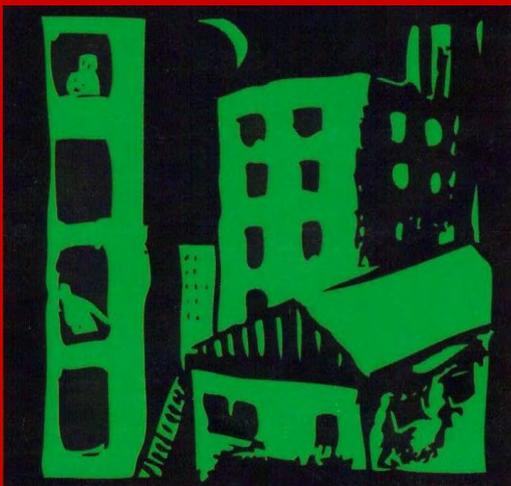


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**Democratic
policing: a
conceptual
framework**

LUKAS MUNTINGH

Associate Professor, Dullah Omar Institute, Faculty of Law, University of the Western Cape, Bellville, South Africa
<https://orcid.org/0000-0003-4447-9538>

ANDREW FAULL

Senior Researcher, Justice and Violence Prevention Programme, Institute for Security Studies <https://orcid.org/0000-0001-5460-9522>

JEAN REDPATH

Senior Researcher, Dullah Omar Institute, Faculty of Law, University of the Western Cape, Bellville, South Africa
<https://orcid.org/0000-0002-1093-3563>

KRISTEN PETERSEN

Researcher, Dullah Omar Institute, Faculty of Law, University of the Western Cape, Bellville, South Africa
<https://orcid.org/0000-0001-9457-9700>

ABSTRACT

Democratic policing, as opposed to regime policing, must meet at least three requirements: there is democratic accountability of and for the police; the police adhere to the rule of law; and the police behave in a manner that is procedurally fair in service of the public.

The article presents a conceptual framework of nine dimensions applicable to different contexts with a view to facilitate policies and practices towards democratic policing. It is argued that the ultimate result being sought is a legitimate police service. If legitimacy is the result, then trust is the outcome preceding it. Legitimacy is dependent on the public's trust that State power will be used in the public interest. Public trust therefore fulfils an important legitimising function. Levels of trust in the police are driven by the police's ability and performance record with reference to three outputs : objectivity, empathy and responsivity. The latter three outputs flow from five input variables, namely : knowledge of what works in creating a safer society from a policing perspective; rights-based policing; accountability of the policing (inclusive of transparency); efficiency and effectiveness of resource utilisation; and the police as citizens also entitled to rights and protections. The utility of the conceptual framework lies in providing a coherent and linked-up view to analyse police organisations and support the development of reform proposals.

KEYWORDS: Democratic policing; regime policing; public trust; legitimacy; human rights; police reform; professional policing.

1 INTRODUCTION

There is no universally accepted definition of democratic policing. Related concepts often subsumed within the phrase include “professional policing”,¹ community-oriented policing,² “SMART policing”³, and “evidence-based policing”.⁴ Democratic policing, as it is understood and applied in this article, must meet three fundamental requirements: (1) there is democratic accountability for policing practices that are vetted in the public arena and have popular support; (2) police adhere to the rule of law; and (3) the police behave in a manner that is procedurally fair in service of the public.

Manning notes that police are an agency that distributes social goods and life opportunities.⁵ As such, at the heart of democratic policing must be the expectation that policing improves quality of life and opportunities for a democratic State's least advantaged residents. This, he proposes, is achieved through procedural fairness and constraint; reactivity to citizen needs; equality in the application of coercion; internal

¹ Holdaway S “The re-professionalization of the police in England and Wales” (2015) 17(5) *Criminology & Criminal Justice: An International Journal* 588.

² Bonner MD “What democratic policing is ...and is not” (2020) 30(9) *Policing and Society- An International Journal of Research and Policy* 1044.

³ Braga A & Schnell C “Evaluating place-based policing strategies: lessons learned from the smart policing initiative in Boston” (2013) 16(3) *Police Quarterly* 339. See also Joyce N, Ramsey C & Stewart J “Commentary on smart policing” (2013) 16(3) *Police Quarterly* 358.

⁴ McKenna P “Evidence-based policing in Canada” (2018) 61(1) *Canadian Public Administration* 135. See also Telep C “Police officer receptivity to research and evidence-based policing: examining variability within and across agencies” (2017) 63(8) *Crime & Delinquency* 976.

⁵ Manning PK *Democratic policing in a changing world* Boulder, CO: Paradigm Publishers (2010).

and organisational fairness; and accountability.⁶ Similarly, Friedman and Ponomarenko note as follows: “Democratic accountability ensures that policy choices are vetted in the public arena and have popular support; the rule of law requires that those choices be constitutional as well.”⁷ These requirements are also noted by other scholars.⁸ Building on this, the article presents a conceptual framework to guide the implementation of democratic policing.

At the risk of oversimplification, it is argued that the antithesis of democratic policing is regime policing. Regime policing protects governments rather than citizens; answers to a regime rather than the people; controls rather than protects populations; privileges a dominant group; and remains separate from communities.⁹ Baker provides a succinct summary of the traits of regime policing with reference to the context in which post-colonial African police forces operated, and sometimes still operate, with specific reference to fragile social order and the nature of political power:

- They were brought under tighter central control and made accountable to the president rather than the law;
- Policing was militarised, detached from the civilian population and protected the ruling regime;
- The insecurity and illegitimacy of States ruled by military regimes led to the fragmentation of State policing. The more fragile the State, the more specialised the police became;
- Government mistrust concerning the reliability and loyalty of security forces, including police, sees them underfunded and police officers un(der)paid; and
- Pre-colonial and customary justice and police systems remained largely unregulated with the formal justice system often applied only to the urban minority.¹⁰

Historically, modern African States have been policed through regime policing, and many of its vestiges remain, despite reforms.¹¹ This historical perspective is important

⁶ See Manning (2010) at 65.

⁷ Friedman B & Ponomarenko M “Democratic policing” (2015) 90(6) *New York Law Review* 1827 at 1827.

⁸ See generally Marx G “Police and democracy” in Amir M & Einstein S (eds) *Policing, security and democracy: theory and practice* Washington DC : US Department of Justice (2001) 35. See also Luna E “Transparent policing” (2000) 85 *Iowa Law Review* 1107.

⁹ Stenning P “Governing policing in a democracy: a primer” (2009) Paper presented at Scottish Institute for Policing Research Seminar available at <http://www.sipr.ac.uk/archive/presentation/stenning.pps> (accessed: 22 March 2021).

¹⁰ Baker B *Multi-choice policing in Africa* (2008) Uppsala : Nordiska Afrikainstitutet at 69.

¹¹ See Baker (2008) at 69 ; Muntingh L “Arrested in Africa: An exploration of the issues” (2015) Bellville: Africa Criminal Justice Reform; and also Beek J, Mirco G, Owen O & Steinberg S *Police in Africa: the street level view* London : Hurst (2016).

because it enables a framework to recognise what remains from the colonial and authoritarian regime era in present day policing, despite legislative and constitutional reform. Admittedly there have been some shifts and reforms, but these are often tenuous, fragile and vulnerable to political (ie regime) changes. For present purposes we may regard democratic and regime policing as opposite ends of a spectrum or continuum. Most police forces or services will fall somewhere on the continuum between fully democratic policing and total regime policing.

Friedman and Ponomarenko , as we have seen above, note that “(d)emocratic accountability ensures that policy choices are vetted in the public arena and have popular support; the rule of law requires that those choices be constitutional as well”.¹² These two basic requirements are noted by other scholars too.¹³ Within these, a number of sub-categories can be identified: seeking to create a security environment promoting democracy; accountable to the law, not a law unto itself; accountable to democratic structures and the community; transparent in its activities; prioritising the safety and rights of individuals and groups and protecting human rights; providing professional and ethical services; representing the community it serves; structured to best achieve these ends; and demonstrating internal adherence to the principles of good governance.¹⁴ The Organisation for Security and Co-operation in Europe (OSCE) *Guidebook on Democratic Policing* sets out a similar structure in respect of the characteristics of democratic policing.¹⁵

It is acknowledged that the business of policing is messy, confusing and, in recent years, an increasingly contested terrain where the authority of the police is challenged. Lack of planning and effective leadership in many police organisations has resulted in institutions that are increasingly alienated from the public they are supposed to serve. The conceptual framework presented below deliberately takes a step back from the day-to-day messiness and institutional failures of policing. It attempts to plot a way forward through a series of interlinked and mutually reinforcing concepts to work towards a police service that upholds the rule of law, is accountable and works for the benefit of the public in a procedurally fair manner. It is acknowledged that policing is context sensitive but context sensitive is not equal to context dependent (with the latter often equated with resourcing levels). Even in resource constrained environments it

¹² Friedman & Ponomarenko (2015) at 1827.

¹³ See Marx (2001). See also Luna (2000) at 1107.

¹⁴ Prasad D “Strengthening democratic policing in the Commonwealth Pacific” (2006) *Commonwealth Human Rights Initiative* available at http://www.humanrightsinitiative.org/old/publications/police/strengthening_democratic_policing_in_cw_pacific.pdf (accessed 11 March 2019).

