

# Local government safety functions and the question of unfunded mandates

This third in a series of Urban Safety Briefs considers the question of whether the role of local government in the provision of safety and security services is an *unfunded mandate*.

The SA Cities Urban Safety Reference Group's Briefs Series is designed to distil the state of current knowledge on urban safety-related topics for a policy and planning audience. It is presented quarterly to the City Budget Forum and other key stakeholders.

## BACKGROUND

Local government in South Africa is under significant pressure to deliver services. The recent local government elections served to again highlight that as the level of state authority closest to ordinary people, local governments are expected to implement services across a wide range of areas. Surveys of voters before the election suggested that ordinary people were troubled by issues such as employment, education and crime<sup>1</sup> – yet local authorities only have some or limited influence on achieving outcomes in these areas. Such functions may be considered to be the primary mandate of other levels of government, even if citizens assume that local governments are responsible.

In determining effective responses, local governments are limited both by the mandates that they have but also by the fact that they only have limited financial capacity to deliver on an array of services – even if those are seen as a priority by communities. Such pressures raise a series of policy issues in respect of the fiscal capacity and mandates of local government to deliver in areas where ordinary citizens demand improvements – but where local government feels is constrained.

Sometimes, the governmental attitude seems to be that municipalities should not concern or distract themselves with functions that are not within their mandate. However, the centrality of local government's role in the area of com-

munity safety is now widely advocated globally as an essential requirement for improving the lives of ordinary people (The New Urban Agenda, 2016). Furthermore, South African cities are regularly compared in terms of levels of violence and crime to other cities, particularly in the developing world, making mayors and senior metro policy makers ever more conscious of the requirement to determine an effective response.

The technical term sometimes associated with these pressures on local government – to deliver on wider mandates but without having the concomitant funds to do so – is that of “**unfunded mandates**”. Defining what exactly are and are not unfunded mandates has been the subject of much discussion and debate. The purpose of this brief is to consider the issue of unfunded mandates in relation to the provision of community safety services.

Four recent government policy documents contain significant policy pronouncements in this respect: the White Paper on Safety and Security, the White Paper on Policing and the National Development Plan (Chapter 12), and the Integrated Urban Development Framework (IUDF). While these policy documents do not use or dwell upon the term “unfunded mandates” in their discussion of the role and functions of local government the conclusions they reach are of significant import for this evolving discussion.



## DISCUSSION

### Defining unfunded mandates

There is no exact agreement on a definition of unfunded mandates. The SACN itself reference a narrow definition that states that unfunded mandates occur when "cities perform the functions of other spheres of government and bear significant costs out of their own revenue sources".<sup>ii</sup> The IUDF states more broadly that "unfunded (or underfunded) mandate arises when municipalities carry out functions that do not form part of those allocated to them by the Constitution or legislation".<sup>iii</sup>

Drawing from this, the wider literature suggests that *two conditions* must be present for an unfunded mandate to be present:

- (1) that levels of government below the national level are tasked in terms of legal or policy pronouncements with taking on certain functions sometimes without consultation or agreement; and,
- (2) that lower levels of government do not have the capacity to raise additional funds or do not receive funding transfers from provincial or national government for these purposes.

An unfunded mandate in the respect of community safety would thus exist if local governments were *obliged* to deliver a set of safety services – such as policing or social crime prevention programmes – in addition to what has been legislated to be their functions and where they do not have the resources to do so.

This definitional discussion raises the question of whether the achievement of community safety at the local government level is, in the South African context, an unfunded mandate?

### Current local government community safety functions

While the overall responsibility of achieving safe communities in South Africa is generally

considered to rest with the national government, which is controlled from national level, the position is in fact more complex. In fact, all levels of government have a responsibility for community safety: what often remains unclear however is the different roles, responsibilities, and by implications sources of funding to support these efforts.

The Constitution emphasises the interdependent and interrelated nature of government and stipulates that all organs of state within each sphere must "preserve the peace" and "secure the well-being of the people of the Republic" (Section 41 (1)). In short, acting together, all levels of the state have a role in achieving citizen safety and wellbeing. **Figure 1** provides a broad schematic of the roles of different levels of government as it is conventionally understood in South African policy making circles. There remain however some significant grey areas in the debate.



