicit market of a licit, but publicly unavailable, opioid substitute i.e. methadone. Subsequent investigation by both the authors and the police has proven that the black market of methadone, mostly run by doctors and pharmacist, is extensive in Durban.

Winston too was released without being processed. He was not paid, as promised, but the police kept their word in letting him go. Of all the people arrested in our time spent with them, Winston was the one they seemed to warm to the most. Perhaps they could empathise with his struggle with substance use, and the impact this was having on him as a young man of a similar socio-economic background to many of the officers. Perhaps his friendly disposition and relatively clean appearance allowed them to see the person behind the drugs.

While these police interactions with users is seemingly callous, it is important to bear in mind that in the context of Durban it is the police alone who engage with drug users as governmental representatives. They are the first and last responders when it comes to street level drug users, with almost no referral agencies available to them. The police experienced this as extremely frustrating, particularly in regard to under-age users. Despite the quest to make arrests, there was tacit knowledge, intermittently vocalised, that in the broader scheme of the drug market economy and its regulation, the existing police strategy was both ineffective and a waste of time. The same users and (small time) dealers were rotating in and out of the vehicles – 'frequent flyers' or 'regular customers' – and by their own admission the local drug market was expanding, not shrinking.

Throughout the period we spent on the streets with the police, we observed (and participated in) a fair amount of banter. Banter is important as it is a form of expressive talk that gives meaning to the intrinsic complexity and contradictory everyday occupational experience of the police (Waddington, 1999, pp. 287–309). The police we were 'in the mix with' made fun of both their own work and of the people they were policing. They acknowledged time and again how the pressure to make arrests led to a fairly senseless and time wasting activity of apprehending street level users (easy targets) with the knowledge that most would not be formally processed either at the station level or by the courts. While they did state that they believed that spending time in prison could lead to 'forced detox', this view directly contradicted their actual experience of 'picking up' the very same users time and time again. They spoke about users they knew well (including some who were arrested during our time spent with them) who circulated in and out of prison, still using drugs and sometimes 'graduating' to selling. At a profound level the police were aware – from their street level experience – that prison was neither a deterrent nor a cure for 'addiction'. They joked about every shop in the CBD area being a front for drug production and sale, indicating an inferred wisdom about drug market and drug use proliferation. Their banter was laced with frustration about the lack of services available to police and to drug users and the harm this was creating to individuals, families and to the police organisation itself.

The pressure to make arrests contradicted their tacit knowledge of the (negative) use value and ineffectiveness of this policing approach. Their harsh dealings with 'dirty' users were combined in complex ways with an understanding of the hopelessness of the users' situation and that of the police, who in one of the officer's own words are 'simply in the job of recycling users and dispersing the drug problem'. They found this work routine both senseless and tedious. A conflict existed between the assumption that users should be arrested both in the interest of the 'public good' and the police organisation, and the deep-seated knowledge that in real terms this strategy was proving a failure. In addition, the cops we spent time with did not view this low-level business of arrest as their reason for joining the police in the first place. That they frequently let apprehended users go without processing them also indicates that they invariably do not see these people as potentially dangerous or threatening. In contrast, it would be highly unusual if the police 'set free' individuals suspected of crimes such as robbery, murder or damage to property – the result of 'real' policing work.

The potential beneficiaries of a harm-reduction programme in Durban: drug users and the police

Our time spent with the police indicated that they lacked any formal knowledge of harm reduction philosophy or practice. None of those we spoke with had read the National Drug Master Plan, nor had they probed alternative approaches to policing street level drug use and markets. This is not unique to South Africa. Even in police organisations in countries with more progressive drug programmes

and policies, such as Australia (see for e.g. Maher & Dixon, 1999, pp. 488–512), police see their role primarily as law enforcers. This often translates into police responses that counteract harm reduction programmes (see Beletsky, Burris, & Macalino, 2005, pp. 267–274).

In the Durban context, we believe, the greatest structural constraint for the police in facilitating and even supporting harm reduction programmes is existing law enforcement-oriented drug legislation and police organisational targets. In South Africa, high arrest statistics are unequivocally viewed by those responsible for performance management as a sign of good police work and management (see Bruce, 2011). This is further fuelled by political pressure placed on police agencies to clean public spaces of drug users (and dealers) who are seen as creating public health problems and disturbing the public peace of 'decent' citizens. This 'field' of policing, as Janet Chan (1996) puts it, thus shapes the everyday 'habitus' of the police in very direct ways.

However, the field does not determine the habitus of the police in a linear or straight forward way. Amongst other reasons, this is because 'law on the books' and 'law on the streets' (Beletsky, Burris, & Macalino, 2005) do not align. The rough law on the streets carried out by the cops is to some extent the upshot of their daily occupational reality where they come into direct contact with the most highly addicted and at-risk populations. In these spaces they are acutely aware of the dangers and damage that habitual use of illicit drugs, particularly in countries where drug use is criminalised and where there are limited resources for assisting drug users to reconnect and reintegrate. While on the one hand this working reality may lead to strong resistance to harm reduction approaches and initiatives, it can also have the opposite effect, with police becoming the leading proponents of harm reduction. We believe that this possibility exists in Durban and South Africa more broadly catalysed by policy incoherence and paradigm shift as well as by the existing dissonance in basic assumptions about drug use markets, drug users, and effective police strategies.

The conflict in assumptions and the wavering support for a zero tolerance approach to drug use was shared by higher ranking police officers from the two main police agencies operative in Durban. Following our ethnographic journey with the police, both authors held 1–2 h long conversations with seven senior police officers, six in Durban and one in Cape Town (where one of the authors is based). What emerged in these conversations was a deep frustration regarding the push to make arrests. One of the SAPS Brigadiers in Durban revealed that he had recently written to the SAPS Provincial Task Team to inform them that arresting users was a waste of his officers' time. In this email which he shared, he requested a rethink of the police target system as it pertains to the policing of drug use. Another, in Cape Town, had collected empirical evidence of police operations which indicated that users, rather than dealers, were being targeted by the police. He argued that even though it is known that arrests of users are largely ineffective, they do not arrest dealers because to do so would prevent them meeting their performance targets as dealers are far harder to apprehend. The pressure of the prescribed year-by-year increase in arrest rates (as set by SAPS targets) was viewed not only as unproductive in the 'fight against drugs', but also as hindering police involvement in more serious crime and public order issues.

Toward the end of a deliberative conversation with the Durban-based Brigadier, he stated with conviction that he would strongly support an Opioid Substitution Therapy (OST) programme in Durban. He provided four reasons. Firstly, having come to understand what OST is, he came to view it as a viable 'mechanism' for heroin users (whoonga in particular) to escape a life of illicit drug use linked to criminal behaviour. Secondly, if the police could refer users to an OST programme they would not be the sole agency dealing with users. Thirdly, relieving police of the pressure to arrest people would provide the 'space' for them to spend more time on their core functions i.e. dealing with serious crime, public disorder and investigations. Fourth, he believed, a properly run and accessible OST programme could in the long term 'strangle the demand for illicit opioids'. Without knowing it, this Brigadier was speaking directly to a harm reduction agenda.

Similarly, the SAPS Captain in charge of crime prevention in a low-income jurisdiction in Durban spoke of his vexation with the pressure placed on him and his team by the community policing forums to arrest street-level drug users. In his view, the consequence of this pressure from community

members in combination with those who measure police performance had disastrous consequences. As he put it, 'The more arrests I make the better I am viewed in terms of doing my work. If my arrests go down, my targets go down. This is so frustrating. But in all honesty what I think personally is of no consequence to the organisation that employs me.' Asked for his personal thoughts he promptly stated that what is happening with drug users on the streets of Durban is 'a travesty of justice'. In his view, users are people in need but find themselves 'in no man's land, shunned by their families, their communities and government. They are helpless and so are the police … Our system is callous and completely dysfunctional, and we as the police can't change that on our own. What they need, he stated, is 'safe spaces' to live and access to services to get their lives on track. Neither of these are available to street level users in Durban, or South Africa more broadly.

These more reflective responses are, we believe, hardly surprising. The police, after all, have the best possible knowledge of the complexities of both drug use and drug control. While the police on the street might be somewhat hardened in their response to users (as evident in their habits), they are well aware of the individual and social harms that drug use creates and the importance of reducing these harms. What they struggle with is thinking beyond the letter of the law and the operating standards (such as targets) and procedures they are expected to adhere to. The possibility for these policing habits to change so that they are more in line with a harm reduction approach is highly plausible given the ruptures in assumptions, the frustration with current strategies and performance management processes. In addition, there are important policy shifts in place most evident in the Drug Master Plans that would support police who champion a harm reduction approach. The idea of reducing harm to individuals, families and the police while simultaneously reducing 'proper' crime levels could potentially be very attractive to the police in South Africa.

Indeed, police are the architects and champions of harm reduction in numerous countries and cities (Ritter, Bammer, Hamilton, & Mazerolle, 2007, pp. 265–271). In many countries, both resource rich and resource poor, they are at the forefront of harm reduction interventions, and play a key role in the operation of drug consumption rooms, drug overdose prevention and drug referral schemes (see Monaghan & Bewley-Taylor, 2013; Caulkin & Reuter, 2009, pp. 9–23). The police in Copenhagen have dramatically shifted from a zero-tolerance approach to a non-enforcement approach in the policing of drug scenes, particularly in the neighbourhood of Vesterbro. Shifts in public policy toward harm reduction approaches has allowed police to become the most avid protectors of consumption rooms as a safe and regulated space for drug users (Houborg et al., 2014, pp. 261–291). Some police leaders take an even more radical stance, accepting that drug use is not going to disappear, that users are a vulnerable group, and that victimisation intensifies the problems of the police and public health sectors. Recently the Chief Constable of Durham (UK) publicly committed himself and his department to ceasing the arrest of drug users. He has advocated for registered addicts to be given free heroin and for consumption rooms to be made available as an important means of reducing both harm and crime levels (Evans, 2015).

Conclusion

Police officers, like many academic researchers and drug users, know that hard tactics like dispersal and arrest have little or no positive impact on the illicit drug use landscape. Demand for illicit drugs is on the increase and in relative terms, drugs are becoming more easily available and cheaper. Furthermore, in Durban as elsewhere in the world, dispersal has quite simply extended the web of transaction spaces and public health problems. While police are well aware of the fact that their tactics are ineffective, their actions are heavily determined by the structural field in which they work (in particular the 'law on the books'), combined with common-sense assumptions informed by popular opinion, dominant policing legislation, and daily interactions with street level users. However, the biggest obstacle to transforming their habitual responses to street-level drug users is the centralised quantitative performance targets they are expected to reach mostly in the form of arrests.

However, our ethnographic exploration revealed that the police themselves question their daily operational schemas and the enforcement approach to dealing with street level drug use. They are well aware of the relative uselessness of ongoing arrest of street level users and of dispersal strategies. The outcomes of these strategies foster frustration amongst police officers. It is therefore not surprising that when on the streets, the law on the books becomes somewhat reinvented as police use their discretion and even lever their empathic capacity when dealing with individual users.

The police are stuck in a structural field that demands responses that are neither effective nor even comfortable emotively for police officers. It is therefore not surprising that when engaging in deeper level conversation with officers both while in operations and in more informal deliberation sessions, police were tentatively optimistic about the possible virtues of having harm reduction programmes available for street level users. They were particularly keen on having publicly accessible OST services and even drug consumption rooms. Such services, they believed, would allow the police to play a more effective regulatory role while being part of programmes that are far more likely to reduce users' involvement in criminal activities. They were far less supportive, however, of needle syringe programmes believing that these encourage users to move from smoking to injecting and fearing that poorly disposed needles present a danger to police and to the broader public.

In short, what emerged through this research process was that deliberative engagements with police officers which take into account their daily realities and sense making have the possibility to shift basic assumptions which themselves are fragmented. Harm reduction may not currently resonate with the law on the books, but it deeply resonates as a way of reducing wasted time and energy on the part of the police and in reducing the very visible harm to individuals and communities as a result of illicit drug use. This, we believe, is already embedded in the police's tacit knowledge derived from their everyday experiences in doing policing. Shifting police strategies away from a zero tolerance approach toward one of harm reduction is possible given existing gaps in policy that pertains to the regulation of drug use, as well as a discernible dissonance in police assumptions about drug users, policing strategies and police work. Their lack of conviction about the zero tolerance approach is abundantly evident in the highly discretionary manner in which they deal with the users that they apprehend. The view that the police are unreflective enforcers is simplistic and inaccurate.

However, for the police to be co-producers and champions of harm reduction programmes, what is required is a process of sense making from their perspective and ways of addressing the structural constraints they face daily in doing things differently. At the same time, academics need to refrain from using glib schemas of 'police culture' in explaining the policing of drug users. The challenge to academic researchers is to be in the mix with the police on the ground, making sense of their realities and helping them to translate these into outputs that are beneficial for them and for populations at risk, such as drug users. Furthermore, academics can play an important role in working collaboratively with the police to facilitate policy shifts in regard to drug use and possession so that it fits more closely with the sense making of the police. The police, as we have seen, are well aware of the harms created to drug users and to themselves in the current enforcement based policy environment. It is therefore not implausible that they could be leading actors in crafting a much clearer harm reduction policy framework in South Africa and policing outcomes that are more outcome oriented.

Notes

1. This research has full ethical clearance from the Institutional Research Ethics Committee, Durban University of Technology. This ethnographic research forms part of a broader researcher project entitled 'Invisible lives: Pathways into and out of street level drug use in Durban'. This research makes use of a number of research approaches including ethnography, mapping and case study research.
2. There is still some disagreement in the literature concerning the composition of 'nyaope', with some toxicology tests having found traces of ARV-related chemicals. For the purposes of this discussion, the difference is primarily linguistic. 'Whoonga' is mainly consumed in Durban, a predominantly isiZulu-speaking area, while 'nyaope' is mainly consumed in Johannesburg and Pretoria. Both have as their primary active ingredient very low-grade, highly adulterated heroin.

3. The researchers made use of a participant as observer method as part of this ethnographic journey. While the researchers did not 'go native', they acknowledge that their active participation in the conversations and the events they were embedded in did lead to some degree of 'co-produced' knowledge. We immersed ourselves in our host grouping i.e. the police. While at no point did we become members of the police 'society', we participated more actively than a 'pure' observer would. This type of immersion is fairly common in ethnographic research in morally compromising situations (see for e.g. Rodgers, 2001; Winslow, Hobbs, Lister, & Hadfield, 2001, pp. 536–548).

4. We did observe behaviour on the part of police officers that could be considered as 'abusive'. This is what Thomas and Marquart (1987, pp. 81–96) refer to as 'dirty information'. The resulting ethical dilemma, between intervening and observing, arose numerous times and in this instance we decided that it was not for us to intervene. Like Reiner (2000, pp. 343–374) and Van Maanen (1982, pp. 227–251), we approached the research in a pragmatic manner which required that we do not undermine the activities of the officers, irrespective of whether we disagreed with them. To do so would have fundamentally altered the research relationship. As Punch (1986) correctly states, ethical codes do not always provide the answers to morally compromising situations, particularly with regards to ethnographic research.

Disclosure statement

No potential conflict of interest was reported by the authors.

Notes on Contributors

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Debate

Finding solid ground: law enforcement, key populations and their health and rights in South Africa

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Abstract

Introduction: Sex workers, people who use drugs, men who have sex with men, women who have sex with women and transgender people in South Africa frequently experience high levels of stigma, abuse and discrimination. Evidence suggests that such abuse is sometimes committed by police officers, meaning that those charged with protection are perpetrators. This reinforces cycles of violence, increases the risk of HIV infection, undermines HIV prevention and treatment interventions and violates the constitutional prescriptions that the police are mandated to protect. This paper explores how relationship building can create positive outcomes while taking into account the challenges associated with reforming police strategies in relation to key populations, and vice versa.

Discussion: We argue that relationships between law enforcement agencies and key populations need to be re-examined and reconstituted to enable appropriate responses and services. The antagonistic positioning, ''othering'' and blame assignment frequently seen in interactions between law enforcement officials and key populations can negatively influence both, albeit for different reasons. In addressing these concerns, we argue that mediation based on consensual dialogue is required, and can be harnessed through a process that highlights points of familiarity that are often shared, but not understood, by both parties. Rather than laying blame, we argue that substantive changes need to be owned and executed by all role-players, informed by a common language that is cognisant of differing perspectives.

Conclusions: Relational approaches can be used to identify programmes that align goals that are part of law enforcement, human rights and public health despite not always being seen as such. Law enforcement champions and representatives of key populations need to be identified and supported to promote interventions that are mutually reinforcing, and address perceived differences by highlighting commonality. Creating opportunities to share experiences in mediation can be beneficial to all role-players. While training is important, it is not a primary mechanism to change behaviour and attitudes.

Keywords: law enforcement; HIV; key populations; relationships; policing; South Africa.

Introduction

The nature of relationships and hierarchies between institutions and social groupings in society affects health and wellbeing in complex ways. For those who are already marginalized, such social dynamics can serve to undermine or strengthen their resilience. The effects of such dynamics may be redesigned to mitigate negativity [1]. Here we speak specifically to law enforcement agencies and key populations (KPs), defined by the United Nations Joint Programme on HIV and AIDS (UNAIDS) as social groupings that are among the most likely to be exposed to HIV and who are negatively affected by punitive laws and stigmatizing policies [2,3]. Although the South African Constitution procedurally mandates the freedoms and services needed to support such KPs, both sex work and drug use remain illegal [4–6]. Sex workers (SWs); people who use drugs (PWUDs); gay, bisexual and other men who have sex with men (MSM); lesbian, bisexual and other women who have sex with women (WSW), and transgender people (TG) are at higher risk of HIV infection than the general population [7–12]. However, emerging evidence reveals that they are particularly affected by discursive and physical abuse, stigma, discrimination and exclusion [7,11,13–17]. Moreover, public opinion in general tends to reinforce heteronormative, politically driven and morally based frameworks that have negative health and socio-economic consequences for these groups of people [18–20].

Engagement between KPs and law enforcement

KPs in South Africa have reported multiple forms of abuse perpetrated by police officers. SWs' experiences of harassment, assault, rape, extortion and condom confiscation by police officers and the denial of access to medication while in custody are well-documented [21–25]. Similarly, research confirms that stigma and discrimination on the basis of sexual orientation and gender identity by police officers occurs both within communities and in police facilities [16,26–28]. At a national consultation in Cape Town in 2014, PWUDs identified negative engagement with law enforcement as their primary

concern [29]. This was confirmed during a 2015 programmatic mapping study [30], and in a report highlighting PWUDs' experiences including harassment, violence, the confiscation and breakage of injecting equipment, and extortion by law enforcement officers in three cities where a needle and syringe programme is operating [31].

Law enforcement efforts are nonetheless a vital service; thus, working with law enforcement agencies to improve public health in South Africa is crucial [32,33]. Despite limited data on the comparative effectiveness of different law enforcement interventions to reduce HIV-related risks and improve the health outcomes of KPs [32], there are examples of law enforcement champions, training and meaningful engagement that have brought about change [34,35]. Notably, these include the "Pink in Blue Amsterdam Police lesbian, gay, bisexual and transgender (LGBT) Network" ("Roze in Blauw"), which has improved the safety of LGBT people for over 15 years by providing contact points to access police services [36]. Closer to home, in Kenya, the institutionalization of training around sex work, health and rights at the Nyanza Provincial Police Training Centre, which had trained over 600 officers by 2015, has improved relationships, reduced violence and increased access to law enforcement services [35]. In Dar es Salaam, support from the National Police Commissioner and the training of law enforcement officers on harm reduction has led to a recognized reduction in drug-related harm and crime [37].

Law enforcement reform
Changes in policing practice in South Africa have been slow, despite increasing global emphasis on encouraging environments to eliminate stigma and discrimination and enable access to health services [11,38−40]. Many recorded instances of police practices have humiliated and degraded individuals and purposefully compromised their access to health services, especially KPs [20,25,41,42]. However, these concerns have not received significant national attention; nor have the drivers or determinants, such as the relationships between officers and KPs, come under sufficient scrutiny [42]. Indeed, many past interventions aimed at implementing alternative approaches to deal with KPs have been rejected and ignored, or have not facilitated the redirection of the day-to-day acts and relationships that define policing at the community level. In 2012, for example, significant pressure from civil society was required to obtain authorization from the Deputy Minister of Police to enable 80 police officers to receive sensitivity training around sex work. However, the training has not been scaled up or included in police training curricula [43]. As a result, the antagonistic relationships that heighten the risk of violence and abuse against KPs continue and/or increase [2,24], despite public litigation efforts to reinforce the constitutional rights of citizens and the creation of enabling environments, particularly for SWs and TG people [44−46].

In reviewing the records of problematic events, it is clear that police officers are often the primary responders and representatives of governance, and therefore cannot simply be ignored. Indeed, we argue that not only should law enforcement be included in such measures, but that they could become enablers of more appropriate responses and services, ironically because they frequently engage with and have a unique "understanding" of KPs. This dynamic is clearly reflected in a Durban-based project, discussed below. This understanding could become the basis for supportive interactions that could contribute to an effective HIV response. That said, police officers and agencies do not operate in a vacuum; their structures and organizational cultures may incorporate more widely shared understandings of KPs, gender, violence and other social factors [47,48].

Though a detailed discussion of South African policing "culture" is beyond the scope of this paper, it is critical to note that neither the institutions nor the relationships to which it speaks are stagnant. They are, therefore, sites of potential change [49]. To address these complexities, this paper draws on our experience and knowledge. Authors include South African researchers in the fields of criminology, gender and health, and KP HIV programme implementation, as well as a Dutch organization that has worked with sexual minority groups for over 60 years. We set out to review the literature and reflect on our programmatic and research experiences. We used these activities to explore alternative ways of understanding, communication and collaboration between police and KPs to improve KPs' health and rights and the operational effectiveness of law enforcement. The paper aims to contribute to an emerging scholarship on the relationships between law enforcement agencies, violence and public health [32].

Discussion
Effective social and institutional interventions require a combination of processes that include reflective and experiential education programmes, and the mutual commitment of stakeholders [50,51]. Moreover, sustainable change requires that interventions "fit" with relevant constitutional and legal principles [52]. In line with this, the development of supportive relationships between law enforcement agencies and KPs cannot be forced or entered into solely from one perspective or another. Rather, it is to *each other* that such concerns need to be directed and promoted, through the crafting of a common language (and understanding) that is meaningful to those affected. This could engender shared responsibilities, which prevent the cyclical forms of antagonism and violence that undermine or prevent interventions. Moreover, hostile, unsupportive and/or distrusting relationships retard development with deleterious consequences for the health of KPs as well as their behaviours in seeking law enforcement services [38]. It is thus in the interests of both "parties" to find a common language. Such commonality can only be created in spaces in which conversations are bidirectional. Without such shared conversations, power disparate relationships are likely to continue and be reinforced [53]. Such spaces of engagement should therefore encourage honest and non-offensive communication that recognizes uniqueness, divergence in opinions and the capacity for change [54].

The prioritization of similarity rather than difference is a useful focal point [55]. This is evident in the shifts that have already taken place in South African policing agencies in the past two decades around rights, HIV and diversity. For example, the South African Police Service's Code of Conduct

reflects the South African Constitution, with members undertaking to ''uphold and protect the fundamental rights of every person'' [56]. A comprehensive Employee HIV Programme is in place [57], and the South African Police Service has become more responsive to the need for a sensitive approach to HIV [57].

Lessons learnt from the organizational shifts that have occurred could inform police reform in other areas, including KPs. The examples above, acknowledgement of the high levels of alcohol and drug use among police officers [58] and the stated need to prioritize employee wellness, including HIV prevention and treatment [59], provide an opportunity to speak about other concerns. Moreover, in replicating the pre-existing structures that have shown success—and that draw on relational understandings—such interventions can be positioned as efficient, familiar and effective, which may further increase the likelihood of adoption and uptake.