¹⁵ Objectives supporting public tranquility, law and order, individual rights, preventing crime and rendering services to the public; upholding the rule of law; ethics and human rights; accountability and transparency; efficient and effective organisation and management. OSCE *Guidebook on Democratic Policing* 2 ed Vienna: OSCE (2008).

costs the State nothing not to torture suspects, or for a police officer to act with empathy and responsiveness towards a victim of crime. It is thus argued that the dimensions of democratic policing set out below are equally relevant in diverse contexts and resource environments. The next part describes nine key dimensions of democratic policing, as shown in Diagram 1 (below, after Part 8 Conclusion).

2 NINE DIMENSIONS OF DEMOCRATIC POLICING

This article identifies nine dimensions required for democratic policing. These are introduced below and explored in more detail. The identification of these dimensions flows to some extent from a re-assessment and re-ordering of the findings of Bruce and Neild by identifying the underlying values and norms for the principles they identified.¹⁶ Supported by an extensive review of relevant literature, the conceptual framework was developed in order to be as practically relevant to police agencies and policy-makers as possible, rather than overtly theoretical as is often the case.¹⁷

Knowledge: Police officers are highly skilled in their work and can apply skills relevant to their post level. Policing is based on knowledge of what works to improve levels of crime, perceptions of safety, community satisfaction with the police, and/or reduce fear of crime.¹⁸ Capacity development to fulfil a particular job function is thus central to this dimension. Managers use data to evaluate policing, identify success and challenges, and learn lessons.

Effectiveness and efficiency: Effective policing in a democratic society refers to the successful maintenance of an environment of order, security and trust, in which the public attribute their abilities to go about their daily routines without fear, to the quality of police services they receive. Police effectiveness is ultimately about what and how much the police have accomplished in the eyes of the public. Efficiency refers to the cost effective utilisation of resources. Especially in resource poor contexts, the efficient utilisation of resources will strongly influence effectiveness.

Ethics and accountability: Police conduct is ethical and lawful. Transgressors are held accountable. Internal accountability mechanisms (eg disciplinary processes) are effective and complemented by strong external checks and balances. Police officials hold each other accountable for disciplinary misconduct and criminal activity (including corruption), with the goal of modifying unlawful behaviour and institutional practices

¹⁶ See generally Bruce D & Neild R “The Police That We Want: A Handbook for Oversight of Police in South Africa” (2005) Johannesburg: Centre for the Study of Violence and Reconciliation.

¹⁷ Muntingh L, Redpath J, Faull A & Petersen K “Review of the literature on democratic policing” (2017) *Report prepared for the Civilian Secretariat for Police Services*, Commissioned report for the Civilian Secretariat for Police by Africa Criminal Justice Reform.

¹⁸ Kriegler A “Building research evidence that works for policing” *ISS Policy Brief* (forthcoming 2021).

that fuel such behaviour. Ethical and accountable policing generates public trust. The different spheres of government collaborate in the spirit of co-operative governance.

Rights based: Policing is based on adherence to and the protection of human rights, and on the values of transparency, fairness, equality and justice. The rights of all people, including suspects, are enshrined in the constitution. All people are treated fairly.

Police as citizens: The rights of police officers are protected by the constitution, both in their interactions with colleagues and with the public. Police are treated fairly.

Objectivity: Police conduct is objective and neutral. It does not favour individuals or groups. It is the task of police (with other stakeholders) to protect democratic political life.

Responsivity: Police are responsive to the needs of the public and victims of crime and employ community centred policing practices.

Empathy: Police demonstrate empathy with people and victims of crime.

Trust: The public trusts the police. Attention is paid to how accessible and approachable the police is perceived to be with particular reference to the diversity in a population.

3 LINKING THE DIMENSIONS

For the purpose of analysis these concepts can by and large be separated, but in practice they are intertwined, often interdependent and frequently mutually reinforcing. Failure in one dimension will have consequences for other dimensions and *vice-versa*. There is to some extent a causal and hierarchical relation between the dimensions.

Figure 1 presents the relationships between the dimensions. Read from left to right, it presents five input variables for police to deliver. These produce three positive outputs leading to trust in, and the legitimacy of, the police. This is discussed in more detail below, described as if Figure 1 is read from right to left. It starts with the overall result being sought which is derived from the outcome, flowing from a set of outputs that is the result of a range of inputs.

4 THE RESULT BEING SOUGHT IS LEGITIMACY

Successful democratic policing results in police being perceived as legitimate authorities. This requires that the public trust police to behave in the broad public interest. Even when difficult to define, "public interest serves as the fundamental criterion for establishing the legitimation of power. Political power, then, is legitimate and necessary, and even acceptable, only inasmuch as it can be established that it serves

public interest.”¹⁹ This legitimising function is dependent on trust, namely, the public’s trust that political power (ie in the form of the police) will be used in the public interest; conversely, if the police are not trusted by the public to act in their interest, it creates a legitimacy deficit for the police.

5 THE OUTCOME IS TRUST

Trust is produced when policing is characterised by objectivity, empathy and responsiveness, as discussed in the next part. Trust can be described as ‘the belief, despite uncertainty, that something one believes should be done will be done, and the belief, despite uncertainty, that something you believe should not be done, will not be done, the outcome of which will be beneficial to you or another’.²⁰ It also involves faith that one’s vulnerability will not be abused.²¹ Trust in an institution is at least partly reliant on the conduct of that institution and its agents.²² Trust in the police, therefore, is a function of perceptions of police conduct.²³

Trust is not simply a state of mind, but rather involves a consequence associated with some kind of risk to one’s ultimate welfare. The Merriam-Webster Dictionary defines “trust” as “assured reliance on the character, ability, strength, or truth of someone or something” with synonyms being “confidence”, “credence”, “faith”, and “stock”. In addition, trust and confidence both imply a feeling of security. Trust also denotes instinctive unquestioning belief in and reliance upon someone or something like a group to which one belongs or a public institution established to protect citizens.²⁴ Levi and Stoker define trust as relational in nature, and argue that “it involves an individual making herself vulnerable to another individual, group, or institution that has the capacity to do her harm or to betray her”.²⁵

Perceptions of competence and effectiveness also inform trust in police. If police are seen as competent in carrying out investigations, and at the same time meet expected outcomes (arresting criminals or managing crisis situations caused by accidents, riots,

¹⁹ Méthot JF “How to define public interest?” (2003) *Collège dominicain de philosophie et de théologie Ottawa ON Canada*, Lecture given at the EPAC Round-Table held at Saint Paul University, 29 January 2003 available at <https://ustpaul.ca/upload-files/EthicsCenter/activities-How to Define Public Interest.pdf> (accessed 10 March 2019).

²⁰ Boda Z & Medve-Bálint G “How perceptions and personal contact matter: the individual-level determinants of trust in police in Hungary” (2017) 2(7) *Policing and Society* 732.

²¹ Levi M & Stoker L “Political trust and trustworthiness” (2000) 3(1) *Annual Review of Political Science* 475.

²² See Boda & Medve-Bálint (2017) at 732.

²³ See Boda & Medve-Bálint (2017) at 732.

²⁴ Liqun C “Differentiating confidence in the police, trust in the police, and satisfaction with the police” (2015) 38(2) *Policing: An International Journal of Police Strategies & Management* 239.

²⁵ See Levi & Stoker (2000) at 475.

extreme weather, etc.), people will probably consider the police as successful and place increased trust in them.²⁶ If people believe that police treat everyone fairly, they are more likely to trust police, obey the law in their absence, and co-operate with them.²⁷ Where police are perceived as unprofessional, incompetent or abusive, trust will decline.²⁸

6 THE OUTPUT VARIABLES

6.1 Objectivity

Objectivity, impartiality, being unbiased, reasonableness and rationality are closely related concepts in the law enforcement and the legal environments. The Merriam-Webster Dictionary defines “objective” as “expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations”.

A police officer is expected to be objective and treat people impartially, without bias, and make decisions or draw conclusions that are reasonable and rational. These aspirational notions, or values, exist because, fundamentally, people in democracies expect equal treatment and not to be disadvantaged by (negative) personal and subjective perceptions held by police officers. As much as the regulatory framework²⁹ may provide prescripts and guidance to police officers to behave in an objective, impartial, unbiased, reasonable and rational way, the law also recognises that they require discretion in the exercise of their duties on a day-to-day basis (see below). How police exercise these discretionary powers is important, because if misused (ie biased use) it has severe consequences for both the public and the police. Public perceptions of bias or unfair treatment by police have immediate negative consequences for the police in respect of trust and ultimately legitimacy, while fair and respectful treatment builds confidence and trust in, and compliance with, police.³⁰

Objectivity in policing thus requires that the police are able to conduct themselves without the negative influence of personal feelings or prejudices, or the favouring of

²⁶ See Boda & Medve-Bálint (2017) at 732.

²⁷ See Independent Police Commission “Policing for a better Britain” (2013) available at <http://www.statewatch.org/news/2013/nov/uk-police-commission-report.pdf> (accessed 10 March 2019). See also Norman J “Seen and not heard: young people's perceptions of the police” (2009) 3(4) *Policing: A Journal of Policy and Practice* 364 and Boda & Medve-Bálint (2017) at 732.

²⁸ See Boda & Medve-Bálint (2017) at 732.

²⁹ See Constitution of the Republic of South Africa, 1996 (Constitution); the South African Police Service Act 68 of 1995; and SAPS Standing Orders.

³⁰ See Sunshine J & Tyler T “The role of procedural justice and legitimacy in shaping public support for policing” (2003) 37(3) *Law & Society Review* 513. Tyler TR “Psychological perspectives on legitimacy and legitimation” (2006) 57 *Annual Review of Psychology* 375.

individuals or groups. Fundamentally it is the task of the police (together with other stakeholders) to protect democratic political life, not distort it through a perceived or real lack of objectivity. From this the constitutional requirement of equality flows.³¹ The notion of equality has been dealt with extensively by South Africa's Constitutional Court and academics,³² and it is not necessary to repeat the jurisprudential complexities here. Focus on the practical meaning of objectivity and equality within the policing context is, however, useful.

