

# SHEBEENS AND CRIME

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## The multiple criminalities of South African liquor and its regulation

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*Recent liquor legislation has centred on shebeens as conduits for crime and violence. In contrast to this perspective, we argue that shebeens form part of a complex constellation of relationships influencing alcohol-related violence. Drawing on a survey of shebeen owners in one community in Cape Town, this article explores how their experiences of crime and police raids are reshaping the dynamics of the liquor trade amid conditions of poverty. It argues that inconsistent and often arbitrary policing is driving many shebeens into adopting covert strategies to manage the risks of closure, fines, temporary imprisonment and bribes demanded by the police. In so doing, liquor law enforcement may have inadvertently precipitated new types of violence in township drinking environments. The paper explores the broader implications of these processes for efforts to address alcohol and violence in sustainable and equitable ways that improve quality of life and wellbeing for all.*

For the past two decades, questions over how best to regulate alcohol and its harms have been interwoven with broader post-apartheid fears over crime, violence, inequality, unemployment, corruption, the state of policing, and social unrest.<sup>1-3</sup> In many respects, therefore, the recent political and public attention to the role played by shebeens in driving South Africa's extremely high rates of alcohol-related harms says as much about these broad fears as it does about the particular risks associated with shebeens as drinking venues. Departing from this line of reasoning, however, we argue here that shebeens are not just conduits or drivers of violence. Instead, we explore their role as sources of grass-roots livelihoods that are also

vulnerable to multiple acts of criminality and violence. In turn, these experiences of criminality may well render their regulation even more problematic.

We do not intend to offer a contentious counter-narrative to the important work exploring the link between shebeens, alcohol, unsafe sex, violence and HIV/AIDS transmission<sup>4</sup> but rather present a starting point for nuanced attention to the shebeen as a complex space where violence can be perpetrated in multiple ways: by patrons, criminals and, in some cases, the police. To do this, the paper draws on a large-scale survey of shebeen owners' experiences of crime and policing in Philippi, Cape Town. It then reflects on the broader consequences of these findings for the enforcement, legitimacy and sustainability of alcohol control policies in the Western Cape and beyond.

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## LIQUOR POLICY AND THE PROBLEM OF SHEBEENS

The Global Burden of Disease Study found that South Africa had almost 60 000 deaths from injury (half of which were caused by interpersonal violence) and 55 000 *reported* rapes of women and children,<sup>5</sup> with many tens of thousands more going unreported. Alcohol is among the primary drivers of these high rates of violence, with multiple studies confirming high levels of blood alcohol among patients presenting to trauma units with injuries,<sup>6</sup> as well as among women who were murdered.<sup>7</sup> In spite of the multiple limitations of the South African Police Service's (SAPS) crime data, its ability to identify crime hotspots, undertake last-drink analysis or indeed systemically record blood alcohol levels of those arrested,<sup>8</sup> the dominant policy, political and media discourse has come to rest on shebeens as conduits for and drivers of crime and violence. At the same time, shebeens remain important sources of livelihoods for many (especially women) in poor communities. They may also 'serve as social spaces that may create a sense of community cohesion and provide opportunities for recreation and socialisation that otherwise do not exist.'<sup>9</sup> Such a counterpoint to the dominant trope of shebeens as loci of violence is important, because the transposition of such narratives into received wisdom has far-reaching implications for the ways in which shebeens, their owners and patrons become targets of public policy. Moreover, these processes have potentially profound consequences for household livelihoods under conditions of multiple deprivation.

In marked contrast to Seedat et al's 2009 claim that alcohol 'is not yet a prominent policy goal' in South Africa,<sup>10</sup> momentum around liquor regulation has gathered dramatically in the past decade. The Western Cape was the first province to promulgate a liquor policy, with the Western Cape Liquor Act (27 of 2008) brought into effect in April 2012.<sup>11</sup> The ascent of the Act has meant new enforcement efforts aimed at upholding licensing requirements. In practice, this means targeted efforts to raid and close shebeens in residential areas as a way of controlling the illegal,

unlicensed trade and its associated harms. These activities have been overseen by Premier Helen Zille in her concern that 'alcohol drives the rate of violence – that is the tragic fact.'<sup>12</sup> In her 2013 State of the Province Address, Zille highlighted that

