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REFORMING SOUTH AFRICA'S CRIMINAL JUSTICE SYSTEM

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INTRODUCTION

South Africa's system of criminal justice is in a crisis. If its ability to prevent, process and deter crime is any measure of its effectiveness, then reforming the system is now not only a necessity but a national priority. Unfortunately, the system is not easily fixed; it is not characterised by a single problem that can be resolved speedily, but is characterised by blockages, many of which cause delays in other parts of the criminal justice pipeline.

The system, stretching across the departments of Safety and Security, Justice and Correctional Services, has never been a unified one. The links between the various departments are weak and the involvement of other departments such as Welfare, National Education and Health - that have to play key roles in the prevention of crime - is minimal.

Broadly, if it was to function effectively, the system should consist of both proactive and reactive components. Proactive crime prevention strategies are central to the longer term reduction of crime in South Africa. But they themselves are limited without effective institutions to process (and rehabilitate) offenders once crimes have been committed. While the development of proactive solutions to crime should be a priority, the focus - at least in the short to medium term - should rest on transforming the reactive components of the criminal justice system. Within this context, however, there is significant scope for the development of proactive strategies - rehabilitation of offenders being the most obvious.

Inevitably, reform efforts after 1994 concentrated almost exclusively on the front end of the criminal justice system - essentially the visible component of policing. Community policing has been the watch word of police efforts to sell themselves as more acceptable to the majority of the South African public. In truth, that focus has been as important a tool for transforming citizen's views of the police as it has been to the change in ethos among police officers themselves.

The transformation of the most publicly visible component of the criminal justice system is still far from complete. But equally serious problems characterise the system further along - these are primarily in the areas of the detection of crime, the prosecution of offenders and in the system of incarceration. These problems are briefly discussed below, followed by a final section on the reaction of government to each of them.

THE DETECTION OF CRIME

What has virtually been ignored by the policy makers in the new order, has been the issue of detecting crime. The consequences have been severe. In 1995 only a quarter of all robberies were resolved, one fifth of all house breakings, one tenth of all vehicle thefts and about fifty per cent of all murders.

South Africa's detectives have always been a threatened breed. Under apartheid the quick road to promotion for bright and ambitious officers was through the security branch, in the new order the fast track is uniform or visible policing. This has been exacerbated in the past year by the large numbers of experienced detectives leaving the services for the more

handsome pickings of the private sector and through the difficulty in recruiting more detectives.

Currently there are few incentives for detective work. Uniform officers work four days on and four days off, while good detectives often work seven days a week with no overtime, under poor and dangerous conditions with little support. Most detectives, often with no training (only about 26 per cent have been on a detective course), carry upwards of fifty dockets. There is no mentorship or assistance programme to speak of, and the vast majority of new detectives are thrown in at the deep end. There is also a high degree of inexperience - only thirteen per cent of all detectives (and these mainly in specialised units) have more than six years 'on the job' experience.

The position has been further aggravated over time by structural changes in the police services. Given that station level detectives were seen as ineffective, specialised units were created. The net result has been the removal of experienced officers from stations and the loss of morale among ordinary street level detectives. In a recent development, SAPS has mooted a detective academy to commence with the training of detectives and the transfer of skills from specialised units to station level officers.

THE PROSECUTION OF OFFENDERS

The Department of Justice is also not blameless. Most public prosecutors have little experience and magistrates' courts are often badly managed. Constant postponements frustrate witnesses who often fail to appear when cases are finally heard.

Most critical though is the interface between detectives and public prosecutors. Greater co-operation and co-ordination between justice and police officials at this point in the system would ensure a higher rate of prosecutions. At the moment, prosecutors and investigating officers often only meet each other for the first time when the detective is in the witness box.

While both departments (Justice and Safety and Security) protest that the systems are in place to ensure effective functioning, what appears to be a common problem is a lack of skilled (and motivated) middle management. Old order civil servants are disillusioned and new or recently promoted officials have little experience and receive no support.