Such engagement and related training is evidently needed, as power differentials between individuals and groups can affect the outcome of engagements, usually in favour of the more powerful party [20]. Despite similar backgrounds, engagements between law enforcement and KPs have, for the most part, been antagonistic with the police often asserting their legal and situational power [43]. It is therefore not surprising that, in June 2015, SWs participating in a workshop in Cape Town, attended by representatives of 26 organizations, reported more instances of harassment, bribery and violence at the hands of law enforcement agents than positive, supportive and respectful engagements [60], a clear reflection of the evidence cited earlier. Equally, KPs' behaviours towards law enforcement are often hostile and may escalate police aggression [60]. This fuels antagonism and distance between KPs and law enforcement officers, which, in the context of unequal power, can lead to police violence, discrimination and abuse [61].

What can we learn from this? In the first instance, interventions aimed at more sensitive relational outcomes would allow the parties to acknowledge their personal, social and structural challenges [62]. Reflective and candid engagement has a better chance of enhancing ''understanding'' than laying complaints and demands squarely at the feet of police officers or blaming KPs for a range of social ''ills''. The starting premise of the police as the root cause of deteriorating community relations, who trigger or exacerbate the vulnerability of hard-to-reach groups, alienates the police from interventions, disempowers KPs and blocks constructive relational possibilities [63].

Neither the police nor KPs are immune to change, but equally, neither wish to be the target of blame. There is no single police understanding; police officers' responses to KPs differ and may be incongruous, as is generally the case in the policing of marginalized groups [64]. The practices of the police are shaped by their everyday interactions on the streets and through reflective engagements with KPs, rather than through formal training [65].

Establishing relationships and creating a change agenda

Below we outline several on-going initiatives that are being led by universities and civil society organizations in South Africa. We believe that these projects offer constructive opportunities to shift relational paradigms between police and KPs.

Since 2014, researchers based at the Urban Futures Centre at the Durban University of Technology have forged close links with police agency units engaged in the policing of drug use and sex work in the city [66]. Over the past year, ethnographic journeys in police vans, discursive workshops and the secondment of law enforcement officers to university spaces have taken place. Civil society organizations experienced in providing HIV-related health services to SWs and PWUDs have co-facilitated workshops where police ''thinking,'' questions and dilemmas have framed the flow of conversation [43]. Immediacy has been used as a tool to enable open conversations about personal dilemmas, including personal experiences of substance use and living on the street. These efforts have improved trust and led to mutual respect for one another's expert knowledge and have identified alternatives to the ''traditional'' policing of KPs. Police support for needle and syringe programmes and training opportunities have been discussed. During these discussions police officers highlighted the need for changes in performance management (especially the use of arrest ''quotas'') [43,60]. They also highlighted the need for appropriate authorization to prevent ''dereliction of duty'' [43,60]. A police officer shared the effects of these engagements with an academic researcher: ''Since I met you, you have made me softer. I have let go more than 50 drug users that I would otherwise have arrested.'' We expect that our efforts to shift policing practice will in turn lead to KPs relating to the police in new ways.

In general, working from the ''top-down'' with police agencies is critical for organizational change [52]. Law enforcement agencies function and are governed through substantive law, accompanying regulations, National Instructions, Standing Orders and other related policies. Application of and compliance with these ''orders'' is monitored by police oversight mechanisms and Parliamentary Portfolio Committees, which are hierarchically structured [47]. Although the processes are complex and often slow, paradoxically perhaps, the same top-down, rule-focused nature of these organizations makes police organizational change fairly simple [42]. Memoranda of understanding between law enforcement and civil society organizations and ''high-level'' police commitment are critical for institutional change and could break the back of ''tried and tested traditions,'' as has been experienced by researchers in both Cape Town and Durban.

Speaking to this, a pilot training module for law enforcement agencies is planned aimed at improving relationships and engagement with KPs. Attempts to obtain high-level approval from the South African Police Service for this project is still pending, eight months after the submission of the proposal. Efforts are now being channelled through the African Policing Civilian Oversight Forum to access high-level groups of police officers who are committed to police accountability and human rights to catalyze this initiative. Rather than approaching the police directly with a set of tools for additional sensitization training, we argue that it is more strategic to create change that aligns with police concerns and commitments to policing accountability that is itself oriented

towards the affirmation of human rights [52]. By engaging the police from a police oversight perspective, we hope to promote understanding and realign relations between law enforcement and KPs with broader strategies aimed at more accountable, effective and just policing practices. The training aims to address an identified need [67] even though the effect of formal training is limited and training lessons often shift dramatically when police are in their work environment [68]. As such, training will complement on-going interventions to improve the health and rights of KPs in South Africa. These include the documentation of violations experienced by KPs and efforts to increase access to justice [31,69,70]; peer-based KPs' rights literacy activities; capacity building of KP organizations and strategic litigation [30,39,60,71], measures that are being implemented by other civil society organizations. These strategies are recommended by UNAIDS to address stigma, discrimination and increase access to justice in national HIV responses [72].

KPs and law enforcement officers confront demands from their peers and organizational "homes." In the case of police officials, performance indices may impose "arrest quotas" that drive behaviours that target KPs [40]. Any change in the processes within law enforcement agencies must, therefore, be foregrounded and framed by parallel efforts to address these structural mandates and concerns, in order to open the space in which mutually advantageous relationships can exist. Similarly, some KPs may be antagonistic to any form of positive engagement with the police [42]. This, too, needs to be acknowledged and addressed with reason. Although the decriminalization of drug use and sex work, as recommended by the World Health Organization [73], is ultimately required to maximize the health, rights and wellbeing of KPs in South Africa, interim measures and the development of more effective intervention strategies remain important.

Conclusions
UNAIDS recommends training, increased access to legal services, improved rights literacy and policy change to address stigma, discrimination and barriers to justice in national HIV responses [72]. We argue that structural constraints – particularly legislation, performance management, accountability mechanisms, training and the physical conditions under which police work – need to be communicated to those who have the capacity and power to bring about change within law enforcement structures, while also working with street level law enforcement officers.

The effectiveness of planned interventions that improve the relationships between law enforcement and KPs, and ultimately the health outcomes of KPs, need to be evaluated to inform future police and health policy reform. In the interim, we suggest a few processes towards improving the health and rights of KPs in South Africa.

In developing a framework for implementation, first, negating "othering" is most likely to result from deliberative forums in which the constraints and possibilities of all groupings are brought to the fore and openly discussed. Solutions that benefit all parties should be identified as well as the constraints in implementing these solutions. Bringing law enforcement officers who work on the streets together with

KPs to find innovative solutions is a powerful starting point. Human rights, public health and risk reduction for all should be at the centre of such engagements. Universities and non-governmental organizations are well placed to facilitate such engagements.

Second, it is important to identify law enforcement officers who are champions of human rights-oriented policing, public health access and harm reduction. These champions should come from the apex of the organization as well as from the ranks of police officers who work on the street. Support should be mobilized from significant individuals and organizations for these officers to openly discuss their alternative positions and concerns. The champions would ideally work collaboratively with KPs and public health professionals to find shared agendas and workable interventions. This could be further bolstered by creating a shared language that allows for effective communication; safety outcomes, which include reducing public health risks, are terminologies that are fundamental to police and KPs.

Third, contrary to conventional thinking, it is important to recognize that changes in policy and training, although critical to long-term and sustainable police organizational change will not on their own lead to the required or desired shifts in daily behaviour. Rather, training is a tool in the structural field of policing that is necessary to enable and support daily behavioural change [74]. However, the real impetus for change in the habitus (or everyday responses and behaviour) is far more dependent on the basic assumptions that police hold about particular social groupings, forged while on the street doing police work and through facilitated deliberations and engagements that often take place outside of formal training programmes.

Finally, law enforcement agencies and individuals should be exposed to those who have been at the forefront of promoting human rights, public health and harm reduction based approaches. Exposure to peer organizations – through discussions, international site visits, and digital and social media – would go a long way in assisting them to find legitimacy and resonance.

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'Licking the snake' – the i'khothane and contemporary township youth identities in South Africa

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'LICKING THE SNAKE' – THE *I'KHOTHANE* AND CONTEMPORARY TOWNSHIP YOUTH IDENTITIES IN SOUTH AFRICA

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ABSTRACT

The *i'khothane* youth subculture is a relatively new phenomenon that has emerged in some of South Africa's townships. Characterised by the rampant consumption of certain goods, such as expensive clothing, the subculture is unique in that it is also defined by the destruction of these goods in performances known as 'battles'. Demonised by the media, we set out to explore what makes these practices meaningful to the participants themselves. On the basis of in-depth interviews conducted with the members of one group, we bring to the academic literature a scarcely analysed phenomenon that is nevertheless an acknowledged element of popular youth culture in contemporary South Africa. We attempt to place the practice of *i'khothane* within the context of the patterns of conspicuous consumption that have emerged in (a highly unequal) post-apartheid South Africa. While the practice of burning expensive consumer goods in public may seem alien, especially in contrast to the impoverished surroundings within which the *i'khothane* live, there are discernable and understandable reasons why the subculture has gained both popularity and notoriety. We show how the practice of *i'khothane* is a potent means of articulating youth identity in settings seemingly left behind by the 'new' South Africa.

Keywords: *I'khothane*, consumption, townships, subculture, poverty, youth

INTRODUCTION

The *i'khothane* youth subculture is a relatively new phenomenon that has emerged in some of South Africa's poorest townships. Loosely translated as 'licking the snake', the practice revolves around the conspicuous accumulation and consumption of expensive material items, such as branded clothing. These items are then destroyed, most

frequently by burning them, in ritualised confrontations or 'battles' (Nkosi 2011). Used as both a noun and a verb, the phenomenon first rose to prominence in the impoverished townships surrounding Johannesburg (Bambalele 2012). The subculture has, however, now expanded, with a number of groups or 'crews' 'representing' many of South Africa's major urban centres (De Kort 2012: 1–3).

I'khothane group members interact with other groups in ritualised confrontations, the purpose of which is to both display one's dancing prowess and to parade and importantly destroy venerated material possessions such as a pair of Gucci shoes or a Ralph Lauren shirt. The destruction of these expensive items of clothing is done in the name of 'respect' and 'having fun' (Interview 19 June 2013). As we explore, the display and destruction of coveted material possessions are a means of both garnering power and displaying specific understandings of taste and identity. Those who are willing to destroy the most expensive item of clothing, or literally tear up or burn the most banknotes (Bambalele 2012) win the confrontation, and in the process also win respect from the audience and other crews.

Variously described by community leaders and local politicians as criminal or morally problematic, the *i'khothane* have been vilified by the media (see, for instance, Petrus 2012: 2). However, relatively little attention has been given by the academic literature to understanding the phenomenon from the perspective of those who practise *i'khothane*, even though there have been numerous articles focusing on it online (see, for instance, Hayes 2012) and in the print media (see, for instance, Ndabeni 2012: 4–5; Petrus 2012: 2–3; Pongoma 2012: 6; Jordaan 2012: 4–5). Indeed, it is precisely because so little has been written on the phenomenon that we have had to frequently rely on media reports and articles to further qualify our claims. Furthermore, while there have been a number of very useful works on post-apartheid youth consumption (Moodley and Adam 2000: 51–69), materialism (Bevan-Dye, Garnett and De Klerk 2012: 5578–5586), and youth identity in South Africa (Dolby 2007; Swartz 2009), very little of this literature has been applied to the *i'khothane* phenomenon. The article aims to bridge this analytical gap.

With this in mind we have undertaken, in the first instance, to provide a thick description of the phenomenon derived from qualitative exploratory interviews conducted with a local crew. Secondly, and upon this basis, we have attempted to understand the rise, importance and meaning of *i'khothane* in the context of post-apartheid South Africa. Here we argue that the prominence of 'black diamonds' – the professional, powerful and extremely wealthy few who have benefitted disproportionately from South Africa's economic redistribution efforts – have provided symbolic role models for the youth, most of whom have consistently been excluded from South Africa's economic development. As Swartz, Tyler and Verfeld (2013: 27–28) have noted, 'In the "New South Africa", overcoming past racism and enduring present inequalities constitutes the experience of being South African for the majority of black South Africans.' The practices of the *i'khothane* are one such means of experiencing what it is to be a young

and poor South African. The celebrity of the likes of Kenny Kunene, the 'Sushi King' (known for eating sushi off the bare bodies of young women in his nightclubs) and Julius Malema, one time leader of the ruling party's youth wing (and known for his love of fine suits and Rolex watches) have glamourised the ideal of a material identity encased in fine clothing and expensive shoes. The *i'khothane*, by 'showing they can afford' (Interview 19 June 2013), pay homage to an understanding of post-apartheid black masculinity that must be seen as materially successful and sexually competitive. We explore this meaning with reference to the context of the emerging economy of South Africa and the high levels of inequality that still remain in the country.

There are a number of different crews in the country, practising *i'khothane* in somewhat different ways. While we make observations about some of the general features shared by different crews and how they are made meaningful within the larger context of South Africa, the article is based on in-depth qualitative interviews with a single crew in the Eastern Cape province of South Africa. As such it makes no claim to a larger representivity, but rather hopes to shed light on the moral and consumptive universe that the young men in our study inhabit.

THE STUDY

The conspicuous consumption of material objects, and especially clothes, has become an important identity marker for post-apartheid South African youth (Oliver 2007: 180–181). Indeed, in the 'moral ecology of the township', Swartz (2009: 41) has noted that 'for impoverished young people branded clothing is perhaps even more important than for their wealthy peers, since their contexts provide few opportunities for enhancing self-esteem – such as acquiring socially desirable jobs, property, or cars'. The *i'khothane* highlight this importance by taking consumption to its logical extreme – they are defined and consciously define themselves by the clothes they wear and destroy.

While many objects can be adopted as or become *i'khothane*, from the hiring of expensive cars to the feeding of one's dog with Kentucky Fried Chicken or the wasting of UltraMel custard, the focus on brand-name clothing is an essential way of displaying one's membership to the subculture (Mabandu 2012). We focus on two core themes that emerged from the analysis of the interviews. In the first section, the study focuses on the importance and context of clothing, the structure of the crew and the 'battles' they engage in. In the second the study focuses on the meaning of 'respect', 'having fun', and the construction of young black citizenship in post-apartheid South Africa. While neither section is mutually exclusive, their analytical division is a useful means of interpreting how the myriad symbols and subjects relate to one another.

The article gives voice to those who participate in *i'khothane* through their first-hand accounts of the practice. To this end we conducted in-depth interviews with seven members of an *i'khothane* group, both as a group and with selected individuals, including the leader of the crew, 'King Bhenga' (hereafter KB). We also conducted an interview with a young man who had left the crew. All participants chose their own aliases. The

interviews were conducted in English, with an isiXhosa translator present in order that the interviewees could fully describe themselves. All the participants spoke good English and felt comfortable speaking in English. The translator clarified the meaning of specific words and phrases in an ad hoc fashion, and reviewed the transcripts in order to ensure they faithfully reflected what was said in the interviews. As such, there were no difficulties in translation, and the participants were happy that their views had been faithfully recorded and reflected by the transcripts. The interviews were structured in the manner outlined by Jovchelovitch and Bauer (2000: 57–74) and entailed four phases – initiation, the main narrative, questioning, and closure of the interview. This method was used as it places emphasis on and provides participants with a setting in which they are encouraged to draw on their own experiences and memories. This provides them with the opportunity to narrate their experiences in their own terms, allowing them to drive the direction and content of the interview. The third stage, however, allows the researcher to engage the interviewees in specific aspects of their experiences, thus allowing for focus to be drawn to those features of their narratives that feature prominently.

In analysing these interviews we have drawn on the work of various authors writing in the traditions of consumption, cultural and township studies.[1] In drawing on the work of these theorists, the study's intention is to not only provide an analytical context or framework in which the *i'khothane* phenomenon can be understood, but to provide a critical analysis of the reasons why these young men engage in the practice. While some commentators, especially in the media, have constructed the practitioners of *i'khothane* as the latest incarnation of 'immoral' youth activities enveloping post-apartheid South Africa, we question this discourse and its assumptions. Indeed, as Swartz (2009) has consistently shown, township youth have a firm understanding of morality, and are not simply 'empty-vessels' mindlessly following their idols' fashion statements or (im) moral sensibilities. We see the participants as portraying an *embodied morality* (Swartz 2009: 65): 'morality is not only about what you do (a morality of action) but also about who you are and who others are to you'. An embodied morality plays an important role in determining the unique set of choices and conditions that make human beings unique – their identity. In this vein, we understand their identity as a product that, in part, is articulated through such performances as clothing, dance and ritualistic consumption. We explore these assertions throughout this article.

There is a growing dissonance between the rights and freedoms safeguarded in the Constitution of South Africa and the lived reality of many of its citizens (Vincent and Howell 2014: 75–90). This dissonance finds expression in the microcosm of citizens' lives, and is mirrored in the way that the *i'khothane* both idealise the political elite and have yet also constructed for themselves their own means of consuming in a conspicuous manner. Understanding the context in which these young people make meaning in their own lives, as we shall argue, needs to be interpreted against the backdrop of spiralling unemployment, violent crime and (often) inescapable poverty.

BATTLES, CLOTHING AND CREWS

The subculture of *i'khothane* is defined, on the one hand, by the conspicuous consumption of material objects, and on the other, by the ritualised destruction of these objects. The very name *i'khothane* – 'licking the snake' – points to the importance of clothing to the crew. As KB noted:

> It is the term we use when we gonna battle with clothes against other crews …. So this guy from other crew we call him a snake so one of our crew must lick the snake. And in some instances "licking the snake" is not about battling because some shoes we wear are made of snakeskin so we specifically mean the dude must lick the shoes in order to be seen that it is a snakeskin (Interview 1 August 2013).

The forms of consumption that the *i'khothane* have adopted are, however, of a specific type – they exhibit certain *tastes* for different material objects that are a result of the process of contextual socialisation. This is in line with Woodruffe-Burton's (1998: 302) argument, which, although conducted in a very different context, speaks to the process: 'Through the socialisation process the consumer learns not only to agree on shared meanings of some symbols but also to develop individual symbolic interpretations of his/her own.' For instance, KB described his taste for specific brands thus: 'If ever I am wearing a Louis Vuitton shirt, everyone knows that it is more expensive than Levi's …. I must burn it so that other people can see I afford that shirt' (Interview 19 June 2013). There is, in other words, a weighted system of values that gives meaning to their patterns of consumption that is itself only explicable within the economic and social structures of post-apartheid South Africa.

Crews are structured hierarchically. To become a part of the crew requires that the individual shows his allegiance to the philosophy of *i'khothane* through the purchasing, wearing and destruction of expensive clothes. Some groups may have particular initiation practices, however the group that was interviewed did not. New members were rarely inducted, and were chosen by the group as a whole. As KB notes below, the leader maintains the discipline of the crew. Continually bringing 'disrespect' to the group may result in the individual being expelled. All the members interviewed argued that they were members 'for life', however it is possible for an individual to renounce their membership. The groups are loosely structured – no member has a specific duty other than the upholding the respect of the 'crew'. A group's size and composition will thus vary over time. Battles and other confrontations are ritualised and undertaken as a group. As far as can be ascertained, groups will not fight over individuals – to do so would be to undermine the respect of the group as a whole by showing weakness. The crew that was interviewed for this paper had no intention of growing in size. This may, however, not be the case in large cities that are home to far more groups competing for resources such as clothes and 'girls'.

The most controversial act that the *i'khothane* undertake is the ritualised burning of expensive items of clothing in their battles. As described by the interviewees, battles can

occur for a number of reasons – women, territory or simply to 'have fun'. Chiefly, the reason for a battle is 'respect'. A battle will involve one member of a crew antagonising another member of an opposing crew – described by the participants as 'making someone dirty' (Interview 19 July 2013). The disrespected member will begin a dance aimed at showing off his 'style' and flaunting his 'tag'. The two opposing members will then attempt to outdo one another through a series of choreographed dance routines and by destroying ever more expensive items of clothing. While battles are central to the *i'khothane* subculture, they are not unique. As one member reminisced, the schoolyard battle for respect would follow a similar form: 'I want to battle with that guy, because that guy wears a toughies [a brand of school shoe], and I am wearing all-stars [a brand of casual shoes]' (Interview 19 July 2013). The *i'khothane* have centralised and refined the rituals surrounding battles, ensuring that there are clearly defined rules (and winners). The disrespect of another group or individual can be achieved through as little as a conversational snub or as much as a physical fight.

The member of the crew who destroys the most expensive item of clothing, with the most amount of style, is declared the winner and thus earns respect, as does the crew to which he belongs.[2] These are not violent confrontations, although they are physical, and are conducted by a strict code of conduct enforced by the mutual respect of the two crews. One might describe them as ritualised confrontational dances in which, while the outcome is not determined, symbolic practices structure the encounter. Should a member of the crew not conduct himself in a respectful manner, he brings the entire crew into disrepute, for which there is a system of discipline in place. As KB noted, 'I discipline them because if anyone of us fights, he knows that for sure, next week, next weekend, the booze is on him, he knows that. That's how we discipline them' (Interview 19 July 2013). The purpose and need to battle with other crews occupied an ambiguous position in the minds of many of the crew we interviewed. The battle was seen as important but also recognisably wasteful and therefore problematic. As 'King Loshika' (hereafter KL) notes, in hoping for a better future, 'It can happen if we work together as *i'khothane*, we don't battle, we don't disrespect each other, we don't force respect from one another and we don't waste' (Interview 19 July 2013).

For the *i'khothane*, expensive clothes, sparkling jewellery and wads of brand new notes point not only to literal wealth, but also a symbolic wealth. This symbolic wealth finds currency in a system of meaning in which specific understandings of post-apartheid black identity have been articulated. As Swartz et al. (2012: 34) note:

> *Ikasi style* [the more general articulation of the context in which young *i'khothane* find themselves] is therefore as much a discourse of inclusion as it is a style that creates subjects who are already excluded from the "New South African" narrative. Advertising billboards throughout the townships indicate this pathway to inclusion by peddling middle class products with the tag line "*Ikasi* for life".

The consequence of glorifying these consecrated items, as we explore below, is an increase in social mobility, a delimitation of the economic and social boundaries inherent in the politico-spatial design and isolation of the township from the formal economy, and an increase in 'respect' – the most important asset for an *i'khothane* to possess. At the same time, the burning of items of clothing worth more than the average weekly income of many of the homes in their communities was recognised as 'wasteful'.

The ritualistic practice of accumulating and then destroying expensive items of clothing in 'battles' can be seen both as a form of yearning for, and mockery of, conspicuous consumption in post-apartheid South Africa. It is a yearning in that these young men will go to great lengths and extraordinary effort to obtain the items of clothing that garner them respect, and which allow them to emulate their idols, such as Kenny Kunene. However, there is also a sense of mockery in the idea of 'showing I can afford' – a mockery of themselves and capitalism in the 'trauma' of their own wasting of valuable resources. In lieu of substantive changes in their lives post-1994, they enact their dreams of 'real' conspicuous consumption by accumulating these wardrobes. Yet in destroying them they transcend this system of meaning, if only briefly – not even Kunene, it is assumed, would take a match to his most valuable items of clothing.

For the *i'khothane*, the cultural capital (Bourdieu 1986: 46–58) signified by an item (and that can thus be embodied by the wearer) is a function of its perceived rarity, glamour and expense. KB articulates this perceived hierarchy by making reference to both the price and name of the items of clothing that he wears: 'I must not wear an item below R500, it must be over R500 so then I could qualify, so I went to buy, I bought it, it was R1800 I bought a Carvella [a pair of shoes] at Spitz [a well-known clothing brand shop in the city] in Port Elizabeth' (Interview 19 June 2013). The collective cost of all of the apparel worn as one outfit is known as the 'tag' – it is for this reason that expensive shoes are so highly prized, as they frequently contribute the largest percentage to the tag. The tag functions as signifier of, and demand for, respect. As KL notes, 'If I am wearing, my tag for the night is 4 000 [Rand] something, and his tag is 2 000 [Rand] something, he will respect me' (Interview 6 July 2013). Brand-name items of clothing signify that which the context in which the *i'khothane* live is not – internationalism, glamour, wealth, and materialism idealised by the popular media.

