

THE POLICE AND POLICING SYSTEM IN SOUTH AFRICA: THE LAW AND LESSONS FOR NIGERIA*

Abstract

The sociological theory of law identifies human society as one characterised by conflicting and contradictory interests. These interests must have to be ironed out for peaceful, progressive and sustainable social development to take place in such a society. In order for effective harmonisation of human interests to be possible, states have adopted the police as a branch of the executive to police societies for social equilibrium to be attained, bearing in mind that conflicts are imperative part of society. Police is therefore a universal institution. However, the degree of efficiency in the police varies significantly from one society to another. In this paper, the researcher employed doctrinal legal research methodology to, inter alia, x-ray the police and law enforcement in South Africa with a view to ascertaining whether policing in South Africa unfolds any lessons for Nigeria. It was found that the two jurisdictions have similar history in police origin, structure and organisation. That Nigeria has some lessons to learn from the system of policing in South Africa. We recommended, among other things, upward review of qualification for enlistment, salary, welfare, rigorous training, effective supervision, increased oversight checks by the National Assembly, community policing, etc, as measures that could reposition the Nigerian police for optimum results.

Key Words: Law, Police, Policing, South Africa and Nigeria.

1. Introduction

The sociology of police and policing is as old as the society itself. Man lives together in society. Thomas Hobbes painted graphic picture of human society during the pre-social contract era. He emphasized that ‘war of every man against every man’ characterising that epoch rendered life brutish, nasty and short. Because man realised that the *hobbesian* ‘war of all against all’ will continue to prevail unless man finds the apparatus of social modulations; the social contract was instituted. In the social contract therefore, man instituted the state and surrendered all their powers to the state to wield for their wellbeing, so posits Thomas Hobbes.¹ The state therefore constituted other agencies that help in the maintenance of social order and tranquility, one of which is the police.

The Police institution was development in Greece and in the Roman world. The Roman Empire influenced the development of modern Police in Britain. Sir Robert Peel was reputed to have found the first organized modern Police in 1829 and the Metropolitan Police was established on his initiative in Lincoln the same year.² The Police in Africa is a colonial institution.³ Prior to the colonial presence in Africa, various ethnic societies had their own peculiar system of the police.⁴ For example, from 1861 and upwards, Caskey and Freeman’s thirty consular guards in Lagos,⁵ the Royal Niger Armed Constabulary, the Niger Coast Constabulary, all shaped the development of modern police in Nigeria. The need to protect British trade interests and prevent rifts between the natives and the imperial merchants as well as the perceived need to deal with native chiefs who opposed British interests and

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¹ J Wolffe, ‘Hobbes and the Motivations of Social Contract Theory’ *International Journal of Philosophical Studies* (2)(2) (1994), 271-272.

² B Whitaker, *Police in Society*, pp. 35- 36 cited in BC Okoro, *The Police, Law and Your Right* (Lagos: Princeton Pub. Co; 2013) p. 2

³ Though each Kingdom, Emirate and traditional societies in Africa had their peculiar system of police and policing prior to colonialism, these traditional police institution were replaced with the colonial police which were bequeathed to the African states upon attainment of independence.

⁴ This was known by various names. The Northern Hausa/Fulani referred to the Police institution as the “Dogari” or “Yan Gadi” and later as “Yan Doka”. The Yoruba referred to the Police as the “Akoda” or “Olopa” while the Igbo called it the “Ohu” or “Kotima”.

⁵ MC Caskry and HS Freeman were granted permission to maintain in the Colony of Lagos consular guards. This marked the nation of organized police in Nigeria.

advancement into their hinterland necessitated the formation of the police.⁶ In South Africa, European interest in the Western Cape began in the 17th Century. During the initial occupation of the Dutch East India Company and later British colonial government, there were maintained various police units in South Africa. The Fiscal's Law Enforcement Officers policed Cape Town from 1652 until 1840 in conjunction with the Night Watch.⁷ The two units metamorphosed into the Police Office in 1825 and was replaced by the Cape Peninsula Urban Police in 1840.⁸ The Magistrate's Law Enforcement Officers policed the rural parts of the Cape from 1686 until 1848 and was replaced by the Rural Police in 1848 and operated till 1913.⁹ In 1855, the Cape Colonial Forces (CCF) was launched and became the official paramilitary organization of the Cape consequent upon the British assumption of control over the Cape Colony from the Dutch. The organization comprised the Frontier Armed and Mounted Police, the Burgher Force, and the Volunteer Force and operated until 1912, when it was disbanded and replaced by the Union Defence Forces. The Cape Government Railways Police policed the railways. The Dock and Harbour Police policed the Table Bay harbor from 1860 to 1913, etc.¹⁰

When the Union of South Africa was established, the Cape Colonial Forces policed the union briefly until 1913 when the Police (SAP) was created by Proclamation 18 as the national police force and prime law enforcement agency in South Africa. SAP was an amalgam of four police forces of the colonies - Cape, Natal, Orange River and Transvaal.¹¹ It is in this light that we appraised the police and policing in South Africa paying close attention to the lessons which Nigeria could learn from the South African system.