THE SYSTEM OF INCARCERATION

South Africa's prisons are also in dire need of reform. Ironically, the prisons have been fuller in the past - in the mid-1980s more than four in every 1 000 citizens were in jail - but apparently better managed. Staff shortages, prisoner and warder unrest and increasing corruption - the majority of escapes are apparently a result of bribing prison officials and the Department is known by its employees as the Department of Corrupt Services - are bringing the crisis to a head.

Far from being hotels, as is the public's perception, South African prison conditions are near Victorian. The announcement that Correctional Services would begin issuing condoms - hoping at least to protect unwilling prisoners forced to have sexual intercourse from Aids - has brought the issue into sharp relief.

Most prisons are dank and dark - maintenance budgets are limited - and in some jails there are areas that are virtually controlled by the prisoners themselves and not by wardens.

To be fair, the problem is not all of Correctional Services' making - about one quarter of all South Africa's 130 000 inmates are still awaiting trial. In effect, Correctional Services must cater for those whose passage through the criminal justice system is blocked at the point where crime is investigated and processed through the courts. Given that those prisoners awaiting trial are not yet sentenced, they are merely held by Correctional Services pending the outcome of their court cases. The effect is that they are not considered as full fledged convicts and not subject to (albeit) limited privileges, such as prison clothes and recreational services.

The clearest indication that the system is failing, lies simply in the fact that more than half of those who have been imprisoned will again commit crime on their release. Rehabilitation in South Africa's prisons is a farce, and the likelihood of improvements in future are slim, given that any new budgetary allocations will be for yet more prisons and staff to guard them. Public opinion is also geared more towards putting an end to crime than the rehabilitation of prisoners (although the two are closely linked) and convicts are widely viewed as deserving of the conditions under which they live. Business Against Crime, for example, while supplying resources to the front end of the criminal justice pipeline where criminals are caught, have displayed little interest in its back waters that often form an excellent training ground for a variety of crimes - SAPS officers refer to prisons as 'the universities'.

At least part of the problem lies in the rigidity of the South African penal system. Alternative forms of sentencing are virtually unavailable and where they are, magistrates seem unwilling to use them, under influence of public perceptions that the system is criminal friendly. In Europe and North America, parole and correctional supervision are increasingly seen as modern alternatives to the isolation of people in jails. In some US states up to eighty per cent of all convicted prisoners are on probation or parole. In South Africa the comparative figure is twenty per cent. And parole in South African prisons is determined by the Department of Correctional Services itself, an open invitation for bribery and an easy (but inappropriate) mechanism to release pressure on the prison system.

In effect, the Department virtually has the power to alter the sentences that were handed down by an independent judiciary. What is urgently needed is an investigation into community forms of sentencing for some categories of offenders. This would mean the appointment of a greater number of supervisors, as opposed to prison wardens. There are currently only 1 100 supervisors for a total of 33 340 convicted offenders, including those who have been granted parole, serving their sentences outside of the prisons. It would further imply the enlisting of business and government support to ensure alternative forms of sentencing to prison.

Corruption throughout the criminal justice system is said to be pervasive. Although few figures are available, the current prosecution rate can only be the tip of the iceberg. Corruption, as a result of poor control, management and training within the system itself, is a symptom rather than a cause. And it should not be viewed as an issue outside of and unrelated to the poor functioning and management of the criminal justice system. But, its consequences for public perceptions of the institutions of criminal justice are severe.

There is a dilemma here. Any large crackdown on corruption is bound to undermine the already flagging public confidence in the criminal justice system. But denial of the extent of the problem will continue to undermine public confidence in the institutions of criminal justice. This will be particularly so, if over the longer term, it becomes the common knowledge and experience of ordinary citizens that the system's representatives - in the form of the police, court and correctional officials - are open to corruption. This dilemma is one of the most significant challenges awaiting policy makers in the next five years. The only alternative is unattractive in the short term - some high profile prosecutions.

GOVERNMENT INITIATIVES

The growing weakness of the criminal justice system has not escaped government. The recently released National Crime Prevention Strategy (NCPS) has as its central task the bringing together of departments involved in crime control and prevention and the co-ordination of their activities. This suggests a more unified approach to the problems of the criminal justice system.