For example, the South African Police Service (SAPS) Code of Conduct does not use the terms "objective" or "objectively", but states that all members undertake to "act impartially, courteously, honestly, respectfully, transparently and in an accountable manner".³³ Similarly, the United Kingdom's College of Policing's Code of Ethics states with reference to objectivity: "You make choices on evidence and your best professional judgement."³⁴ The *OSCE Guidebook on Democratic Policing* states :

"Policing in a democratic society includes safeguarding the exercise of democratic activities. Therefore, police must respect and protect the rights of freedom of speech, freedom of expression, association, and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law."³⁵

The practicalities of policing require that officers be awarded discretion, within the confines of the law, to exercise their powers of arrest, detention and use of force. Joh defines police discretion as "the distinction between legally permissible police action versus the real acts of police officers" , and notes further that discretion is, at least, the

³¹ Section 9 of the Constitution provides : "(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination. (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."

³² See Currie I & De Waal J "Equality" in Currie I & De Waal J (eds) *The Bill of Rights handbook* 5th ed Cape Town: Juta (2005) at 229.

³³ See SAPS "Code of Conduct" available at <https://www.saps.gov.za/about/conduct.php> (accessed 10 March 2019).

³⁴ See College of Policing "Code of Ethics - A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales" (2014) Coventry: College of Policing Limited at 3.

³⁵ See OSCE (2008) at 22.

freedom to decide between two possibilities.³⁶ Police discretion exists for two main reasons, namely, enforcement priorities and police culture. Depending on, amongst others, context and crime situation, as well as political pressure, certain crimes will be prioritised. Skolnick characterised police culture as primarily shaped by danger, authority, and pressure to appear efficient.³⁷ Because police officers regard their jobs as ones of “continuous potential [of] violence” they develop a “shorthand” to classify people and how to interact with them.³⁸ These are characteristics of people that officers come to associate, through experience rather than science, with violating the law.³⁹ These professional shortcuts (or tricks of the trade) are observed in other professions, including elsewhere in the public service.⁴⁰ However, in the police context, where authority is important and arrest (and other limitations of rights) may be used, their misuse can have severe consequences for those perceived as potential suspects.

6.2 Responsivity

Many advocates of “professional policing” emphasise outputs, such as, response times, arrests, and reported crime, as measures of police performance.⁴¹ However, policing is much more than these measures suggest. It is important to consider an officer’s response to the needs expressed during interactions with the public.⁴² Police responsivity is a vital component of democratic policing.⁴³

Democratic policing literature points towards the value of responsiveness: police must be “responsive to some expression of the views of the public”.⁴⁴ Importantly, responsiveness is not simply acquiescing to a generally expressed will. Rather, “responding” can mean refuting, with reason, public demands.⁴⁵ Police and their

³⁶ See Joh E “Discretionless policing – technology and the Fourth Amendment” (2007) 95 *California Law Review* 205.

³⁷ Skolnick JH “A sketch of the policeman’s working personality” in Newburn T (ed) *Policing: key readings* Cullompton: Willan Publishing (2005) 264.

³⁸ See Joh (2007) at 205.

³⁹ See Joh (2007) at 205.

⁴⁰ Lipsky M *Street-level bureaucracy: dilemmas of the individual in public services* New York : Russell Sage Foundation (2010).

⁴¹ See Rossler MT & Terrill W “Police responsiveness to service-related requests” (2012) 15(1) *Police Quarterly* 3.

⁴² See Rossler & Terrill (2012) at 3.

⁴³ See Rossler & Terrill (2012) at 3.

⁴⁴ See Aitchison A & Blaustein J “Policing for democracy or democratically responsive policing? Examining the limits of externally driven police reform” (2013) 10(4) *European Journal of Criminology* 496 at 501.

⁴⁵ See Aitchison & Blaustein (2013) at 501.

managers may be called to “respond” to a wide range of individuals, groups and institutions.

Three further variables contributing to responsiveness are: information; redress; and participation.⁴⁶ Information underpins other democratic criteria and promotes responsiveness in two ways, namely, the publication of information is a stimulus for citizens, groups and institutions to present preferences to police who must then respond, and providing information can be a reasonable response.⁴⁷

Redress requires that victims can seek reparation through effective mechanisms. These should allow for the expression of discontent with police actions, and for this to be effectively addressed. Reparation can take several forms: restitution, financial compensation, rehabilitation, satisfaction (through complaints, investigations, truth-seeking mechanisms, official apologies, etc) and guarantees of non-repetition.⁴⁸

Participation is a stimulus demanding a police response. A responsive police service incorporates reactions to citizen complaints and feedback. This includes accountability and an acceptance that police must explain themselves. Responsiveness also relates to “the unique cultural, ideological and legal characteristics of a country”.⁴⁹ In essence, the police should be responsive to the needs of the public and victims of crime and exhibit community-centred policing practices.

6.3 Empathy

Empathy is narrower than responsiveness. Empathy is most commonly defined as the ability to understand the situation of another.⁵⁰ However, according to Henderson, three other meanings are conveyed by this word: feeling the emotion of another; understanding the experience or situation of another, both affectively and cognitively, often achieved by imagining oneself to be in the position of the other; and action brought about by experiencing the distress of another.⁵¹

Murphy and Tyler suggest four issues that are key to police legitimacy: respect, neutrality, trustworthiness, and voice, with the last referring to the broader notion of “communication”. Empathy is part of effective communication. They note that, procedurally, just policing requires that police commit to four key principles when

⁴⁶ See Aitchison & Blaustein (2013) at 501.

⁴⁷ See Aitchison & Blaustein (2013) at 501.

⁴⁸ A/RES/60/147, Arts 15-23.

⁴⁹ See Aitchison & Blaustein (2013) at 501.

⁵⁰ Henderson LN “Legality and empathy” (1987) 85(7) *Michigan Law Review* 1574.

⁵¹ See Henderson (1987) at 1574.

interacting with others.⁵² Apart from treating people with respect, they must show “that they can make neutral decisions based on consistently applied legal rules and principles and the facts of a case, not on personal opinions and biases”. They explain further:

“Demonstrations that police are benevolent and caring and are sincerely trying to do what is best for people are also viewed favourably by the public. Police communicate trustworthy motives when they listen to people’s accounts and explain or justify their actions in ways that show an awareness of and sensitivity to people’s needs and concerns. Finally, people value having the opportunity to voice concerns and issues to an officer before a decision is made in their case. Each of these four elements must be delivered by police in a way that is perceived as genuine. Hence, the quality of the interaction and dialog between police and citizens is vital. Importantly, people are more likely to accept unfavourable outcomes (e.g. receiving a traffic infringement) if they believe the procedures used by police to reach that outcome are fair.”⁵³

Police are expected to display empathic qualities and skills when dealing with victims of crime. As an authority in which a great deal of trust is placed, particularly when affected by a crime or having had one’s rights violated, it is important for the police to convey compassion, beyond the qualities of responsiveness. In many instances the police will be the first responders to a crime scene, accident or other calamity, and must therefore be able to deal with such situations in a manner that respects the dignity of those affected and acknowledges the impact of the event on those involved.

It is essential that victims of violence receive appropriate care. British research found police empathy to be positively correlated with victims’ ratings of the likelihood of taking their cases to court.⁵⁴ When police respond sensitively and empathetically, for example, rape case attrition may be reduced.⁵⁵ Negative attitudes expressed by police may include victim blaming, affirming rape myths, and patriarchal attitudes toward gender relations including notions of male sexual entitlement and justification of men’s use of violence against women as “caused” by the victim.⁵⁶ For the police to show appropriate empathy is therefore important.

⁵² Murphy K & Tyler T “Experimenting with procedural justice policing” (2017) 13 *Journal of Experimental Criminology* 288.

⁵³ See Murphy & Tyler (2017) at 288.

⁵⁴ Maddox L, Lee D & Barker C “Police empathy and victim PTSD as potential factors in rape case attrition” (2011) 26(2) *Journal of Police and Criminal Psychology* 112.

⁵⁵ See Maddox, Lee & Barker (2011) at 112.

⁵⁶ Lockwood D & Prohaska A “Police officer gender and attitudes toward intimate partner violence: how policy can eliminate stereotypes” (2015) 10(1) *International Journal of Criminal Justice Sciences* 77.

Simple acts, such as, listening and communicating, can help transform stressful situations into trust building opportunities.⁵⁷ When police empathise with the public, citizens are more likely to agree that the result of their interaction was fair and deserved, even when they are sanctioned.⁵⁸ This improves community / police relations, trust, and the legitimacy of the police.

7 THE INPUT VARIABLES

The goal of democratic policing is police legitimacy. This flows from the trust outcome, which is a consequence of the outputs: objectivity, empathy and responsiveness. In this part, the input variables are described - these are variables that the police have control over and are responsible for.

7.1 Knowledge

Professionalism requires expert knowledge in a particular field. Professions are involved in birth, survival, physical and emotional health, dispute resolution and law-based social order, finance and credit information, educational attainment and socialization, construction and the built environment, military engagement, peace-keeping and security, entertainment and leisure, and religion and our negotiations with the next world.⁵⁹ In short, we rely on professional knowledge to assist us to manage a wide range of risks. As such, we must ask: what risks do we entrust the police to deal with and do they have the requisite knowledge to do so? Are the police professionals in the use of coercion? Do they know when to use it and exactly how much to use in order to remain within the confines of the law and human rights standards?