2. Theoretical Basis

2.1 Sociological Theory

The sociological school of jurisprudence is concerned with what the law will do for the society as a whole rather than for the individual member of the society. Sociological jurists are of the firm belief that the emergence of the society makes law to be inevitable. Generally, the main concern of the sociological school of thought is how law can be used to foster social order and progress.¹² The legislators must, therefore, be guided in their law-making by the interest of the society; they must have a thorough and deep understanding of the society in which they belong.

According to Rudolph von Jhering,¹³ dubbed the 'fore-runner' and 'father of sociological jurisprudence',¹⁴ laws are merely instruments for servicing the needs of the society and their purpose is purely for the promotion and protection of the interests of society; this purpose should guide juridical thought and action. Furthermore, he posited that a law which is good today may be bad tomorrow, and vice versa, depending on whether or not the social background has shifted in the meantime.¹⁵ Jhering saw law not as a formal system of rules but as a prime method of ordering the society. Society itself was composed of a mass of competing interests - many of them economic but by no means all. An unfettered clash of these interests could only lead to chaos and anarchy and could not all be satisfied, for many were in conflict with one another. The purpose of law is to further and protect the interests of society and the purpose is to guide judicial thinking. It is, therefore, the view of Jhering that where there

⁶BC Okoro, *The Police, Law and Your Rights* (Lagos: Princeton Pub. Co., 2013) pp. 6-7

⁷ M'Call Theal, George, *Abstract of the Debates and Resolutions of the Council of Policy at the Cape from 1651 to 1687* (Cape of Good Hope, South Africa: Saul Solomon and CO., 1881), 5.

⁸ Ordinance 12 of 1825 (Cape of Good Hope); see also Ordinance 2 of 1840 (Cape of Good Hope)

⁹ Ordinance 25 of 1847 (Cape of Good Hope)

¹⁰ Ibid.

¹¹JSE. *Opolot, Police Administration in Africa: Toward Theory and Practice in the English-Speaking Countries*. (University Press of America, 2008), 114.

¹² Ibid., 199.

¹³ Also spelt 'Ihering', as seen in Dias, *op. cit.*, 376-377 and 423-425.

¹⁴W. Friedmann, *Legal Theory* (Columbia University Press, 1967) 213 & 280.

¹⁵ RV Jhering, *Law as a Means to an End*, cited in Adaramola, *op. cit.*, 259-260.

is a conflict between the interest of the society and that of the individual, the interest of the society should prevail.¹⁶

Eugen Ehrlich, one of the chief exponents of the sociological school of thought, posited that positive law cannot be understood apart from the social norms of the 'living law'. The 'living law', as conceived by him, is 'the inner order of association', i.e., the law practiced by society and enforced by the state.¹⁷ He identified the living law as the law which dominates societal life even though it has not been posited in legal propositions. In his words: 'At the present as well as at any other time, the centre of gravity of legal development lies not in legislation nor in juristic science nor in judicial decisions but in society itself.'¹⁸ He realized that a legal system might operate for good or evil and therefore observed the necessity for judges and lawyers to appreciate the social foundations of legal rules and to develop them on right and correct lines. Ehrlich argued that it is essential for the lawyer to be aware of and understand the nature of the 'inner order' and the 'living law' as well as the formal rules of law. To equate law with the formal rules is to give a false picture of the natural law. In his words:

To attempt to imprison the law of a time or of a people within the sections of a code is about as responsible as to attempt to confine a stream within a pond. The water that is out in the pond is no longer a living stream but a stagnant pool and but little water can be put in the pond.¹⁹

The living law reflects the ethical and moral values prevalent in the society. Judges and legislators who are out of touch with these values are incapable of developing the legal system in such a way that it will be harmonious with needs of the society. Due to the dynamic nature of the society, there is also the need for law to be in continual process of change if it is to serve the needs of the society.²⁰

2.1 The Utilitarian Theory

The 'father of English Jurisprudence' - Jeremy Bentham is noted for this theory. He asserts that the ultimate aim of law should be to guarantee greatest happiness for the greatest number of citizens.²¹ In other words, law is that which maximises pleasures and minimises pains.²² Illuminating on this theory, Malemi maintains that the central idea of the utilitarian theory is that every person is entitled to pursue his/her happiness, advantage, self-actualisation, and self-fulfillment with no interference by the state. The utility of any law therefore lies on the extent to which it guarantees happiness and reduced pains for the citizens. Whether any law is good or bad depends on its evaluation with regards to its utility to individuals and the society.²³ Harrison illustrates that Bentham premises his theory on the fact that it is in the habit of men to direct their actions towards gaining pleasures but not pain. He maintains that the fact that this self-interest is disguised as altruism or some similar selfless ideal is immaterial. Bentham identifies pleasure to include physical pleasures of all sorts - knowledge, riches, power, friendship, and good reputation and pain to include deprivation, enmity, bad reputation, malevolence, insecurity, fear, etc. All institutions devised by men, Bentham insists, are supposed to promote happiness and avoid pain. Their utility therefore should be determined based on the extent of their success in guaranteeing happiness to greatest number of the citizens.²⁴ The ultimate task of laws is therefore to secure maximum happiness of each individual, for the happiness of each will result in the happiness of all.

By Bentham's position, the ultimate goal of laws lies in securing maximum happiness of the majority of the individuals living in a given society. Bentham insists that the happiness of individuals will bring

¹⁶ Ibid., 238-239.

¹⁷ E Ehrlich, *Fundamental Principles of the Sociology of Law* (Harvard University Press, 1936) xxxii.