The Western Cape Liquor Board has been conducting blitzes across the province and imposing heavy fines against owners who aren't complying with liquor regulations. We are also working with municipalities, City of Cape Town Law Enforcement and the SAPS to close down illegal liquor outlets.<sup>13</sup>

In contrast to this celebration of police efforts, the South African Liquor Traders' Association (SALTA) has repeatedly defended its members in their accusations of police corruption and violence associated with these 'blitzes'.<sup>14</sup> The perspectives and experiences of shebeeners have attracted relatively few headlines, except in covering their episodic protest marches.<sup>15,16</sup> Shebeens provide spaces that can, under circumstances of heavy drinking, provoke multiple risk-taking and violent behaviour, but as cash-led micro-enterprises, they are also vulnerable to South Africa's extremely high rates of robbery. Increased police attention to shebeens in the context of the Liquor Act has not served to reduce their vulnerability to crime, but has rather added another layer of (often) violent confrontation and criminality to the experience of making a living through shebeening. The nature and consequences of these experiences will be explored in more detail below.

### SHEBEENS AS MULTIPLE SITES OF CRIMINALITY

We conducted a detailed survey in Browns Farm and Sweet Home Farm, Philippi, Cape Town, a mixed area of formal and informal housing with 17 844 households and about 70 000 residents in 2011/2012. Three hundred and fifteen shebeen owners were asked a series of questions about the nature of their business, their clientele, and experiences of crime and the police. The research also included a participatory action research component whereby eight shebeeners in Sweet Home Farm were trained in digital story-making

and supported to produce digital stories about their livelihoods and experiences, which were made available on YouTube.<sup>17</sup> Throughout this paper we direct attention to their experiences both through direct quotation and by reference to their digital stories. The research sites are representative of many of the major barriers facing urban development in Cape Town: low levels of educational attainment; high rates of unemployment; inadequate transport infrastructure; distance from locations of employment; and poor quality services. Liquor retailing in the sites is also reflective of circumstances in other poor parts of the city and is a direct reflection of historical disparities in licensing criteria: there are only nine licensed liquor outlets within the research site.

The shebeens studied are exceptionally diverse – by size, revenue, aesthetics, clientele and drinking style – challenging the monolithic perception of unlicensed venues within the liquor control paradigm. For example, 38 (12%) of the shebeens sampled operate on a take-away basis, not permitting drinking within the business premises. Of those businesses willing to permit ‘on-site-consumption’, the majority provide only rudimentary seating and the venue’s main entertainment is conversation among patrons. Only a relatively small proportion of the sample provides ‘drinkertainment’: 15% have pool tables; 5% juke-boxes and 6% have satellite sport channels. Over 70% of the shebeens sell relatively low volumes of liquor, meaning that they never have more than 150 litres of alcohol (equivalent to 16,5 crates of beer) in their possession, the benchmark volume for ‘private consumption’ specified in the Liquor Act. New research has begun to show how shebeens typically target specific clientele – such as the elderly, adult men, or youth – through the provision of certain types of entertainment, restrictions on the kinds of alcohol sold, operation hours and door policies. These strategies of selective inclusion/exclusion have emerged as a response to increased police raids of shebeens in general and ‘problem’ shebeens in particular.

In Browns Farm, 66% of premises reported being raided by police in the past year. In Sweet Home

Farm the figure was 64%. Given that the majority of premises surveyed would be considered small businesses and that women are almost 50% more likely to own them, police raids have a disproportionate effect on the smallest, female-run businesses, which mostly operate from private homes. Thus, of the 206 businesses reporting being raided, 131 were low volume sellers. The experience of these raids leads to great volatility, with over 50% of businesses reporting that they had been forced to close temporarily at some point in the past year to deal with the after-effects of police raids. These include loss of stock and, as a result, capital. Raids were far more common where patrons were drinking on-premises, with only 12 off-trade outlets reporting being raided. While police raids may often lead to the shebeener being fined, many respondents also reported being asked for bribes by the police in order to evade court action. While reports of bribery did not necessarily emerge as a straightforward response in the formal survey, subsequent qualitative engagement with interviewees noted that at least half of those questioned had experienced what they termed and understood to be ‘bribery’.

