

Building Police Capacity in Post-Conflict Communities

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Let loose the Scorpions!

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Introduction

Analysis of local to national policing and related organizations dominates discussion of police capacity building in post-conflict societies, as it should. But, is there another possible tool in the kit? What about the creation and use of elite police forces in post-conflict situations?

The term, “elite police,” is utilized herein simply to connote, without any political inference, a relatively small unit of the best policemen a country has – whose members are better trained and resourced than other policemen. There are, of course, long histories of elite policing in the developed world, perhaps most famously the FBI, Scotland Yard, and many others. Many elite police units also have been and are being created in wartime, such as in Afghanistan today – ones used often (too often, in my view) as auxiliary military forces to help decide the struggle.

This paper, however, focuses on a distinctly different question; that is, in truly post-conflict countries, mostly located outside the developed world, can elite police forces be used effectively to increase security and stability? The case study here is South Africa and its creation in early 2001 of the Directorate of Special Operations (DSO), known much more widely as “The Scorpions.”

For the sake of transparency, I was involved with the Scorpions. From 1999-2002, I was at various times either the Chief of Mission or Deputy Chief of Mission of the United States in South Africa. As such, I oversaw and furthered U.S. government assistance to the Scorpions, and also solicited FBI involvement, including directly from then-Director Janet Reno. Despite this obvious bias, I will endeavor to be as objective as possible. Other viewpoints about this seldom examined and sparsely documented topic are certainly welcome.

Background

Nelson Mandela and F.W. de Klerk deserved the Nobel Peace Prize they jointly received in 1993. They did not just pontificate about something or make some partial progress on a peace process. Together, they brilliantly steered South Africa away from the abyss of an expanding race war that was already underway.

Nevertheless, South Africa was and is a post-conflict society, with deep wounds and schisms. A complete treatment of the complexities of South Africa is beyond the scope of this paper but, suffice it to say, post-Apartheid South Africa has never enjoyed adequate social peace and security. There are many reasons for this situation, some of which are rooted in the history of Apartheid.

The internal security laws of the Apartheid period criminalized many day-to-day activities for majority blacks and other non-whites. I witnessed Apartheid operating in the early 1980s. As the struggle against Apartheid picked-up momentum, political resistance behavior versus criminal acts became harder and harder to distinguish from all perspectives.

This may seem like so much ancient history but, it is not. The indelible psychological imprint that the struggle and transition left on the population is quite germane to South Africa’s security situation today. Call it a “culture of violence,” but the practices of that era, the frequent use of violence by the state under Apartheid, and also by anti-Apartheid revolutionaries, left many South Africans with a legacy: quick utilization of violence to resolve problems.¹ And, of course, the struggle saw an influx of arms into South Africa, which continued thereafter.² In sum, this culture of violence fused explosively with a heavily armed society.

Of course, it would be a mistake to trace all of South Africa’s crime problems to Apartheid. South Africa’s demographics work against stability. There is simply too much poverty, income inequality, corruption, ethnic, and tribal animosities.

¹ See “Crime in South Africa: A country and cities profile, Schonteich & Louw, Institute for Security Studies, Occasional Paper No. 49-2001, page 5. The authors of this paper do a fine job describing crime trends in South Africa at the turn of the century. I have not seen anything on this subject written as well subsequently.

² Ibid.

Importantly, South Africa is a land of young people with a median age of just 24.7 years, and with an unemployment rate at about 24%.³ Although real gross domestic product annual growth in South Africa often hits 5% or higher, significantly less joblessness would require a much faster rate of real economic growth.

So, the economic situation also presses hard on social stability, and on the construction and maintenance of the rule of law, particularly when rural-urban migration and immigration pressure from neighboring countries are added into the mix. In sum, many black South Africans appreciate that political power has shifted to the majority (i.e. to them), but large anticipated economic gains have generally not been realized.

All of this would be enough to explain crime pressure in South Africa. But, there is a bit more necessary background.

Transition dynamics and security

Politically, post-Apartheid South Africa has been dominated by the party that led the struggle for majority rule, the African National Congress (ANC). For several years, there was power sharing under the Government of National Unity (GNU) but that has passed. How well a once revolutionary party becomes a ruling one is always a nice question and the effects of the ANC accession to power on security in South Africa have been complex.