While Louis Vuitton, Ralph Lauren and Gucci were the most commonly cited and sought after clothing brands, each individual member had their own unique style. This style was defined by the individual's identity, by the clothing and particular brands that he commonly wore and were associated with his own unique dance. Individual members of the crew thus both looked similar and yet different – similar in that they were clearly all wearing expensive clothes, different in that each had tailored those clothes and their arrangement to his own style. KB conceptualised the process of reconfiguring the clothing, as signifiers, as a form of vandalising – 'We impress girls and people with our clothes, we don't like vandalising – we vandalise the fashion industry' (Interview 19 June 2013). Rather than buying into consumerism as a form of display, in

these instances, their display is the annihilation of the accoutrements of consumerism. Paradoxically this *is* a form of consumerism – their oppositional stance is nihilistic rather than avant-garde. In this sense, and as they themselves note, they truly 'vandalise' fashion by not only producing meaning in a context not typically attributed to catwalk fashion items, but by also rearranging those garments in unique ways that define their individual styles. As one of the crew noted, 'sometimes we design our clothes. I can make it myself, take it to the factory, someone will sew it there and maybe make some kind of flowers, kinda new. That's how it is' (Interview 19 June 2013).

Carvela shoes were the most highly prized item by all members of the crew, both because of their price and because of their 'cosmopolitan' style (Niehaus 2012: 42). They are also one of the first items to be destroyed in battles, usually by burning or drinking alcohol out of them (or both). Because the participants did not always have access to those brands of clothing that would be seen as the preserve of the elite and of those whom they wished to emulate – Gucci, Polo, and so on – they reoriented their perception of what constituted an elite brand to conform to the limitations of their socio-political and (impoverished, provincial) economic environment. Thus, for instance, Markhams, Truworths and Edgars brand clothing (all larger South African chain stores that do not have the same cachet as recognisably international brands such as Hilton Weiner) and certain local stores (such as Spitz's) all took the place of these more recognisable brands as relatively expensive and therefore worthy of display and destruction. As KB notes in this regard, 'I go to PE (Port Elizabeth) and look for clothes, I maybe go to Green Acres [a local shopping mall] and maybe there is a girl that sells rejects from Jo'burg and I go there and order some clothes, and I come back and say "guys I saw this other trouser there and it was awesome. Would you like to have one? It is R350 or it is R500"' (Interview 19 July 2013). The *i'khothane*, in their quest to obtain and display brand-name clothes, have become participants in an informal economy that itself relies on specific references to global consumerism.

The *i'khothane* can thus be described as 'cultural omnivores' (Snowball, Jamal and Willis 2010: 467–483), reconfiguring the received wisdom about the products they consume, and adapting their tastes and modes of consumption as they 'vandalise fashion' in a context described by Leslie Banks (2002: 631–649) as existing at the nexus between South Africa's turbulent history, the economic stagnation of the present, and a hope for a better future. In the same way, as Bourdieu (1986) describes, cultural capital can be seen as existing in an 'embodied state' – that is to say written on the posture and ways-of-being-in-the-world of the body – the *i'khothane* experience their identity as permanently written on their bodies. As KB explains,

> when I grow up I want to be a CA, a chartered accountant. But if ever that happens I can be an *i'khothane* at the same time, because *i'khothane* is in my blood, it is flowing through my veins, no one can change that, even my mother. even the pastor from church, even the sangoma, because *it is in my blood,* I live it (Interview 19 July 2013, emphasis added).

While *i'khothane* prize consumer fashion objects because of their expense, their clothes are also used to convey a specific and symbolic language (Hall 1997). This language is not only used to articulate their individual and group identities, but is also used as a frame of reference by *i'khothane* groups to define themselves in relation to one another, the larger community, and post-apartheid society as a whole. However, the point of the clothes and their display and destruction is not to emphasise the impoverishment of the community, or its lack of cosmopolitan airs and graces, but are a form of defiance, a means of re-articulating a consumerist identity that simultaneously embraces and negates consumerism – in many senses a perfect summation of the contradictory psycho-social space the participants inhabit. 'To show I can afford' is a powerful statement of resistance in the context of a community that has largely been left out of the economic development of the country. It is a conscious form of resistance to economic isolation born of the historical economic stratification of white and black access to capital. It is perhaps for this reason that the clothes garner respect – their wearers vandalise not only fashion but also the construction of what it means to be young black men living in a township in contemporary South Africa. As 'King Madaba' sums up, 'It [*i'khothane*] has grown my self-esteem, it has groomed my ability to face people and it has groomed my confidence because if you are *i'khothane* you see lots of people that you must show what you are made of, you must be confident in yourself' (Interview 19 July 2013).

The *i'khothane* crew that we interviewed had a hierarchical structure, determined by the length of each member's involvement in the crew. KB, as the founder was also the leader, and was responsible for choosing a particular name and style for the crew:

> The thing is that the group I started is called Moshwana, the difference in words instead of that Z, there is a S. Actually the structure is, us we do not do all those things that *i'khothane* do, all those battling, all those kinds of shit. What we do, we promote having fun while you can (Interview 19 July 2013).

Asked what 'having fun *while you can*' meant, an interviewee, King Pantsula, who had left the crew argued that 'it [*i'khothane*] is bad for our health. I mean like guys, criminals, will see that we have got a lot of money, so they will take advantage of us. And they can come and kill us and take the stuff away' (Interview 19 July 2013). South Africa has one of the highest rates of violent crime and is one of the most unequal societies in the world. All the crew members had experienced forms of violent crime, and were thus very conscious of the fleetingness and fragility of their lives. It is perhaps for this reason that the immediacy and satisfaction of 'having fun' and the buying and burning of expensive clothes – rather than, say, traditional capital accruement through the investment of money in savings accounts – are so important to the *i'khothane*. Living in violent and impoverished communities the immediacy of the present is far more important than long-term investments – whether fiscal or cultural – simply because the future may not always be there. This understanding of their lives have led the *i'khothane* to seek out the pleasures of the present, and this structures the cultural capital associated with different acts, places, and brands.

The leader's duties are not simply limited to the organisation of the crew, but extend to actively creating what he termed the 'standard': 'I must make sure there is money for this weekend. That everyone has R50 or a R100 for the weekend, the outfits are to standard, that the spot where we are going to this certain weekend is nice' (Interview 19 July 2013). What is 'nice' and 'standard' is a function of their desires, shaped by the politico-economic context in which they live, and articulated as 'having fun'. For the *i'khothane* there is a clear hierarchy of goods, acts and places that constitute varying degrees of cultural capital – Louis Vuitton is superior to Ralph Lauren, while certain local nightclubs are considered superior to others and are therefore frequented more often.

The participants were mute as to where exactly they obtained the money for their clothes, although as noted below, at least some of it is garnered from their parents and relatives. Young black women and the elderly are also some of the most vulnerable members in contemporary South African society (Moffet 2006: 142). Thus while the participants would not speak to the topic themselves (most probably for fear of incriminating themselves), previous evidence has pointed to a strong link between the accruement of capital and the continuing patriarchal nature of South Africa's townships where, in the context of very high unemployment, government social grants constitute the main source of income for many communities.

I'khothane crews are split along heteronormative gender lines – the crew that we interviewed consisted only of men, and although all-female crews are emerging in the larger cities, the practice is still largely male-dominated. These sharp gender distinctions in the informal spaces of township life are not unique to the *i'khothane*, as has been noted by a number of authors (see, for instance, Wood and Jewkes 1997: 41–46). While women were not allowed to be a part of the crew, they were still passively integral to the performance of being *i'khothane*, especially during the battles – not only would some battles be about or for women, but the women themselves form a circle around the battle, providing the framework in which the meaning of the battle is made. As one crew member noted, 'I must make sure that there are girls that are accompanying us, and then I have to make sure everyone is there that night, that we must go and have fun' (Interview 19 July 2013). 'Having fun' requires that young women accompany the crew.

The participants in the interviews articulated their understanding of gender (and indeed their own gendered identity) through a reiterative heteronormativity – women or 'girls' were to be impressed, were to be chased or pursued, to be protected from other men and crews. The more beautiful a girl, the more respect the crew would earn by having her associate with them, the ultimate aim of which would be sex. As one member notes, 'If you buy expensive clothes, drink booze, having girls around us, then we hire cars, then you host parties, it's all about having fun' (Interview 19 July 2013). From the above interviews it is clear that women are considered placid and receptive – 'everywhere girls would fall for me' (Interview 19 July 2013) – with men being seen as proactive and having to 'earn' the woman's respect through the consumption or

destruction of clothing items, or through dancing or disrespecting other crews. Sex is seen as a consequence or reward for a successful battle or evening, a reward for respect.

RESPECT, HAVING FUN AND THE QUEST FOR CITIZENSHIP

Jean Comaroff and John Comaroff (2003: 446) argue that '[t]he generic citizen of postcolonial South Africa may be the rights-bearing individual inscribed in the new Constitution; also the rights-bearing individual – typically urban, cosmopolitan – presumed in much mass-mediated discourse'. Contemporary South Africa is awash with images of ideal forms of consumption – from the large highway billboard advertising the latest car to the glossy magazine highlighting the latest gadget for convenient urban living, the country is now very much a part of the global consumerist economy. The rise of a culture of consumerism can be represented by a congruent rise in the number of consumers with 'impaired debt records' – 9.53 million according to the latest report from the National Credit Regulator, or just under a quarter of the country's citizens (Strydom 2013). However, while the *discourse* of consumerism may be ubiquitous, South African society is still one of the most unequal in the world, with people living in the vast townships still playing only a marginal role in the formal economy. It is at this nexus that *i'khothane* stand – torn between the dreams of consumerism and the economic reality of post-apartheid South Africa. As Swartz, Tyler and Verfeld (2012: 33) graphically conclude:

> In this context, the presence of the dream itself functions as currency in the symbolic economy of the "New South African" myth. By dealing in dreams, young people in the country's townships appear to be writing themselves into the nation's narrative by constructing their own sense of opportunity and, thereby, belonging.

The lived reality of this dissonance became visible in two instances – when we asked the local crew who their role models were, and when they defined themselves as a 'good' crew. Speaking to the former, the one role model that was mentioned above all others was Kenny Kunene, the 'Sushi King'. One of the few 'black diamonds' in the country, the businessman has created an empire of nightclubs and business interests, and is frequently seen in public surrounded by young women, known as his 'girls' (Cilliers 2013). While constantly courting controversy, he has become seen by the *i'khothane* as the ideal model for both clothing and a specific form of consumption. As one member, King N'zee (hereafter KN), puts it:

> Kenny doesn't wear clothes from South Africa, he wears clothes from outside South Africa and outside Africa. So that's why now I see Kenny Kunene as my role model in the *i'khothane* world. Because we do have a world of *i'khothane*. Us we live in our world, the world of fame, the world of good things, goodies (Interview 19 July 2013).

The 'world of fame and goodies' is of a specific flavour – it is a cosmopolitan and international dream played out in an impoverished community in the Eastern Cape of South Africa. One can view the tension in the *i'khothane* worldview by looking at the second most cited role model, that of Nelson Mandela – the crew's desire for international fame and fortune is still marked by a conscious understanding that citizenship, the symbolic work of Nelson Mandela, is yet to come.

The second instance in which it is possible to see the dissonance between the dreams of the *i'khothane* and their reality is in their articulation of what they saw as 'good' and 'bad' practices. As one member noted, 'There are two types of *i'khothane*, those that waste money and do disrespectful things, you know those … that buy booze, a lot of booze, spend money and girls, and then there are those that depend on their parents incentives' (Interview 19 July 2013). The 'good' *i'khothane* would be 'not about wasting money, and buying expensive clothes and having fun' (Interview 19 July 2013). There is a palpable tension here between the desires and prescription of the *i'khothane* and their understanding of good citizenship. Not wasting government grants and incentives is considered good and responsible, yet 'having fun' requires expensive clothes and money for alcohol and parties. KB was perhaps the most upfront about how he negotiates this tension:

> My foster parent doesn't know that I am an *i'khothane*, "he is wearing this and that today, but he doesn't ask money from me, the money I have for the groceries, and all the expenses I have in the house. Where does he get this money?" I call my family from PE, they give me money every time I ask it, they give it to me …. I work every time. Month end I buy something new. I layby, I buy (Interview 19 July 2013).

Thus even though the crew have a specific understanding of moral citizenship, the needs and desires, which are a product of their involvement in *i'khothane*, can supersede their understandings of responsibility and good citizenship – something KB offhandedly remarked as 'traumatising'.

I'khothane have mostly been framed by the media in a negative and criminal light (see, for instance, Bambabela 2012; Hayes 2012). The participants were very conscious of this, and while they did make some references to criminal behaviour, they constantly differentiated between 'bad' and 'good' *i'khothane*. While the distinctions were often ambiguous and terse, the participants nonetheless all had firm understandings of right and wrong, as has been documented in a different context by Swartz (2009). While the contrast between the grinding poverty of many of South Africa's townships and the conspicuous burning of R100 notes may be newsworthy, one must question whether these reports do not assume an understanding of the township male youth as intrinsically deviant, immoral or criminal (Seekings 1996: 103–125; Perrow 2004). The crew that we interviewed acknowledged that some of their practices were wasteful, the memory of past battles appeared painful, yet for them the need for respect superseded this waste. Swartz (2009) has shown that the perceptions of the moral capabilities of

township youth are heavily biased. Indeed, township youth often portray an embodied morality (Swartz 2009: 65), which lends credence to an understanding of their identity articulated through such performances as clothing, dance and ritualistic consumption. While the use of grant money is morally questionable, it does not necessarily follow that the practitioners of *i'khothane* are somehow inherently criminal. Considering the weight that our participants placed on the notion of respect, it becomes possible to at least understand their desire to perform their identity through clothing, dance and 'having fun'.

The concept that seems most central to the *i'khothane* is that of respect. Indeed, the concept of respect is used as a justification for many of the practices, rituals and symbols that make up the *i'khothane* worldview. Placed in the context of the need for and display of forms of conspicuous consumption, 'showing that I can afford' by both buying and destroying items of clothing is a potent means of configuring a post-apartheid identity. Respect becomes a means of discerning one's place within that system of meaning – respect, in this form, is a dominant form of cultural capital that guides the patterns of consumption and gives structure to the rituals. 'Everyone knows you first of all, everyone respects you, everyone looks up to you, it may be a little boy that the other day or the other night I impressed' (Interview 19 July 2013). Respect can be lost, through a lack of discipline for instance, and won through having a more expensive tag than a rival. Respect is symbolically portrayed through the clothes that the *i'khothane* wear and ritually enacted through the battles and burning of the clothes: 'If I ever I afford a lot of new, for sure then you will respect me. If I burn more clothes that other night, you will respect me' (Interview 2 August 2013).

Respect is also a form of belonging articulated through the markers of clothes and practices – it is a form of symbolic wealth in communities that have been left powerless since the advent of democracy twenty years ago. The participants, in their daily lives, are politically and economically marginalised, facing an uncertain future. Lacking tertiary education, social services, and living in communities in which violent crime is a daily occurrence, respect becomes the symbol through which a new identity can be constructed. With no recourse to the conventional structures through which respect is earned, they have found new arenas, new paths, and new traditions upon which to build their identities. While clothing and battles are the *vehicle*, it is ultimately respect that it desired. Respect becomes power and wealth in the face of powerlessness and poverty. Much like South Africa itself, this process is very much hesitant, sometimes problematic, and without recourse to any foundation but itself. The *i'khothane* are a product of this negotiation as much as proponents of it. 'Vandalising the fashion industry', in this context, is a unique means of creating a meaningful identity in communities that, however framed, have not radically changed since the apartheid era. For the *i'khothane* that were interviewed for this article, like Swartz et al.'s '*ikasi* youth' (2012: 33), material wealth is a 'key marker of belonging and respect'. But here the idea is taken to its logical extremity – belonging and respect through (symbolic) material wealth. In the words of one of the crew, 'that's

what keeps me going' (Interview 19 July 2013).

CONCLUSION

I'khothane crews have emerged as a response to the cultural emphasis on the conspicuous consumption of expensive goods as a means of articulating black post-apartheid identity. In contrast to the communities they operate in, their destruction of expensive goods may seem wasteful or perverse. But in communities where there is so little, 'to be able to afford' is a potent means of defining oneself, of performing an identity as a form of resistance to (often) all-encompassing poverty. With the above in mind, it is possible to see the practice of *i'khothane* as a means of garnering agency in a context that is largely devoid of it. While the crew that we interviewed were concerned with specific brands of clothing, the respect that they had, and the need to 'have fun', one must ask *why* they had articulated their identities in this manner. The answer, it seems, is that the *lifestyle* of *i'khothane* provides familiar and measurable markers, imbued with understandable forms of cultural capital, that allow the members to express their agency and subjectivity in the context of their own exclusion from the 'New South Africa'. The lifestyle of *i'khothane*, much like Swartz et al. (2012: 34) have documented, is one of inclusion in the face of exclusion – the practices, rituals, and symbols provide a familiar framework in which meaning, and thus agency, can be articulated and felt. As described by KB,

> Now everyone will see that *i'khothane* are wrong people, you see, *i'khothane* are not bad people. I preach that, and I want to make sure that that stays in everyone's minds. *I'khothane* are entertainers, by showing off our clothes, by dancing, by having fun. And having fun is our priority, our number one, because we just have fun. We are not bad people (Interview 19 July 2013).

There is a tension in KB's assertion, between being seen as wrong and yet wanting to have fun. With little recourse to what might traditionally be seen as 'useful' ways of having fun, the construction of an identity through the conspicuous consumption of material objects is as much a product of the *i'khothane's* political-economic position as it is a desire.

There are finally two important concepts that Swartz et al. (2009) introduce that are key to understanding the position of the *i'khothane* in post-apartheid South Africa: that of their lives as 'dreams deferred' and 'woundedness'. Speaking to the former, Swartz et al. (2009: 33) argue that '[i]n a nascent democracy such as South Africa where the transition from Apartheid brought with it enormous optimism and endless promises of change, dreams of possible futures are perhaps also the process of conceptualising the nation and one's inclusion in it'. While these dreams and promises had political capital during the transition, 20 years later many of these dreams are unrealised and have become deferred. This is not to say that the youth of today do not have dreams of

a better future, but that the immediacy of the poverty and violence in which they live have constrained and stunted those dreams. It is in this context that the *i'khothane* live and dream and it is for this reason, perhaps over any other, that they have resorted to garnering respect that is by its very nature ephemeral and momentary, a temporary, fleeting agency emulating what is represented by the 'black diamonds' who are the literal embodiment of the fantasy. The symbolism of this success, its simulacrum, has become the only choice in a sea of poverty, the transient replication of the dream is the only real option left.

There is then a certain woundedness (Swartz 2012: 36–37) to the unrealised dreams and lives of many young black people in South Africa: 'Township youth are amongst those most wounded, most excluded, from the new South Africa' (36). Shaped by a historical narrative that consistently excluded black people from the economic and political processes that shaped their lives, and confronted by a reality that has not seen radical change since then, it is no wonder that the *i'khothane* have shifted their gaze to the few that have achieved, that can 'show they can afford' and whose presence garners respect and status. The *i'khothane* are a product of this discourse as much as they play a role in shaping it, their intense longing for respect a sharp reminder of its lack.

ENDNOTES

1   Similarly, there is also an analytical heritage to understandings of consumption in the anthropological work of Thorstein Veblen (1899), Daniel Miller (1987), and the various debates concerning the potlatch phenomenon (see, for instance, Aldona Jonaitis's *Chiefly Feasts* (1991)). There are numerous congruencies between the Potlatch phenomenon and *i'khothane* – the use of symbolism as a basis for social order being perhaps the most prominent. A direct comparison is, however, beyond the scope of this article.

2   For further examples, search YouTube for 'Ikhothane' or Izikhothane [the Zulu derivative of the word].

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BIOGRAPHICAL NOTES

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West Africa and the transnational trade in illegal drugs: physical properties, policing, and power

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West Africa and the transnational trade in illegal drugs: physical properties, policing, and power

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This paper focuses on the role that physical properties play in the production and distribution of illegal drugs. Using the primary examples of cocaine, cannabis, and heroin, the paper argues that there is a causal relationship between the physical properties of a drug and the manner in which it will be produced and distributed. By explicitly borrowing concepts frequently found in studies concerning resource creation and conflict, the paper uses a transdisciplinary conceptual framework with which to examine some of the factors and mechanisms that have helped to shape the contemporary trade in illegal drugs, with specific reference to West Africa. We have further highlighted some of the means and modes of transport now employed by drug smugglers, showing how they can be situated in relation to policing measures and tactics. By taking into account these physical properties, as well as by focusing on the demand for and value of individual drugs – not to mention the risk calculations that frequently inform different patterns and methods of distribution – we argue that a more nuanced approach to drug policing and legislation is not only possible, but necessary. While the role that the physical properties and ascribed value of specific resources play can be used to show how they contribute to conflict patterns, little *explicit* attention has been given to how these same features may influence the transnational trade in illicit substances. The need for more nuanced understandings are becoming increasingly important, especially in areas such as West and Southern Africa, where the prescriptions of the now failed 'war on drugs' found little use or traction, and have failed to adequately reduce the production, distribution, or consumption of various illicit drugs.

Keywords: drugs; West Africa; physical properties; policing; surveillance; statehood

1. Introduction

The physical properties and ascribed value of a natural resource or commodity will determine, to a large degree, the manner in which it is produced and distributed (Barnett and Morse 2011). The path gold will take from the mining of its ore to its inclusion in a piece of jewellery will be very different from the path taken by wood pulp in the production of paper. So too do the physical properties and ascribed value of different illicit drugs determine their methods of production and distribution (Emmett 2005). Cocaine is, both physically and pharmaceutically, very different from cannabis. A drug's weight and volume, not to mention ease of concealment and detection, all contribute to the manner in which the contraband might be transported, how well it might be hidden, and what counter-detection measures might be put in place (Gathmann 2008,

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1926–1941). Cocaine is, continuing from the example above, also far more valuable per gram than cannabis. Furthermore, in most parts of the world, it attracts far stricter punitive measures. It stands to reason, then, that far more effort will be expended in ensuring that a consignment reaches its destination. It is on this basis, perhaps, that while the size and volume of shipments of cocaine and heroin have been steadily decreasing in recent years (although this is offset by the frequency of shipments) (compare, for instance, UNODC 2010a, 2012, 2013, 14–17), seizures of literal truckloads of cannabis still frequently occur in Southern Africa (see, for example, SABC 2013).

With the above in mind, this paper seeks to theorise the role that the physical properties and ascribed value of various drugs play in their contemporary production and distribution, specifically focusing on the 'burgeoning' transnational trade passing through West Africa. While the role that the physical properties and the ascribed value of specific resources play can be used to show how they contribute to conflict patterns, little *explicit* attention has been given to how these factors may influence the transnational trade in illicit substances. Thus, by using a multidisciplinary conceptual framework, we hope to show how this knowledge may be usefully employed in the creation of effective regulatory measures. The need for such measures is becoming increasingly important, especially in areas such as West and Southern Africa, where the prescriptions of the now defunct 'war on drugs' found little use or traction and have failed to adequately reduce the production, distribution, or consumption of various illicit drugs.

While the paper will make explicit the role that illicit drugs' physical properties play in their production and distribution, there are numerous implicit and historical demonstrations of their importance. For instance, between 1886 and 1887, Merck Pharmaceuticals produced some 70 kgs of cocaine hydrochloride. Just one year later, however, the company produced a little over 275 kgs (Spillane 2000, 85). This four-fold increase can be attributed to a number of factors, including, but not limited to, the rapid increase in demand (as a function of the discovery that cocaine could be used an effective topical anaesthetic) and its increased use in all manner of medicines and cures (Spillane 2000, 85). Writing at the time, an author of an article in *The London Lancet* (further reproduced in *The New York Times* ('Cocaine in Hay Fever' 1885)) exalted that

> The therapeutic uses of cocaine are so numerous that the value of this wonderful remedy seems only beginning to be appreciated. Almost daily we hear of some disease or combination of symptoms in which it has been tried for the first time, and has answered beyond expectation.