**Figure 1:** The South African inter-governmental safety hierarchy as it is conventionally understood



All levels of government contribute to safety through the performance of different functions. Local government, in line with relevant legislation and policy documents, is generally accepted as having four broad and overlapping functions:

- (1) The *enforcement of by-laws and the provision of traffic policing*. This can be done through the mandated establishment of metropolitan and municipal police services as stipulated in the Police Act (Section 64). The establishment of such a police service is *not* mandatory.
- (2) The provision of services that are focussed on achieving the *prevention of crime*. This in itself has two dimensions:
  - i. The **first** relates to the work of *visible policing* through municipal and metropolitan police or traffic services, which includes the arrest of suspects and the handing over to the SAPS and the response to emergencies where crimes are underway; a daily occurrence for most local government police or traffic services (see Section 64 H of the Police Act). The 2016 White Paper also argues for a regulatory framework to be developed to allow metropolitan police services to conduct investigations in relation to by-law and traffic infringements.
  - ii. The **second** relates to the *prevention of crime* more generally through the provision of local government services such as lighting, roads and related matters as well as being more generally “crime aware” in the context of local government planning and infrastructure development. It also however includes the opportunity for local governments to invest in social crime prevention projects of their own and to coordinate such local safety and crime prevention services. Significantly, however, there is not clarity across different government departments, despite the various policy pronouncements on the subject, as to what exactly constitutes “social crime prevention interventions”. While the White Paper on Safety and Security makes a start in this regard, it does not by any means resolve the current discussion.
- (3) The *securing of municipal property, systems and personnel for the purposes of crime prevention*. This includes guarding of municipal infrastructure and the protection of personnel and councillors where required. Such a function is arguably part of the day-to-day management of local government affairs, as indeed would be the case for individual households, who have a responsibility to ensure that basic precautions are present to ensure their possessions are secured. Important to note here is that the 2016 White Paper on Policing specifically makes provision for metropolitan police services to conduct investigations on crimes “such as theft and tender irregularities” in respect of municipal business or carried out on municipal property (p. 31).
- (4) Finally, and generally overlooked, is that local governments themselves have important *accountability functions* given their elected nature. For example, local councillors have had a role in attending and representing their various constituencies on Community Police Forums (CPFs). In this respect, the 2016 White Paper on Safety and Security argues that local governments should “establish sustainable forums for co-ordinated, collaborative and ongoing community participation” (p. 44). This suggests that local governments could take the lead in establishing systems of coordination for local stakeholders in respect of crime prevention.



### Do these functions constitute unfunded mandates?

Each of these four functions has been assigned to local government through legislative or policy processes. Although the 2016 White Paper on Safety and Security goes further than previous government policy documents in respect of the role of local government, the four functions that are outlined above have generally been accepted for some time. For example, the 1998 White Paper on Safety and Security included references to the role of local government and in 1998 the Police Act was amended to make provision for municipal policing.

For the purposes of the discussion here, it is worth clarifying that a wider definition of the term unfunded mandates could also be argued to include two other broad considerations. These are briefly:

- The **first** is cases where national or provincial government set minimum standards for delivery resulting in significant and/or unintended costs at local level. For example, in the case of the provision of safety services, setting standards for VIP protection or municipal policing at local level that are unrealistic for less well-resourced municipalities to achieve will have financing consequences. In response, however, it could be argued that some minimum standards are required (for example around firearm training or management) to prevent poor performance and in the case of safety services the possibility of danger to lives and property. The issue of standard setting is directly addressed in the 2016 White Paper on Policing that emphasises the role of the SAPS in setting standards for local government policing.
- The **second** case is circumstances where political or historical choices and/or requirements result in the provision of services that are beyond what is mandated for. For example, in the case of several cities in the country, it could be argued that the provision of

policing services stretches the mandate provided to local government in the Police Act. Given the wide ambit of the term "crime prevention" – which as we have seen above is given as a core 'catch-all' function for local government policing – this is a debate not easily resolved. In such cases, however, it would be difficult to justify these as unfunded mandates given that they are choices made by municipalities themselves, rather than being a clear requirement.

Discussions in these two areas by their nature have a political content. How any local government interprets the extent to which it provides safety services is to some degree an outcome of a series of political engagements and choices. In this reading then, achieving safer communities is not the *primary* responsibility of local government, BUT local governments, by performing a series of functions, the boundaries of which are subject to a degree of interpretation, given in particular the relatively woolly nature of the term "crime prevention", can make a contribution to the overall objective of safe communities as envisaged in the Constitution. This role in fact may be a critical contribution given that no other level of government may provide social crime prevention functions in most areas.

There are thus strong arguments for a role for local government in crime prevention, not least being their constitutional responsibility to contribute to the wellbeing of citizens. The question then becomes what kinds of social crime prevention interventions is local government justified in spending *local* funds on. This is particularly the case should they encounter gaps caused by other spheres of government/sectors departments not adequately fulfilling their mandates within the municipal space. Is the problem that there simply are these gaps and other actors don't see the need to take responsibility for investments on these kinds of social crime prevention programmes, or is it more the problem of lack of joint planning or poor coordination horizontally and vertically across government?



The complexity of the discussion is clear from this question and it must be emphasised that the debate continues to evolve. As stated, the 2016 White Paper on Safety and Security suggests an important role for local government. Its wording also provides an opportunity for local government representatives and associations to lobby for a clarifying of their position within the safety and safety financing architecture.