Before turning to these experiences in more depth, it is important to highlight that shebeens and taverns<sup>18</sup> are also subjected to high levels of violent crime. Licensed and larger premises were proportionally the most likely to have reported an incidence of armed robbery in the past year. Thus, 68% of taverns in the Browns Farm sample (n=9) reported being victims of armed robbery. However, when absolute numbers of reported incidents are considered, low volume traders endured the highest frequency of armed robbery (n=29), when compared to medium volume (n=14), showing that violent crime affects liquor outlets, irrespective of size. These figures point to the need to re-frame the ways in which we engage with debates on shebeens, given the pervasiveness of criminality in poor communities. The inter-personal violence that can emerge from shebeen drinking does not exist in a spatial vacuum. Rather, it emanates from a multi-layered environment of violence in which shebeeners’ own experiences of criminality inform their strategies to control (potential and actual) situations of violence within their premises.

As will be explored, the enforcement of liquor laws by the SAPS is all too often interpreted by shebeeners as just another form (among the many that they experience) of criminality and violence. While technically upholding the licensing laws by forcing closure, seizing goods and fining unlicensed venues, a lack of police communication about the mechanics of the Liquor Act, the absence of alternative livelihoods for many shebeeners, and their continued ineligibility for liquor licences, undermines the perceived legitimacy of police actions. In turn, this raises significant questions about how, given their technical illegality, shebeens should be policed. Moreover, the paper considers how such policing can be undertaken in ways that support, rather than undermine, the efficacy of the Liquor Act in reducing alcohol-related harms.

## EXPERIENCES OF LIQUOR LAW ENFORCEMENT

Experiences of crime and police action are often entwined in the shebeener accounts we analysed and, more often than not, the distinction between the two is blurred. We concur that raids are technically and legally justified when shebeeners are trading without a licence, but they may blur the edges of corruption when bribes are demanded, due process is not followed, and confiscated liquor is retained or consumed rather than disposed of. We also recognise that the task of policing shebeens presents high risks (especially when raids affect patrons) and, as many authors have pointed out, is a task that police themselves see as unpopular and detracting from broader crime prevention activities.<sup>19,20</sup> These actions and shebeeners' experiences of them are significant, not just because they are embroiled in the crisis of public confidence in the SAPS<sup>21-23</sup> but because they also fundamentally undermine the perceived legitimacy of liquor control and enforcement, which, ultimately, could ensure the persistence of the spiral of alcohol-related violence. Certainly, when the barriers to obtaining the liquor licence needed to trade legally (e.g. the costs and complexity of the application, the need to obtain legal services and the requirements for land use rezoning) are combined with an absolute lack of

alternative economic activities, then it becomes clearer why selling liquor illegally is so entrenched and, importantly in the context of legislative enforcement, remarkably resilient to police blitzes.

The digital story by Nosipho, titled 'I will never forget ...' clearly articulates the paradox confronting many shebeeners between the difficult choice of feeding her family through selling alcohol, and the consequences of breaking the law in terms of fines, imprisonment and personal humiliation.<sup>24</sup> Nosipho begins her story saying, 'the first day I was arrested was the most painful day of my life'. During her incarceration, she recalls, 'I held on because inside there was a voice telling me I was arrested for putting food on the table for my family'. She was selling alcohol as a 'better option than being a slave to bad things'. In her decision to continue selling liquor, she counterpoises the 'fear' of vulnerability (from no income) against the 'fear' of police detection.

In recounting their experiences of police raids, shebeeners highlighted the frequency at which the events occurred, with respondents raided, closed and arrested up to twelve times in the past year. One reported that the police came at least twice a week, but that she had only been arrested twice. It was far more common for the police to merely seize alcohol, hassle patrons and issue fines rather than arrest and prosecute shebeeners. The fines appear arbitrary, as respondents report the police demanding wildly varying amounts. R1 500 is the standard fine for 'trading without a licence' under the 1977 Criminal Procedures Act as an admission of guilt payment (which results in a criminal record) and many shebeeners reported handing over this amount. Yet many reported being asked for R200, R300, R500 'bail'/admission of guilt fines before the request (or not) of a standard fine.