Professionalism implies trust, because it is based on knowledge (and sometimes guilty knowledge). Because this knowledge is scarce, lay people must place their trust in professionals. Professionalism requires professionals to be worthy of trust and to maintain confidentiality and conceal guilty knowledge by not exploiting it for evil purposes. In return for knowledge, ethics and trust, professionals are rewarded with authority, privileged rewards and higher social status.⁶⁰

Being a “professional” is more than being competent at one’s job, as such a “professional”, for example, seeks responsibility and welcomes accountability, demonstrates customer care principles, interacts with colleagues in a professional

⁵⁷ Posick C “Empathy on the street: How understanding between police and communities makes us safer” (2015) *The Conversation* available at <http://theconversation.com/empathy-on-the-street-how-understanding-between-police-and-communities-makes-us-safer-40041> (accessed 26 October 2017).

⁵⁸ See Posick (2015).

⁵⁹ Evetts J “The sociological analysis of professionalism” (2003) 18(2) *International Sociology* 397.

⁶⁰ See Evetts (2003) at 400.

manner (eg treats colleagues as customers and generates enthusiasm), is self-critical, and listens.⁶¹

For example, the Independent Police Commission for England and Wales attaches several distinct meanings to the idea of professionalism:

- High expectations: Professional police are police who are held to demanding standards of conduct. It means a police service in which slack performance, unkempt appearance, rude manners, and loose ethics are not tolerated;
- Self-regulating: In the manner of the legal profession, the medical profession or the accounting profession – ensuring institutional autonomy and freedom from political interference;
- Expertise: Professional policing, in this sense, means policing that is reflective and knowledge/evidence- based, rather than a matter of common sense, intuition, or innate talent; and
- Internalised norms: Rather than by rules enforced through a bureaucratic command structure or a formalised system of external oversight.⁶²

Fournier, building on Foucault, notes in respect of professionalism:

“Through the notions of competence, truth and knowledge are translated into a code of appropriate conduct which serves to construct the subjectivity of the professional practitioner. Truth governs not by controlling directly the acts (or even knowledge) of the professional practitioner but by making sure that the practitioner is the sort of person who can be trusted with the truth. Thus an important characteristic of professional competence is its reliance on technologies of the self (eg through careful selection and strong doses of socialisation) rather than merely on technologies of domination.”⁶³

This approach requires moving away from bureaucratic controls to softer and more flexible controls that would serve the customer better. The notion of “professionalism” thus enables management to steer employees to a position of greater reliance on self-regulation *vis-à-vis* bureaucratic control, and thus able to provide a better service to customers. Employees are seen as “empowered” agents within a newly delineated space (defined by professionalism) to exercise their newly found power and autonomy.⁶⁴

The appeal to professionalism is attractive to management as it serves to “responsibilise” the autonomy by demarcating “the competence” of the “professional

⁶¹ See Fournier V “The appeal of ‘professionalism’ as a disciplinary mechanism” (1999) 47(2) *Sociological Review* 297.

⁶² See Independent Police Commission (2013) at 110.

⁶³ See Fournier (1999) at 287.

⁶⁴ See Fournier (1999) at 291.

employee” through a process of instilling “professional like” norms and work ethics which simultaneously govern productivity and employee subjectivities.⁶⁵ Fournier refers to this as a “mode of conduct” rather than simply a way of performing one’s job.⁶⁶

7.2 Effectiveness and efficiency

Effectiveness is the degree to which something produces a desired result. It does not factor in the related costs. A programme may be effective, but not efficient or cost effective. An assessment of efficiency relates the results or outputs of a programme relative to its costs.⁶⁷ Ideally, a monetary value is placed on the benefits arising from activities, and this is compared with the costs of the programme. In most cases, however, an accurate monetary quantification of outputs and outcomes is not possible. In these cases, the assessment of efficiency focuses on ratios such as the number of households provided with a service per million rands invested.

An assessment of cost effectiveness asks whether output benefits could have been produced at a lower cost. Cost effectiveness is the extent to which a programme has “achieved results at a lower cost compared with alternatives ... Shortcomings in cost-effectiveness occur when the programme is not the least-cost alternative or approach to achieving the same or similar outputs and outcomes.”⁶⁸

Hung-En Sung notes that “perceptions of police efficacy matter because on them hinges the legitimacy of the state”.⁶⁹ At the same time, a burgeoning, empirically-informed literature on procedural justice in policing suggests that being treated fairly by police is, in many instances, considered more important in public assessments of police than their perceived effectiveness in reducing crime. Moreover, where people believe police treat them fairly, they are more likely to identify with the authority police represent (the democratic State), to co-operate with police, and to obey the law in their absence.⁷⁰ Procedural justice is thus central to police effectiveness.

Sung notes that, at the time of his writing (2006), the linkage between democratisation and improved policing was often assumed, but rarely methodically

⁶⁵ See Fournier (1999) at 293.

⁶⁶ See Fournier (1999) at 297.

⁶⁷ World Bank “Sourcebook for Evaluating Global and Regional Partnership and Programs: Indicative Principles and Standards” (2009) available at http://siteresources.worldbank.org/EXTGLOREGPARPROG/Resources/grpp_sourcebook_chap11.pdf (accessed 10 March 2019).

⁶⁸ See World Bank (2009).

⁶⁹ Sung (2006a).

⁷⁰ See Independent Police Commission (2013) at 32. Stanko et al (2012). Tyler TR “Enhancing police legitimacy” (2004) 593 *Annals of the American Academy of Political and Social Science* 84.

examined.⁷¹ Like others, he noted that crime is the product of a myriad of factors and so cannot be used as a measure of police effectiveness.⁷² While good evidence exists that some police interventions targeting some types of crime, areas and offenders can reduce specific crimes,⁷³ the notion that police will independently and on an ongoing basis reduce general crime is contested. What is clear, however, is that ineffective policing is not likely to improve crime in general and may well exacerbate it; in countries in which the police are abusive, corrupt or ineffective, public insecurity and the general level of violence often worsen, and this is particularly the case in developing country contexts.⁷⁴

Sung points out that effective policing means different things to different social groups.⁷⁵ To the wealthy it can imply the maintenance of the status quo while to the poor and criminalised it can mean restraint and care.⁷⁶ In a democracy then, effective policing occurs when people feel safe and attribute this safety to the police.⁷⁷

In measuring democracy, Sung finds that a U-shape relationship between democratisation (of a country) and police effectiveness fits the country data best: very undemocratic countries and the advanced democracies experienced the highest levels of police effectiveness, whereas middle-range democracy countries showed lower ratings of police performance.⁷⁸ It is important to note that this analysis found that South Africa did not fit the general pattern – essentially it had amongst the highest ratings for democracy, but amongst the lowest ratings for police effectiveness with the variables employed. As Sung put it, although Bolivia, along with South Africa, “made a very quick transition from stifling autocracy to full-blown democracy during the 1990s,

⁷¹ See Sung (2006a) at 348.

⁷² See Sung (2006a) at 348.

⁷³ Chalfin A & McCrary C “The effect of police on crime: new evidence from US cities 1960-2010” (2013) Working Paper 18815 National Bureau of Economic Research: Cambridge. See also Skogan W & Frydl K (eds) *Fairness and Effectiveness in Policing: The Evidence Committee to Review Research on Police Policy and Practices* (2004) Washington DC : National Research Council. Sherman LW “The rise of evidence-based policing: targeting, testing, and tracking” (2013) 42(1) *Crime and Justice in America 1975–2025* 377.

⁷⁴ Perez OJ “Democratic legitimacy and public insecurity: crime and democracy in El Salvador and Guatemala” (2003) 118(4) *Political Science Quarterly* 627. Andvig JC & Fjeldstad OH “Crime, Poverty and Police Corruption in Developing Countries” (2008) Chr Michelsen Institute (CMI) Working Paper. See United Nations Office on Drugs and Crime “Crime and Development in Africa” (2005) available at https://www.unodc.org/pdf/African_report.pdf (accessed 22 March 2021).

⁷⁵ See Sung (2006a) at 348.

⁷⁶ See Sung (2006a) at 349.

⁷⁷ See Sung (2006a) at 350.

⁷⁸ See Sung (2006a) at 360.

[they] failed miserably to reinvent their police forces at the same pace of their other political achievements".⁷⁹

Good macro-economic performance of a country, as measured by indicators, such as, high GDP per capita and low unemployment rate, was connected to higher levels of police effectiveness, with GDP being more important than unemployment.⁸⁰ Perceived police effectiveness did not significantly differ across countries of different population sizes.⁸¹ Sung concludes that findings from this study highlight the dependence of police effectiveness on good judicial governance and a healthy economy.⁸² While this correlation is true in absolute terms, police may still be relatively more or less effective within the constraints of judicial governance and the health of the economy.

7.3 Ethics and accountability

Police have exceptional powers, including the power to infringe on fundamental rights. These include the right to freedom (through arrest and detention), the right to safety and security (through the use of force), and the right to life (in some jurisdictions, through their right to use lethal force beyond the strict remit of self-defence). These extraordinary powers must be subject to strict accountability mechanisms that are effective, transparent, accessible and change-driven. Accountability is a cornerstone of democratic policing.⁸³

The antithesis of accountability is impunity, which is defined as "the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to them being accused, arrested, tried and, if found guilty, convicted".⁸⁴ Therefore, the above definition of impunity focuses on the absence of effective individual accountability mechanisms, and not so much on the failure of broader mechanisms aimed at ensuring institutional accountability, often exercised towards political oversight.