While cocaine's many uses created the *demand*, the attendant increase in production was *made possible* by advances in the production process. At first, raw coca leaves were transported from South America to Europe in large bunches and on ships that could take some time to complete the journey. The leaves had to first be dried, making them susceptible to damp and rot. Moreover, only a very small percentage of the active alkaloid was to be found in the leaves, necessitating the processing of large aggregates of the leaf in order to produce a small amount of cocaine hydrochloride (Streatfeild 2001, 105–116; see, also, Karch 1998). Considering the length of transport, the frequent damage to or loss of the cargo, and the inefficient production process, the distilled product was difficult to make.

However, with the development of 'crude cocaine' (also known as *pasta basica*), many of the barriers to the production of the cocaine hydrochloride were eliminated. 'Crude cocaine', a thick white paste, is the product of an intermediate phase in cocaine production. The product is less susceptible to damp or water damage, does not spoil over time, and contains higher levels of the active alkaloid per weight and volume. More cocaine hydrochloride, as such, could be produced more frequently (Spillane 2000, 85). This allowed Merck to ramp up production of the substance in order to meet demand. The physical properties of 'crude cocaine', especially in relation

to the importation of raw coca leaves, thus had a direct bearing on the production and distribution of cocaine itself. Indeed, having commercialised the process, by 1886, Merck relied solely on the importation of 'crude cocaine' in the making of cocaine hydrochloride – the production of which continued to increase for another decade (Spillane 2000, 85).

In the context of resource conflict and management, the physical properties of natural resources have been used both as a means of theorising and predicting the paths by which a conflict may spread (Snyder 2006, 943–968). Knowing, for instance, where gold-bearing ore is likely to be found, the methods of transportation available in a specific region and the destination for the ore can focus concerns, efforts, and counter-measures. In the instance of illegal drugs, an understanding of their particular physical properties can sharpen focus on specific areas, specific methods of transportation and concealment, and highlight which techniques may be most useful in their detection. Understanding the role the physical properties of specific illicit drugs play in their production and distribution can make more effective and more efficient targeted counter-measures and reduction efforts.

A prominent lesson that can be drawn from the failure of the 'war on drugs' is that uncritical, totalising understandings of the complexities of the transnational trade in illegal drugs are not effective (for a detailed analysis, see for instance Dan Baum's *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (1996)). What is of value in one region of the world may not be so in another. Localised, contextual, and sensitive understandings of the trade are therefore important in the effective policing and reduction of the drug trade (Kenney 2003, 187–206). As such, it must also be remembered that this analysis is intended to be read as supplementary to the literature – it is not that the physical properties of a drug are the only determinant of a drug's likely or real production methods or distribution paths, but are an important aspect of these two processes. As such, this article pays specific attention to the West African region, a region that has risen to international prominence in recent years – as has been shown by a number of reports and articles, the area has now become an important node in the distribution of illegal drugs to Europe, the USA, and Africa (Ellis 2009; Mazzitelli 2007; Shaw 2002).

With the above in mind, the following section of this paper presents the multidisciplinary conceptual framework that will be employed. Our aim here is to highlight a number of tools, frequently employed in conflict analysis, which may find equal use in understandings of illicit drugs. With this in place, we present a brief situational analysis of the West African example, placing the region in the context of the global trade in particular illegal drugs. Following this, we present two case studies; the first focusing on the relationship between distribution routes and the physical properties of specific illicit drugs and the second focusing on how this information may be used to more effectively and efficiently engage with the trade. Our hope, as such, is that by using analytical tools found in another area of study, important conclusions can be drawn in fields engaging with the transnational trade in illicit drugs.

2.   Theorising the importance of physical properties

While concerned with resource creation and distribution in the early 1930s, economist Zimmerman (1933, 814–815) observed the following:

> Resources are highly dynamic functional concepts; they are not, they become, they evolve out of the triune interaction of nature, man [sic], and culture, in which nature sets the outer limits, but man [sic] and culture are largely responsible for the portion of physical totality that is made available for human use.

While the discourses concerning 'nature, man, and culture' may have radically changed since Zimmerman's time of writing, there are three useful points that can be drawn from his analysis.

Firstly, 'nature sets the outer limits' of how or for what a resource can be used. It is gold's physical properties that make it malleable or a good conductor of electricity. A natural resource's functional value, on the other hand, will be determined by its demand and uses – gold's functional value, for instance, is derived from its use in numerous production process, perhaps most prominently in the manufacture of jewellery and electronic products (Montague 2002). The demand for a resource is then not static, even if its (known) physical properties are. Iron's malleability made it ideal in the production of swords and military hardware, creating a demand (and thus value) for the resource (Bradley 1988, 251). In the same manner, an illegal drug's physical properties will ultimately determine its functional value – cocaine's 'explosion' as an effective anaesthetic created a demand for coca leaves at the same time as increasing its value. Indeed, when cocaine hydrochloride was first synthesised by Albert Niemann in 1860, it had no specific use, and thus remained virtually unknown until Karl Koller and Sigmund Freud discovered its anaesthetic properties in 1884 (Friman 1999, 84).

A natural resource's physical properties and functional value will also influence the production process and distribution methods employed in its commercialisation. Platinum, for instance, requires a complex extraction process (Manson and Mbenga 2003, 25–27). The process has been industrialised precisely because the material is highly valuable, and thus its material worth justifies the expense of extraction. In the same manner, the advances in the production process of cocaine hydrochloride noted above were justified by the demand and value for the drug. With regard to heroin, the manufacturing process was commercialised when Bayer began marketing the drug as a cough syrup (de Ridder 1994, 65–67; see also, Durlacher 2000). The commercialisation of the drug's production, in turn, affected its production methods and distribution paths.

As demand, worth, and the physical properties of specific resources operate in a 'highly dynamic' functional relationship (Zimmerman 1933, 814), so too does this relationship shape the production, distribution, and consumption of illegal drugs. Using the example of cocaine again, the two largest 'surges' in its consumption and value occurred at the turn of the nineteenth century and again in the 1980s. In the first instance, it was cocaine's natural anaesthetic properties that transformed it from an unknown substance into a 'medical miracle' (Spillane 2000). In the second, it was cocaine's psycho-physiological effects that endeared it to the actors and socialites of Hollywood (Shapiro 2002, 133–141). By inducing feelings of confidence and independence in an industry that valorised these characteristics, cocaine became the drug of choice for a new version of the American Dream (Shapiro 2002, 139–140). The rapid rise in value and demand for cocaine, in turn, transformed its production methods, distribution routes, and transportation patterns (for a substantive overview, see Siegal 1996).

While the above can be seen as the 'positive' aspects of the changing relationships between a natural resource or drug's physical properties, demand, and value (in that new production and distribution methods are created), the physical properties of both also engender a 'negative' function, in that they serve as limitations. The difficulty in extracting platinum from its ore determines how it is produced. Gold's value determines its transportation routes. In the instance of illegal drugs, their ease of detection by law-enforcement authorities plays a prominent role in how they will be distributed. This is a direct function of their physical properties. Speaking of this, Michael Ross (again in the context of discussing resource conflict) argues that 'the role played by any natural resource depends largely on its *lootability*, and to a lesser extent, its *obstructability* and its *legality*' (2003, 54). Again, all three concepts can be usefully employed in discussions concerning the production and distribution of illegal drugs, and which relate to their physical properties. Each needs to be individually reviewed.

The lootability of a resource or drug is determined by three key attributes: its size, weight, and worth (Ross 2003, 54).These three attributes determine how easy it is to distribute an illegally acquired resource and thus, what paths a resource might take in its path from acquirement to consumption. A single rhino horn is, for instance, more lootable than an entire consignment, but worth far less. Illegal or 'blood' diamonds are extremely valuable, and very small, and are thus very lootable (Orogun 2006, 151–161). In the same manner, a gram of cocaine is worth far more than a gram of cannabis. Smaller quantities can be transported for a far higher price, making the substance more lootable. The same can be said of the physical differences between heroin and khat. Moreover, the higher worth and smaller quantities of cocaine or heroin encourage smugglers to hide their shipments far more rigorously. The use of highly complex homemade submarines in the transportation of cocaine has been well noted in the media (see, for instance, Schmidt and Shanker 2012). In the instance of cannabis, however, which is far bulkier and of far less value, seizures of large bags of the substance are still frequently made on long-distance buses in South Africa (Williams 2014). These bags are simply packed into suitcases. The physical properties and (functionally ascribed) value of an illegal drug will thus play a significant role in the manner in which it is distributed – its lootability.

Linked to this, Ross (2003, 54) also notes the importance of a resource's obstructablity. The obstructability of a resource is a function of its weight, volume, and ease of detection. Gold-bearing ore is far more difficult to smuggle than gold itself, and is worth far less per weight and volume. Using Ross's terminology, then, its obstruction is far more easily achieved, whether by the authorities or rivals. With regard to illegal drugs, we may also add the factor of risk – different drugs frequently attract different sanctions, themselves varying in severity. Thus, while cocaine may be more lootable, and of far higher value, it is also more risky to transport, frequently attracting far more serious punitive measures. Consequently, far more effort will be expended in concealing a consignment, while more advanced counter-detection methods will be employed – again, the use of home-made submarines is a useful example. It seems very unlikely that such efforts would be employed in the smuggling of cannabis, which has far less worth and is far bulkier. Once more then, an illegal drug's physical properties, the risk involved in its transport, and its value will play an important role in the calculations that determine the manner and modes of transport that will be employed in its distribution (for a detailed account, see Topik, Marichal, and Frank 2006).

Finally, legality plays a significant role in the production and distribution of different resources or illegal drugs. 'Blood' diamonds or coltan will be produced and distributed in very different ways from those that have been legitimately sourced. So too will various drugs be manufactured and distributed differently. As noted above, different drugs attract different risks, which will play a role in how they are moved and concealed. There would be little point in using 'mules' to swallow pellets of khat for transportation into the UK – their value would simply not justify the risk. The same cannot be said of cocaine or heroin, as is frequently noted by the media (see, for example, Harding 2014). Consequently, it must be remembered that the simple binary between articulating a drug as either legal or illegal is not useful in understanding the complexity of drug production and distribution. Different measures, values, and properties all play a role in the risk calculations that will, in turn, play an important role in determining the distribution methods, modes, and counter-detection mechanisms employed in the smuggling of drugs.

Using these conceptual tools, we now turn to the specific example of West Africa. Our concern here is two-fold. In the first instance, we wish to show how these tools can be usefully employed in understanding how various drugs have been distributed in the region. Secondly, and based upon this, we hope to show that an understanding of the physical properties of a drug can be used to further enhance and make more efficient the resultant drug control and reduction efforts. Thus far, while the links between the two fields are frequently made, they are rarely explicitly

explored. Before such an analysis can begin, however, it is necessary to sharpen focus on the West African region by providing an historical and contextual analysis of its relationship with the transnational trade in illegal drugs.

3. The West African region and the transnational trade in illegal drugs

Contrary to recent media attention, the West African region, and especially Nigeria, has long been associated with the transnational trade in illegal substances, including cocaine, cannabis, and heroin (Mazzitelli 2011, 33–36). Both local law-enforcement agencies and the United Nations Office on Drugs and Crime (UNODC) have observed a steady rise in the import, export, and traffic of illicit substances, with origins as diverse as Latin America and Afghanistan (UNODC 2008b, 18). These connections, it has been argued, developed as a result of both historic and cultural links (Mazzitelli 2011, 33–36). Historically, for instance, it was first thought that 'West Africa was introduced to the cultivation of cannabis and the consumption of the plant's leaves by veterans returning from military service in Asia at the end of the Second World War' (Ellis 2009, 173). However, the historian Akyeampong has argued that the relationship has deeper roots (2005, 429–447). In Nigeria, for instance, the colonial authorities had experimented with the cultivation of the coca plant as early as 1934. There is also documented evidence of arrests for the cultivation of cannabis from the mid-1950s (Akyeampong 2005, 432). Indeed, there is extensive evidence of a flourishing trade in both heroin and cannabis at the time, with US officials noting that 'parcels of [heroin] were being transported by a Lebanese syndicate from Beirut to New York via Kano and Accra, using corridors on commercial airlines' (Ellis 2009, 174).

While EU and USA demand for cocaine, heroin, and amphetamine-type stimulants has fluctuated, there was a sharp rise in demand for all three in the late 1950s and early 1960s (UNODC 2008a, 7–33). As a result, two symbiotic trade routes emerged – a local distribution pattern that supported the growth and trade in cannabis from West and Southern Africa to Europe and Asia, and a transitory network that supported the distribution of cocaine from Latin America and heroin from Afghanistan to the EU and the USA (UNODC 2008a, 32–33). Both, however, took advantage of the West African region's badly policed borders, endemic corruption, and economic inequalities (Cockayne and Williams 2009, 12). There was, for instance, an implicit acknowledgment of the scale and importance of these distribution networks by the Nigerian authorities at the time – in 1966, Nigeria's new military government passed stern legislation that instantiated a mandatory 10-year jail sentence for offenders (Ellis 2009, 174–175).

The exponential rise in the trade in illegal substances funnelled through West Africa has also been attributed to a number of key relationships that developed between Nigerian and Ghanaian nationals, and Latin American suppliers (Ellis 2009, 175–176). The distribution networks discussed above were initiated by Nigerian nationals, who began transporting small quantities of cocaine from Latin America to Nigeria, which were then forwarded to the EU. From East Pakistan and Afghan, heroin was sent to Nigeria, again in small quantities, before being shipped to the USA. As these networks became established, larger quantities of the drugs were entrusted to the West African distributors. As shall be explored below, the development of these routes heralded the creation of specific systems, operational mandates, and smuggling techniques by West African distributors that not only allowed them to gain their suppliers' trust, but also established the procedures with which law-enforcement agencies could either be avoided or co-opted. As a result, West Africa began to serve as a key international transit point – both the EU and the USA could be directly reached from Nigeria using container shops or commercial airlines while at the same time, Nigerian officials were found to be notoriously lax, if not outright corrupt (UNODC 2008a, 7–9). As Ellis has noted, 'in the general atmosphere of corruption and manipulation that characterised General Babangida's years as head of state, from 1985 to 1993, the

country's role in the global narcotics trade grew' (Ellis 2009, 180). These trade networks soon expanded and diversified. In 1983, for instance, it was reported that both ships and planes from Nigeria frequently carried heroin, cocaine, cannabis, and amphetamines (UNODC 2008a, 7–9).

The region's role in the transnational trade in illegal substances has continued to grow, strengthened by favourable foreign exchange rates, continued maladministration, and increasing income disparities (themselves becoming evermore glaring with the region's adoption of consumption-orientated capitalist economic systems) (Mazzitelli 2007, 1071–1090). Moreover, West African distributors have displayed a great adaptability and resilience in the face of increased international attention and law-enforcement efforts. As Ellis (2009, 176) has further noted, 'Nigerian traders showed great ingenuity in switching their smuggling techniques and routes, for example, exporting from Thailand overland to Malaysia or by sea to Taiwan or Hong Kong for onward transmission to Europe and North America'. As shall be explored below, the organisational structures they have developed, which show similarities with the Sicilian Mafia (Akyeampong 2005, 429–430), have also prevented law-enforcement measures from substantially undermining their continued operation. These structures lack a clearly defined hierarchy, use a decentralised form of authority, and are often organised in a cellular arrangement which allows for both the rapid mobilisation of resources and the quick replacement of people in the event of capture or detainment – all the while preventing local groups from understanding the operation as a whole (Akyeampong 2005, 430–431).

Driven by the demand and value of illegal drugs – especially cocaine and heroin – the West African region has become an important node in the transnational trade in illegal drugs. Moreover, with their large and entrenched diasporas, West African nationals have been able to create highly effective but loosely based outposts in many of the world's major cities, thus creating networks of kin that ensure effective cooperation (Akyeampong 2005, 429–447). We now turn to how the physical properties of specific illegal drugs serve to set the parameters on different modes of distribution by these networks. With this in place, we begin a tentative exploration of how this knowledge might be employed in the mitigation, regulation, or reduction in the transnational distribution of illegal drugs.

4. Distribution routes, policing, and physical properties

A prominent feature of the contemporary trade is its fragmentary nature (Dishman 2005, 237–252). Using the example of cocaine, when the transnational routes between Latin America and the USA were first established, large (over 100 kg) and very large (over 1 ton) shipments would cross the borders through established routes; as has been well documented, George Jung used small planes and boats to transport relatively large volumes of the drug across the America border (for a detailed account, see Gugliotta and Leen 2011). However, with the development of more advanced surveillance and policing methods, such brazen approaches are now extremely rare and risky. Paradoxically, however, the development of these and other policing methods has fragmented the trade, making it much harder to police – the identification and targeting of a relatively large plane is far easier than policing a border post through which thousands of potential 'mules', carrying very small amounts of the drug, pass every day (Dishman 2005, 237–252). Indeed, while contemporary reports show a decrease in the number of large and very large shipments of cocaine, there has been an increase in the number of small (under 100 kg) or very small (under 10 kg) shipments (compare, for instance, UNODC 2008b, 2010b). Thus, while spectacular (and newsworthy) discoveries of containers full of cocaine may have decreased, many smaller shipments continue to sustain and meet the demand for cocaine and other drugs (UNODC 2013, 16–18). The policing of these smaller shipments is also obviously much

harder (Wannenburg 2005, 5–16). Consequently, with the above in mind, 'the use of West Africa – which lacks effective coastguard and airspace control arrangements – adds additional maritime and aerial routes both out of Latin America and into Europe' (Cockayne and Williams 2009, 8).

While the use of traditional policing methods did contribute to the eventual downfall of the drug 'king pins' such as Pablo Escobar and Ochoa brothers, the contemporary trade is more fluid, dynamic, and resilient to sustained policing efforts than ever before (Dishman 2005, 237–252). While it is recognised that many of these methods (developed through and because of the 'war on drugs') have been a failure or may actually have contributed to the strengthening of the transnational trade, new understandings of the trade's operational logic are still needed. No longer is the transnational trade centralised and no longer can the removal of specific individuals stem the flow of drugs, however, briefly. This is especially true in West Africa and is, in part, a product of the structure of the distribution networks and organisations:

> The variations in these risk profiles within West Africa in turn enable drug-trafficking organizations to engage in strategic arbitrage. They can – and do – engage in jurisdiction-hopping in order to avoid short-term law-enforcement clampdowns, and develop a dynamism that makes proactive law-enforcement very difficult, particularly if carried out on a unilateral, national, and uncoordinated basis (Cockayne and Williams 2009, 9).

What the above comment points to is the importance of the *relationship* between law-enforcement efforts and drug trafficking routes and organisations. The 'dynamism' of an organisation will evolve in step with developments in the technology, techniques, and information available to law-enforcement agencies and agents. Over and above this, it must also be remembered that the trade in narcotics is not solely limited to the trade in a substance – the trade affects all levels of society, from the need for fake passports, to the need for plane tickets, and to the need for an avenue by which the vast amounts of hard currency can be dissipated or laundered into the legitimate economy (Addo 2006, 1–2).

The routes taken and methods used by these organisations to transport illegal drugs are not exempt from this antagonistic (yet often generative) relationship. Law-enforcement agencies now frequently rely on numerous detection and surveillance technologies in order to carry out their task (e.g. see Chandha and Ferguson 2013, 1–3). These developments, while increasing their capabilities, also make more complex the distribution routes and methods used by drug-trafficking organisations. For instance, the development of port-based X-ray scanners now allow law-enforcement agencies to quickly and thoroughly scan containers leaving a country's ports of entry (Hokey, Lim, and Park 2013, 98–112). In response, there has been a notable rise in 'quick-release' methods of smuggling, in which bags of contraband are not concealed, but are left just inside the containers, to be removed by corrupt officials or agents before the container is passed through the scanning machine (Nte 2011, 69–89). These and other forms of technology, not to mention the employment of highly effective sniffer-dogs, have led some smuggling organisations to use nature itself as a means of transporting contraband. It has been reported, for instance, that shipments destined for the Southern African market are fitted with relatively cheap satellite tracking technology, dumped at sea further north, and are carried down the coast by the Aghulas Current. These floating parcels are then picked up by local organisations for forwarding to the larger cities.[1] Indeed, the South African Police Service recently intercepted just such a shipment when some of the packages inadvertently washed ashore near the town of Mossel Bay (Legg 2014). Various drug contraband are also frequently hidden in evermore sophisticated places and packaging, even going so far as to use counter-detection technologies and methods of concealment in response to the deployment of specific surveillance and detection technologies.

In West Africa, these methods of surveillance and detection have also forced distribution organisations to adapt their practices. Police efforts and equipment have focused on the traditional and formal points of entry, such as the seaports and airports (UNODC 2013). In response, it has been reported that smugglers now use large vessels only in the actual transatlantic crossing, intercepting these larger vessels out at sea and carrying the packages ashore using small, fast boats that are virtually undetectable against the radar 'noise' of the ocean (UNODC 2013). Of course, this presupposes that the particular stretches of coast are even covered by radar surveillance, with some smuggling organisations paying officials in order to be informed which stretches of coast are under surveillance at any particular time. It must be remembered that the coast of West Africa is also extremely inaccessible to any large vehicle, often being comprised of marshy shoreline that is frequently uninhabited. In those areas where communities exist, due to the continuing levels of poverty, inequality, and political disenfranchisement, they are often willing accomplices to the smugglers' work, continuing the logic of the 'resource curse' (Bybee 2009, 1–20). Policing of the trade at its most vulnerable point, where the illicit substances are transferred from the vehicles that were used to transport them across the sea to those that will be used to transfer the product onwards to Europe, is thus made doubly problematic, with the local populace often helping the traders and distributors with their work by providing them with tip-offs, by stalling police operations or in some cases actually engaging violently with the law-enforcement agents (Nte 2011, 69–89). Indeed, it is these structural issues that frequently play a prominent role in the establishment, production, distribution, and use of illegal drugs. As such, those who wish to trade in illicit substances find a fertile breeding ground for the recruitment and employment of the local populace, many of whom will already harbour an antagonism to the local law-enforcement agencies and officers. Finally, the trade in illegal drugs has also been aided by the various turf wars and increasing instances of political unrest that have characterised West African states and their governance. These periods of unrest have the direct consequences of not only creating a geopolitical environment in which the distribution of illicit substances might flourish, but also have the effect of drafting away from the trade those resources that might otherwise have been spent on its policing (for an extensive critique, see Brown 2013).

It is not only the equipment used by law-enforcement officials in the detection of illegal contraband that is frequently dependant on, or uses, the physical features of a particular drug in order to operate. As noted above, a drug's value, weight, volume, and ease of detection, and the attendant risk of transportation all interact. Those drugs that have a high worth, but that are risky to transport, such as cocaine, are frequently concealed in a sophisticated manner. Almost weekly, news of 'mules' swallowing packets of cocaine or heroin emerge, often when the 'mule' is caught or dies from poisoning as a result of one of the packages bursting in their stomachs. Cocaine has been transported on and in the bodies of 'mules' in numerous ways, including the swallowing of packets of contraband, insertion into the vagina or anus, or even in the dreadlocks of one hapless woman (Maclean 2011).