Establishing a new and effective post-Apartheid rule of law system has been a difficult and ongoing challenge for South Africa. The creation of the post-Apartheid South African Police Service (SAPS), for example, was essentially a merger of many police agencies, plus an infusion of a small number of personnel from liberation armies.⁴ With the passage of time, the number of heretofore disenfranchised, sometimes revolutionary, but often under-qualified South Africans placed in the police force rose and some were rapidly put into managerial and even ministerial positions. Psychologically, some newcomers made the personal transformation from opposition member or revolutionary to sincere representative of government, but others used their appointments ineffectively or corruptly. The point here is that moving to a police force and government more representative of the population, while absolutely necessary, did not happen without transitional institutional costs.

Furthermore, police can only be effective if the criminal justice system functions adequately. Evidence suggests that at the beginning of South Africa's transition period from 1994-2000, just prior to the launch of the Scorpions, there was a problem with conviction rates for serious crime. By

1999 conviction rates fell to less than 9% for all crimes, and was much lower for serious crimes.⁵ The transitional outflow and inflow of personnel and concomitant demoralization undoubtedly had destabilizing effects on the courts and other criminal justice institutions, not just on the police.

Nor did the black majority of the population, now in power, embrace the SAPS and other law enforcement institutions, despite the infusion of non-whites into these institutions and doctrinal reforms designed to make the police more responsible to the people and to local communities. After all, for many years, the police had functioned mainly to protect white minority rule. Attitudes do not change like light switches. Neither the attitude of the people, nor that of the police toward the people, adjusted quickly just because there had been major political change. That would take time, training, and psychological adjustment by all parties, and is still a work in progress.

For their part, white South Africans accepted majority rule variously. Some were determined to do everything possible to make the new South Africa function, while others became quite cynical. Some left the country. Certainly not unrelated to the weaknesses of transitional South African law enforcement institutions, white collar crime rose. Organized crime increased as well in the post-1993 period, also stimulated by South Africa's weakened law enforcement institutions. Most of the increase in organized crime was probably indigenous, but I can also remember watching international crime figures literally moving in to the best neighbors in Pretoria during this era. International underworld connections were being established or strengthened.

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Enter the Scorpions

There was actually a popular misconception in South Africa that once peace was attained crime, especially violent crime, would abate. There was a brief leveling of non-violent crime after 1994, but by the end of the 1990s it was increasing at about 7% per year.⁶ Violent crime was worse. It increased consistently since 1994 and by the end of the century rose to record rates of increase; a staggering 9% per year.⁷

³ Central Intelligence Agency, The World Fact Book, South Africa, median age.

⁴ See "Post Conflict Police Reform in South Africa and other African Countries", Geyer, IDASA, page 2. The author states that eleven police agencies were amalgamated along with personnel from the liberation armies. www.idasa.org

⁵ Schonteich and Louw, op. cit. p.6. Some specifics: 2% convictions for carjacking, 3% for aggravated robbery, and 8% for rape.

⁶ Ibid. page 2.

⁷ Ibid. page 3.

By the end of the 1990's, South Africa was caught in powerful transitional, social, economic, political, and criminal tornado pushing already high crime rates skyward. Both Nelson Mandela, South Africa's first post-Apartheid President, and his successor, Thabo Mbeki, understood the seriousness of what had become, not a situation, but a crisis.

The DSO, The Scorpions, was launched in early January 2001. The concept was simple, but potent. Members of the Scorpions would be very select, the very best law enforcement officers in South Africa. They and new recruits thereafter would be provided abundant training. As an elite group, they would be paid more than their SAPS counterparts, and provided much more support across the board. They would also be allowed to concentrate on fewer cases (i.e. their case loads were less than that of their SAPS counterparts).

The composition and mission of the Scorpions deserves attention. The unit was intentionally interdisciplinary. Prosecutors, intelligence officers, financial, and forensic experts were combined with investigators. Until it was disbanded in 2008, there were usually around 500 or so Scorpions; it was not a huge organization. The central objective of the Scorpions was to investigate high-level crime, especially organized crime. Their targets, however, diversified through time, and they went after drug dealers, scam artists, racketeers, murderers, corrupt politicians and policeman, and even terrorists.

Organizationally, and very importantly, it was not placed under the SAPS, but operated very independently under the control of the National Prosecuting Authority. Its first leader was none other than Frank Dutton, South Africa's famous "Elliot Ness" equivalent. But, he was soon replaced by Leonard McCarthy. The National Director of Prosecutions, Bulelani Ngcuka, was a driving force of the Scorpions for many years.