Accountability is understood to mean the relationship "between the bearer of a right or a legitimate claim and the agents or agencies responsible for fulfilling or

⁷⁹ See Sung (2006a) at 360.

⁸⁰ See Sung H "Structural determinants of police effectiveness in market democracies" (2006b) 9(1) *Police Quarterly* 13.

⁸¹ See Sung H (2006b) at 14.

⁸² See Sung H (2006b) at 15.

⁸³ See OSCE (2008) at 9. See also Newham G "Strengthening democratic policing in South Africa through internal systems for officer control" (2005) 36(2) *South African Review of Sociology* 160.

⁸⁴ See ECOSOC "Report on the question of the impunity of perpetrators of violations of human rights (civil and political rights)" (1996) UN Doc N. E/CN 4/Sub 2/1996/18 at 9.

respecting that right”.⁸⁵ This means that a government must be able to execute its mandate, and indeed explain how it did so.⁸⁶ The point has also been made that the normal features of a democracy (eg multi-party elections and universal suffrage) are necessary, but not sufficient to ensure healthy accountability between citizens and the government.⁸⁷ Democratic elections therefore do not make for clean government and new democracies remain haunted by human rights violations, nepotism and corruption, which do not disappear with the advent of democratic elections.⁸⁸

The construct of accountability can be split into two dimensions: horizontal accountability and vertical accountability. According to Schacter, the State must be willing “to restrain itself by creating and sustaining independent public institutions to oversee its actions, demand explanations, and when circumstances warrant, impose penalties on the government for improper and illegal activity”.⁸⁹ The accountability that the State imposes on itself and on governments is commonly referred to as horizontal accountability. Vertical accountability refers to the control external institutions exercise over a government, such as, the electorate, the media and civil society.⁹⁰ The fact that a relationship exists between the State and another internal or external body does not automatically produce effective accountability, and three principles need to be adhered to, namely, transparency, answerability, and controllability. Transparency means that State officials have a duty to act visibly, predictably and understandably.⁹¹ Their actions must be predictable because they are guided by policy, legislation, regulations, standing orders and good practice. When called to account, officials must be able to motivate their decisions and actions in a manner that is rational and justifiable. In sum, it needs to be known what officials are doing, and when asked, they must be able to provide an understandable and predictable answer.⁹²

The answerability requirement states that decision-makers must be able to justify their decisions and actions publicly in order to substantiate that they are reasonable, rational and within their mandate.⁹³ Answerability (and transparency) will, however, be

⁸⁵ Gloppen S, Rakner L & Tostensen A “Responsiveness to the Concerns of the Poor and Accountability to the Commitment to Poverty Reduction” (2003) Bergen: Ch Michelsen Institute at 9.

⁸⁶ Muntingh L “Prisons in the South African constitutional democracy” (2007) Johannesburg: Centre for the Study of Violence and Reconciliation at 16.

⁸⁷ Schacter M “When accountability fails – a framework for diagnosis and action” (2001) 2(2) *Isuma* 1. See Muntingh (2007) at 16.

⁸⁸ See Muntingh (2007) at 16.

⁸⁹ See Schacter (2001) at 2.

⁹⁰ See Schacter (2001) at 2.

⁹¹ See Transparency International ‘What is transparency?’ available at <https://www.transparency.org/en/corruptionary/transparency> (accessed 22 March 2021).

⁹² See Muntingh (2007) at 25.

⁹³ U4 “Anti-corruption” Resource Centre Glossary available at <https://www.u4.no/terms> (accessed 22 March 2021).

meaningless if there are not mechanisms in place to sanction actions and decisions in contravention of the mandate. Accountability institutions must be able to exercise control over the institutions that they oversee.⁹⁴ Failure to hold government and individuals accountable fosters impunity.⁹⁵

Even if only a few police abuse their powers, the legitimacy of an entire police force can be damaged.⁹⁶ It is the need for legitimacy that, first, drives the need for accountability mechanisms. Secondly, the purpose of an effective accountability structure is its proactive function: the outputs and consequences of action taken by accountability mechanisms must produce changes in police behaviour and deter misconduct.⁹⁷

The first and primary focus of police accountability requires holding individual police officials accountable for their behaviour when performing their policing duties, in particular in relation to their use of force, arrest practices, stop and search, interrogations, and treatment of persons in custody.⁹⁸ Such behaviour should be tested against clear laws and policies outlining permissible conduct.⁹⁹

The second focus of police accountability requires holding police organisations accountable for services rendered.¹⁰⁰ In this regard, police management needs to ensure adequate training, operational direction, supervision, equipment, and infrastructure.¹⁰¹ Institutional accountability includes oversight over police policy and police operations by external actors, and is therefore intrinsically linked to transparency and openness.

Police officials can be held individually accountable through oversight mechanisms internal and external to the police. Aggrieved individuals (internal or external to the police) should be able to lay complaints against police officials, which should result in

⁹⁴ See U4 “Anti-corruption” Resource Centre Glossary available at <https://www.u4.no/terms> (accessed 22 March 2021).

⁹⁵ See Muntingh (2007) at 16.

⁹⁶ United Nations Office on Drugs and Crime (UNODC) *Handbook on police accountability, oversight and integrity* New York: United Nations (2011) at iv. Brannagan C “Police misconduct and public accountability: a commentary on recent trends in the Canadian justice system” (2011) 30 *Windsor Review of Legal and Social Issues* 61 at 62.

⁹⁷ See UNODC (2011) at 14.

⁹⁸ Walker S *The new world of police accountability* Thousand Oaks, CA: Sage Publications (2005) at 7. See UNODC (2011) at iv & 9.

⁹⁹ See UNODC (2011) at iv.

¹⁰⁰ See Walker (2005) at 7. See UNODC (2011) at 11. Bruce D “Unfinished business : the architecture of police accountability in South Africa” Policy Paper No 2 Cape Town: African Policing Civilian Oversight Forum (2011). Auerbach J “Police accountability in Kenya” (2003) 3 *African Human Rights Law Journal* 275.

¹⁰¹ See UNODC (2011) at iv.

inquiries and/or investigations by internal and/or external authorities empowered and resourced to do so.¹⁰² External individual accountability mechanisms should be able to formulate recommendations for internal disciplinary action or for criminal prosecution and have them acted upon.¹⁰³ In addition, police officials may be held individually accountable by the judiciary (in particular through criminal proceedings) and, on rare occasions, by the legislature.¹⁰⁴

Institutions usually exercising institutional oversight over the police are primarily found at the domestic level, but also relate to international mechanisms. Domestically, the executive, the legislature and the judiciary all play a role in holding police accountable. Their oversight role is primarily proactive and extends to overseeing the budget and expenditure of the police, appointment and removal processes of senior officials, and policing policy choices.¹⁰⁵ The judiciary usually plays a reactive institutional oversight role, including, ruling on the police's financial liability and wrongdoing committed by its members.¹⁰⁶ Internationally, State reporting to treaty monitoring bodies and communications submitted by aggrieved individuals are two spheres where police interventions will be subject to institutional accountability.¹⁰⁷

Importantly, civil society (including the media) must be able to contribute to holding the police accountable, both at individual and institutional levels. All platforms cited above should allow for formal and informal engagements with civil society.

Internal accountability mechanisms may be mistrusted by the public, especially where police abuse is rife.¹⁰⁸ External, independent mechanisms are then necessary to ensure impartial oversight of police activities. However, external mechanisms can only be effective if internal accountability processes function, as the latter will correct minor infractions which, if left unsanctioned, may lead to serious offences by police.¹⁰⁹ Efficient internal accountability mechanisms may be more effective than external

¹⁰² See UNODC (2011).

¹⁰³ See UNODC (2011) at iv.

¹⁰⁴ Commonwealth Human Rights Initiative "Police accountability: Too important to neglect, too urgent to delay" (2005) CHRI report: New Delhi, India.

¹⁰⁵ See Commonwealth Human Rights Initiative (2005).

¹⁰⁶ Dereymaeker G "Making sense of the numbers: civil claims against the SAPS" (2015) 54 *South African Crime Quarterly* 29.

¹⁰⁷ See UNODC (2011) at 12.

¹⁰⁸ See Commonwealth Human Rights Initiative (2005) at 52.

¹⁰⁹ Muntingh L & Dereymaeker G "Understanding impunity in the South African law enforcement agencies" (2013) CSPRI Research Paper Bellville: Community Law Centre.

mechanisms in changing police behaviour because the processes and outcomes will be owned by the police themselves.¹¹⁰

Police accountability mechanisms must be effective throughout the police organisation and in all its functions: clear policy and operational directions must be given to police officials before police actions or operations, and police must be supervised and monitored during actions and operations. Police misconduct must be effectively addressed after an action or operation, and must lead to reparations for victims, disciplinary action or criminal prosecution against implicated officials, and evaluations that support changes in police conduct and policies, where relevant.¹¹¹

Accountability mechanisms will correct and modify ill behaviour if they are adequately resourced, empowered and independent, receive political support, and are under sufficient public pressure to carry out their work.¹¹²

7.4 Rights-based

A police service that respects, promotes and protects the human rights of all people, suspects and victims in particular, is central to democratic policing.¹¹³ While the emphasis on different rights may vary between countries, international law upholds numerous fundamental rights relevant to democratic policing. However, it is one thing to recognise fundamental rights in principle and quite another to uphold them in practice.