5. Physical properties and governance

While this paper argues that there is a causal relationship between the physical properties of any particular drug and the manner in which it may be produced or distributed, these properties are not a sole determinant. The trade in illegal drugs is highly complex, dynamic, and fluid, operating in response to (and at times driving) numerous political, economic, and social considerations (Felbab-Brown and Forest 2012, 787–806). The physical properties of a drug do, however, determine the parameters that will frequently define the most likely means of transport, distribution, and use. These considerations are further and specifically augmented by demand, a drug's value, and the risk associated with its production and distribution. Large consignments of

cocaine have become less frequent because of their value, the risk of detection, and the serious punitive measures applicable to those caught in its smuggling. This does not mean that such large consignments will simply cease to exist, but that they have become far more infrequent. In contrast, it seems likely that large consignments of cannabis or khat will continue, especially on the African continent (where both drugs have religious and cultural meanings often somewhat different from interpretations by international law) because they have a relatively low worth and the risk associated with their distribution is low. Consequently, while not the sole factor, a drug's physical or functional properties will play an important role in the manner in which it will be distributed.

An illegal drug's worth is a particular important property, even though it is contextually ascribed and will thus frequently fluctuate. In impoverished settings, the high worth of drugs such as cocaine, coupled with their ease of attainment, plays a prominent role in the recruitment and retaining of distributors or dealers, even in spite of the associate risks (Ellis 2009, 171). In South Africa, for instance, a gram of low-grade cocaine can be easily sold for ZAR350. This is R40 *more* than the government's *monthly* child-support social grant. As such, the distribution of or dealing in drugs remains an extremely attractive undertaking despite the associated risks. Coupled with continued political and economic disenfranchisement, which has been shown to encourage risk-taking behaviours, the distribution of illegal drugs will continue to flourish (Anderson and Galinsky 2006, 511–536). Indeed, as has been documented in both West and Southern Africa, illegal drugs have also begun to operate as a form of currency. This has become an increasingly prominent feature of distribution routes used in smuggling cocaine. This phenomenon may be articulated as the 'currencisation' of a resource or substance.

The currencisation of illegal drugs is of particular detriment to a Westphalian understanding of the state. This is because the production and distribution of illegal drugs not only occur beyond the auspices of the state, but actively undermine its sovereignty. Using illegal drugs as a form of currency undermines the legitimacy and validity of the legitimate, state-sanctioned economy, while also creating and sustaining a market that is beyond its regulation, taxation, and control. This has the further effect of calling into question the legitimacy and authority of the state itself, not to mention the official currency. Furthermore, the currencisation of illegal drugs has the effect of transferring economic power into the hands of those who, by virtue of their trade, operate beyond the auspices of the legitimate state. The net effect is the creation of a competing and antagonistic economic system, one that maintains a parasitic relationship with the very structures of the state itself. This, in turn, displaces the state's power.

Through a realist lens, a state will maintain, to the best of its ability, its monopoly on the use of force and violence. The creation of a second economy, as has been seen in Colombia, Bolivia, and more recently, Mexico, creates the wealth needed for the private acquisition of the necessary weaponry and tools with which this monopoly can be actively undermined (for a substantive critique, see Thoumi 2003). Indeed, in some regions of Mexico, the state's authority has been undermined to such an extent that it is no longer is, or seen as, the legitimate authority (Vulliamy 2010). The use of capital acquired through the production and distribution of drugs has also been used to acquire tools and technology that directly rival the state's ability to conduct surveillance in some areas. The displacement of the state's ability to control a particular area or region has been shown repeatedly, in both Latin America and Africa, to breed violence, terrorism, and corruption, resulting in the deaths of thousands of civilians. Indeed, over 70,000 people have been killed in Mexico alone (Vulliamy 2010).

Consequently, the deployment of state resources in the 'fight' against the production and distribution of illegal drugs cannot be done haphazardly, reactively, or in isolation (Greenfield and Paoli 2012, 6–15). To do so will simply result in the further fragmentation of the distribution routes, making them exponentially harder to further police. Moreover, the antagonistic

relationship between the state and drug distribution organisations, as defined by the now defunct 'war on drugs', resulted in ineffective policing strategies and methods that ultimately and ironically created the very environment needed for the distribution organisations to flourish (Csete and Sánchez 2013, 2–17). Understanding this, we believe, is the first step towards engaging more fruitfully with the transnational trade in illegal drugs. A state's capacity to both interpret and deal with the rise of the distribution of illicit substances within its borders can, in an important sense, be used as one of the definitive analytical lenses by which we might judge its claim to sovereignty and capacity. International collaboration, as always, will be key to both understanding and attempting to deal with the transnational trade in illicit substances.

6. Conclusion

With the death knell of the 'war on drugs' now having sounded, it has been recognised from a variety of perspectives that new and more effective means of engaging with the transnational trade in illegal drugs needs to be imagined. Indeed, there is a growing understanding that, ironically, the 'war on drugs' served to make far more complex this trade by creating an enabling environment in which it could expand. Africa, and especially West Africa, now stands at a crossroad (Csete and Sánchez 2013, 2–17). Does the region follow the prescriptions and policies that led to the proliferation of the trade, or does it attempt to seek for itself local, contextual, and contemporary mechanisms, tools, and understandings with which to engage with the trade? To do so will require a 'paradigm shift'; it will require a fundamental recognition that attempting to articulate the drug 'problem' as a problem is often the problem itself (Nadelmann 1988, 1989, 1–9). While such an enterprise will require the input from a number of sectors, it seems possible at least begin to understand some of the factors that have contributed to the continued existence and expansion of the transnational trade in illegal drugs, and in spite of the nearly USD50 billion that has been spent on its surveillance and policing. While it may never be possible to outright eliminate drug use, there may be better and more efficient ways with which to curtail its effects (Chartock 1974, 239–240). The militarisation of state responses against the use of drugs, as seen for instance in Plan Colombia, has been nothing short of a disaster. However, it is with this experience that law-enforcement agencies can arm themselves, not only so that they do not repeat the many mistakes that have been made, but so that the mistakes that have been made can serve as lessons for future plans and engagements.

By focusing on the physical properties of drugs and their causal yet antagonistic relationship with policing and surveillance measures, we have argued that the fragmentation of the contemporary trade is frequently a direct result of these measures. We have suggested that a substance's physical properties, much like natural resources, will determine how it is produced and smuggled. We have further highlighted some of the means and modes of transport now employed by drug smugglers, showing how they can be situated in relationship to policing measures and tactics. Consequently, the deployment of new technologies and tactics cannot be done haphazardly, or with an uncritical zeal. Effective responses will need to be carefully considered and should take into account the correlative effect they will have on the very trade they are deployed against. The physical properties of a drug cannot thus be considered in isolation, but should be seen as a contributing factor in a complex interaction between drug distribution and countermeasures by policing and law-enforcement agencies.

Taking into account these physical properties, as well as by focusing on the demand for and value of individual drugs, not to mention the risk calculations that frequently inform different patterns and modes of distribution, we have argued that a more nuanced approach to drug policing and legislation is not only possible, but necessary. Consequently, any attempt to decrease or eliminate the trade of narcotics, especially in West Africa, must also attempt to restore those political

and economic structures that make the risks associated with the trade far more substantive. To begin such a conversation requires a fundamental reorientation of understandings of drug production, distribution, and use. Drugs, in short, do not occur apart from the state, but are fundamentally a part of it.

Note

1. Personal conversation with Lieutenant Major Jeremy Veary (May 15, 2014).

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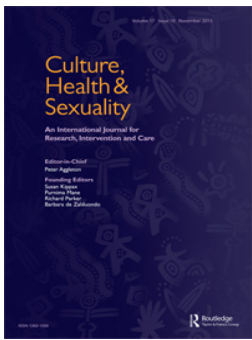
Public foetal images and the regulation of middle-class pregnancy in the online media: a view from South Africa

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Public foetal images and the regulation of middle-class pregnancy in the online media: a view from South Africa

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Ultrasonography images and their derivatives have been taken up in a range of 'public' spaces, including medical textbooks, the media, anti-abortion material, advertising, the Internet and public health facilities. Feminists have critiqued the personification of the foetus, the bifurcation of the woman's body and the reduction of the pregnant woman to a disembodied womb. What has received less attention is how these images frequently intersect with race, class, gender and heteronormativity in the creation of idealised and normative understandings of pregnancy. This paper focuses on the discursive positioning of pregnant women as 'mothers' and foetuses as 'babies' in online media targeted at a South African audience, where race and class continue to intersect in complex ways. We show how the ontologically specific understandings of 'mummies' and 'babies' emerge through the use of foetal images to construct specific understandings of the 'ideal' pregnancy. In the process, pregnant women are made responsible for ensuring that their pregnancy conforms to these ideals, which includes the purchasing of the various goods advertised by the websites. Not only does this point to a commodification of pregnancy, but also serves to reinforce a cultural understanding of White, middle-class pregnancy as constituting the normative 'correct' form of pregnancy.

Keywords: Ultrasonography; Pregnancy; Discourse; South Africa; Internet

Introduction

The use of ultrasound sonography technology in obstetrics has, since the 1960s, become particularly widespread in well-resourced situations. These images are, however, not limited to the 'private' realm of the medical consultation, but have been taken up in a range of 'public' spaces, including medical textbooks, the print media, anti-abortion campaign material, advertising, the Internet and public health facilities (Boucher 2004; Taylor 2008; Palmer 2009; Lupton 2013). Because of this, ultrasonography imagery has entered the political, philosophical, social and moral domains, enabling particular constructions of the foetus (as patient, as person, as citizen), and of the pregnant woman's body (as incubator, as absent, as protective shell), while laying down (at least some) of the terms of debate concerning abortion (Petchesky 1987; Mitchell 2001; Boucher 2004). Traditional concepts of inside and outside the body have been disrupted by the visualising technology of the ultrasonography image, and 'the foetus' has become a public social actor (Krolokke and Sorensen 2005; Lupton 2012). The images generated by the technique, as such, are no longer limited to medical encounters but are thoroughly political, and are frequently used as examples and justifications for much larger debates. Indeed, as Morgan (2009) has

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pervasively argued, the human embryo has been 'recruited … to "speak" about the social issues of the day' (35).

Much of the literature on the visualising technology of ultrasonography has focused on the implications of the personification of the foetus, the bifurcation of the pregnant woman's body and the reduction of the pregnant woman to a disembodied womb. What has received much less attention (with some exceptions – most notably Taylor [2008] – see later discussion), however, is how the cultural framing of ultrasonography imagery is not only gendered, but also raced, classed and heterosexualised. In this paper, we focus on the discursive positioning of pregnant women as 'mothers' and foetuses as 'babies' in South African online media that use pictorial representations of ultrasonography images, showing how these signifiers intersect with deeper questions of race, class, heteronormativity and gender. We examine how the ontological imposition of 'mummy' or 'baby' on to middle-class and, for the most part, 'White-raced' bodies serves to regulate and monitor these bodies in subtle ways, creating an 'ideal' pregnancy for which other women should strive, and (re)producing cultural understandings of a 'good' pregnancy. This is especially pertinent, considering the continued salience of 'race' and 'class' in the country (Durrheim, Mtose, and Brown 2011) and the fact that, despite the relative privilege of 'White-raced' people in South Africa, Internet usage cuts across racial divides.

In order to undertake this analysis, we initially draw attention to the discursive elements of sonography techniques and images. Using the Foucauldian concept of the 'clinical gaze', we discuss the intricate interweaving of the visual and aural aspects of ultrasonography. We locate our research within (the limited) discussions of the politics of the public foetus, as well as racialised and class-based issues in reproductive health in South Africa. With this as a basis, we analyse the visual and discursive framing of three websites aimed at the South African public that track the week-by-week progress of foetal development.

The discursive embeddedness of the 'science' of ultrasonography

Foucault's notion of the clinical gaze, of which ultrasonography imaging technology represents a paradigmatic instance, is useful in understanding the discursive embeddedness of foetal imagery (Shaw 2012). Foucault (2003) explicates the relationship between the clinical gaze, the discourse/rhetoric it employs to narrate itself and the materiality of medical technology: the clinical gaze 'meant that the relation between the visible and invisible … changed its structure, revealing through gaze and language what had previously been below and beyond their [medical practitioners] domain' (xii). Thus, the gaze shifted from a perception of the surface of the body to one in which the secrets and essences of the body were revealed – to one of 'invisible visibility' (149).

The development of ultrasonography technology represents a key development of the clinical gaze in relation to pregnancy. The interior of the pregnant body has been rendered simultaneously visible and discussable. It is the clinical gaze, which 'has the paradoxical ability to hear a language as soon as it perceives a spectacle' (Foucault 2003, 108), that renders the uptake of ultrasonography images in public discourse possible. The clinical gaze provides the grids of visibility for the hidden, the interior of the pregnant body, rendering these aspects audible as a language that can deliberate about the meanings, essence or substance of the pregnant body's interior. At the same time, it provides scientific authority to the narratives and discourses attached to the images.

Ultrasound technology has been significantly refined: from the A-mode (one dimensional, static reproductions) introduced by Donald, MacVicar, and Brown (1958)

through to the invention of the 4D ultrasound scanner, which allows for 3D images to be displayed continuously and in real time, and for the image to be produced in actual material form on a 3D printer (Nicolson and Fleming 2013). These refinements have rendered the foetus (and, by implication, the pregnancy and the pregnant woman) viewable and discussable in new and finer detail. The increasing sophistication of ultrasound technology, together with the development of technologies of medical, microscopic-facilitated photography (see, for example, the work of Lennart Nilsson [2004]) and of computer imaging, have allowed for 'highly detailed and aestheticized portrayals of the unborn' (Lupton 2013, 38).

The politics of foetal images

Researchers have noted a number of social developments resulting from the habitual use of ultrasonography in antenatal care (in resourced settings), and the circulation of foetal images in a range of public spaces. Pertinent to this study, the separation of the foetus from the pregnant woman has allowed for the personification of the foetus, which, in turn, has enabled the construction of a range of understandings concerning the foetus, including as a rights-bearing citizen (in particular the right to life), as a patient and as a person in need of care (Zechmeister 2001).

This serves to conceal the relation of the foetus to the pregnant body – 'The pregnant body has become an "empty spaceship" for the "cosmonaut" foetus' (Zechmeister 2001, 391) – while at the same time, it emphasises the woman as the 'foetal container'. The separation of the womb from the woman means that the woman is now seen to be carrying 'precious cargo' (Lupton 2012, 329). The injunctions for pregnant women to monitor and regulate their actions during pregnancy (what they eat, what they drink, how they exercise, how they take care of their health, what stress they are under, the safety of the spaces they occupy) are given significant weight by the images of the foetus as a fully-fledged 'baby' (Lupton 2012).

Much of the feminist work regarding the politics of public foetal representations concentrates on this simultaneous invisibilisation and responsibilisation of the pregnant woman and the use of these images in anti-abortion activism. As summarised by Lupton (2013), such images promote:

> [t]he separation of the unborn entity from that of the body in which it is growing, the infantilisation of this entity, its portrayal as beautiful, vulnerable and precious and its very status as an entity of which 'baby photos' may be taken, [which] have allowed anti-abortion groups to use these images to promote their objections to pregnancy terminations. (47–48)

There has, however, been less work on the embeddedness of these images within racialised and class-based power relations. Nevertheless, Taylor (2008) reminds us that although the public foetal image 'is detached from specific social conditions of its production … [it] retains certain crucial markers of social difference' (48). For example, the use of White babies in public foetal images is a judgement about what a 'valued' baby looks like (Taylor 2008). Although these images are mostly stripped of gender identifiers, 'White-race' is often a taken-for-granted marker. Kaplan (1994) notes that commercial foetal images share a crucial feature: they are presented as 'already human, white, and as a subject' (126).

These politics are, of course, embroiled in the wider cultural up-take of ultrasound images. For example, Mitchell (2001) argues that ultrasound pictures frequently feed off US neoconservatism around 'traditional' family forms, while Mehaffy (1997) argues that they promote a White heterosexual consumer identity and restrict maternal agency.

Race and reproductive health in South Africa

Despite the fact that it has been 20 years since the first democratic elections in South Africa, numerous economic, political and social problems continue to plague the country. The disparity between different income groups has increased in the last 20 years and, considering the country's history, these economic disparities are intricately enmeshed with race (Özler 2007). Race continues to be the salient 'category' that not only structures the formal economy, but many, if not most, of citizens' daily interactions and access to services (Özler 2007; Durrheim, Mtose, and Brown 2011).

These race, class and location inequalities play themselves out in the sexual and reproductive health arena despite the strong sexual and reproductive rights framework that has underpinned much legislative change and policy formulation in post-apartheid South Africa. Racial and class inequities are evident in rates of unwanted pregnancies, maternal mortality and access to services (Department of Health 2007). The reality of pregnancy is very different depending on race, class and location, as evidenced in disparities in access to antenatal care facilities. For example, the last South African Demographic and Health Survey revealed that 61.9% of White women and 24% of African women receive antenatal care from doctors or specialists (68.6% of African women receive antenatal care from nurses or midwives compared to 24.8% of White women); 51.3% of White women and 3.8% of African women deliver their babies in the well-resourced private healthcare sector, while 84.4% of African women and 41.5% of White women deliver their babies in the overstrained public healthcare sector (Department of Health 2007). Similar fractures are seen in terms of location, with:

> central cities in former White areas featuring sophisticated curative services rivalling those available in developed countries, while women living in remote rural areas [who tend to be poor and Black] are often forced to travel great distances to visit a clinic providing only basic services. (Burgard 2004, 1130)

Ultrasound is not usually used in the public health sector (which is mostly utilised by poor Black women). It is available only for high-risk cases in the public sector, but is a standard tool used in private healthcare (which is utilised by most middle-class people who have access to medical insurance).

While the reproductive health challenges faced in South Africa have resulted in much research with regard to disadvantaged Black women, there is an increasing trend to problematise reproductive issues amongst White people. This work has started to grapple with how classed and gendered discourses and practices shape reproductive norms for 'White-raced' women and men around such things as reproductive decision-making (Macleod and Morison 2015) and childbirth options (Chadwick and Foster 2013, 2014). However, barring research in medical obstetrics (e.g. Van Dyk, Motto, and Buchmann 2007), and a brief mention of middle-class pregnant women constructing ultrasound technology as managing risk (Chadwick and Foster 2014), we could find very little research that speaks to the social, gendered or cultural implications of the use of ultrasound technology in South Africa or how foetal images get taken up in the cultural domain.

Pregnancy online: our study

We analysed the discursive and visual framing of foetal images in three websites aimed at the South African market as representatives of public media potentially consumed by women unmediated by a health service encounter. We chose to analyse online sites rather than pregnancy magazines partially because of the interactive nature of the content

(women may access a range of foetal images relatively easily if they have access to a computer and the Internet) and partially because of the sheer number of images compared to the relatively isolated images produced in pregnancy magazines (as our scan of magazines contained in the National Archive of Magazines in Cape Town revealed). As with all online media, these sites are consumed by people with sufficient resources to access a computer and the Internet. In South Africa, approximately 36% of households have regular access to the Internet (Statistics South Africa 2012).

In order to access pregnancy websites formulated with South African audiences in mind, we used the search terms: Pregnancy AND 'South Africa'. We entered these search terms in google.co.za (the South African version of Google), google.com and bing.com. Using analytics provided by Google, including referral metrics, indexing prominence and link numbers, as well as our own impression of the design, clarity, purpose and knowledge exposition of the sites, we settled on the three sites for analysis. These sites were thus chosen because they were indexed by the search engines as the most referred-to websites, had the highest number of South African visitors and were the most complete and clear websites that specifically target the South African market. With this in mind, the websites chosen were Pregnancy Week-by-Week (www.pregnancyweekbyweek.co.za), Babies Online (www.babiesonline.com) and Parent24-Pregnancy (www.parent24.com/pregnant).

Our analysis was limited to the sections of the websites directly concerning pregnancy, in particular the pregnancy week-by-week sections (each of the sites contains week-by-week photos or images of the pregnancy and explanations of foetal development on the corresponding page). We did not include sections dealing with pre- or post-pregnancy phenomena or concerns, but did include pages that spoke specifically of pregnancy. In total, there were 166 pages directly relating to pregnancy. It is from these pages that we have selectively drawn our examples below. It is important to note, considering the dynamic nature of online sources, that these sites were accessed and analysed in February/March and July/August 2014 and are thus subject to change. We present these data as they were displayed at the time.

The homepage of the Pregnancy Week-by-Week site (hereafter PWW) bills itself as 'your guide to everything pregnancy & more: whether you are trying, expecting or new mom or dad, we are excited to join you on your journey'. A photo of a heavily pregnant White stomach on which a male hand is placed, with a female hand covering the male hand accompanies this.

The website promotes itself through an implication of care: 'Pregnancy and parenthood can be daunting, but like with everything else, these stages too will pass – allow us to bring you comfort and keep you company while embarking on this life changing journey'.

The homepage of Babies Online (hereafter BO) contains an article on 'being green', with a photo of a pregnant White woman relaxing on the grass, protectively holding her stomach, as seen in Figure 1 below.

To the left, a White couple is presented kissing a happy and healthy baby in a picture that has been ghosted so as to appear 'angelic'. Advertisements are prominently displayed and positioned. At the time of writing, 'Pampers Baby Dry' nappies and the latest Samsung™ smartphone were on display. Both are expensive, which limits their access and use to a very small segment of the South African population. A tone of easy and free gains from accessing this site is emphasised: 'Since 1997 we have been providing Fun Tools, Free Baby Web Sites, Free Baby Product Samples from hand selected partners, and must-read articles on Pregnancy & Parenting Newborns'.

Figure 1. An example of the images used by the Pregnancy Week-by-Week website. ©Pregnancyweekbyweek. Reproduced by permission of rights holder. Permission to reuse must be obtained from the rightsholder and supplied to Taylor & Francis.

The Parent24-Pregnancy site (hereafter P24) forms part of the much larger South African News24 stable. Its homepage and various tabs feature topical 'news' stories (e.g. at the time of writing, 'South African model's baby bump' [these change daily however]). At the analysis stage, the front page displayed only White models in each of the highlighted sections, as seen in the example of Figure 2 below.

In line with the theoretical issues discussed above, we conducted a broadly Foucauldian discourse analysis on the material. Corresponding with Foucault's understanding of the simultaneous visibility and audibility of the interior of the body, we analysed the images
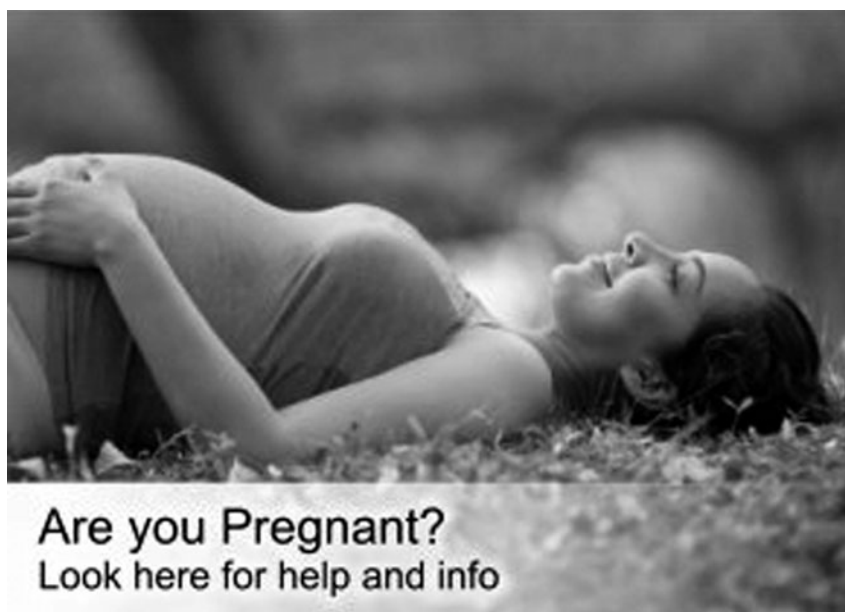
Figure 2. An example of an image in which pregnancy is depicted using White models. ©Babiesonline. Reproduced by permission of rights holder. Permission to reuse must be obtained from the rightsholder and supplied to Taylor & Francis.

and writing on the sites as text that can be given interpretive gloss (Parker 1992). Using the method proposed by Arribas-Ayllon and Walkerdine (2008), we viewed the analysis as drawing attention to 'the material practices wherein being is rendered thinkable, manageable and governable' (101). In the following, we outline how the sites: (1) construct foetal 'personhood' and 'maternal' responsibility, (2) normalise 'White-raced-' and middle-class bodies and (3) normalise heterosexuality and particular gendered stereotypes.