¹⁸ Ibid., xx. See also Friedmann, *op. cit.*, 248.

¹⁹ Ehrlich, *op. cit.*, 488.

²⁰ Ibid., 151.

²¹ Adaramola, *op. cit.*, 254.

²² Elegido, *op. cit.*, 43.

²³ E Malemi, *The Nigerian Legal Method*, (2nd edn., Lagos: Princeton Pub. Co., 2012), 52.

²⁴ R Harrison (ed.), *Bentham: A Fragment on Government* (Cambridge: Cambridge University Press, 1988), 5.

about the happiness of all.²⁵ In the happiness of all lies the actualisation of the communal weal, orderliness and state of equity.

Juxtaposing the theories, the social weal is secured by seeking to position the society in the path of order and progress. In this lies the role of law in securing robust engineering of a greater society. In the same vein, happiness of all and sundry is actualized in the orderliness of the society, a criminal should be paid in his own coin while the innocent is free and protected by the law. In this lies the desire, imperative and sustenance of a robust police system all over the world.

3. Police and Policing in South African

3.1 Police Origin and Powers in South Africa

European interest in the Western Cape, currently known as South Africa began in the mid-seventeenth century. In its initial stages, the colony was run by the Dutch East India Company. During their occupation, and well into British colonisation of the area, there were a variety of policing units throughout the various areas of the vast colony. From 1652 until 1840, the primary law enforcement agency in Cape Town was the Fiscal's Law Enforcement Officers who maintained law and order in the area and worked in conjunction with the Night Watch responsible for the nighttime surveillance of Cape Town between 1686 to 1840.²⁶ These two units were merged in 1825 into the Police Office, which was later replaced by the Town Police -the Cape Peninsula Urban Police in 1840.²⁷ There were also other units in charge of the rural areas of the Cape. From 1686 until 1848, the Magistrate's Law Enforcement Officers were responsible for policing the rural areas of the Cape; each district had a magistrate, and each magistrate had its own officers. The Rural Police (1848-1913) came to replace the Magistrate's Law Enforcement Officers.²⁸ Under this agency, each district had its own chief constable and a small force that were commanded by a resident magistrate. In 1855, the Cape Colonial Forces (CCF) was established as the official paramilitary organization of the Cape. They were formed after the British took over the Cape Colony from the Dutch and granted the colony representative government. The organization was made up of a variety of units that patrolled and operated in various areas of the Cape. The organization was made up of the Frontier Armed and Mounted Police, the Burgher Force, and the Volunteer Force. The Burgher and Volunteer forces were district-based militias that could be mobilized in their respective areas; the Volunteer Force was made up of privately organized and financed units that provided services at the government's disposal.²⁹ The organization operated until 1912, when it was disbanded and replaced by the Union Defence Forces. The Cape of Good Hope also had units policing borders and points of trade. The Frontier Armed and Mounted Police (1855-1878) and the Northern Border Police (1868-1873 and 1879-1884) were forces responsible for maintaining order along the borders of the colony and to protect the colony from neighboring indigenous kingdoms. The Cape Government Railways police were hired by the government to maintain order on the railways. The Dock and Harbour Police (1860-1913) were established with the intent to enforce the law in the Table Bay harbor.³⁰

After the establishment of the Union of South Africa, the union inherited the Cape Colonial Forces, but eventually replaced that agency with the Union Defence Forces in 1912 with the passing of the Defence Act (No. 13 of 1912). Because this force was primarily used as a standing army, the Union required the formation of a formal police agency. In 1913, the Police (SAP) was created by Proclamation 18 to function as the national police force and law enforcement agency in South Africa. SAP was an

²⁵ J Bentham, *An Introduction to the Principles of Morals and Legislation*, cited in Dias, *op. cit.*, 427.

²⁶ M'Call Theal, George, *Abstract of the Debates and Resolutions of the Council of Policy at the Cape from 1651 to 1687* (Cape of Good Hope, South Africa: Saul Solomon and CO., 1881), 5.

²⁷ Ordinance 12 of 1825 (Cape of Good Hope); see also Ordinance 2 of 1840 (Cape of Good Hope)

²⁸ Ordinance 25 of 1847 (Cape of Good Hope)

²⁹ Van Lill, Dawid, *Van Lill's South African Miscellany*. (South Africa: Zebra, 2004), 105.

³⁰ *Ibid.*

amalgamation of the four police forces of the colonies (Cape, Natal, Orange River, Transvaal).³¹ It originally only policed urban areas and cities, while the South African Mounted Rifleman (a part of the Union Defence Force) policed the rural areas. After the first World War, SAP took over the role of the Riflemen—who were later disbanded—and had the task of policing the vast territory that made up the union. SAP also had the task of policing South West Africa, which was under the South African government.³²

3.2 The Apartheid Era (1948-1994)

With the rise and subsequent election of the conservative National Party in 1948, the new government began passing legislation that allowed for a closer relationship between the police and military. There were moves to militarize the police force and SAP became heavily armed, most notably for its interactions with crowds that were deemed unruly and hostile. Police Act (No. 7) of 1958 outlined the functions of the police. Most importantly, Section 5 (now repealed) of the act read as follows:

The functions of the South African Police shall be *inter alia*: (a) the preservation of the internal security of the Republic; (b) the maintenance of law and order; (c) the investigation of any offence or alleged offence; and (d) the prevention of crime."³³