While such figures are correct procedure in many cases, the lack of respondent understanding about due process and experiences of fluctuating fines/bail amounts for the same crime have undermined the perceived legitimacy of enforcement efforts. For example, in the digital story 'The Bribe', Lewis recalls how the police raided his shebeen under the pretence of searching

for drugs, but, unable to find any, they arrested him for selling liquor after finding beer in his fridge.<sup>25</sup> He then admitted to selling liquor, saying 'I don't have a licence. I live in a shack' (in other words, it is impossible to obtain a licence in an informal settlement). The policemen responded: 'Give us a cold drink and we will let you go'. He offered them R100, which they refused, demanding R750 on the basis that his 'bail' was R1 500. They finally accepted R400. A month later, police arrested his wife for selling liquor, offering her release in bargaining their bribe. Lewis again relented and paid R500. In other cases, respondents described the police as 'stealing' money, with one respondent reporting the police taking R6 000 cash.<sup>26</sup> Some caution must be applied to the interchangeable use of the terms fine, bail and bribe by respondents, as well as accusations of police 'stealing' money from them. However, reports of being asked for 'bail' before even being arrested and an inconsistency in the conditions under which fines are demanded (and paid) are notable.

Shebeeners also reported episodes of police brutality against themselves and their patrons. There were three incidents of police tear gas on patrons within the premises, resulting in injury. In Noluthando's story, for example, she recalls how, during one of the times she was arrested, the police put her in their van with the confiscated liquor. En route to the police station the police stopped the van and released her, saying that they had decided to 'forgive her'. They drove off without returning her liquor.<sup>27</sup>

Sustained police action led many respondents to report that they had started to operate 'covertly', employing strategies such as flexible opening hours, closing at night, or making sure they close whenever police are reported as being in the vicinity. These risk management strategies also have implications for the legitimacy of policing. In addition, while the majority of shebeeners reported being arrested at least once, in not one case did this prevent them from re-opening their business just a few days later. The overwhelming tenor of shebeener accounts is of multiple and consistent police attention, as well as the loss of stock and money in various forms: fines, bribes, bail. On the

few occasions where respondents reported being given a court summons, not a single case was heard, due to a lack of evidence or the incorrect paperwork. Such inconsistencies between police actions towards unlicensed shebeens and the criminal justice system is an important element feeding the continued resilience of the shebeen sector. There is evidence to suggest that neither the courts nor some police are in favour of applying the full weight of the law, which would result in lengthy prison sentences (up to five years of imprisonment), on people living in poverty and trading low volumes. As a result, despite police efforts, the status quo seems to remain and shebeens continue to mushroom.

## BROADER CONSEQUENCES

Effective and equitable enforcement of alcohol control legislation and prosecution for infringements would enhance the legitimacy of policing. Under the current situation, shebeeners have found covert ways to evade police attention. This points to important broader problems with the accountability and legitimacy of policing, as well as the historical legacies of community-police antagonisms within South Africa's poorer communities.<sup>27</sup> The lack of consistency in shebeeners' experiences of regulation and enforcement recounted here suggests very fundamental flaws in the operation of due process and the criminal justice system – no doubt reinforced by the complexity of multi-agency policing involving the SAPS, the Metro Police and local security – without which, alcohol control may never properly function.

Under Section 74 of the Western Cape Liquor Act, the police are given broad powers to at 'all reasonable times enter ... any premises or vehicle on which he or she on reasonable grounds suspects that liquor is being stored or sold contrary to the provisions of this Act, and make such investigation, enquiries or inspections as he or she may deem necessary'. In reality, and under Section 75 of the Act, this means that police can legitimately enter premises without search warrants if there is an outstanding compliance notice or if 'the designated liquor officer or inspector on reasonable grounds