Foetal 'personhood' and 'maternal' responsibility

The websites under review all provide intricate images of the foetus on the weekly pages, together with significant amounts of text. For the most part, pregnancy is dissected spatially – the pregnant woman's body is invariably portrayed as nothing more than an abdomen or set of reproductive organs, which contain or house the growing foetus, as can be seen below in Figure 3. For example, in the 'about us' section of the PWW site, the page contains a series of pictures documenting a White foetus's development in a womb that has been disembodied from the woman. These pages thus reproduce what feminists have critiqued for some time now (Petchesky 1987; Duden 1993).

In addition to the still pictures featured on all the sites, PWW provides an interactive advertorial entitled, 'See! What your baby may look like'. The user is instructed to 'select your current week of pregnancy'. When a user clicks on any of the weeks between 6 and 40, they are directed to a new website that contains, among other things, a 4D ultrasound
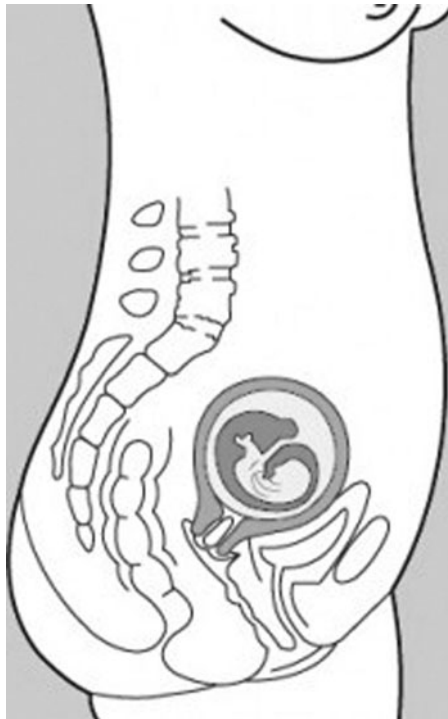

Figure 3.   An example of an image in which only those physical aspects related to pregnancy are shown. ©Pregnancyweekbyweek. Reproduced by permission of rights holder. Permission to reuse must be obtained from the rightsholder.

flash image, looped for approximately three seconds. Although much of the 'movement' is actually created by altering the perspective of the view scanner, the impression created is of an independent, moving, living being.

All of the websites refer to the foetus as 'baby' or the possessive 'your baby'. Moreover, each of them begins to refer to the foetus as a baby shortly after conception:

> Your baby is a whole 500 cells big at the moment. (PWW-week 3)

> By the end of week 4 of your pregnancy, your baby is about the size of a lentil, curled into an arc and measures about 4mm across. (P24-week 4)

> Your baby is now known as an embryo and is around 3mm in length. (BO-week 4)

Although two of the sites complicate this early naming with 'foetus' and 'embryo', the implication is that the product of conception, even in the first couple of weeks, is not only a 'baby', but also, more specifically, 'your baby'.

On the week-by-week pages, the physical development of 'your baby' is described in detailed terms – how nutrition is obtained, how oxygen flows through the blood stream, the development of organs, brain, heart, limbs, spine, vocal chords, muscles, senses. The physicality of the foetus is attributed even more status on PWW, where readers are referred to a site in which the creation 3D models of foetuses (by scanning and 3D printing technology) are shown in a video clip. The small part of the woman's body that is printed is transparent and foetus is White. These detailed descriptions of physical development and the physical reproduction of a model of 'the baby' all contribute to an understanding, underpinned by the power of the authority of the clinical gaze, of an independent physical entity.

In addition, all the sites refer to the actions of the foetus, such as sucking the thumb, crying, having hiccups, opening and shutting eyes, hearing sounds, sleeping, moving and passing waste:

> Believe it or not, your baby actually starts to urinate into the amniotic fluid. (PWW-week 14)

> He wakes and sleeps in regular intervals, similar to what a newborn would do. (BO-week 21)

> She is beginning to move her facial muscles – she can frown, open and close her mouth and suck and swallow amniotic fluid. (P24-week 12)

These descriptions, apart from giving independent physical status to the foetus, also promote an understanding of the foetus as conscious of its surroundings and as having fully developed human capacities. The result is the subtle anthropomorphisation of the foetus into a baby.

The ontological difference between a 'baby' and 'foetus' or 'embryo' is vast. The former necessitates forms of responsibility and care that the latter do not frequently engender. The net effect of the personification of the foetus is that the pregnant (White) woman is made responsible for the foetus and its personhood (while, ironically, simultaneously written out of the pregnancy – literally made transparent as in the 3D model). The use of the pronoun in '*your* baby' dovetails with injunctions made to the women to engage in particular activities to ensure the health of the 'baby':

> Be sure to eat enough foods containing calcium. Your body is demanding more and more calcium as his bones grow and harden. (P24-week 30)

> Be sure not to take any sort of pain medication – even over the counter remedies such as Tylenol or Advil – without first discussing it with your doctor. (BO-week 32)

> Dehydration has been found to be a possible cause of premature labour, so be sure to drink at least eight glasses of water a day. (PWW-week 24)

Terms like 'be sure' leave no doubt about where responsibility for the outcome of the pregnancy lies. These kinds of injunction render the pregnant woman culpable for the growing, independent, conscious human being referred to on the websites, with little or no acknowledgement of the constraints or possibilities allowed for by the context within which she lives.

Idealisation of the middle-class 'White-raced' body

Barring five of the photos featured on the PWW and the BO sites (found on the landing pages, some of the information pages and some of the week-by-week breakdowns), the rest of the images are of White women, White heterosexual couples, White women with children or White heterosexual families. Barring two pages, P24 also features White women, heterosexual families and children on the eight main pages dealing with pregnancy and the many subpages – some of which take the form of 'news' type stories. The main exception is found on PWW, which features the abdomen of a woman with brown skin (showing the, by now, standard interior view of the foetus). Although not all the pictures of the foetuses are clear, visible ones on PWW and BO are White. While the pictures used by the websites are subject to change, our extensive search for contrary examples to the White heterosexual women at the time of analysis produced only these few instances.

Despite the relative expense of the Internet in South Africa, and the continued overlap of class and race, we cannot, however, assume that most of the consumers or potential consumers of these sites are White, middle-class women (Pejovic et al. 2012). Only 8.9% of the population is White and, as mentioned above, 36% of households have access to the Internet (Statistics South Africa 2012). Use of the Internet through new technologies, such as mobile phones, has been shown to be rapidly increasing in South Africa.

Thus, it is not a simple case that there is a match between the representations of the 'raced' body and the consumers or potential consumers of these sites. Rather, the overwhelming representation of White-raced bodies in relation to depictions of normal pregnancy and foetus feeds into the idealisation of these bodies – 'Whiteness' continues to operate as the unseen norm, even in a country in which the vast majority of people are Black, as noted by other researchers (e.g. Steyn 2001).

The representation of the White-raced body is subtly paired with an assumption that the person consuming the webpage has sufficient access to the resources needed to experience a comfortable pregnancy. For example, PWW provides readers with '20 questions you should ask on your maternity ward tour', thus assuming access to good healthcare facilities (that, moreover, accommodate tours); Parent24 markets 'parent awareness month' through a link to sessions at the private hospital provider, Mediclinic, and readers are urged to obtain more information by downloading an application for Android or iPhone (the 'smart' mobile phones that only people with a high income can afford). There is a range of sections in BO, including ones for baby showers, gift ideas, maternity clothes, 4D scans, choosing a hospital, buying 'green' or organic goods, staying at home or working, each of which implies a certain level of financial ability and time, not to mention resource base. All of the sites contain significant advertising, the message being that good parents have sufficient expendable capital to find and buy the products represented by the advertisments on the website. The possession of these products is a marker of a good and well-resourced pregnancy.

These messages do not explicitly racialise pregnancy. However, given the fact that, as indicated earlier, few Black women have access to well-resourced, private reproductive healthcare, and that race and class (and therefore access so such luxuries as smartphones

and the various goods advertised on the sites) largely overlap in South Africa, the emphasis on both goods and private healthcare serves to idealise the classed, White-raced body in subtle ways.

Normalising heterosexuality and gendered 'differences'

The pregnant woman's partner is frequently not addressed in the sites. In particular, BO speaks only to the pregnant woman, with the partner being essentially absent both from discussion and as a potential consumer of the information. Where partners are mentioned in the other two sites, the assumption is that this partner will be male: 'Touring the maternity ward of your chosen hospitals is an important way for pregnant women and expectant fathers to prepare themselves for the big day'. Pregnancy Week-by-Week attempts to include male partners in its website, frequently referring to what 'moms' and what 'dads' experience or expect. Each page has three sections – one for 'mum', one for 'baby' and one for 'dad'. It also provides the option to 'email this page to dad' – itself presupposing a gender disparity in which 'moms' have the time and motivation to visit the page and to engage in the emotional labour of finding out about the pregnancy, while 'dads' have other things to do and require help in accessing the resources. On all the sites, where couples are featured visually, they are heterosexual couples (with the exception of some of the news stories on Parent24).

Where partners feature, not only is heterosexuality assumed, but also particular gendered stereotypes. The following excerpts addressed to 'dads' from PWW illustrate this:

> We know that you men are not as emotional as we are but you need to make a huge whoohhaa about this. (PWW-week 4)

> At this point in time, you might be starting to stress about the financial and psychological responsibilities of being a parent. (PWW-week 7)

> It's understandable, however, that you might also be feeling a little stressed. Take a few hours for yourself and spend time with your friends playing a round of golf, or enjoy a vigorous workout at the gym. Just remember that Mom might still be a little emotional, so give her some extra attention when you get home. (PWW-week 11)

These quotes reinforce the notion of women as emotional and of men as requiring tutoring in how to deal with emotionality. Men are positioned as responsible in terms of finances, and entitled to time with their (presumably male) friends, engaging in traditionally masculine pastimes such as playing golf or going to the gym. As such these men are invited into a form of class-based hegemonic masculinity, in which men are rational, the household's breadwinners, financially well off (able to afford a round of golf) and peripheral to the main business of reproduction (Morrell 2001).

Discussion

By making an implicit claim to medical science, public foetal images are positioned as truth-bearing signifiers that allow the reader to be privy to the changes in the pregnant woman's body, and indeed the growth of the foetus. The clinical gaze enabled by sonography constructs particular understandings of the pregnant woman. The creation of more and more fine-grained images (to the extent of printing 3D models of the foetus and portraying movement through 4D scanning) gives rise to ever-greater possibilities of describing the interior of the pregnant body, and invites a plethora of language about the foetus and the pregnant body.

The websites we analysed use visual and linguistic interpretations of foetal images to draw pregnant women into the subject position of 'mummies' with fully fledged 'babies'. Our analysis shows how the foetus is personified through giving it, firstly, separate physical status from the pregnant body and, secondly, implying human capacity through emphasising movement, feeding, crying and so on.

These images, and the accompanying cultural framing, are not simply explanatory, but are set up as ideal images of the pregnant body and foetus that are simultaneously normative and regulatory. The online media use sonography images, or stylised derivatives, as a means of articulating an understanding of how pregnancy should be lived, how it should progress and how it should conclude. This normative framework does not occur in isolation, but is embedded in pre-existing historical and socioeconomic differences that have hereto defined South African society and played a significant role in constituting the 'normal' and accepted.

The simultaneous reduction of the pregnant woman to a womb or abdomen and assignment of the status of mummy and baby to the pregnant woman and foetus, respectively, set up the conditions for the responsibilisation of women. The woman is positioned as principally responsible for the outcome of the pregnancy, separate from the healthcare, economic, social, interpersonal and cultural context within which she lives.

This responsibilisation dovetails with an idealised depiction of the pregnant body as White-raced and well resourced. The implication of this idealisation is that this is how 'normal' pregnancy does and should look. Deviations are thus implicitly depicted as a failure on the part of (Black or poor) pregnant women, irrespective of their ability to control them. Similarly, this logic is employed as a means of selling the products featured on the website – to not have newest and most essential item for one's pregnancy or child is to bring into doubt one's responsibility. The normalisation of heterosexual relations and gendered stereotypes completes the picture in which middle-class women are regulated into a particular understanding of pregnant subjectivity: a subjectivity that should conform to gendered heteronormative standards in order to be normal.

Roberts (2012) highlights how, with increasing infiltration of the media, we are used to interpreting our lives through images and expect to be able to make sense of them without expert guidance. The access that women now have to public foetal images, not only through websites, but also in public clinics, baby pamphlets, pregnancy magazines and abortion and advertising campaigns has meant that the medical surveillance normally associated with pre-natal sessions in which the pregnant body is monitored, measured and compared against norms (Lupton 2013) has extended into the cultural domain.

This has implications both for White-raced or middle-class women and for women who do not fit into these categories, as the ideal infiltrates and gets taken up in the cultural framing of pregnancy. Berlant (1994) argues that the pregnant woman's form (its fat, its femaleness, its foetus) is the 'vehicle for the production of national culture' (148). We argue that public foetal imagery, enabled through the clinical gaze of ultrasonography and reproduced through electronic media, simultaneously regulates the pregnancies of middle-class women, reproduces social and reproductive inequities and informs general social and cultural understandings of what constitutes a 'good' pregnancy (as has been shown of reproductive technologies in general [Lowry 2004]). This regulation, as indicated in our research, coheres around the idealised White-raced body (both of the pregnant woman and the valued foetus) and around particular heteronormative and gendered norms. Not only does this cultural surveillance extend to pregnant women, but also a range of people associated with pregnancies (partners, families, healthcare

providers, co-workers and employers of pregnant women), thereby reinforcing the net of regulation around what constitutes a good pregnancy.

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Résumé

Les images ultrasonographiques et leurs dérivés ont été adoptés par une série d'espaces « publics » comme les manuels de médecine, les médias, la documentation des groupes de pression contre l'avortement, la publicité, Internet et les établissements de santé publique. Les féministes ont critiqué la personnification du fœtus, la bifurcation du corps féminin et la réduction de la femme enceinte à un utérus désincarné. Cependant une question a peu retenu l'attention: comment et à quelle fréquence ces images se recoupent-elles avec la race, la classe sociale, le genre et l'hétéronormativité dans la détermination de compréhensions idéalisées et normatives de la grossesse ? Cet article se concentre sur le positionnement discursif de la femme enceinte en tant que « mère » et du fœtus en tant que « bébé » dans les médias en ligne qui ont pour cible un public sud-africain, au sein duquel la race et la classe sociale continuent de se recouper avec complexité. Nous montrons comment les compréhensions ontologiquement spécifiques des « mamans » et des « bébés » émergent de l'utilisation d'images fœtales ayant pour but de construire des compréhensions spécifiques de la grossesse « idéale ». Dans ce processus, la femme enceinte est rendue responsable de la conformité de sa grossesse avec ces idéaux, notamment de l'achat de produits divers proposés sur les sites web. Non seulement cette situation met l'accent sur la marchandisation de la grossesse mais, aussi, elle sert à renforcer la notion selon laquelle une compréhension culturelle de la grossesse, typique de la classe moyenne et blanche, constitue la forme normative « correcte » de la grossesse.

Resumen

Las imágenes de ultrasonografía y sus derivados se han recogido en una amplia variedad de espacios "públicos", entre ellos, libros de texto médicos, medios de comunicación, material contra el aborto, anuncios publicitarios, Internet y centros públicos de salud. Las feministas han criticado la personificación del feto, la bifurcación del cuerpo femenino y la reducción de la mujer embarazada a un útero incorpóreo. Sin embargo, se ha prestado menos atención a cómo estas imágenes se entrecruzan muchas veces con la raza, la clase, el género y la heteronormatividad en la creación de conceptos idealizados y normativos del embarazo. Este artículo se centra en la posición discursiva de

las mujeres embarazadas como "madres" y los fetos como "bebés" en medios informativos por Internet dirigidos a un público sudafricano, donde la raza y la clase siguen mezclándose de formas complejas. Mostramos cómo los conceptos ontológicamente específicos de "mamás" y "bebés" surgen a través del uso de las imágenes de fetos, creando conceptos específicos del embarazo "ideal". En este proceso, se hace responsable a las mujeres embarazadas de garantizar que su embarazo se ajuste a estos ideales, que incluyen la compra de diferentes objetos anunciados en los sitios web. Con esto, el embarazo no solo se convierte en una experiencia mercantil, sino también sirve para reforzar un concepto cultural de embarazo de mujeres blancas de clase media que representaría la forma "correcta" normativa del embarazo.

BALANCING HARMS IN CANNABIS POLICY: SOME CONSIDERATIONS FOR THE SOUTH AFRICAN CONTEXT

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2. INTRODUCTION: BALANCING HARMS

2.1 Despite widespread use, the concept of a 'drug' can be difficult to define. Legislatively, those substances listed in Schedules 3 to 8 in the Drugs and Drugs Trafficking Act (140 of 1992), the Pharmacies Act (53 of 1974) and the Medicines and Related Substances Act (101 of 1965) are illegal to produce, distribute, or use without the proper authorisation. Colloquially however, the term 'drug' normally denotes a schedule 8 substance, such as amphetamine, cocaine hydrochloride, or indeed, cannabis. These substances may not be produced, handled, or consumed except in very limited circumstances by authorised persons. History shows that the determination of the legal basis for the regulation of such substances is subject to a range of normative and political forces.[1]

2.2 One useful way to begin to make sense of drug policy alternatives is to distinguish between some different categories of related costs or benefits that need to be considered. Naturally, the question of who is to determine what precisely constitutes a policy-relevant cost or benefit is a difficult and political one. Such an account must consider not only the impact of the consumption of a substance, but also the effects of its production, distribution, and means of regulation. The case for any position on the regulation of a drug must take account of at least four areas:[2]

    2.2.1 The direct impact that it may have on its consumers, including negative effects on physical health and quality of life (especially in the context of the risk of dependence or addiction), as well as positive effects in therapeutic treatment and quality of life through recreation;

    2.2.2 The indirect impact that it may have on consumers and other parties, for example by encouraging consumers to become involved with other criminal activities,[3] or

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[1] See for example: Sue Pryce, 'The State of the Discipline: Politics and Drugs', *British Journal of Politics and International Relations*, 8 (2006), 602–10.

[2] This framework draws on that in Stephen Pudney, 'Drugs Policy: What Should We Do about Cannabis?', *Economic Policy*, 2010, 165–211 (p. 172).

[3] See for example: Michael M Vanyukov and others, 'Common Liability to Addiction and "Gateway Hypothesis": Theoretical, Empirical and Evolutionary Perspective', *Drug and Alcohol Dependence*, 123 (2012), 3–17.

by supporting criminal markets that can be problematic for society in other ways, such as the degree to which violence may be integral to them;

2.2.3 The direct impact that it may have on non-consumers, including consumers' families and others touched by their drug-related behaviour (for example because consumers may commit crimes related to their drug consumption); and

2.2.4 The impact of the policy measures aimed at addressing the above, including their effectiveness and their financial and opportunity costs.

2.3 We do not here attempt a full consideration of the relative significance of these factors as they apply to cannabis, or of the formidable challenge of satisfactorily balancing them in the context of inevitably-limited resources. While we will touch on aspects of the first two of these points, our main focus is on some issues around the third and especially the fourth that are within our expertise and that may be of interest to the court. Still, at least all of these four must, ideally explicitly, form part of any good policy calculus.

2.4 Substance use policy measures are contemporarily conceptualised as falling under one of three broad categories of approach: 1) attempts to reduce the **demand** for the substance, 2) attempts to reduce its **supply**, and 3) attempts to reduce the impact or **harm** of its use. According to the South African National Drug Master Plan of 2013-2017, these concepts can be described as:

2.4.1 "Demand reduction, or reducing the need for substances through prevention that includes educating potential users, making the use of substances culturally undesirable (such as was done with tobacco) and imposing restrictions on the use of substances (for example by increasing the age at which alcohol may be used legally);

2.4.2 Supply reduction, or reducing the quantity of the substance available on the market by, for example, destroying cannabis (dagga) crops in the field; and

2.4.3 Harm reduction, or limiting or ameliorating the damage caused to individuals or communities who have already succumbed to the temptation of substance abuse.

This can be achieved, for example, by treatment, aftercare and re-integration of substance abusers/dependents with society."[4]

2.5 The legal prohibition of the manufacture, trafficking, supply, possession and/or consumption of cannabis (or other drugs) can be understood as an attempt at both demand and supply reduction. Historically, the threat or experience of criminal punishment has been believed to be a useful tool for dissuading first or continued use of drugs (or indeed many other activities deemed negative or unwanted by a society). It is likely that prohibition has some deterrent effect for those that do not already have drug use patterns so problematic that they might be described as addiction or dependence, but the strength of this effect is debatable. Countries with more punitive anti-drug policies do not, for example, tend to have lower drug use prevalence levels than those with more liberal policies, and the evidence is mixed at best that there are significant changes in drug use prevalence when countries shift their policies between more or less punitive approaches.[5] The deterrent effect of such sanctions may be particularly limited in circumstances where policing is ineffective, where punitive sanctions become seen as a rite of passage within some marginalised communities, or indeed where prohibition is at odds with the broader structures or values of society. All three of these concerns exist in South Africa, to varying degrees.

2.6 For those that already do have highly problematic drug use patterns, we believe that it is fair to say that there is good consensus among experts that imprisonment is a wholly inappropriate and ineffective tool for dissuading or helping them. This has even been acknowledged by the Director of the US White House's Office of National Drug Control Policy, who recently stated during a televised interview that:

2.6.1 [The war on drugs] has been all wrong...We can't arrest and incarcerate addiction out of people. Not only do I think it's really inhumane, but it's ineffective, and it cost us billions upon billions of dollars to keep doing this.[6]

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[4] South African National Department of Social Development, 'National Drug Master Plan 2013-2017', 2013, 1–168 (p. 29). [Emphasis added]

[5] Dan Werb, Tara Marie Watson and Nazlee Magshoudi, *State of the Evidence: Cannabis Use and Regulation*, 2015, p. 27.

[6] Mierjeski, A 2016, 'Top White House Drug Official: War on Drugs is a Failure', *attn.:* 14 December, available at: http://www.attn.com/stories/4686/white-house-official-says-war-on-drugs-failure (accessed 5 March 2016).

2.7 It is no longer the norm in the international drug policy arena (although it is not unheard of) to hear the criminalisation of drugs described as a matter of discouraging demand. Instead, it is typically understood as a tool for supply reduction – for disrupting and disincentivising the provision of drugs to those who might wish to access them. The logic of supply reduction may be as simple as proposing that the removal of one unit of the drug implies a one unit reduction in its possible consumption (the 'physical flow' model)[7] or may extend slightly further to suggest that the disruption of the drug's market will further reduce drug consumption through the medium of increased prices (the 'risks and prices' model).[8] Recent years have seen a major reduction in the international consensus on the effectiveness and desirability of a supply reduction approach based on criminal punishment, as we will describe below.

2.8 While the concept of 'harm reduction' as mentioned above has historically been used in the drug debate in a narrow and health related sense, we believe that the use of measures of harm with a wider lens is useful. There is evidence that an 'objective' assessment of harm has often played a smaller guiding role in drug policy formation than has some combination cultural norm, historical custom and political incentive.[9] However, the concept of harm can be applied more widely than the public health sphere, for example to police interventions around cannabis. As we will show, this opens up the argument to a wider set of factors that should be considered from a policy perspective. We acknowledge of course that the difficulty is that definitions and assessments of harm, and especially of the appropriate weightings of different types of harm to different groups in society, are as practically troublesome as they are often politically or ethically contentious. Nevertheless, we suggest that there is enough evidence, particularly in the case of policing, to justify this approach.