The UN Pocket Book on Human Rights Standards and Practice for the Police (UN Pocket Book) provides a comprehensive overview of the rights which police must uphold and protect in their work.¹¹⁴ It reviews compliance requirements under the following themes:

- *Police investigations:* Police shall conduct their investigative work while respecting the following rights: right to security, right to a fair trial, right to the presumption of innocence, right to privacy, prohibition of torture and other ill-treatment, and right not to be pressured into providing information.¹¹⁵

¹¹⁰ See UNODC (2011) at 14. See OSCE (2008) at 26 para 87.

¹¹¹ See UNODC (2011).

¹¹² See OSCE (2008) at 27 para 93.

¹¹³ Bayley D “Democratizing the Police Abroad: What to Do and How to Do It” (2001) Washington DC, USA: National Institute of Justice at 14 & 76.

¹¹⁴ UNHCR “Human Rights Standards and Practice for the Police, Professional Training Series” (2004) No 5/Add 3 New York & Geneva: United Nations at 2.

¹¹⁵ See UNHCR (2004) at 10.

- *Arrest:* Police shall conduct arrests within the boundaries of the following fundamental rights: right to liberty and security, prohibition of arbitrary arrest, right to be informed at the time of arrest of the reasons for arrest, right to be promptly informed of the charges, right to promptly appear before a judicial authority to review the legality of detention that follows the arrest, right to apply for bail, and right to access a legal representative, family and a health care professional;¹¹⁶
- *Detention:* Police shall detain individuals within the boundaries of the following fundamental rights: right to liberty (detention must be the exception) and security, prohibition of arbitrary detention, right to promptly appear before a judicial authority to review the legality of detention, right to the presumption of innocence, prohibition of torture, prohibition of incommunicado detention, right to be informed of the reasons for detention, right to apply for bail, right to access a legal representative, family and health care, right to humane conditions of detention, and right to be separated (women and men, children and adults).¹¹⁷
- *Use of force and firearms:* The use of force and firearms by police is a particularly contentious issue in democratic policing and one that has led to at least a perception of abuse, in particular in relation to the use of lethal force.¹¹⁸ Human rights policing requires that force be used with restraint, only when strictly necessary and proportional to lawful objectives, and that officials be trained in non-violent means of restraint and means of differentiated use of force. Firearms should be used only in extreme circumstances, when there is an imminent threat of death or serious injury of the police official or someone else (or a serious crime leading to such an immediate threat is about to be committed) and when the official has identified him- or herself and given sufficient warning.¹¹⁹ After the use of firearms, medical assistance must immediately be made available, families must be notified, a full and detailed report must be completed and investigations should be allowed where necessary.

Therefore, a democratic police service must train its staff in human rights, should instill a culture of human rights within the institution, and should hold its members accountable for infringements of human rights. In addition to the UN Pocket Book, a significant amount of work has been put into guiding the formulation of codes of

¹¹⁶ See UNHCR (2004) at 14.

¹¹⁷ See UNHCR (2004) at 17-19.

¹¹⁸ Osse A & Cano I "Police deadly use of firearms: an international comparison" (2017) 21(5) *The International Journal of Human Rights* 629.

¹¹⁹ International Committee of the Red Cross "The use of force in law enforcement operations" (2015) available at <https://www.icrc.org/en/document/use-force-law-enforcement-operations> (accessed 19 March 2021). See also UNHCR (2004) at 23-26.

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conduct for police, including African and South African police agencies.¹²⁰ Well managed codes of conduct, linked to clear standards of behaviour and monitoring and accountability systems that detect and correct deviation from the code, can significantly shape police practice, even in the absence of technical understanding or knowledge.

Key components of a police service that upholds and protects human rights in practice are:

- A deviation from the reliance on the defence of obedience to superior orders to justify an action, legal or illegal, and rather a reliance on knowledge and skills, provided through theoretical and practical training, both at inception and throughout the period of service, to make informed decisions in police interventions. Superiors should share responsibility for violations committed by their personnel when they know or ought to have known about a violation and did not take the necessary action to ensure accountability;¹²¹
- Restraint in showing force or power, in particular in relation to investigations and crowd control. Police should especially exercise restraint in the use of force, avoid using firearms, not rely on confessions, and avoid warrantless searches;¹²²
- The keeping of comprehensive written records of all policing activities involving any limitation of rights. This refers in particular to the use of force and firearms, arrest, detention and interrogations, as well as any interference in the private communication of individuals;¹²³
- The importance of developing soft interpersonal skills that will assist in de-escalating a situation which may lead to police interventions that would affect the rights of those interacting with the police;¹²⁴

¹²⁰ In addition to the United Nations texts already mentioned, see UNODC *Handbook on Police Accountability, Oversight and Integrity* New York: United Nations (2011); and UNODC *United Nations Criminal Justice Standards for United Nations Police* New York: United Nations (2009). See also, African Union Commission *Guidance Note on the Development of Codes of Conduct for African Security Institutions* (2014); and Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) *Harare Resolution on the SARPCCO Code of Conduct for Police Officials* adopted at the 6th Annual General Meeting 27–31 August 2001 available at http://www.apf.ch/content/files_res/SARPCCO.pdf (accessed 20 January 2017). See further, Dissel A & Tait S “Implementing the SARPCCO Code of Conduct” (2011) Cape Town: African Policing Civilian Oversight Forum; and Bruce & Neild R (2005).

¹²¹ See generally UNHCR (2004).

¹²² See UNHCR (2004).

¹²³ See UNHCR (2004).

¹²⁴ See UNHCR (2004).

- The principles of transparency and accountability requiring that police officials be identifiable throughout their work: in public spaces, during police interrogations and when overseeing suspects in police detention;¹²⁵ and
- The acceptance that policing work is stressful and requires adequate physical and mental support. Democratic police agencies support and encourage staff to use support services, especially those involved in crowd control or using firearms.¹²⁶

Therefore, two fundamental elements to ensure a human rights compliant police in practice are training and accountability. Police need to be trained in the theoretical knowledge and practical skills that enable them to perform their policing duties in accordance with human rights standards. Furthermore, police need to be held accountable for violating human rights.

7.5 Police as citizens

The preceding focused almost exclusively on the impact of policing on the public and what the police must do or not do to uphold the rights of individuals and groups. It should, however, be acknowledged that police officials are also citizens and employees of the State. It should similarly be acknowledged that police work can be extremely trying on the mental and physical health of police officials. The rights of police officials must be protected, both in their interactions with colleagues and with the public. Recognition of these facts positively shape police/public relations. One cannot expect procedurally just, democratic policing where police do not believe they work for organisationally just, democratic organisations.

In many parts of the world police are actively campaigning for their rights as citizens and as employees as they sell their labour and have little control over their work processes.¹²⁷ Bruce and Neild note that, by virtue of being citizens, police are entitled to the following rights and privileges that accompany such citizenship: equity and fairness in the recruitment, promotion and remuneration processes of the police service; basic conditions of service; due processes in disciplinary and criminal matters against them; and organisational rights and safety in the workplace.¹²⁸

Elaborating on this, Bruce and Neild note that police officials may not be discriminated against in the process of recruitment, promotion or remuneration, but concessions can be made to ensure diversity in the workplace.¹²⁹ Promotion and

¹²⁵ See UNHCR (2004).

¹²⁶ See UNHCR (2004).

¹²⁷ Marks M & Fleming J "Police as workers: police labour rights in Southern Africa and beyond" (2007) 19 *South African Crime Quarterly* 13.

¹²⁸ Bruce & Neild (2005) at 41.

¹²⁹ See Bruce & Neild (2005) at 41.

remuneration policies must be transparent, and remuneration and benefits should be on a par with other civil servants.¹³⁰ Police are entitled to reasonable working hours and should be treated with respect by colleagues and superiors.¹³¹ They are entitled to remain silent when accused of criminal conduct.¹³²

Although being an essential service¹³³ curtails some of police officials' labour rights, they are still entitled to the basic rights to form organisations that represent their interests and to engage in collective bargaining.¹³⁴ It is argued that the benefit of having police unions is positive as they have the capacity to confront existing (undemocratic) occupational cultures, to promote organisational accord, and to forge positive reform.¹³⁵ Police, through their membership of unions, are able to become active, participatory "citizens" within police organisations and negotiate important decisions that affect them individually and collectively.¹³⁶

Law enforcement has been recognised as one of the most stressful occupations worldwide.¹³⁷ Many police officers experience threatening and potentially traumatic events more frequently than the average person.¹³⁸ Even when police are not exposed to trauma, the idea that traumatic or stressful events may occur at any moment, informs the occupational culture and shapes attitudes to the job.¹³⁹ It is well established that police officers are killed annually in the course of their duty, but that they are more often killed off duty and in car accidents.¹⁴⁰ Bruce and Neild note that despite the fact that their careers expose them to danger, their safety should still be safeguarded and

¹³⁰ See Bruce & Neild (2005) at 41.

¹³¹ See Bruce & Neild (2005) at 41.

¹³² See Bruce & Neild (2005) at 41.

¹³³ An essential service is defined in terms of the Labour Relations Act 66 of 1995 as those services that, if interrupted would endanger the life, personal safety or health of the whole or any part of the population. The Parliamentary Service and the South African Police Services are designated as essential services in terms of the Labour Relations Act 66 of 1995.

¹³⁴ See Bruce & Neild (2005) at 41.

¹³⁵ See Marks & Fleming (2007) at 14.

¹³⁶ See Marks & Fleming (2007) at 15.