believes that (i) a warrant will be issued in terms of subsection (3) if he or she applies for it; and (ii) the delay in obtaining the warrant would defeat the objects of the search or inspection.' This situation may have given the police and liquor officers greater powers, but it has also had the unintended and significant effect of weakening shebeeners' authority over their customers. Some shebeeners fear that confronting abusive and drunk customers (both within and on the street outside the business) may result in retribution through informing (or indeed alerting) the police of the presence of the shebeen. In Nobesuthu's story, she tells of the dual challenges of 'people's drunken behaviour towards me' and the police who she sees 'as animals,' having broken down her front door, destroyed her stock and beaten her at gunpoint in the presence of her two young children, who were then left at home alone when she was taken to prison.<sup>28</sup> The irony of this situation is best illustrated by a sign written on the door of Sweet Home Farm shebeen, situated deep within the informal settlement. It reads: 'Khona Beer. Ungabaxeleli' (Beer for sale. Please don't tell the police).

The question thus remains of how best to police shebeens to ensure responsible business practices, minimise the negative externalities of alcohol for communities and ensure adherence to municipal and provincial liquor laws. In countries such as South Africa with 'nodal governance regimes'<sup>29</sup> 'the state police are but one actor within a hybrid policing field involving the production of security'.<sup>30</sup> This hybrid field of state police, municipal actors and provincial agents such as liquor inspectors makes liquor law enforcement all the more challenging in practical terms. That the result is often 'incoherent and ineffective' is perhaps unsurprising, especially when the social and economic centrality of liquor to many communities is considered.

Ultimately, adherence to liquor laws needs community buy-in and, therefore, citizens' active participation in ensuring that regulations and codes of conduct/agreed best practice (e.g. on opening hours, serving intoxicated patrons, pregnant women and children) are met. To do so

will necessitate effective public communication of the rationale of the liquor laws, why enforcement is necessary and what these enforcement procedures are. The absence of genuine community engagements in the formulation of current liquor policy needs to be addressed, while the formulation of the licence criteria will need reconsideration to ensure that small-scale shebeens are not automatically excluded from opportunities to trade legitimately. Not only should this ensure continuity of police practice, but it should also help communities and shebeens understand the boundaries between illegitimate and legitimate police actions. Co-working and partnerships with communities may also ensure that the kind of micro-scale informal mechanisms of social control that often exist within shebeens and described in this paper are not compromised. Indeed, as Paula Meth shows in her analysis of the regulation of 24-hour drinking in Cato Crest, a settlement within in Cato Manor, Durban, 'the formalisation of local organisations [Community Policing Fora] and the conferment of legitimacy to enforce change can contribute to the restriction of certain practices, which encourages the management of crime and social unrest as well as improving the liveability of a place'.<sup>31</sup>

Policing shebeens and the informal sector of which they form a part is a delicate undertaking, but it is clear that for enforcement actions to be understood as legitimate and for them to have the positive effects they promise, they must be undertaken in the context of community cooperation.

## CONCLUSION

Shebeens have been held up in the public, policy and media imagination as being central to South Africa's endemically violent township society. Our research shows that the reality of unregulated liquor trade is more complex. We have argued that shebeens are also *vulnerable* to crime as well as more contested forms of police 'violence', which has marked consequences for the perceived legitimacy and efficacy of liquor control efforts. While clear *correlations* can be drawn between alcohol use and incidents of violence and injury,<sup>32</sup>

it is harder to discern the *causal* links between alcohol retailing, consumption patterns and violence (whether as perpetrator or victim). This article does not aim to defend the actions of those who sell alcohol irresponsibly, but rather to highlight that such 'irresponsibility' may be compounded by a lack of faith in the efficacy and equity of due process and the coping strategies that the threat of constant raids and closures produce.

Shebeens are not simple unidirectional drivers of crime and criminality. They are instead complex social spaces that form part of the constellation of risk factors for violence. However, if law enforcement and criminality blur – as with those few respondents who reported armed robbery by criminals posing as police conducting raids – it is easy to see why suspicions of police corruption over bribes, the seizure of alcohol for personal consumption and harassment run high. If the Liquor Act is to reduce alcohol-related harms (or even the total number of shebeens), we need to ask more questions about due process and continuity in enforcement. Without interrogating the actual experiences of liquor control implementation as opposed to its stated intentions, our research suggests that there will be direct and indirect consequences for the nature of the informal liquor trade. This holds the potential to compound alcohol-related harms amid new forms and situations of violence.



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