This Act broadened the function of the SAP beyond the standard police operations of maintaining law and order, investigating and preventing crimes. The SAP had unprecedented power to combat counterinsurgency and opposition to the Apartheid government. The Police Amendment Act (No. 70) of 1965 introduced search and seizure zones. This empowered police with the ability to search without warrant any person, receptacle, vehicle, aircraft, or premise within one mile of any national border as well as the ability to seize anything found during the search. These zones were gradually expanded in 1979 and 1983; ultimately, the SAP were permitted to conduct a search and seizure within South Africa without restriction.³⁴ These broad police powers created a very powerful and volatile force in the Apartheid regime. The SAP were taking many liberties in their interactions with the population of South Africa and instances of abuse and human rights violations were abundant. In 1977, the government passed the Indemnity Act (No. 13) to retroactively protect the government and the SAP from civil and criminal litigation due to acts committed between June 16, 1976, and March 16, 1977. The act placed police and government action during this period beyond public and legal scrutiny and prevented victims from seeking criminal or civil claims.

The Black Local Authorities Act of 1982 provided the establishment of local government structures in the Bantustans, similar to those present in white areas; the Apartheid government claimed that this would create a sense of autonomy in black communities and would allow them some local township power. However, the formation of these separate living areas for blacks systematically segregated black people from white communities as well as kept Black Africans from acquiring full citizenship. Included in this act was the creation of Homeland Police. While the police presence in the homelands was legally independent of the SAP, they were still very much an extension of the national organization in action.

The SAP presence was mostly focused on a counterinsurgency approach that aimed to diminish the amount of retaliation and revolt in the homelands. In an effort to aid this counterinsurgency, homeland security forces were established by Proclamations R400 and R413. These proclamations stipulated that a local department of justice and security force would be established in the Transkei and they would be under the jurisdiction of SAP, with equipment, training, and modes of operation being decided by SAP forces. In the Transkei, the 543 members (in 1975) were commanded by five white officers, reflecting

³¹JSE. Opolot, *Police Administration in Africa: Toward Theory and Practice in the English-Speaking Countries*. (University Press of America, 2008), 114.

³² Ibid.

³³ The Police Act (No. 7), S. 5; D. S. Lambrechts, "The Powers and Functions of the South African Police Service: A 'New Socio-Legal Perspective?'" *Acta Criminologica*. 9(85) (1996).

³⁴Ndletyana, Mcebisi, *Essays on the Evolution of the Post-Apartheid State: Legacies, Reforms and Prospects*. (Johannesburg: Real African Publisher, 2015), 29.

a redundancy in policing, as the homelands were subject to an overlap of policing and security forces. Very frequently, security forces in the homelands played “kingmaker” and assumed the legislative and governing roles. Homeland police were usually used to support particular regimes; the judiciary was weakened, focusing the police functions in upholding the interests of ruling elites, and not in the law.³⁵

3.3 South African Police Service 1994 to Date.

The South African Police Service (SAPS) is the current national police force of South Africa, formed after the end of Apartheid and during Transformation in the late 1990s. The SAPS came to replace the Apartheid national police force, the South African Police in 1994. The Constitution of South Africa states that the SAPS' responsibilities are to prevent, combat and investigate crime; maintain and protect the public, their property and the overall security and safety of the Republic; uphold and enforce the law; and maintain. Furthermore, the South African Police Service Act (No. 68) of 1995 states that the SAPS is "to provide for the establishment, organisation, regulation and control of the South African Police Service; and to provide for matters in connection therewith." Despite the vision of a new South Africa with a security force that upholds the ideals of serving and protecting the entire public, unlike the previous law enforcement agencies, there have been numerous accounts and accusations of police brutality.

4. Organisational Structure of South African Police

South African Police Service headquarters in Pretoria is organised into six divisions: the Crime Combating and Investigation Division, the Visible Policing Division, the Internal Stability Division, the Community Relations Division, the Supporting Services Division, and the Human Resource Management Division. The Crime Combating and Investigation Division holds overall responsibility for coordinating crime and investigative procedures. It administers the Criminal Record Centre, Commercial Crime Unit, Diamond and Gold Branch, Narcotics Bureau, Stock Theft Unit, the Inspectorate for Explosives, murder and robbery units located in each major city, and vehicle theft units throughout the country. In addition, the division manages the National Bureau of Missing Persons, which was established in late 1994.³⁶ The Visible Policing Division manages highly public police operations, such as guarding senior government officials and dignitaries. Most government residences are guarded by members of the division's Special Guard Unit. The division's all-volunteer Special Task Force handles hostage situations and other high-risk activities. The Internal Stability Division is responsible for preventing and quelling internal unrest, and for assisting other divisions in combating crime. The Community Relations Division consults with all police divisions concerning accountability and respect for human rights. The Supporting Services Division manages financial, legal, and administrative matters. There is also a large reserve division.

Some municipalities also maintain their own Municipal Police units, which are tasked mainly with traffic policing and the enforcement of municipal bylaws. Municipal Police have fewer powers than the South African Police Service, and do not investigate major crimes.³⁷ Municipal Police forces exist in a number of major cities, including Cape Town, Johannesburg and Durban. In addition to general policing units, some municipalities maintain their own specialized units that focus on particular issues. The Anti-Land Invasion Unit was established in 2009 by the City of Cape Town to prevent the illegal occupation of land and the erection of "unauthorized" dwellings throughout the city. It was reported that the unit demolished over 300 shacks in the past year.³⁸ The South African police service is therefore organised in a decentralised form from the centre to the provincial and local government levels.