### **The 2016 White Paper on Safety and Security: Local is lekker?**

The 2016 White Paper on Safety and Security is significant in several respects. Amongst others, it lays out the functions of local government. This includes, to:

- allocate budgets for safety and crime prevention;
- secure funding, presumably externally, for the implementation of safety and crime prevention programmes;
- capacitate and resource directorates for safety and crime and violence prevention; and,
- develop and implement local strategies and plans on safety and security, crime and violence prevention.

The language of the Safety and Security White Paper implies that local governments are compelled to take these steps, although without changes in legislation this is more likely to *remain a choice* rather than an obligation. It could be argued that if crime prevention is to be taken seriously as a policy principle then indeed legislation should follow stated policy.

However, the two 2016 White Papers are somewhat contradictory on the issue of resource allocation. Significantly, the White Paper on Safety and Security in Annex E concludes that: “Local government plays a key role [in] the safety, crime and violence prevention needs of communities. In this regard, national and provincial governments are *legally obligated* (emphasis added) to equip municipalities with the resources and the capacity to plan, implement and monitor their services” (p. 6). In contrast, the White Paper on Policing begins its section on local government by stat-

ing that “[e]ach municipality is responsible for promoting a safe and healthy environment *within* (emphasis added) its financial and administrative capacity and in line with national and provincial priorities” (p. 40). Thus, the interpretation in both White Papers has a different emphasis policy and legislation on the subject, most particularly whether national and provincial government have a role in supporting local government in this sphere (including financially), thus remains somewhat ambiguous.

Within the context of tight fiscal constraints, the former statement from the White Paper on Safety and Security is unlikely to be enough to ensure the transfer of funds for safety programmes and initiatives at local level. While the functions of local government in respect of safety are relatively clear in terms of municipal by-law and traffic enforcement, spending on safety issues, specifically social crime prevention, while strongly encouraged by the White Paper, is not seemingly an obligation and must take into account the means of each municipality. Annex E of the Safety and Security White Paper in addition makes it clear that functions assigned (that is, obligated) to local government (in terms of Section 156 (4) of the Constitution) would require both an assessment of local government capacity, the “existence of sufficient funding and capacity building initiatives” and the promulgation of provincial legislation (p. 5). This has not occurred in the case of crime prevention or community safety discussions.

In addition, neither of the two White Papers addresses a series of key institutional issues that have close linkages with this discussion, but are seldom considered as related. This concerns less the issue of mandates and their funding and more the issue of the providing for effective forms and incentives for institutional alignment and cooperation in the local safety sphere. While inherently political in the South African context, changes in this regard would be in line with best crime prevention and policing practice.



## Strengthening the safety architecture

Particularly in relation to the country's major cities, three aspects have mitigated against an effective alignment between national, provincial and local community safety functions. It is submitted that any future debate on mandates and the evolving national safety and crime prevention architecture of the country needs to address these. While in the cases of small municipalities these issues may be less of a concern, for larger metros (where most of the country's crime occurs<sup>iv</sup>) they are significant obstacles to an alignment of the available safety resources. While these have a strong focus on policing, they in fact also have considerable implications for social crime prevention and its alignment across levels of government.

The three interlinked aspects are as follows:

- (1) *Boundary misalignment*: The provision of policing services and that of local government services do not align. Thus, SAPS boundaries do not match those of major metropolitan areas or local governments. This reality is a significant stumbling block to a more effective alignment of national and local government policing and safety resources, including in respect of accountability. At the most basic level, for example, and this information being a key first step to determining policy responses, no South African city can present a complete picture of crime within its jurisdiction.<sup>v</sup>
- (2) *Weak local government accountability linkages to policing*: Partly as a result of the misalignment of boundaries, elected city governments are not in a position to work with the SAPS in determining priorities for the cities concerned. Police managers are also seldom called to account for performance by local councils – and can effectively refuse to do so. As a result, several local governments have begun to strengthen their own policing systems and social crime prevention programmes partly because they argue they have few options to express local government priorities to the SAPS. Giving local government a "coordination function" as suggested by the 2016 White Paper does not resolve the issue as the SAPS, or for that matter any other government department, is still not legally obliged to adjust their operations to meet the stated crime fighting priorities of city government or to attend coordination meetings arranged by city authorities.
- (3) *Poor coordination between local and national policing and community safety provision*: The literature on police policy repeatedly makes the point that effective coordination between agencies is the key to delivering safety.<sup>vi</sup> The misalignment of boundaries and the weakness of accountability measures at local level in South Africa mitigates against achieving this and fuels a debate around mandates rather than one of effective coordination. Asking local governments to provide coordination of safety services (as envisaged in the 2016 White Paper on Safety and Security) might be useful, but its promise will remain unfulfilled in the absence of a series of wider institutional and police accountability reforms. It should be noted here too that the 2016 White Paper on Policing makes the argument for a single national police agency, effectively suggesting greater control over and/or coordination with municipal police functions (although how this is to be done is not clearly stipulated). Any attempt to incorporate municipal police services into the SAPS will be challenged at the Constitutional Court, and likely successfully. In short, more innovative responses to developing coordination and improving accountability between the SAPS and local government are required.