¹³⁷ Anshel M "A conceptual model and Implications for coping with stressful events in police work" (2000) 27(3) *Criminal Justice and Behavior* 375. See also Arnetz B, Arble E, Blackman L, Lynch A & Lublin A "Assessment of a prevention program for work-related stress among urban police officers" (2013) 86(1) *International Archives of Occupational and Environmental Health* 79.

¹³⁸ See Arnetz *et al* (2013) at 79.

¹³⁹ Skolnick (2005).

¹⁴⁰ Faull A *Police work and identity: a South African ethnography* Abingdon : Routledge (2017) at 38.

taken into account insofar as dealing with issues, such as, equipment, training and operational procedures.¹⁴¹

The literature suggests that an organisational structure is needed in the police profession to monitor officers' use of maladaptive coping (eg excessive drinking, abuse of drugs, and high absenteeism) and the lack of adaptive coping (engaging in physical activity, communicating in a professional manner) and that allows, and strongly encourages, continued access to stress management training.¹⁴² This is due to the inherent risks associated with a career in law enforcement. The frequent exposure to occupational stress elevates the risk of adverse mental and physical health outcomes, and behavioural consequences, such as, divorce, drug and alcohol abuse, and in extreme instances, suicide, have demonstrated a significant positive correlation with the occupational stress police officers face.¹⁴³

The preceding has established that police officials have rights as citizens and employees. Further, that police work is stressful and is accompanied by risks to officials' mental and physical wellbeing. As employer, the State has a responsibility to provide police with fair employment practices (hiring and promotion) and fair working conditions, and to make accessible support services to cope with stress. Failure to do so will impact their effectiveness and the quality of their interactions with the public, and thus the state of democratic policing.

8 CONCLUSION

The conceptual framework presented in this article is not merely intended to describe what democratic policing looks like, but rather to guide strategic planning in police organisations. This relates in particular to medium-term strategic objectives and annual performance plans of police services with particular reference to the input variables and the outputs they need to deliver. Performance indicators need to be crafted in such a manner that they drive performance towards the three minimum requirements of democratic policing: upholding the rule of law; being accountable; and acting in service of the public in a procedurally fair manner. There can be no expectation that the outputs objectivity, responsiveness and empathy will be achieved if there are no inputs articulated in annual performance plans and delivered towards the outputs. Trust in the police will equally not improve unless the outputs are delivered on, and if the public do not trust the police, the police remain with a legitimacy deficit.

The conceptual framework also requires that when measuring police performance, it is necessary to measure what matters, and more specifically to measure what matters to the public. The number of reported crimes may attract significant media attention

¹⁴¹ See Bruce & Neild (2005) at 41.

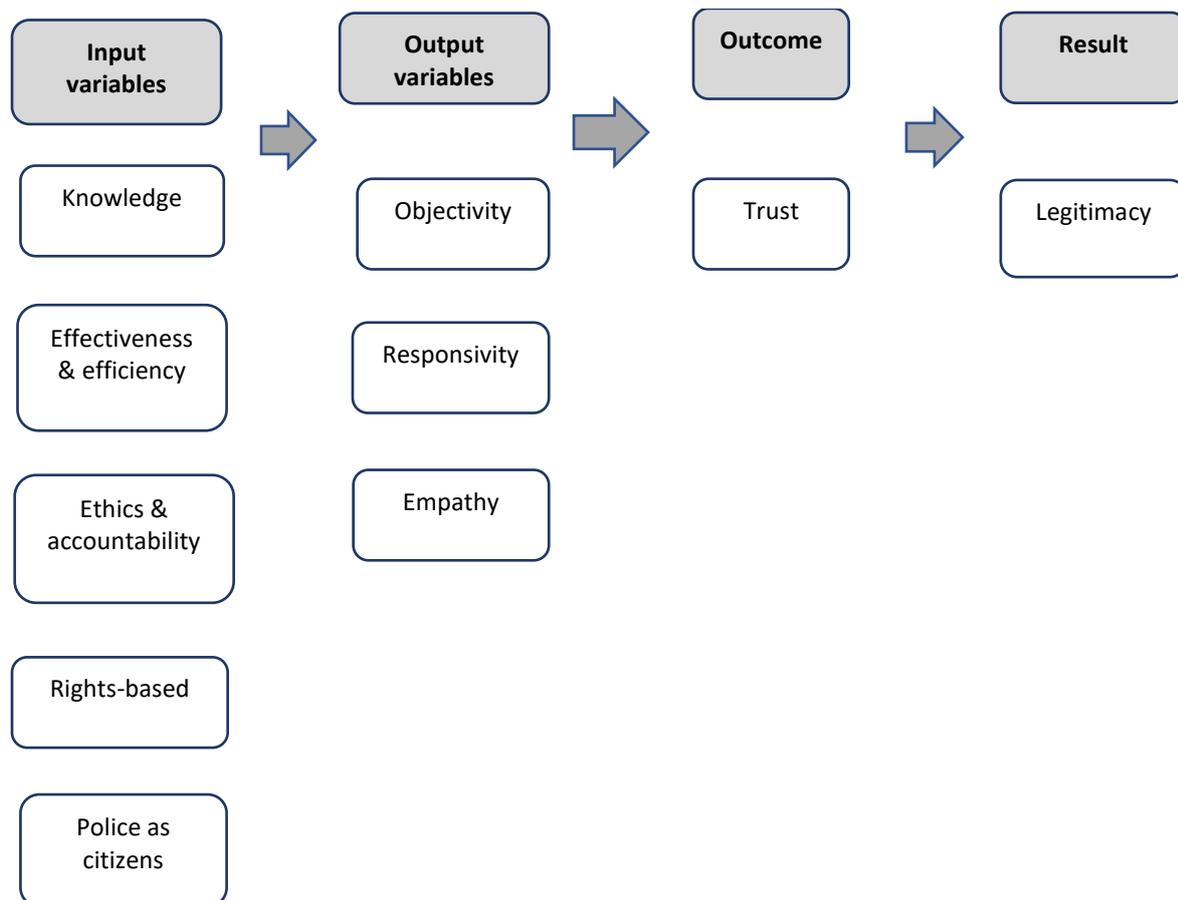
¹⁴² See Anshel (2000) at 79.

¹⁴³ See Arnetz *et al* (2013) at 79.

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annually, but as a management and evaluation tool, it is of limited value. What matters to the public is whether or not the police can be trusted and trust can be measured. In short, if the strategy is not to achieve democratic policing, democratic policing will not be achieved. It must be a medium-term goal with clear and measurable shorter-term objectives covering the input variables discussed.

Diagram 1



Authors' contributions:

Muntingh oversaw the literature review and resultant report to which all the authors contributed. He developed the draft article and oversaw the revision process to which all the authors contributed focusing on their areas of expertise. Faull focused on the police as citizens and also on comparative perspectives. Redpath has particular expertise in the utilisation of police resources, and Petersen in police outcomes (rights-based policing, empathy and responsivity).

BIBLIOGRAPHY**Books**

Beek J, Mirco G, Owen O & Steinberg S *Police in Africa: the street level view* London: Hurst (2016).

Faull A *Police work and identity: a South African ethnography* Abingdon: Routledge (2017).

Lipsky M *Street-level bureaucracy: dilemmas of the individual in public services* New York: Russell Sage Foundation (2010).

Manning PK *Democratic policing in a changing world* Boulder, CO: Paradigm Publishers (2010).

Walker S *The new world of police accountability* Thousand Oaks CA: Sage Publications (2005).

Chapters in books

Currie I & De Waal J "Equality" in Currie I & De Waal J (eds) *The Bill of Rights handbook* 5th ed Cape Town: Juta (2005) 229.

Marx G "Police and democracy" in Amir M & Einstein S (eds) *Policing, security and democracy – theory and practice* Washington DC: US Department of Justice (2001) 35.

Skolnick JH "A sketch of the policeman's working personality" in Newburn T (ed) *Policing: Key Readings* Cullompton: Willan Publishing (2005) 264.

Journal articles

Aitchison A & Blaustein J "Policing for democracy or democratically responsive policing? Examining the limits of externally driven police reform" (2013) 10(4) *European Journal of Criminology* 496.

Anshel M "A conceptual model and implications for coping with stressful events in police work" (2000) 27(3) *Criminal Justice and Behavior* 375.

Arnetz BB, Arble E, Backman L, Lynch A & Lublin A "Assessment of a prevention program for work-related stress among urban police officers" (2013) 86(1) *International Archives of Occupational and Environmental Health* 79.

Boda Z & Medve-Bálint G "How perceptions and personal contact matter: the individual-level determinants of trust in police in Hungary" (2017) 2(7) *Policing and Society* 732.

Bonner MD "What democratic policing is ...and is not" (2020) 30(9) *Policing and Society- An International Journal of Research and Policy* 1044.

Braga A & Schnell C "Evaluating place-based policing strategies: lessons learned from the smart policing initiative in Boston" (2013) 16(3) *Police Quarterly* 339.

Brannagan C "Police misconduct and public accountability: a commentary on recent trends in the Canadian justice system" (2011) 30 *Windsor Review of Legal and Social Issues* 61.

Dereymaeker G "Making sense of the numbers: civil claims against the SAPS" (2015) 54 *South African Crime Quarterly* 29.

Evetts J "The sociological analysis of professionalism" (2003) 18(2) *International Sociology* 397.

Fournier V "The appeal of 'professionalism' as a disciplinary mechanism" (1999) 47(2) *Sociological Review* 297.

Friedman B & Ponomarenko M "Democratic policing" (2015) 90(6) *New York Law Review* 1827.