Fearlessly, the Scorpions brought down many crime kings like bowling pins. Huge caches of drugs, illicit funds, and many high-visibility arrests were made. Their conviction rates soared to around 90% (i.e. about ten times the rate of the SAPS), and followed one another with regularity. Scorpion busts of white collar crime and corrupt politicians were the talk of the town. It was impressive.⁸ All of this was particularly embarrassing for the SAPS. Typically, the Scorpions would move into a SAPS jurisdiction and bust some criminal operation without the SAPS even knowing about it. The implication, that the SAPS were mostly bought off and could not be trusted, was clear to all.

⁸ Although I have not as yet been able to see the raw data on Scorpion arrests, such numbers would likely be misleading in any case. It was the high level and quality of the arrests and convictions, not the raw figures, which impacted South Africa so dramatically.

The FBI lent invaluable assistance to the Scorpions. Its prestigious National Academy actually trained at least 70 of the Scorpions, while Scotland Yard also trained a smaller group of them. The training included many different topics and types of investigation, including homicide, and the graduates from Quantico came back to South Africa at a new, higher level and absolutely determined to succeed. Moreover, the fact that the Scorpions had a relationship with the FBI did a lot to bolster their reputation.

The Scorpions became almost mystical. The morale of a frightened, victimized public of all ethnicities rose. The criminal world was genuinely afraid of the Scorpions. There was certainly a significant criminal deterrence effect associated with the Scorpions across the board, but especially pronounced on high-end crime. While early ANC-led governments were already more stable than most post-conflict regimes, their legitimacy nevertheless strengthened as they demonstrated through the Scorpions the will and a means to fight a terrifying crime wave.

It should be noted that the Scorpions also moved with effect against terrorists. They caught infamous Al-Qaeda bomber Khalfan Khamis Mohamed (KKM), who is now imprisoned in the United States. They effectively went after PAGAD, a terrorist group centered in Cape Town, responsible for lethal bombings at Planet Hollywood as well as other alleged murders and serious crimes.

Evaluating the Scorpions

As racketeers, drug dealers, white collar criminal and corrupt elites, including ANC officials, businessmen and generals were brought down by the Scorpions, objections to their activities became louder and louder. Political stooges of these criminals and others complained about the Scorpions being out of control, high-handed, corrupt, and even illegal under South Africa's Constitution. The Scorpions also went after corrupt police officials, eventually including Jackie Selebi, the National Police Commissioner of the SAPS, and an Mbeki insider. The SAPS began to arrest Scorpions and vice versa.

To consider the utility and allegations against the Scorpions, President Mbeki asked Justice Sisi Khampepe to form a commission in 2005. It was charged to examine in particular whether the rationale for the Scorpions remained valid. The Commission released its report in February of 2006.⁹

What is remarkable about this report is that it does not even entertain any assertions that the Scorpions were ineffective. The 2006 final report states the Scorpions had been an "unheralded success" that made conflict with the SAPS inevitable.¹⁰ While noting falling levels of crime (due

⁹ *Khampepe Commission of Inquiry Into the Mandate and Location of the Directorate of Special Operations ("The DSO")*, The Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations ("The DSO"), Final Report, February 2006, Pretoria, South Africa.

¹⁰ *Ibid.* page 5.

to Scorpions), the Khampepe Commission said that the threat from organized crime still, “represents a threat that needs to be addressed through an effective comprehensive strategy.”¹¹

The report also asserts that the legal framework of the Scorpions was not in conflict with South Africa’s Constitution. It did, however, recommend some measures designed to enhance oversight of the Scorpions, and scolded them for grandstanding with the media. But basically, it is impossible to read the report as anything other than a recommendation to keep the Scorpions. Pressure to absorb the Scorpions into the SAPS, or at least move the Scorpions out from under South Africa’s prosecuting service, was deflected, but only for the time being.

Undoubtedly, as in all organizations, there were some rotten apples in the barrel, but most of the Scorpions played by the rules. There is little doubt, however, that the Scorpions did go out of their way at times to play to the media, often embarrassing the SAPS.

SAPS data suggest that from 2003-2010, and certainly from the mid-1990’s, very high murder and some other serious crime rates declined or stabilized; however, it is very difficult to say how much of that decrease is attributable to the Scorpions.¹² After all, the Scorpions were a small outfit; tiny compared to the SAPS and other law enforcement personnel. Moreover, violent crime in South Africa remains a huge problem to this day. Even South Africa’s current President, Jacob Zuma, describes South Africa as the most violent country in the world.¹³ Nevertheless, it seems certain, however, that the more specific areas of organized crime, drug trafficking, corruption, and white collar crime were all hurt by the Scorpions.

So, the Scorpions did their job. But, what is less understood, and very important to this day, are the indirect benefits of the Scorpions not just to South African law enforcement, but to governance and the transition process as a whole.