The current ranking system of the South African Police Service was adopted in April 2010. The change caused some controversy as new ranks like "general" and "colonel" have a military connotation. The

³⁵Webmaster. "Policing the Periphery: Police and Society in South Africa's" available Online at: www.csvr.org.za; accessed on 28th November, 2023.

³⁶ Green Zone Nation: The South African Government's New Growth Path, *Open Democracy*, 19 March 2012

³⁷ "Police Rank Reform the Best in Years". *IOL*. 31 May 2016.

³⁸"Police to Introduce New Regional Commissioner Rank". *Eyewitness News*. 31 May 2016.

ranking system in the South African Police Service is in close affinity with the military rankings. The police command is divided into three segments of Senior Management cadre, Commissioned Officers cadre and Non- Commissioned Officers.

- i. **The Senior Management Cadre:** this cadre is composed of ranks as the General, the Lieutenant General, the Major General and the Brigadier.
- ii. **Commissioned Officers Cadre:** in the commissioned officers cadre are: the colonel, the lieutenant colonel, the major, the captain and the lieutenant.
- iii. **Non- Commissioned Officers:** the non- commissioned officers cadre is the lowest in the hierarchy. It is composed of such ranks as: the warrant officer, the Sergeant and the Constable.³⁹

Furthermore, the new rank system mirrors the system used by the South African Police during the apartheid era.⁴⁰ The ranking system was amended in 2016. The role of regional police commissioner was introduced, with the rank of lieutenant general. The major and lieutenant ranks were eliminated, with lieutenants assuming the rank of captain and majors assuming the rank of lieutenant colonel.⁴¹

5. Public Perception of the Police in South Africa

On December 23, 2020, Peter Ntsime, the Acting Deputy General Secretary of South African Policing Union (SAPU), declared that the image of SAPS was tainted the previous day when Colonel Kamelash Dalip Singh, a senior SAPU policeman from the KwaZulu-Natal Provincial Anti-Corruption Unit, was arrested, and then released on bail, on a bribe charge. Ntsime criticized the arrest, stating Singh was at the forefront of arresting crooked police officers and was onto a big syndicate. Despite a statement from Directorate for Priority Crime Investigation (Hawks) spokesperson Captain Simphiwe Mhlongo that uncover Hawks officers caught Singh red-handed accepting a R5,000 bribe, people took to social media to criticize his arrest as well.⁴²

On December 24, 2020, a video was published showing passengers on a minibus taxi cheering on their driver as he brawled with a police officer in Cape Town following a vehicle crash. Despite the fact that the taxi driver delivered more punches, and also spit in the officer's face after the officer attempted to deliver the first punch, the officer was arrested after a test confirmed he driving under the influence of alcohol, and was also charged reckless and negligent driving. On December 15, 2020, it was that at least one Cape Town-area officer stationed in Durbanville had been using taxis to illegally sell alcohol.⁴³

6. Challenges of Police and Policing in South Africa

6.1 Challenges as to Origin and Development

Although the South African Police under apartheid most clearly demonstrated this colonial legacy, police forces all over the world still remain focused on repression rather than social empowerment.⁴⁴ The centralization of policing as a state function is a principal source of the problems that have confronted contemporary policing. Colonial policing is by character closely linked to the interests and structure of the colonial state: "The police are centralized under the control of the government and they

³⁹ Police Ranks and Hierarchy in South Africa available online at: <https://www.pinterest.com/pin/493003490431174071/>; accessed on 20th Nov.. 2023

⁴⁰In 2009, Deputy Minister of Police Fikile Mbalula spoke of making the police a paramilitary force by changing the SAPS ranking system so that it would closely mirror the military ranking system. This created a significant amount of controversy from people critical of what they called the "militarisation" of the police.

⁴¹ Editorials, "Top Cop Position is a Poisoned Chalice". *The Citizen* (27 October 2017), accessed 6 November 2017.

⁴²Chothia, Andrea, "Three Law Enforcement Officers Arrested for Bribery and Corruption". *The South African*. 28 December 2020. Available online at: <https://www.google.com/search?q=Chothia%2C+Andrea%2C+%22Three+Law+Enforcement+Officers+Arrested+for+Bribery+and+Corruption%22.+The+South+African.+28+December+2020%3B+Retrieved+4+January+2020.&ie=utf-8&oe=utf-8&client=firefox-b-ab>; accessed 20/11/2023..