Henderson LN "Legality and empathy" (1987) 85(7) *Michigan Law Review* 1574.

Holdaway S "The re-professionalization of the police in England and Wales" (2015) 17(5) *Criminology & Criminal Justice: An International Journal* 588.

Joh E "Discretionless policing – technology and the Fourth Amendment" (2007) 95 *California Law Review* 205.

Joyce N, Ramsey C & Stewart J "Commentary on smart policing" (2013) 16(3) *Police Quarterly* 358.

Kriegler A "Building research evidence that works for policing" (forthcoming 2021) *ISS Policy Brief*.

Levi M & Stoker L "Political trust and trustworthiness" (2000) 3(1) *Annual Review of Political Science* 475.

Liqun C "Differentiating confidence in the police, trust in the police, and satisfaction with the police" (2015) 38(2) *Policing: An International Journal of Police Strategies & Management* 239.

Luna E "Transparent policing" (2000) 85 *Iowa Law Review* 1107.

Maddox L, Lee D & Barker C "Police empathy and victim PTSD as potential factors in rape case attrition" (2011) 26(2) *Journal of Police and Criminal Psychology* 112.

Marks M & Fleming J "Police as workers: police labour rights in Southern Africa and beyond" (2007) 19 *South African Crime Quarterly* 13.

McKenna P "Evidence-based policing in Canada" (2018) 61(1) *Canadian Public Administration* 135.

Murphy K & Tyler T "Experimenting with procedural justice policing" (2017) 13 *Journal of Experimental Criminology* 288.

DEMOCRATIC POLICING

Norman J “Seen and not heard: young people's perceptions of the police” (2009) 3(4) *Policing: A Journal of Policy and Practice* 364.

Osse A & Cano I “Police deadly use of firearms: an international comparison” (2017) 21(5) *The International Journal of Human Rights* 629.

Perez OJ “Democratic legitimacy and public insecurity: crime and democracy in El Salvador and Guatemala” (2003) 118(4) *Political Science Quarterly* 627.

Rossler MT & Terrill W “Police responsiveness to service-related requests” (2012) 15(1) *Police Quarterly* 3.

Schacter M “When accountability fails – a framework for diagnosis and action” (2001) 2(2) *Isuma* 1.

Sherman LW “The rise of evidence-based policing: targeting, testing, and tracking” (2013) 42(1) *Crime and Justice in America 1975–2025* 377.

Stanko B, Jackson J, Bradford B & Hohl K “A golden thread, a presence amongst uniforms, and a good deal of data: studying public confidence in the London Metropolitan Police” (2012) 22(3) *Policing and Society: An International Journal of Research and Policy* 317.

Sung H “Police effectiveness and democracy: shape and direction of the relationship” (2006a) 29(2) *Policing: An International Journal of Police Strategies & Management* 347.

Sung H “Structural determinants of police effectiveness in market democracies” (2006b) 9(1) *Police Quarterly* 13.

Sunshine J & Tyler T “The role of procedural justice and legitimacy in shaping public support for policing” (2003) 37(3) *Law & Society Review* 513.

Telep C “Police officer receptivity to research and evidence-based policing: examining variability within and across agencies” (2017) 63(8) *Crime & Delinquency* 976.

Tyler TR “Psychological perspectives on legitimacy and legitimation” (2006) 57 *Annual Review of Psychology* 375.

Tyler TR “Enhancing police legitimacy” (2004) 593 *Annals of the American Academy of Political and Social Science* 84.

Legislation

Labour Relations Act 66 of 1995.

South African Police Service Act 68 of 1995.

SAPS Code of Conduct available at <https://www.saps.gov.za/about/conduct.php> (accessed 10 March 2019).

Constitutions

Constitution of the Republic of South Africa, 1996.

Treaties and Conventions

African Union Commission *Guidance Note on the Development of Codes of Conduct for African Security Institutions* (2014).

ECOSOC “Report on the question of the impunity of perpetrators of violations of human rights (civil and political rights)” (1996) UN Doc No E/CN 4/Sub 2/1996/18, p 9.

Harare Resolution on the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) Code of Conduct for Police Officials, adopted at the 6th Annual General Meeting 27–31 August 2001, Mauritius available at <https://www.apt.ch/en/resources/publications/sarpcco-code-conduct-police-officials-2001> (accessed 22 March 2021).

UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution adopted by the General Assembly on 16 December 2005, A/RES/60/147.

Reports

Andvig JC & Fjeldstad OH “Crime, Poverty and Police Corruption in Developing Countries” (2008) Chr. Michelsen Institute (CMI) Working Paper.

Baker B *Multi-choice policing in Africa* (2008) Uppsala: Nordiska Afrikainstitutet.

Bayley D “Democratizing the Police Abroad: What to Do and How to Do It” (2001) Washington DC, USA: National Institute of Justice.

DEMOCRATIC POLICING

Bruce D & Neild R “The Police That We Want: A Handbook for Oversight of Police in South Africa” (2005) Johannesburg: Centre for the Study of Violence and Reconciliation.

Chalfin A & McCrary C “The effect of police on crime: new evidence from US cities, 1960-2010” (2013) Working Paper 18815 National Bureau of Economic Research: Cambridge.

College of Policing “Code of Ethics - A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales” (2014) Coventry: College of Policing Limited.

Commonwealth Human Rights Initiative “Police accountability: Too important to neglect, too urgent to delay” (2005) CHRI report: New Delhi, India.

Dissel A & Tait S “Implementing the SARPCCO Code of Conduct” (2011) Cape Town: African Policing Civilian Oversight Forum.

Gloppen S, Rakner L & Tostensen A “Responsiveness to the Concerns of the Poor and Accountability to the Commitment to Poverty Reduction” (2003) Bergen: Ch Michelsen Institute.

International Committee of the Red Cross “The use of force in law enforcement operations” (2015) available at <https://www.icrc.org/en/document/use-force-law-enforcement-operations> (accessed 19 March 2021).

Independent Police Commission “Policing for a better Britain” (2013) available at <http://www.statewatch.org/news/2013/nov/uk-police-commission-report.pdf> (accessed 10 March 2019).

Muntingh L & Dereymaeker G “Understanding impunity in the South African law enforcement agencies” (2013) CSPRI Research Paper Bellville: Community Law Centre.

Muntingh L “Arrested in Africa: An exploration of the issues” (2015) Bellville: Africa Criminal Justice Reform.

Muntingh L “Prisons in the South African constitutional democracy” (2007) Johannesburg: Centre for the Study of Violence and Reconciliation.

Muntingh L, Redpath J, Faull A & Petersen K “Review of the literature on democratic policing” (2017) Report prepared for the Civilian Secretariat for Police Services, Commissioned report for the Civilian Secretariat for Police by Africa Criminal Justice Reform.

Organization for Security and Co-operation in Europe (OSCE) “Guidebook on Democratic Policing” (2008) 2nd ed Vienna: OSCE.

Skogan W & Frydl K (eds.) *Fairness and Effectiveness in Policing: The Evidence Committee to Review Research on Police Policy and Practices* (2004) Washington DC: National Research Council.

UNHCR “Human Rights Standards and Practice for the Police, Professional Training Series” No. 5/Add.3 (2004) UN Doc. No. HR/P/PT/5/Add.3 New York and Geneva: United Nations.

United Nations Office on Drugs and Crime “United Nations Criminal Justice Standards for United Nations Police” (2009) New York: United Nations available at https://www.unodc.org/pdf/criminal_justice/UN_criminal_justice_standards_for_UN_police.pdf (accessed 19 March 2021).

United Nations Office on Drugs and Crime “Handbook on Police Accountability, Oversight and Integrity” (2011) New York: United Nations available at https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf (accessed 19 March 2021).

United Nations Office on Drugs and Crime “Crime and Development in Africa” (2005) available at https://www.unodc.org/pdf/African_report.pdf (accessed 19 March 2021).

Internet source

Méthot JF “How to define public interest?” (2003) Collège dominicain de philosophie et de théologie Ottawa ON Canada, Lecture given at the EPAC Round-Table held at Saint Paul University, 29 January 2003 available at <https://ustpaul.ca/upload-files/EthicsCenter/activities-How to Define Public Interest.pdf> (accessed: 10 March 2019).

Posick C “Empathy on the street: How understanding between police and communities makes us safer” (2015) *The Conversation* available at <http://theconversation.com/empathy-on-the-street-how-understanding-between-police-and-communities-makes-us-safer-40041> (accessed 4 March 2021).

Prasad D “Strengthening democratic policing in the Commonwealth Pacific” (2006) Commonwealth Human Rights Initiative available at http://www.humanrightsinitiative.org/old/publications/police/strengthening_democratic_policing_in_cw_pacific.pdf (accessed 11 March 2019).

Stenning P “Governing policing in a democracy – a primer” (2009) Paper presented at Scottish Institute for Policing Research seminar available at <http://www.sipr.ac.uk/archive/presentation/stenning.pps> (accessed 22 March 2021).

DEMOCRATIC POLICING

Transparency International “What is transparency?” available at <https://www.transparency.org/en/corruptionary/transparency> (accessed 22 March 2022).

U4 “Anti-corruption” Resource Centre Glossary at U4 Anti-Corruption Resource Centre Corruption Glossary available at <https://www.u4.no/terms> (accessed 22 March 2021).

World Bank “Sourcebook for Evaluating Global and Regional Partnership and Programs: Indicative Principles and Standards” (2009) available at http://siteresources.worldbank.org/EXTGLOREGPARPROG/Resources/grpp_sourcebook_chap11.pdf (accessed 10 March 2019).