The demonstration effects

The Scorpions unit was a kind of experiment; done out of desperation, to be sure, but a thoughtful experiment nevertheless. For example, a less celebrated portion of The Khampepe Commission’s report dealt with the methodology of the Scorpions, and why it achieved such success, especially in successful prosecutions.

A section of the report compares much less successful

traditional methods (especially those of the SAPS and community policing) with “The troika principle” of the Scorpions, which combines and teams the skills of investigators, intelligence operatives and analysts, and prosecutors. It concludes: “There appears to be no reason why the skills base that has been built by DSO cannot be broadened to include other law enforcement agencies such as the Organized Crime Unit (“OCU”) of the SAPS.”¹⁴

The practice of collocating investigators, intelligence operatives and analysts, and prosecutors represents a unique approach in modern law enforcement, as the Khampepe report noted.¹⁵ In the case of the Scorpions, this practice apparently yielded highly effective results, in terms of successful investigations followed by very high conviction rates in the South African justice system. It represents an alternative model of law enforcement that may be useful in the difficult circumstances presented by many transitioning states.

While certainly true that the animosity between the SAPS and the Scorpions retarded reform of the SAPS in this direction, eventually the SAPS grudgingly learned from the Scorpions’ methodology. So, this positive demonstration effect of the Scorpions on the SAPS must also be recognized, and it probably increased as some former Scorpions rejoined the ranks of the SAPS. But, the Scorpions’ demonstration of superior results and better methodologies may not be the only or even most important indirect benefit of the Scorpions experiment.

The other major demonstration benefit may be a bit harder for Westerners to understand. In Africa, the police are often ruthless enforcers for those in power; as was the case during Apartheid and the notorious counter-revolutionary programs of police forces of that time. African leaders may court the police, who play political as well as security roles in their countries.

When transition began in South Africa, and for years thereafter, the emphasis on policing was not about making the police more effective, but rather on how to ensure that they were under ANC political control. Institutions and safeguards were built to contain the police, not to enhance their efficacy. Above all, an untrustworthy police must never again be allowed to massively violate human rights, and communities were to be protected from them.

Enter the Scorpions. For years, a very high-profile demonstration to all the people of South Africa, and indeed to other countries, that much better and honest police work could take place, and successfully attack crime while, at the same time, respecting human rights and remaining apolitical. Now, that is quite a valuable demonstration! In the long run, this may be the most important contribution of the Scorpions experiment.

¹¹ Ibid. page 8.

¹² “The Crime Situation in South Africa”, South African Police Service, on the Internet, 2009/2010. Page 1 and 3. Improvements, however, must be put in an international context. South Africa’s murder rate and other serious crime rates have been very high since the turn of the century, see for example, “Crime Statistics for South Africa” www.capecgateway.gov.za/eng/pubs/public_info/C/86878/1

¹³ “South Africa’s Crime Statistics: What it means for 2010,” www.pascorisk.com/world-cup-2010, article number 29..

¹⁴ *Khampepe Commission*, op. cit., pp107-111.

¹⁵ Ibid., p. 102.

Autopsy of the Scorpions

The Scorpions unit died as it had lived; fearlessly. They went after corruption and crime wherever they found it.

And where they found some of it was at very high levels of the ANC. As mentioned, they pursued Police Commissioner Jackie Selebi, a national figure. Selebi's friendship with a drug dealer paved the way for his conviction on corruption charges. Shortly after the Scorpions won their case against Selebi, they were disbanded. Characteristically, they also had been investigating then-Deputy President Jacob Zuma, for corruption and sexual offenses. He is now the President of South Africa. Mr. Zuma claimed that he had been victimized by these investigations. The ANC's National Executive Committee met in early 2008 and essentially terminated the Scorpions.¹⁶

Conclusions/lessons learned

Overall, there is little doubt that the Scorpions were successful in South Africa. Their direct attack on organized and white collar crime, as well as on corruption at high levels is now legend. A case could probably also be made that they did help ameliorate violent crime across the board, but that would be hard to prove.

The indirect impacts of the Scorpions may be even more important in the long run. Certainly, their interdisciplinary methodology is recognized as superior, albeit quite expensive. However, their inability to forge a complementary relationship with the SAPS, while to some degree inevitable, sticks out as a serious deficiency. Elite policing should not seek to diminish the larger policing force, and in the last analysis, the Scorpions could not resist doing so.