⁴³ Ibid

⁴⁴ M. Brogden, and C. Shearing, *Policing for a New South Africa* (London: Routledge, 1993).

serve that government, rather than the law, performing several non-police duties for government⁴⁵ The South African government relied on the police to maintain its colonial and apartheid policies (including, notoriously, its policies of racial segregation) in defiance of internal opposition and an international environment where decolonisation had become the norm. Policing in South Africa during the past decades thus isolated the police from a large segment of the community whose security it was supposed to protect. Although the police served the interest of the apartheid state, public accountability of the police should be understood within a broad social and historical context in which the police represented only one of many oppressive state structures. Van der Westhuizen illustrates that the development and history of policing in South Africa needs to be placed within the context of broader government racial policies: “Police work was defined primarily as the policing of race relations and policing became a political activity”⁴⁶ Steinberg clarifies that policing black communities in South Africa for the better part of the twentieth century boiled down to two imperatives: “controlling the movement of people, and squashing political opposition”⁴⁷ Steinberg says the set of rules that govern the relationships of everyday life was missing from the policing of black communities. He ascribes much of the violent crime committed today to the fact that “in the absence of law, relationships are regulated by the private appropriation of force”⁴⁸ An example of this is the lawless violence committed in the taxi industry. In April 1994 the previous “enemy of the State”, namely the African National Congress (ANC), became the governing party of South Africa. Given its historic contribution to the apartheid government, the South African Police has been one of the main targets for change in the new dispensation. Transformation of the South African Police as an organisation implies a total reorganisation and restructuring of management and administration, as well as the way in which services are rendered. Transition from a police force with an emphasis on authoritarian decision making to a police service with an emphasis on community policing and participatory decision making can be seen as an important and difficult challenge the organisation has to face.

6.2 The Challenges of Police Funding

The South African Police Service has an obligation to maintain peace and public order before, during and after all elections.⁴⁹ Funding for the SAPS cannot be said to be comparatively low given that R18.7 billion was allocated to SAPS in the 2018/19 and increased to R22.9 billion in the 2021/22 fiscal year. No decreases in the number of personnel are expected in this programme over the period ahead. An estimated 78.1 per cent (R316.2 billion) of the department’s budget over the medium term is allocated to compensation of employees. The department has a funded establishment of 192 431 personnel in 2018/19. This number is expected to decrease by 1 000 in 2019/20 due to natural attrition, and remain constant over the period ahead to remain within government’s expenditure ceiling for compensation of employees. To minimise the impact of the expenditure ceiling on core service delivery, critical vacant funded posts, such as visible policing, forensic analysts, detectives and senior management, are still expected to be filled. The department will also continue to prioritise its rejuvenation programme, which entails the recruitment of younger police officials at the entry level, by appointing at least 3 000 trainees each year over the MTEF period. Expenditure in the Crime Prevention sub-programme in the Visible Policing programme is projected to increase at an average annual rate of 7.1 per cent, from R36.3 billion in 2018/19 to R44.5 billion in 2021/22. The number of personnel in the Crime Prevention subprogramme is expected to remain at 86 512 over the medium term. As such, spending on compensation of employees in the subprogramme increased at an average annual rate of 7.3 per cent, from R31.5 billion in 2018/19 to R38.9 billion in 2021/22, in line with cost of living adjustments. Expenditure in the Detective Services programme, which includes an allocation of R5.4 billion over the

⁴⁵E. J. Van der Westhuizen, “Ethics in Police Management and Administration: A South African Perspective”, *Acta Criminologica*. Vol.14(1), (2001), 31-39 at.38.

⁴⁶ *Ibid*, 40.

⁴⁷J. Steinberg, (Ed). *Crime Wave: The South African Underworld and its Foes*. (Johannesburg: Witwatersrand University Press, 2001), 7.

⁴⁸ *Ibid*, 8.

⁴⁹ See the South African Government, 2019 Estimates of National Expenditure, Police Budget summary, 467 available at: <http://www.treasury.gov.za/documents/national%20budget/2019/ene/Vote%2023%20Police.pdf>; accessed on 20/11/2023.

medium term to the Directorate for Priority Crime Investigation, is expected to increase at an average annual rate of 7 per cent, from R18.7 billion in 2018/19 to R22.9 billion in 2021/22. No decreases in the number of personnel are expected in this programme over the period ahead.⁵⁰ This is just an exploration of two key issues in the police budget to buttress our position here.

6.3 The Challenges of Police Corruption

One of the challenges confronting the SAPS is corruption. The SAPS is believed to be corrupt to a large extent. Corruption take different shades and forms here ranging from tipping, extortion, embezzlement, trumped up charges on procurement for a certain sum of money, etc. for instance, on 10 September 2007 an arrest warrant was issued by the National Prosecuting Authority (NPA) for National Police Commissioner Jackie Selebi (Interpol President from 2004 to 2008). On 23 September 2007, President Mbeki suspended NPA Head Vusi Pikoli, allegedly because of "an irretrievable breakdown" in the relationship between Pikoli and Justice Minister Brigitte Mabandla. However, journalists at the *Mail and Guardian* claim to have solid information supporting the widespread suspicion that President Mbeki suspended Pikoli as part of a bid to shield Police Commissioner Selebi.⁵¹ According to the *Mail and Guardian* on 5 October 2007 the NPA was investigating Selebi for corruption, fraud, racketeering and defeating the ends of justice.⁵² Selebi was found guilty of corruption in July 2010, but not guilty of further charges of perverting the course of justice.⁵³ In February 2011 Bheki Cele was implicated in unlawful conduct and maladministration with a R500m lease agreement for the new police headquarters in Pretoria. In October 2011, President Jacob Zuma announced that Cele had been suspended pending an investigation into the agreement. After recommendation from a board of inquiry, Zuma dismissed Cele and announced that Riah Phiyega, the first female commissioner, would replace him. In February 2018, SAPS Lieutenant-General Khomotso Phahlane, who was also former acting SAPS Commissioner and his wife appeared in court on charges of fraud and corruption.⁵⁴ On 30 July 2020, Phahlane was dismissed from the police after 3 years on suspension.⁵⁵ The same day, he was found guilty of dishonest conduct.⁵⁶ On 12 July 2019, it was announced the five North West Province police officers were arrested during the week in three separate corruption cases.⁵⁷ On 4 June 2020, six senior Gauteng police officers were among 14 people arrested on corruption charges.⁵⁸ Two other senior officers, now retired, were arrested as well. Among the Gauteng-based SAPS officers charged with corruption included three brigadiers and a retired SAPS Lieutenant General.⁵⁹ On 12 October 2020, Lieutenant-General Bonang Mgwenya, the country's second-most senior police official, was arrested on charges of corruption, fraud, theft and money laundering involving about R200-million and afterwards appeared in Ridge Magistrates' court. At the time of Mgwenya's arrest, she and Phahlane were among 14 fellow officers who were charged with corruption.⁶⁰ Mgwenya was suspended on 15 October 2020 and was dismissed from SAPS on 13 November 2020.⁶¹ On 23 December 2020, four Cape Town police officers attached to the national border control unit at Cape Town International Airport were arrested for extorting money