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[7] Jonathan P Caulkins and Peter Reuter, 'Illicit Drug Markets and Economic Irregularities', *Socio-Economic Planning Sciences*, 40 (2006), 1–14 (p. 2).

[8] Don Weatherburn and others, 'Supply Control and Harm Reduction; Lessons from the Australian Heroin "Drought"', *Addiction*, 98 (2003), 83–91 (p. 83).

[9] See for example: David Nutt and others, 'Development of a Rational Scale to Assess the Harm of Drugs of Potential Misuse', *Lancet*, 369 (2007), 1047–53. *Consuming Habits: Global and Historical Perspectives on How Cultures Define Drugs*, ed. by J Goodman, PE Lovejoy, and A Sherratt, 2nd edn (London: Routledge, 2007); Arthur Gould, 'Nationalism, Immigrants and Attitudes towards Drugs', *International Journal of Drug Policy*, 9 (1998), 133–39; Dwight B Heath, 'US Drug Control Policy: A Cultural Perspective', *Daedalus*, 121 (1992), 269–91.

2.9 Still, it is worth reflecting on the contribution that the explicitly harm reduction approach to drug policy has made to drug policy thinking more generally. The harm reduction perspective differs from demand and supply reduction in that it places ultimate priority on the direct measurement, analysis, and reduction of harm – *over and above any concerns about prevalence*. It grew from especially the 1980s out of attempts of drug users, activists, social workers, and health workers to combat HIV/AIDS and hepatitis problems among injecting drug users.[10] It has gained increasing global support and momentum over especially the last decade. Some typical harm reduction techniques that have since become increasingly mainstreamed globally are ensuring access to sterile needles and syringes to injecting drug users, and generally providing drug users with healthcare that doesn't stigmatise or necessarily try to eliminate their drug use.[11] Harm reduction advocates tend to eschew criminal justice tools and to stress the primacy of the values of human rights and human dignity in all drug policy interventions. They also stress the need for interventions that are evidence-based, targeted, and realistic.[12] We are strong supporters of this approach.

2.10 These principles – or even just the explicit identification of harm as the ultimate unit of analysis and concern – can and should cut across all drug policy alternatives. For example, just as they already inform many public health interventions with drug users, they can help inform the management of the cultivation or manufacture and trade in drugs.[13] The entire question of managing 'drugs' is one of balancing a wide and complex range of harms (and indeed benefits). This is a policy process which requires comprehensive intervention at the political level.

2.11 To some extent the plaintiffs in this case seem to argue for an end to cannabis prohibition on the basis of the contention that it is harmless, or at least not as harmful as

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[10] Gordon Roe, 'Harm Reduction as Paradigm: Is Better than Bad Good Enough? The Origins of Harm Reduction', *Critical Public Health*, 15 (2005), 243–50 (p. 243); Gerry V Stimson, '"Harm Reduction - Coming of Age": A Local Movement with Global Impact', *International Journal of Drug Policy*, 18 (2007), 67–69 (p. 67).

[11] Stimson, p. 67.

[12] Stimson, p. 68.

[13] Mark Shaw, 'UNGASS 2016: The Focus on "Harm Reduction" Is Making Us Blind to Reducing the Broader Harms of Organised Crime', in *After the Drug Wars*, ed. by LSE Expert Group on the Economics of Drug Policy, 2016.

it should have to be to justify its prohibition. It is important to note that this is not a necessary position for anti-prohibition arguments. Indeed, many of those who motivate for an end to prohibition (of cannabis or other drugs or prohibited activities) instead do so out of a keen appreciation of the harms at play – and out of a belief that the most successful management of those harms requires that the task be brought into the sphere of legal, transparent, and constitutionally-guided public institutions.[14]

3. CANNABIS AND (OTHER) CRIME

3.1 In a country with rates of crime and violence as high as South Africa's, where almost a third of households report that fear of crime prevents them from going to parks or open spaces alone,[15] it is appropriate that discussions of drug policy alternatives should consider the matter of what the relationship might be between the use of drugs and the incidence of (other) crimes. There is of course a direct and unequivocal link between drug use and crime in that the former has been defined as the latter, but this is a function of the legislative framework rather than a product of drug users' behaviour. Studies worldwide do tend to find that a large proportion of people who are arrested for other crimes test positive for alcohol or some illegal substance. One study in Cape Town in 2004 found that 80% of arrestees tested positive for at least one illegal drug.[16] This does not necessarily imply, however, that the drugs are the drivers of criminality or that there is a causal path between drug use and crime. It may be, for example, that common factors in individuals' backgrounds or immediate contexts may independently drive both their drug use behaviour and their (other) criminal behaviour.

3.2 Assuming that there is a causal relationship between drug use and the commission of crime, the possible routes through which such a relationship might play out are often understood to take one of three broad forms: psychopharmacological effects, economic-

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[14] Steve Rolles and others, *A Framework for a Regulated Market for Cannabis in the UK: Recommendations from an Expert Panel*, 2016, p. 2.

[15] Statistics South Africa, *Victims of Crime Survey 2014/2015*, 2015, p. 2.

[16] Charles Parry and others, 'The 3-Metros Study of Drugs and Crime in South Africa: Findings and Policy Implications', *The American Journal of Drug and Alcohol Abuse*, 30 (2004), 167–85 (p. 178).

compulsive effects, and systemic effects.[17] This neat tripartite classification, described below, is unfortunately not so easily discerned in practice. Although it is likely that all three of these factors play some part in the causation of crime, it can be difficult to determine which of them best explains a given incident of crime, and even more difficult to satisfactorily estimate their relative importance in driving overall levels of crime.[18] Many drug users also use a number of different drugs, making it impossible to ascribe their behaviour to any particular one of them.[19] It may nevertheless be useful to speculate on what place cannabis may occupy in South Africa within this broad typology of possible drug-related contributors to crime levels.

3.2.1 First there are those possible drivers of crime that are based on the **psychopharmacological** effects of the drugs in question (perhaps especially in combination with underlying predispositions or mental illness). These may make users more likely to commit certain crimes (for example due to increased aggression and appetite for risk, or decreased inhibition or decision-making capacity). These psychopharmacological effects may also have a causal effect on the incidence of crime by making users more vulnerable to becoming victims of crime (for example by making them less alert to risky situations). These crimes can be understood as being caused primarily by the physical nature of the drugs themselves.

3.2.2 The psychopharmacological effects of cannabis are no longer popularly understood to result in dangerous and uncontrollable 'reefer madness', and in fact many users are of the opinion that cannabis is more likely to induce passivity than help encourage any possible criminal behaviour. Perhaps surprisingly, the research on this is inconclusive.[20] It may well be that cannabis, like alcohol, plays

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[17] Paul J Goldstein, 'The Drugs/violence Nexus: A Tripartite Conceptual Framework', *Journal of Drug Issues*, 15 (1985), 493–506.

[18] See for example: Robert Maccoun, Beau Kilmer and Peter Reuter, 'Research on Drugs-Crime Linkages: The next Generation', ed. by National Institute of Justice and US Department of Justice, *Toward a Drugs and Crime Research Agenda for the 21st Century*, 2003, 65–95; Trevor Bennett and Katy Holloway, 'The Causal Connection between Drug Misuse and Crime', *British Journal of Criminology*, 49 (2009), 513–31.

[19] Pudney, p. 117.

[20] Todd M. Moore and Gregory L. Stuart, 'A Review of the Literature on Marijuana and Interpersonal Violence', *Aggression and Violent Behavior*, 10 (2005), 171–92.

a disinhibiting role in certain possible crime situations (and others, for example involving risky sexual behaviour),[21] especially for adolescents.[22] However, it is our view that the psychopharmacological effects of cannabis, unlike those of some other drugs, are unlikely to be a major contributor to levels of crime in South Africa.

3.2.3 Second there are the possible crime drivers based on drug users' **economic-compulsive** need to regularly access an expensive product, which combined with some drug users' difficulty in maintaining ordinary employment and supportive relationships may encourage them to use illegal means to access the needed money. Offenders do very often ascribe their criminal behaviour to an irresistible financial need to purchase drugs. About 77% of South African households believe that perpetrators of property crimes commit their crimes because of drug-related need.[23] These crimes can be understood as being caused primarily by the nature of the relationship between drugs and their users.

3.2.4 For the possible economic-compulsive pathway, the cannabis case is perhaps slightly less clear than the psychopharmacological. There is some tentative evidence elsewhere of burglary and shoplifting committed specifically for money to buy cannabis.[24] However, this effect is likely limited because (unlike some other drugs) cannabis consumption is not understood to typically produce compulsive patterns of criminal behaviour.[25] About 9% of lifetime cannabis users ever experience something that might be described as dependence, although this proportion may be slightly higher for those who initiate use in adolescence or those who use cannabis daily.[26] Its risk of dependence is understood to be lower

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[21] Rachel Jewkes and others, 'Rape Perpetration by Young, Rural South African Men: Prevalence, Patterns and Risk Factors', *Social Science & Medicine*, 63 (2006), 2949–61 (p. 2958).

[22] Neo K Morojele and Judith S Brook, 'Substance Use and Multiple Victimisation among Adolescents in South Africa', *Addictive Behaviors*, 31 (2006), 1163–76 (p. 1165).

[23] Statistics South Africa, p. 2.

[24] Bennett and Holloway, p. 515.

[25] Rosalie Liccardo Pacula and Beau Kilmer, *Marijuana and Crime: Is There a Connection beyond Prohibition?*, Working Paper, 2003, p. 8.

[26] Werb, Watson and Magshoudi, p. 9.

than the risk for alcohol or especially nicotine.[27] Cannabis is much cheaper than other common drugs,[28] which allays the need for ready access to large quantities of cash. While efforts to access the means to purchase other types of drugs – notably 'tik' – may well contribute to criminal activities like burglary or robbery, there is little credible evidence that this is the case for cannabis (at least any more so than for tobacco).[29] It is thus our view that for cannabis, what is known as the economic-compulsive effect likely plays a relatively small role (if any) in driving levels of crime in South Africa.

3.2.5   The third possible way in which drugs may drive the incidence of crime is through the **systemic effects** that drugs as a market or economic activity may have on their broader contexts. For example, some participants in drug markets may use violence to settle disputes over contracts or territories. These systemic effects are a likely culprit for much of the violence typically described as 'gang-related'. The trade in drugs, especially in parts of Cape Town, is a large contributor to the violence that last year escalated to such a level that schools had to be closed and ambulances would not enter some areas without police escort.[30] This category of crime can be understood as being caused primarily by the nature of the supply of drugs. For example, research has suggested that drug markets will be associated with less violence when they are relatively stable and consolidated in the distribution of power.[31] A common argument in favour of cannabis (and other drug) legalisation is that it will reduce systemic violence, as this will allow for more traditional legal mechanisms to manage at least some of the market.[32]

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[27] Werb, Watson and Magshoudi, p. 9.

[28] Karl Peltzer and others, 'Illicit Drug Use and Treatment in South Africa: A Review', *Substance Use and Misuse*, 45 (2010), 2221–43 (p. 16).

[29] Pudney, p. 177.

[30] Xolani Koyana, 'Manenberg Gang Violence Disrupts Schools', *Eyewitness News* (Cape Town, 15 May 2015) <http://ewn.co.za/2015/05/15/Manenberg-gang-violence-disrupts-schools>.

[31] See for example: Henry H Brownstein and Bruce G Taylor, 'Measuring the Stability of Illicit Drug Markets: Why Does It Matter?', *Drug and Alcohol Dependence*, 90 (2007), 52–60; Dan Werb and others, 'Effect of Drug Law Enforcement on Drug Market Violence: A Systematic Review', *International Journal of Drug Policy*, 22 (2011), 87–94.

[32] Werb, Watson and Magshoudi, p. 28.

3.2.6 For the most part internationally, although it accounts for much of the volumes of drugs sold, cannabis is understood to contribute relatively little to the overall levels of systemic violence around drug markets.[33] This varies between different contexts and market structures and can be difficult to estimate because criminal organisations often trade in a range of different drugs and other illegal products and services. The systemic violence around the drug market in South Africa (and especially the Western Cape) is extremely serious, but it isn't feasible to disaggregate this to particular drugs. However, based on our interviews conducted in ongoing research around several illicit markets, as well as the bulk of the evidence from abroad,[34] it is our view that little of the systemic violence around the drug market in South Africa can be ascribed to cannabis. Unlike some other drugs, it is not likely to contribute significantly to overall levels of violence.

3.3 Regardless of whether we are correct in these estimations, the difficulty is that they tell us little about what the case would be under a different policy regime – what is needed is a counterfactual.[35] Luckily, the growing cannabis policy experimentation that we explain in the section below is helping to provide the variation required for empirical analysis. Thus far there is no evidence that cannabis decriminalisation laws in US states have resulted in spikes in crime. In Colorado, two years after decriminalisation and one year after the beginning of retail sales, the evidence suggests that there have not been spikes in young people's use, road fatalities, or crime[36] – if anything there may have been slight decreases in both violent and property crime.[37] There is also no evidence that older measures such as partial decriminalisation, for example for medical

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[33] Maccoun, Kilmer and Reuter, p. 74.

[34] Sharon M. Boles and Karen Miotto, 'Substance Abuse and Violence: A Review of the Literature', *Aggression and Violent Behavior*, 8 (2003), 155–74 (p. 162).

[35] Robert J MacCoun and Peter Reuter, 'Assessing Drug Prohibition and Its Alternatives: A Guide for Agnostics', *Annual Review of Law and Social Science*, 2011, 61–78 (p. 62).

[36] Steve Rolles, 'Cannabis Regulation in Colorado: Early Evidence Defies the Critics', 2015, 1–4.

[37] Drug Policy Alliance, 'Status Report: Marijuana Legalization in Colorado after One Year of Retail Sales and Two Years of Decriminalization', 2014
<https://www.drugpolicy.org/sites/default/files/Colorado_Marijuana_Legalization_One_Year_Status_Report.pdf>. See also the report from the Colorado Department of Public Safety, March 2016, at:
http://cdpsdocs.state.co.us/ors/docs/reports/2016-SB13-283-Rpt.pdf

purposes, have resulted in increases in crime.[38] The results of an increasing number of cannabis policy experiments are still being closely watched.

3.4 Even if it were true that prohibition was an effective tool to control cannabis use prevalence and crime levels, it would not follow that prohibition was a desirable policy option. There is, after all, a good deal of evidence for a link between alcohol use and crime, particularly in South Africa[39] – but this has not been enough to suggest complete alcohol prohibition as a popular modern policy option. The harms that cannabis users may inflict on others through crime constitute just one of the forms and directions of harm that must be entered into the policy calculus.

4. INTERNATIONAL DRUG REGULATION CONTEXT

4.1 Regulatory approaches based on the legal prohibition of the manufacture, trafficking, supply, possession and/or consumption of a wide and growing range of substances has been the international norm for over a century. Conferences in Shanghai in 1909 and The Hague in 1912 began the development of an international system of conventions under the League of Nations and later United Nations.[40] This process culminated in the three major United Nations drug control treaties currently in force, namely the 1961 Single Convention on Narcotic Drugs (amended in 1972),[41] 1971 Convention on

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[38] Nancy J Kepple and Bridget Freisthler, 'Exploring the Ecological Association between Crime and Medical Marijuana Dispensaries', *Journal of Studies on Alcohol and Drugs*, 73 (2012), 523–30; Robert G. Morris and others, 'The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006', *PLoS ONE*, 9 (2014).

[39] See for example: Charles Parry and Sarah Dewing, 'A Public Health Approach to Addressing Alcohol-Related Crime in South Africa', *African Journal of Drug and Alcohol Studies*, 5 (2006), 41–56; R. G. Matzopoulos and others, 'The Cost of Harmful Alcohol Use in South Africa', *South African Medical Journal*, 104 (2014), 127–32.

[40] United Nations Office on Drugs and Crime, *A Century of International Drug Control*, 2009, p. 7.

[41] United Nations, *Single Convention on Narcotic Drugs, as Amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs*, 1961 <https://www.unodc.org/pdf/convention_1961_en.pdf>.

Psychotropic Substances,[42] and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[43]

4.2   The Conventions oblige signatories to ensure the medical and scientific availability of certain named substances – and to combat their availability for other 'illicit' purposes, including through the establishment of related criminal offences.[44] They are considered the international pillars of the regulatory approach described as 'prohibitionist' and known as the 'war on drugs'. About 95% of United Nations member states are parties to the Conventions.[45] They are among the most adhered to of all UN instruments, at least superficially.[46] The key bodies given responsibility for various aspects around policy-making and the supervision of the application of the Conventions are the Commission on Narcotic Drugs (CND), International Narcotics Control Board (INCB), World Health Organization (WHO), and United Nations Office on Drugs and Crime (UNODC).

4.3   The Conventions make use of four graded lists or schedules to classify controlled substances. They also provide tables of controlled chemicals which are frequently used in the manufacture of the scheduled substances. The schedules and tables are periodically revised and issued separately as addenda.[47] Scheduling determines the type and intensity of controls required for the relevant substance and is based on assessments of the degree to which the substance presents a risk for abuse, poses a threat to public health, and holds legitimate therapeutic value.[48]

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[42] United Nations, *Convention on Psychotropic Substances*, 1971

<http://www.unodc.org/pdf/convention_1971_en.pdf>.

[43] United Nations, *Convention Against Illicit Drugs and Psychotropic Substances*, 1988

<https://www.unodc.org/pdf/convention_1988_en.pdf>.

[44] Transnational Institute, *The UN Drug Control Conventions: A Primer*, 2015, p. 1

<https://www.tni.org/en/publication/the-un-drug-control-conventions>.

[45] United Nations Office on Drugs and Crime, *A Century of International Drug Control*, p. 89.

[46] David Bewley-Taylor and others, *Cannabis Regulation and the Drug Treaties: Strategies for Reform*, 2016, p. 4 <https://www.tni.org/files/publication-downloads/cannabis_regulation_and_the_un_drug_treaties_june_2016_web_0.pdf>.

[47] These are available at: https://www.unodc.org/unodc/en/commissions/CND/conventions.html.

[48] Christopher Hallam, Dave Bewley-Taylor and Martin Jelsma, *Scheduling in the International Drug Control System*, 2014, pp. 1, 5 <https://www.tni.org/files/download/dlr25_0.pdf>.

4.4   Globally, the question of the appropriate regulation of the currently controlled drugs is being contested with unprecedented vigour.[49] Supporters of the status quo stress that a century of prohibition has coincided with measurable reduction in the prevalence of the use of certain drugs (chiefly opiates).[50] However, many drug policy experts describe the 'war on drugs' as failed and discredited.[51] This is partly due to its numerous admitted 'unintended consequences'[52] (including mass incarceration, the creation of virulent criminal markets, and the diversion of resources from more health-based approaches to drug regulation) that are of such a scale that former United Nations Secretary-General Kofi Annan (among others) has suggested that many more lives have been destroyed by drug policy than by drugs.[53] In particular, many authors in numerous contexts have noted that a principle effect of punitive drug regulation is the disproportionate incarceration of those who are already marginal or vulnerable, namely poor, black individuals and communities. The argument, effectively, is that attempts at supply reduction by criminal justice means do not satisfactorily reduce drug harms – even if they are indeed successful at reducing supply (which is itself hotly contested).

4.5   The international consensus on drug policy has become increasingly fractured and polarised since the 2000s. A growing number of countries have begun adopting policies that require creative interpretations of, or that arguably are entirely impermissible under the Conventions.[54] Many in especially Latin America and Western Europe have motivated for reform that would allow for greater flexibility and for public health and human rights concerns to play a greater role in drug policy and practice. Others, including Russia, China, and many in Southeast Asia, Africa, and the

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[49] Peter Reuter, 'Ten Years after the United Nations General Assembly Special Session (UNGASS): Assessing Drug Problems, Policies and Reform Proposals', *Addiction*, 104 (2009), 510–17 (p. 510).

[50] United Nations Office on Drugs and Crime, *A Century of International Drug Control*, p. 89; Commission on Narcotic Drugs, *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, 2009, p. 1 <https://www.unodc.org/documents/ungass2016/V0984963-English.pdf>.

[51] For just one of countless examples, see: LSE Expert Group on the Economics of Drug Policy, 'After the Drug Wars', 2016.

[52] United Nations Office on Drugs and Crime, *A Century of International Drug Control*, p. 92.

[53] International Drug Policy Consortium, *IDPC Drug Policy Guide, 3rd Edition*, 2016, p. 3 <http://idpc.net/publications/2016/03/idpc-drug-policy-guide-3rd-edition>.

[54] See especially: Dave Bewley-Taylor and Martin Jelsma, *The UN Drug Control Conventions: The Limits of Latitude*, 2012 <http://www.undrugcontrol.info/images/stories/documents/dlr18.pdf>.

Middle East, remain committed to more punitive strategies.[55] A much-anticipated event in April 2016 was the United Nations General Assembly special session (UNGASS) on drug abuse held in New York. The UNGASS raised the hopes of many reformers for a fundamental review of the international policy regime, but in this respect the final outcome document, drafted by difficult consensus, was a disappointment.[56] The failure to take a position on the use of the death penalty for drug offences was a particular matter of contention.[57]

4.6 South Africa's position at the UNGASS was fraught. As one of the few African countries with current membership of the Commission on Narcotic Drugs (CND) and with permanent representation in Vienna, it contributed to a preparatory document representing the position of the CND's 'Africa Group'.[58] However, it was also party to the 'Common African Position' developed and agreed to by the entire African Union.[59] The former represented a considerably more conservative position on drug policy reform. There appeared to be some diplomatic uncertainty about which of these positions South Africa was expected to submit to and represent at the UNGASS.[60] At the UNGASS itself, separate statements made by South Africa's Minister of Police, on behalf of the South African delegation,[61] and its Deputy Minister of Social Development, on behalf of the African Union,[62] also reflected two quite different positions.

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[55] Vanda Felbab-brown and Harold Trinkunas, *UNGASS 2016 in Comparative Perspective: Improving the Prospects for Success*, 2015, p. 5.

[56] United Nations General Assembly, *Resolution Adopted by the General Assembly on 19 April 2016*, 2016 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/110/24/PDF/N1611024.pdf?OpenElement>.

[57] Countries' position statements can be found at: https://papersmart.unmeetings.org/ga/70th-session/thirtieth-special-session-of-the-general-assembly-%281%29/special-session-on-the-world-drug-problem/statements/

[58] This document can be accessed at: http://www.sadrugpolicyweek.com/uploads/6/6/2/3/66238155/africa_pages_from_ungass_contributions.pdf

[59] Available at: https://www.unodc.org/documents/ungass2016/Contributions/IO/AU/Common_African_Position_for_UNGASS_-_English_-_final.pdf

[60] Kerry Cullinan, 'Elite "African Group" in Vienna Undermines AU Drug Policy', *Health-E-News*, 7 February 2016, pp. 7–9 <http://www.health-e.org.za/2016/02/07/elite-african-group-in-vienna-undermines-au-drug-policy/>.

[61] Available at: http://www.sadrugpolicyweek.com/uploads/6/6/2/3/66238155/s-africa.pdf

[62] Available at: http://www.sadrugpolicyweek.com/uploads/6/6/2/3/66238155/s-africa-on-behalf-of.pdf

4.7 A no less interesting domestic development occurred in June 2016, when South Africa's Central Drug Authority announced a major change in its policy approach.[63] It acknowledged the global and national debate around cannabis regulation, noted that there was little evidence that supply reduction through criminalisation was effective at reducing cannabis abuse, and recommended the decriminalisation of cannabis. This is a dramatic shift, lauded by the editorial of the prestigious South African Medical Journal (which in fact called for the same logic to be applied to all illegal drugs).[64] It is not yet clear what this will mean in practice, what the response will be from the police, or if and when this will be raised in parliament – but it does indicate that South Africa's highest drug policy guardian is itself increasingly amenable to the position of the plaintiffs in this case.