## CONCLUSION

The role of local government in the provision of safety and security services is unlikely to be a debate that moves off the agenda in the near future. The question has been asked whether the role of local government in the performance of these functions is an “unfunded mandate”. However, this brief suggests that in fact it would be difficult in the current context to motivate that local government safety provision requires external funding from national or provincial level. Nevertheless, the issues involved remain somewhat blurred in the day-to-day policy discourse and the matter is far from resolved.

Local governments have four key safety functions mandated to them. They are not in fact obliged to establish municipal or metropolitan police services, but may have the discretion to do so. In this sense cities may stretch their mandates, also in terms of determining what such police services do, but this would not necessarily provide an argument for requesting external funding. Other functions relate to: the provision of crime prevention, both through being “crime aware” in the conduct of ordinary local government service provision as well as in the development of specific projects or programmes; the securing of municipal property and personnel; and, the provision of accountability resources through elected representatives engaging with the police and other stakeholders on safety issues. It must be emphasised that the issue of defining the role of different levels of government in relation to

the provision of social crime prevention (or different forms or types) remains relevant in the current discussion.

However, the 2016 White Paper on Safety and Security in particular raises the prospect of local governments taking a more proactive role in community safety and coordination functions. It also provides a much needed clarification on an issue that is now widely accepted: that local government has a key “accountability function” for policing and safety at local level. Nevertheless, such functions are being provided for in a context where the system is characterised by a number of misalignments, most notably in relation to overlapping geographical jurisdictions, weak accountability linkages and poor coordination between local and national safety provision. Local government should arguably be cautious in accepting too wide a mandate without a discussion on improving the safety architecture in terms of boundary alignment, stronger forms of accountability and better systems of coordination.

The Brief concludes that the debate on “unfunded mandates”, at least in the area of safety, might be better construed as a discussion around the lack of institutional coherence in the area of safety provision at local level. What may be termed the “national safety architecture” and its connection to, and inclusion of, local government safety functions requires further policy refinement.

## RECOMMENDATIONS

### Local government community safety policy makers should:

1. Seek to define more clearly the role of local government – in relation to national or provincial government – in the area of social crime prevention. This should include a clearer understanding of what *types* or *forms* of social crime prevention that must be emphasised by the different levels of government.
2. Engage with national and provincial policy makers on the issue of boundary alignment as a key prerequisite for local governments to effectively perform their designated functions in coordination with other levels of government.
3. Emphasise to national and provincial government that if local government is to take on a meaningful coordination role for community safety, it must rely on an acceptance that other entities,



most notably the SAPS, must, within the framework of current laws, align with the designated community safety and crime prevention priorities as set out by elected local representatives.

4. Focus on costing the implementation and cost/benefits of current or future social crime prevention programmes,

including by analysing current levels of crime in specific areas and seeking to target those determined to be most susceptible to local government intervention<sup>vii</sup>.

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### ENDNOTES

<sup>i</sup> Survey data consistently shows that safety is one of the top priorities for South African citizens. See, for example, Afrobarometer, 'South Africans disapprove of government's performance on unemployment, housing, crime', Dispatch no. 64, 24 November 2015.

<sup>ii</sup> The Financial and Fiscal Commission, Appendix 2: The Impact of Unfunded Mandates in South African Intergovernmental Relations. Submission for the Division of Revenue 2012/2013.

<sup>iii</sup> *The Integrated Urban Development Framework*, Policy Lever 9: Sustainable Finances, p.108. Pretoria: Republic of South Africa, 2016.

<sup>iv</sup> *State of Urban Safety in South African Cities Report 2016*. Johannesburg: South African Cities Network, 2016.

<sup>v</sup> For the process required to calculate city rates of crime in the current system see Anine Kriegler and Mark Shaw, *A Citizens Guide to Crime Trends in South Africa*, Johannesburg: Jonathan Ball, 2016.

<sup>vi</sup> This for example was the conclusion of a series of UN expert consultations on improving urban security conducted during the course of 2016 with research in ten cities. See United Nations Office on Drugs and Crime.

<sup>vii</sup> See discussion in Urban Safety Policy Brief No. 1: More bang for the buck? Effective budgetary investments for crime prevention. Johannesburg: Urban Safety Reference Group (SACN/GIZ), March 2016.

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