⁵⁰ Police – BUDGET - www.treasury.gov.za › national budget › e-booklets › Vote 23 Police

⁵¹ William Gumede, 'South Africa: Marikana Is a Turning Point' *The Guardian*, 29 August 2012

⁵² Ibid; 'The Desperate Bid to Shield Selebi' *The Guardian* on 5 October 2007.

⁵³ "South Africa Ex-police Head Selebi Guilty of Corruption". *BBC*. 2 July 2010.

⁵⁴ Barry Bateman, "Former Top Cop Phahlane to Appear in Court on Fraud, Corruption Charges". *Eyewitness News*, 8 February 2018; *Angelique Serrao*, "Top Cop's Luxury Car Fleet Comes under the Spotlight" *News24* of 25 January 2018.

⁵⁵ *Angelique Serrao*, "A Look Back into the Case against Phahlane". *News24* of 8 February 2018.

⁵⁶ Marianne Thamm, "Former acting national police commissioner Khomotso Phahlane sacked". *Daily Maverick* of 30 July 2020

⁵⁷ Ernest Mabuza, "Five Cops Arrested for Corruption and Bribery in North West". *Sunday Times*, 12 July 2019.

⁵⁸ Paul Richardson, "Top South African Police Officers Arrested in Graft Crackdown". *Bloomberg News* of 4 June 2020.

⁵⁹ *SABC News*, "SAPS Arrests Police Officers over Fraud, Corruption". 4 June 2020.

⁶⁰ Marianne Thamm, "SA's Second Most Senior Cop, Lieutenant-General Bonang Mgwenya, Appears on Corruption Charges for Dodgy Tenders". *Daily Maverick*, 12 October 2020.

⁶¹ Riaan Grobler, "Deputy police commissioner Bonang Mgwenya fired following corruption charges". *News 24*, 13 November 2020.

from Chinese businesses.⁶² On December 28, 2020, three law enforcement officers who were employed by the Emalahleni Municipality were arrested in Mpumalanga on corruption and bribery charges which involved allegations of not issuing standard fines to motorists who committed traffic violations, but instead extorting them for bribes.⁶³

7 The Challenges posed by Occupational Hazards

In the SAPS, the incidence of injuries sustained while on duty among police officers was 4.7, 6.8 and 4.3% for 2013/14, 2014/15 and 2015/16, respectively.⁶⁴ For the same reporting periods, the fatalities were 3.5, 1.2 and 1%, respectively. Although there was a decline in the fatalities, there has not been a significant change to injuries. These findings were observed from the 138,595 police officers working in the SAPS. From the available statistics, the injuries encountered by police officers were not categorized according to the ILO hazard classification.⁶⁵ The lack of hazard classification limits the possibility of understanding the common causes of injuries that affect police officers while on duty.⁶⁶ Thus, it is essential to have a good OHS plan whereby the employees, employers and the government participate.⁶⁷ Due to the need for public safety, the police force has a mandate to protect citizens and enforce law.⁶⁸ Such duties require both physical and psychological wellness, given that each role is associated with specific hazards. The roles and responsibilities of police officers vary; they include attending the crime scene, patrol, firing range practice or testifying in court.

7. Police Welfare Schemes

South African police is comparably well paid. Apart from salary, there are also other incentives paid to officers to be well motivated. According to the Bureau of Labor Statistics Occupational Employment Statistics Survey of May 2017, the average annual pay for South African police and sheriff's patrol officers was \$61,050 ranking second after forensic science technicians who earn \$61, 220. Base salaries for police officers are often augmented by a variety of special pays, including:

- i. Shift differential pay for time worked on nights and/or weekends,
- ii. Longevity pay based on years of service,
- iii. Overtime, comp time, and court time for duty beyond the standard schedule,
- iv. Annual uniform allowances, and
- v. Periodic equipment allowances.⁶⁹

Some departments also offer bonuses to officers with degrees, special training, or language skills. In addition to above average salaries, police enjoy benefits, retirement packages, and insurance coverage options that usually exceed those offered by private employers. In some agencies, full retirement is attainable in 20 to 25 years regardless of age. This means if you start early, you can retire in your forties and start a new career while still drawing your police pension. Many jurisdictions match employee

⁶²Philani Nombemde, "Cape Town border control police officers arrested for 'business robbery'". *Sunday Times*, 23 December 2020.