4.8 Like that in South Africa, the global drug policy sphere has not been fundamentally changed by recent events but remains in flux. There are likely to be a number of developments in the coming years. Although the consensus is by no means complete, the overall movement appears to be in the direction of increasing flexibility and national experimentation with policy measures to supplement or replace the use of criminal sanctions. The terms for these movements include decriminalisation, legalisation, relegalisation, depenalisation, and liberalisation. They are seldom clearly defined and in any event obscure the fact that within each there are countless important variables to consider.

4.9 Questions of exactly how to regulate, how to tax, and how to license previously illegal drugs are essential to the outcomes of the policy shifts.[65] It is important to get things right from the start, in order to avoid other unanticipated negative outcomes. For example, partial decriminalisation (say, for those with certain religious beliefs) would

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[63] Central Drug Authority, 'Position Statement on Cannabis', *South African Medical Journal*, 106 (2016), 569–70.

[64] Keith Scott, 'Editorial: Comment on the Central Drug Authority's Position Statement on Cannabis', *South African Medical Journal*, 106 (2016), 545–46.

[65] To be fair, these policy minutiae are no less important under still-criminalised regimes. For example, many fail to account for the breadth of the pharmacological and psychological effects that the different strains of cannabis may have or induce. Garden-variety strains with lower potency are sold in relatively large volumes, while hydroponically grown species retail for much higher prices, by gram weight in small packages. This has implications for socioeconomic position of those caught with them.

necessitate the creation of the appropriate bureaucratic machinery to determine whether or not individuals meet the necessary requirements. As another example of the technical complications around legalisation, many in the United States are concerned that some aspects of new State cannabis policies will create powerful, monopolistic commercial interests that are not in the public interest. This should also be a concern in South Africa, where legalisation of cannabis could see small-scale, informal farmers with few economic alternatives forced out of the market by large agribusinesses. On the other hand, the prohibition of cannabis in South Africa arguably does more to harm the current producers and distributors than it does casual consumers. This has racial and socioeconomic implications. Accounting for the likely shifts in the distribution of harms under a different regulatory system requires considerable nuance and care.

4.10 The range of alternative regulatory positions already in practice (for at least some drugs) include complete de jure decriminalisation (e.g. Uruguay), de jure decriminalisation through police discretion (Spain), de jure decriminalisation through administrative or civil discretion (Portugal and the Czech Republic), de jure decriminalisation through judicial discretion (Germany and Peru), complete de facto decriminalisation (Netherlands), and de facto decriminalisation through judicial discretion (some US states).[66] The lessons being learnt in these places are likely to be invaluable to other countries considering policy change, but although the data around their success or otherwise (however defined) is starting to accumulate, these remain new and moving targets. Portugal, for example, has since 2001 implemented a strategy whereby those found in possession of small quantities of drugs have those drugs confiscated and are given a ticket requiring them to appear before a 'dissuasion board' (consisting of two psychiatrists and a legal specialist) to discuss their drug use.[67] Here they risk a fine or mandatory drug treatment, but the majority of cases are suspended with no sanction.[68] Even some 15 years later, there are some calling the policy change

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[66] For a useful visual overview of these positions, with links to more detailed descriptions of the national drug policies, see: http://decrim.idpc.net/

[67] David Nutt, *Drugs without the Hot Air: Minimising the Harms of Legal and Illegal Drugs* (Cambridge: UIT Cambridge, 2012), p. 171.

[68] Nutt, p. 171.

a disastrous failure and others (arguably a growing majority) calling it a resounding success.[69]

4.11 However, different places face entirely different contexts of drug use, different existing drug market structures and price levels, different regulatory capacity, and different political climates. Policy that works in the Netherlands or Colorado may yet turn out to be disastrous for a developing country like South Africa. Many of these international movements away from the use of criminal justice methods in drug policy are based on an appreciation that they are not only ineffective at reducing harms, but can aggravate and introduce new and unnecessary harms for drug users and society. So it may well be that some of the harms around drug use will to some extent be reduced simply by ending the criminalisation of drug use. However, few thoughtful anti-prohibition advocates aspire to a situation in which currently illegal drugs simply disappear from the criminal justice sphere but aren't somehow more seriously taken up by other authorities, including departments of health and social development. Criminalisation is not by any means responsible for all the harms that can accrue to drug users and others as a result of drug use. The case of alcohol makes this very clear. Effective legal regulation is costly. It would require at least as much political will and ongoing practical capacity to implement as does criminalisation. It would require strong integration between different departments and agencies in government and the non-profit sector. It would be impossible without major commitments in effort and resources.

4.12 The question of cannabis has provided much of the impetus for recent challenges to the drug control status quo on the international level and in many countries. Cannabis is the most commonly used illegal drug worldwide, with an estimated 183 million people having used it in 2014.[70] The failure of prohibition to prevent its large scale use is one of the reasons many are looking to alternatives. Cannabis and some of its derivatives are classified alongside cocaine and heroin under the most restrictive schedules of the 1961 Convention (inter alia).[71] This has long been controversial in policy debates and

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[69] Caitlin Elizabeth Hughes and Alex Stevens, 'A Resounding Success or a Disastrous Failure: Re-Examining the Interpretation of Evidence on the Portuguese Decriminalisation of Illicit Drugs', *Drug and Alcohol Review*, 31 (2012), 101–13.

[70] United Nations Office on Drugs and Crime, *World Drug Report 2016*, 2016, p. x.

[71] Hallam, Bewley-Taylor and Jelsma, p. 7.

has driven considerable pressure for rescheduling, as some experts for example assert that cannabis poses significantly less public risk than do the legal substances of alcohol or tobacco.[72] The scheduling of cannabis has led some to question the legitimacy of the entire scheduling system,[73] which has been accused of being determined more by historical accident and cultural beliefs than by scientific evidence.[74]

4.13 A number of countries have recently come to the conclusion that some form of decriminalisation of cannabis is consistent with their commitment to international law. Cannabis legalisation initiatives are underway or being seriously considered in an increasing number of American states, as well as Canada, Italy, Spain, Jamaica, and several Latin American countries. Strategic litigation has thus far played a modest role in these developments. They have for the most part been political processes. We believe this to be appropriate. Assessments of the success or otherwise of these initiatives are academically and popularly contentious. This is in part because of the difficulty in satisfactorily accounting for and balancing the possible impact on the different types of harm around drug use and policy.

5. CRIMINAL REGULATION OF CANNABIS IN SOUTH AFRICA

5.1 According to its annual reports, in 2013/14 the South African Police Service (SAPS) made 222 598 arrests for 'drug related crime', accounting for 16% of all arrests that year.[75] In 2014/15, it made 251 944 such arrests, accounting for 15% of that year's total. Drug-related crime is responsible for more recorded charges than any other crime type, besides the very broad category of 'all theft not mentioned elsewhere'. Last year there were about five drug-related crimes recorded for every 1000 people in the population.

5.2 The SAPS annual reports also refer separately to 'narcotic' activity relating to 'specialised investigations'. Here the 2013/14 report notes that the reporting period

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[72] Nutt and others.

[73] See especially Bewley-Taylor and others.

[74] International Drug Policy Consortium, p. 22.

[75] SAPS Annual report, 2013/14, p. 105.

http://www.saps.gov.za/about/stratframework/annual_report/2013_2014/ar2014_02_partb.pdf

saw seizures of 1 196 000kg dagga, 344kg crystal meth (Tik-Tik), 1 043kg crack, 134kg cocaine, 729 ecstasy tablets, 1kg cat, 6kg of heroin powder and 935 heroin tablets to the total reported value of R103 860 030. The 2014/15 report states that 57 clandestine drug laboratories were dismantled and 324 people arrested for drug-related crimes resulting in 98 convictions. The 2013/14 report also declares that the year had seen the SAPS Cannabis Eradication Programme destroy a total of 714 hectares of cannabis plants valued at R499 800 000.[76] The 2014/15 report noted that cannabis eradication operations during January and February 2015 had sprayed 529.2 hectares of cannabis fields in the Eastern Cape, valued at R685 314 000.[77]

5.3   These figures all indicate that 'drug related crime' is a strategic priority for the SAPS. For one category of crime to account for 15 or 16% of arrests is significant, especially given that the offence is only detected as a result of pro-active police action (rather than the norm for most crimes, which is that victims report them to the police).[78] Pursuing drug crimes is also clearly a political priority. Large drug busts function as public relations exercises for both the police and politicians, regardless of the (at best) debatable impact that they have on the drug trade or on drug use prevalence levels.

5.4   Given that cannabis is the most commonly used illicit substance in South Africa,[79] it follows that the SAPS could free up significant resources if cannabis-related enforcement were not made a priority, or were it decriminalised or legalised. A 2010 estimate of the cost of drug enforcement in the US, calculated by Harvard academic Jeffrey Miron, suggested the United States could save over $41 billion per year if it changed its approach to drug-law enforcement. It would be worthwhile costing the equivalent estimates for South Africa. Here, it would be important to keep in mind that legalising or de-prioritising one drug where others remain criminalised or in focus,

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[76] SAPS Annual Report 2013/14, p.121

http://www.saps.gov.za/about/stratframework/annual_report/2013_2014/ar2014_02_partb.pdf

[77] SAPS Annual report 2014/15, p.183

[78] In other words, arrests are not made in response to a complaint from the public, or because someone has been a victim of crime. Rather, this category emerges from police initiating contact with member of the public.

[79] Africa Check: https://africacheck.org/reports/flawed-survey-claims-a-third-of-south-africans-are-drug-users/ ; Dada, Plüddemann, Parry, Bhana, Vawda, Perreira, Nel, Mncwabe, Pelser & Weimann, 2012 'Monitoring Alcohol & Drug Abuse Trends in South Africa (July 1996 – December 2011)', available at:

http://www.mrc.ac.za/adarg/sacendu/SACENDUBriefJune2012.pdf

would not necessarily lead to huge de-escalation in related police activity. It would, however, likely lead to drastic reductions in arrest rates, and so reductions in tense potentially abrasive police-citizen encounters, as discussed below.

5.5   The SAPS figures above also raise questions about the disparity between the large number of arrests for 'drug related crime' and the small number of arrests for activities found by specialised narcotics investigations. The most obvious interpretation is that the bulk of the 200k+ annual arrests for 'drug related crime' represent the arrest of drug users or low level suppliers 'caught in the act', rather than the results of any focused investigation. If this is the case, one might infer that as few as 254 and 324 of those 200k+ represent the arrest of drug manufacturers, importers, or higher level suppliers – categories which one might expect to be far more important to police seeking to reduce the supply of drugs in the market. In other words, the police's own figures suggest that the vast majority of their anti-drug activity has little prospect of making any impact on the overall levels of drug supply. Although other differences remain, there is by now very little disagreement in the international drug policy sphere about the importance of focusing any supply reduction efforts on more senior members of drug supply organisations.[80]

5.6   Another item of concern in the police figures is the fact that whereas specialised investigations accounted for 324 arrests, these resulted in only 94 convictions.[81] In fact, data from the Department of Correctional Services reveals that there were only 3 613 offenders sentenced to prison for possession and dealing in banned substances in 2014/15. This accounted for just 3% of all prison sentences,[82] a figure obviously much

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[80] This was a key conclusion of, inter alia, the Organization of American States and the West African Commission on Drugs. See Organization of American States, *The Drug Problem in the Americas*, 2013 <http://www.oas.org/documents/eng/press/Introduction_and_Analytical_Report.pdf>; West African Commission on Drugs, *Not Just in Transit: Drugs, the State and Society in West Africa*, 2014 <https://www.unodc.org/documents/ungass2016/Contributions/IO/WACD_report_June_2014_english.pdf>.
[81] It is possible that these two numbers – arrests and convictions for a single year – should not be considered in relation to one another. If arrests are made in one financial year but the trial is conducted in the subsequent year, this may result in misleading reporting. That said, if the majority of arrests are for possession of small quantities of illicit substances, it is likely that the accused are simply fined, so that that 'conviction' is immediate. If this is the case, then a 40 percent conviction rate seems poor.
[82] Correctional Services Annual Report, 2014/15, p. 30.
http://www.dcs.gov.za/docs/2015%20doc/DCS%20Annual%20Report%202014-2015.pdf

lower than the 15% of arrests made by the SAPS. Our ongoing research (as yet unpublished) suggests that of all the illegal drug crimes reported by the SAPS, only 0.28% of those translated into the actual incarceration of a person on a cannabis-related charge. This extremely low rate is indicative of a systemic 'failure' to find convictions for drug-related offenses. This raises the question of what the purpose is of all these arrests and whether this can possibly be a good use of police resources. Superficially 'cleaning up' an area by temporarily removing those in possession of drugs is an exercise in social control and public relations. It does not suggest a meaningful commitment to justice or harm reduction.

5.7   Unlike in some other countries, cannabis offences in South Africa are not resulting in mass incarceration. They are not 'filling the prisons'. However, evidence suggests that they are filling the holding cells and to a lesser extent the courts, and are absorbing a great deal of policing resources and time. Our interviews over several years of research suggests there is a chronic problem of drug charge dockets going missing or not being processed, that countless cases never make it to the courts, and that many of those that do are dismissed by due to insufficient evidence or chaotic prosecutions. The criminal justice system as a whole is heavily overburdened by the large number of drug arrests generated by the police.

5.8   The SAPS makes use of a complex computer based performance management system that collects and analyses performance data with the aim of understanding and improving effectiveness and efficiency measured against predefined targets.[83] By setting particular performance targets for each of its police stations, SAPS management in Pretoria is able to set priorities for police on the ground, right across the country. Police performance targets set priorities for police action. The SAPS measures its drug related performance on the number of charges recorded and the 'quantity of illicit drugs confiscated as a result of police actions'.[84] Unlike with most other crimes, these targets are positive – police are expected to maximise rather than minimise them.

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[83] Peter Neyroud &Emma Disley, 'The management, supervision and oversight of criminal investigations', in Tim Newburn, Tom Williamson and Alan Wright (eds), *Handbook of criminal investigation*, 2007, Devon: Willan, p.558

[84] SAPS, 'Technical indicator descriptions', available at: http://www.saps.gov.za/about/stratframework/strategic_plan.php, p.51

5.9 In general police are limited in their ability to control crime, making crime reduction targets difficult to meet. In contrast, they have significantly more control over their ability to meet performance targets for acts reliant on police action for detection, such as drug-related offences. Targets for detected drug-related crime encourage SAPS officers to frequently stop and search people in places where drugs are known to be sold. What it does not do is encourage police to investigate and dismantle the operations of drug producers or sellers. In fact, it incentivises them to *protect* producers and sellers and to keep them in business. If drugs are not being produced or sold, police will be unable to reach one of the few performance targets over which they have some degree of control. The targets provide a perverse incentive for irrational police practices. This applies to all drugs, but its wide availability and use make cannabis an easy target.

5.10 They also provide the police with a strong incentive to arrest – and potentially abuse – any easy target who may be in possession of illegal drugs. In our work we have witnessed and heard about numerous incidents in which individuals have been beaten or had their homes turned upside down by state officials simply for *possibly* being in possession of cannabis. Research suggests that it matters less for public trust in police that police catch offenders as it does that police treat people fairly, respectfully and without bias, whether they be an offender or victim.[85] Furthermore, violence delivered by the South African state against those it considers deviant can promote, rather than reduce offending.[86] In the only major study on police legitimacy conducted in South Africa, researchers found that being treated fairly by police was as important in determining cooperation with police as were perceptions of police effectiveness.[87] Similarly, though qualitatively, focus groups conducted in major South African metros

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[85] Sunshine, J. & Tyler, T. 2003 'The role of procedural justice and legitimacy in shaping public support for policing', *Law & Society Review*, 37(3), pp. 513–548; Stanko, B., Jackson, J., Bradford, B. & K. Hohl 2012 'A golden thread, a presence amongst uniforms, and a good deal of data: studying public confidence in the London Metropolitan Police', *Policing and Society: An International Journal of Research and Policy*, 22:3, pp.317-331

[86] Gould, C. 2015 'Beaten Bad: the life stories of violent offenders', Institute for Security Studies: Pretoria

[87] Bradford, B., Huq, A., Jackson, J. & B Roberts 2014 'What price fairness when security is at stake? Antecedents of Police Legitimacy in South Africa', *Regulation and Governance*, 8, pp.246-268

showed that made to choose, people desired fair treatment from police rather than aggressive crime fighting.[88]

5.11 Perceptions and experiences measured by South Africa's annual Victims of Crime Survey provide further insight. In 2014/15 only 57% of households were satisfied with the police in their area, down from 65% in 2011.[89] That over 40% of households were unsatisfied with police in their area suggests a lack of perceived legitimacy. The general view in procedural justice/legitimacy literature on police is that police should treat everyone in procedurally fair manner in order to win public trust and confidence. To the extent that police action against drug users is perceived as unfair, for example if they take the form of aggressive 'crack downs' and rough handling, they could therefore do significant harm to police legitimacy.

5.12 On the other hand, as already noted 77% of households surveyed believed the primary motivation of burglars was in order to meet their 'drug-related needs'.[90] This suggests a negative, possibly punitive attitude towards drug use. South Africa has a long history of vigilante and citizen justice, and it has been suggested that South Africans support the use of violence for punishment, provided they are not the victims.[91] This might suggest that tough police action against drugs, even aggressive public crack downs, might not be entirely detrimental to police legitimacy. However, given that it would appear that a large majority of police action targets users or lower level and more marginal members of drug supply organisation rather than more senior and powerful members, this effect is likely to be short-lived.

5.13 Another important consideration around legitimacy and the policing of drug crimes is the matter of corruption. There is a good deal of anecdotal evidence, borne out in our qualitative research, that drugs play a major role in encouraging or facilitating police corruption. The fact that the police face strong incentives to maximise the number of

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[88] Faull, A. 2011 *Civilian perceptions and experiences of corruption and the South African Police Service*, ISS Occasional Paper No. 226, Pretoria: Institute for Security Studies

[89] Statistics South Africa, 2015 'South African Victims of Crime Survey 2014/15', available at: http://www.statssa.gov.za/publications/P0341/P03412014.pdf (accessed 3 March 2016), p.39

[90] *Ibid.*, p.17

[91] Collins, A. 2013 'Violence is not a crime: a broader view of interventions for social safety', *South African Crime Quarterly* 43, pp.29-37

arrests for relatively minor drug crimes, combined with the fact that the drug economy is cash-based, make for ideal conditions for petty corruption. This not only undermines positive police culture and public legitimacy, but can escalate into more serious and deadly incidents of corruption such as the recent case in which senior officers were found to be selling confiscated firearms into communities already ravaged by gang violence. Again, this applies to all drugs, but the removal of cannabis from the list of police priorities would arguably also potentially reduce the opportunities for low level police corruption.

5.14 One final point of interest is that in Minister of Police and Others v Kunjana [2016] ZACC 21, the Constitution Court decided on 27 July 2016 that parts (a) and (g) of section 11 of the Drugs and Drugs Trafficking Act (140 of 1992) are constitutionally invalid because they unjustifiably violate the right to privacy. This has rendered a central clause of the Act – that any law enforcement officer may solely and at their own discretion stop and search any person, property or vehicle on the grounds of 'reasonable suspicion' – invalid and in conflict with the constitutional provisions underpinning the legislative framework. The ruling limits search and seizure operations to only those that are conducted under the auspices of a pre-obtained court warrant. Such a warrant itself requires that evidence of the need for and validity of such an operation is presented to a judge. Thus while the ruling does not prevent search and seizure operations entirely, there can no longer be ad hoc, random, or discretionary interventions by officers.

5.15 This ruling is important because the policing of illegal drugs in South Africa has not kept pace with international best practices and standings, the de facto position having been that it is acceptable for law enforcement officers to stop and search whomever or whatever they see fit in the pursuit of illegal drugs, firearms, property and so forth. It is significant to the present case in that a) a central concern of some of the plaintiffs is that they as a group and as individuals are frequently and unfairly targeted by policing operations; and b) that during such events they may experience harassment or be subject to forms of police brutality when searched. Now that such ad hoc/discretionary policing tactics are unconstitutional both concerns have, procedurally at least, been mitigated. However, these provisions may yet be re-enacted with more guidelines for police as to time, place and scope of the search, and making a differentiation between personal homes and less private places, thus possibly passing constitutional muster.

6.   CONCLUDING SUMMARY

6.1   The question of how best to regulate cannabis must take into account and attempt to balance a range of different harms (and benefits) to different groups in society. The reduction of harms, rather than prevalence, should be the understood as the ultimate goal of drug policy. Recent years have seen major reduction in the global consensus on whether criminal punishment is an effective or desirable tool for reducing the harms around drugs, especially cannabis. Motivating for an end to drug prohibition need not imply the disparagement of any possible drug-related harms. Quite the reverse: for many, it is based on the understanding that prohibition is a very poor tool for managing those harms.

6.2   The extent and nature of the relationships between cannabis use and crime levels are not clear. There is as yet no evidence that partial or complete removals of cannabis prohibition elsewhere have resulted in crime spikes. We do not believe that there is good reason to believe that the removal of cannabis prohibition in South Africa would raise levels of crime appreciably (or at all). Even if they did so, it would not follow that cannabis prohibition was a desirable crime control policy option. There are numerous other harms and potential benefits to consider. For example, the strong and known link between alcohol and a range of negative outcomes (including crime) has not been sufficient to prohibit its production, sale, or consumption.

6.3   The three United Nations Conventions on drugs require signatories to combat the availability of certain named drugs through establishing criminal offences. There is a growing sense, although certainly not (yet) a global consensus, that this is an ineffective way to control supply and an undesirable way to regulate drugs overall. The negative unintended consequences are such that many are of the opinion that this kind of drug policy has done more harm than drugs themselves.

6.4   A number of countries have begun experimenting with a range of different approaches, including full decriminalisation of the use of all or some drugs, while (for the most part) remaining signatories to the Conventions. These examples are being closely watched. Exactly what kind of system prohibition is replaced with is very important in determining the outcomes. The appropriate regulatory system will depend on a range of local conditions. Ending prohibition would not simply be a matter of removing

drugs from the criminal justice sphere, but would require crafting a place for them within a more evidence-based, integrated, co-ordinated, and adequately resourced framework based on harm reduction principles.

6.5 Cannabis is scheduled among the most dangerous drugs, requiring the most stringent controls. The growing evidence that this is not an appropriate or proportionate way to approach the harms around cannabis has provided much of the impetus for recent challenges to drug prohibition in several countries and on the international level. Cannabis legalisation initiatives are underway or being seriously considered in an increasing number of American states, as well as Canada, Italy, Spain, Jamaica, and several Latin American countries.

6.6 The SAPS appears to place a high priority on drug-related crimes. It has made almost half a million arrests for it in the last two years, or about 15% of all its arrests. Very few of these arrests result in convictions. Many are likely to involve drug users and very low level suppliers rather than any people with strategic value in disrupting drug supply. This is not an effective use of police and criminal justice resources. No longer pursuing cannabis laws could result in major savings. These savings could be put towards more evidence-based drug policy approaches.

6.7 The performance targeting of drug crimes (of which cannabis are the majority) creates perverse incentives for the police, discouraging more strategic and effective drug supply reduction in their areas. It also provides strong incentives for indiscriminate arrests and potential abuse of easy targets. This is unlikely to contribute to police legitimacy. In addition, the pursuit of drug crimes may be a key contributor to police corruption. An end to petty cannabis prohibition could facilitate a criminal justice system that is more rational and effective, less wasteful and abusive, less corrupt, and better in line with South Africa's constitutional values.

6.8 This court case is timely and will be watched around the world, where more people and authorities than ever before are asking these same questions. It forms part of a rapidly developing global conversation about harm, human rights, ethics, and appropriate state responsibilities and limits. Good research and expert opinion should certainly play an important role in determining the route ahead. So should legal concerns. However, we believe that these questions are inherently political ones that will require legislative and far-reaching policy changes, and so must ultimately be contested in the political arena.