The Scorpions' demonstration in Africa that a police organization could be relatively honest and work for the people, not to suppress them, but to serve them and reduce crime would be hard to overvalue. South Africa should have kept the Scorpions, but obviously, as one sage summed it up to me aptly, "the moth came to close to the flame."

Insofar as applicability to other countries is concerned, every post-conflict situation is distinctly different. Careful, integrated work must be done by many parties to dynamically design a distinct way through each unique post-conflict situation in order to achieve sustainable stability and security. South Africa is richly resourced, and can do things that most developing countries in post-conflict situations are unable to do. Further, South Africa's institutions are more developed than in many post-conflict countries, even though those same institutions were not strong enough to politically protect the Scorpions. It may also be important to note that the Scorpions experiment was not attempted until almost seven years after the change of power in South Africa. It might not be feasible or wise to launch such controversial endeavors too close temporally to the usual initial traumas

¹⁶ For an interesting summary of these events see, "A Requiem for the Scorpions", at Commentary South Africa www.commentary.co.za

surrounding transitions of political power.

On the other hand, post-conflict stabilization and reconstruction is usually not a solo undertaking. Not only are bilateral donors usually engaged, but the international financial institutions as well. A major problem, however, is the political reluctance of donors to support security capacity building in other countries due to their own domestic political constraints. The politicians of foreign donor countries are often very reluctant to support capacity building of the police or the armies of other countries, even when it is imperative to do so, because it is unpopular at home.

So, that leaves the question of applicability of elite policing in post-conflict situations in a tough spot. The fact that it requires a great deal of financial and underlying domestic (and in many cases exogenous) political support will stop most post-conflict countries from attempting to create an elite police unit.

In fact, this is where I originally intended to conclude my brief case study of elite policing in post-conflict countries. But, after studying the history of the Scorpions, I just cannot do so. There is a certain daring and success about the Scorpions that is compelling; as a means to give post-conflict societies hope, when there is precious little of that in most cases. The Scorpions unit was also an invaluable example of relatively honest and apolitical policing. It showed millions that it is possible for the police to loyally protect and serve the people. That concept is almost unknown in many parts of the world, not just in Africa. Moreover, the many post-conflict countries lose legitimacy in the eyes of their people because they cannot or will not engage crime. While there would be risks associated with elite policing modeled after the Scorpions, greater regime legitimacy and stability could also result in many cases.

So, where does that leave this issue? Yes, it would be very hard to replicate such elite policing elsewhere. But, with enough creativity and exogenous and domestic political will, the Scorpion brand of elite policing might be recreated, and should not be forgotten as a possible and very sharp implement in our post-conflict tool kit. One of the few that dares to fight perhaps the most pernicious of all cancers in post-conflict and other societies — corruption.

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David Becker recently returned from three years at the U.S. Embassy in Haiti serving as Stabilization Coordinator, leading an experimental interagency DOD-funded program to restore control to ungoverned urban zones by integrating security and development. He spent 14 of 21 years as a Foreign Service officer overseas in countries with active insurgencies and criminal networks. Eight of those years were supervising large USG funded police reform efforts in Guatemala (1992-1996) and in Colombia (1997-2001). In addition, Mr. Becker served in Ethiopia, Burkina Faso, El Salvador and Honduras, and in Miami (as a senior level management advisor to a major telecom company). Prior to Haiti, he served as the Political Advisor to TRANSCOM Combatant Commander General Norton Schwartz from 2004-2006. Mr. Becker is a 2004 graduate of the National War College.



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As U.S. Ambassador to Liberia (2002-2005), John Blaney successfully ended a 14 year civil war on the battlefield and played a key role in removing warlord Charles Taylor from power. He also conceived and implemented much of Liberia's multilateral post-war stabilization and recovery program in order to ensure peace, democratic transition, and nation building, which included the disarmament of approximately 110,00 combatants from three armies. For his accomplishments in Liberia, Ambassador Blaney was awarded the President's Distinguished Service Award, the Secretary of State's Distinguished Honor Award (the highest decoration in the State Department), and the Order of Redemption, Knight Great Band for bold and courageous interventions that led to the establishment of peace in Liberia.

A former U.S. Army officer and teacher at West Point, his degrees are from Syracuse University (BA), and Georgetown University (MSFS). He holds many other high awards and decorations from throughout his career. Currently, Mr. Blaney is with Deloitte Consulting LLP. Among his many activities, Mr. Blaney developed and teaches "Negotiating in Non-secure Environments" to U.S. interagency Provincial Reconstruction Team members on their way to Iraq. Separately, he also is a consultant to Wall Street on a global range of topics and countries.