⁶³ Andrea Chothia, "Three Law Enforcement Officers Arrested for Bribery and Corruption" *The South African*, 28 December 2020.

⁶⁴South African Police Service. Annual Report 2015/16. Pretoria: South Africa; 2016; South African Police Service. Annual Report 2014/15. Pretoria: South Africa; 2015; South African Police Service. Annual Report 2013/14. Pretoria: South Africa; 2014.

⁶⁵International Labour Organization. "List of Occupational Diseases (revised 2010). Identification and Recognition of Occupational Diseases: Criteria for Incorporating Diseases in the ILO list of Occupational Diseases." *J Chem Inform Model.* 53, (2010), 1689–99.

⁶⁶EJ Mrema, A. V. Ngowi, SHDD Mamuya, Status of Occupational Health and Safety and Related Challenges in Expanding Economy of Tanzania. *Ann Glob Heal.* 81(4) (2015), 538–547.

⁶⁷G. Brown, "Genuine Worker Participation-an Indispensable Key to Effective Global OHS." *New Solut a J Environ Occup Heal Policy.* 19(3) (2009), 315–333; C, Randall, and N. Buys, Managing Occupational Stress Injury in Police Services: A Literature Review. *International Public Health Journal* 5(4) (2013), 413–425.

⁶⁸C, Randall, and N. Buys, Managing Occupational Stress Injury in Police Services: A Literature Review. *International Public Health Journal* 5(4) (2013), 413–425.

⁶⁹U.S. Department of Labor, Bureau of Labor Statistics, National Occupational Employment and Wage Estimates, May 2017. Available online at: <https://www.bls.gov/oes/current/oes333051.htm>; assessed on 21/11/2023.

retirement contributions, and some agencies offer tuition assistance, allowing you to further your education while maintaining fulltime employment. Still other benefits may include generous leave time, take-home vehicles, and free access to health/fitness facilities. When comparing agencies and weighing the pros and cons of each, it's important to look beyond salary and consider the full range of benefits offered by an agency. What one agency lacks in base salary, it may more than make up for elsewhere.⁷⁰

8. Lessons for Nigeria

We have, in this work appraised two jurisdictions of Nigeria and South Africa in law enforcement. In both jurisdictions, the police is the major pillar of law enforcement. We can identify areas of convergence and divergence in the police service of both jurisdictions. There is convergence in the police origin and development in both jurisdictions have common root in colonialism. The colonially transposed police service was nurtured in both jurisdictions towards the colonial desires of suppression and repression. In the case of the Nigerian police, the short-lived first republic caved in for the military regimes lasting up to 1999. In the case of South Africa, the apartheid policy ushered in the racial government that was built on white supremacy lasting up to 1994. This ugly era further infused in the force the military mentality of human right abuses, bribery and corruption, detachment from the people and so forth. Also, there is similarity in most of the challenges bedeviling the police optimal performance in both jurisdictions. For instance, there is the case of police corruption, police' citizens' rights abuses, poor public image, poor welfare schemes, job hazards, etc.

There is however areas of difference in police service of the two states. For instance, there is sharp contrast in the organisational and command structure of the two states. While the South African police service is organized in a decentralized manner of central, provincial and the local government levels and has ranking structure akin to the military ranking system, the Nigerian police force is highly centralized. There is also disparity in terms of funding. The South African police tend to be better funded with slightly enticing welfare package than the Nigerian counterpart. In terms of professionalism, the police in both jurisdictions are the same.

9. Conclusions

We have examined police and policing in SA in this paper. We have also explored lessons for Nigeria from the South African system. In concluding this paper, we deemed it imperative to make the following recommendation:

a. Upward Review of Qualification for Enlistment

Nigeria should review the educational qualification for recruitment into the police force. The current qualification of senior school certificate or its equivalent is no longer sustainable. In South Africa, the least qualification is ordinary national diploma. This is especially imperative given the deplorable standard of education in Nigeria.

b. Salary and Welfare

There should be general wage review for public and civil servants in Nigeria especially the police. There should also be increase in incentives for gallantry, exceptional deployment of intelligence and diligence. There should be set of welfare packages for the police like life assurance, free medical treatment, NHIS enhance treatment for family and wards of officers, well equipped police hospital and recreational facilities, etc.

c. Rigorous Training

Men of the police should be well trained. There should also be conferences, workshops and symposia at regular intervals for men of the police force. International conferences and trainings should be available to encourage robust interactions with fellow officers of the force in different jurisdictions.

⁷⁰ U.S. Department of Labor, op cit.

This will not only sharpen their minds in the job but also occasion rapid transformation of men and officers of the Nigerian police,

d. Effective Supervision

Men of the police force should be given adequate and effective supervision by both the Police Service commission and high ranking officers of the force. The X-Squad should also be up and doing in police discipline.

e. Increased Oversight Checks by the National Assembly

The National Assembly should step up their exercise of oversight function on the police. The Inspector-General of Police should brief the Joint Session of the National Assembly periodically of the activities of the police.