But the greatest strength of the crime prevention strategy - its inclusive and comprehensive nature - also has the potential to become its greatest weakness. The very complexity and wide ranging nature of the strategy suggests that co-ordination and leadership will be critical success factors.

While the strategy provides a vision for a society in the process of confronting the problem of criminality eating at its core, what still has to be demonstrated is an ability to manage the process of reform of the criminal justice system, rightly pointed to by the strategy as central to

any crime prevention effort.

The strategy - an 88 page document in small, single-space type - aims to draw together key role players in government in an attempt to provide the basis for the restructuring of the criminal justice system, and in the longer term, more effective crime prevention programmes.

The development of the strategy involved six core government departments: Correctional Services, Defence, National Intelligence, Justice, Safety and Security and Welfare. This is in itself an important development, representing a holistic (as opposed to sectoral) approach to crime prevention which has been sorely lacking. What is also clear from the document is the reorientation of the intelligence community, which now will assume an increased crime combating role for specific types of crime.

At a different level, the strategy indicates another significant shift in the discourse on safety and security in South Africa. The focus changed from 'community policing' (which is barely mentioned in the document), to 'crime prevention' and the building of 'partnerships', both between government agencies and with outside organisations in business and civil society in an effort to stem the tide of crime.

The document provides a detailed analysis of the reason for the growth of crime in the country - seen (correctly) as a complex intermeshing of a diversity of factors - and outlines steps under way in various government departments to counter crime.

Outside of the repair of the criminal justice process, three key issues - environmental design, education and transnational crime - are identified as being critical areas for intervention to reduce crime. In addition, the strategy lays down seventeen nationally driven programmes to be implemented. These are diverse, ranging from the improvement of information systems (poor information transfer is at the heart of the system's problems), victim empowerment and support, and mechanisms to counter organised crime.

What seems notably absent from the list of new programmes are specific preventive strategies related to drug use, the proliferation of small arms and the gang problem in certain parts of the country. While all are covered either directly or indirectly within various sections of the document, it would be well worth consolidating current initiatives and developing specific strategies to form two or three additional (and high profile) prevention programmes. These areas are of increasing concern, given that they hold the potential to spawn wider forms of criminality.

The issue of increasing drug usage, for instance, is a critical one. Government response to the drug problem has historically been fragmented and poorly funded with no co-ordination between reactive and proactive programmes. What needs to be explored, is the establishment of a law enforcement body separate from the current police and intelligence structures that would provide leadership in the area of both prevention and enforcement.

On a different level, it is a pity that the strategy does not contain a more detailed section on initiatives by local government. International experience suggests that the key to crime prevention lies at the city level. The strategy could have advanced the process and debate at local level substantially had the issue of crime prevention, for example at a metropolitan level, been emphasised. A useful mechanism in other countries has been the establishment of city forums to compare experiences and determine joint guidelines for crime prevention.

Yet, South African cities have not been idle. Many are beginning to work on crime prevention plans and the establishment of further local authority police agencies. But central government has dragged its heels on these developments. No official framework exists for local government policing or crime prevention strategies, and, if current developments are anything to go by, local governments will run ahead of the national authorities in this sphere.

What the NCPS does correctly suggest, however, is that local level initiatives should be able to take account of local conditions and circumstances in tailoring individual programmes. What are not clear though, are the consequences if local authorities should stray outside the

broad boundaries delineated by the strategy. The document could have suggested guidelines to contain, or where necessary, focus any such initiatives.

Equally, while the NCPS calls for more research into expenditure on private security, no special initiative is identified to allow an in-depth investigation of the industry and its role (if any) in crime prevention.

The key to the success of the strategy is co-ordination. Without this, it simply becomes a reflection of a wide variety of programmes which may eventually, in any event, have occurred in one form or the other. A related problem with such a large and complex initiative is that it is virtually immune to measurement at a national level. There is a danger that success will simply be equated with a flurry of activity rather than any real decreases in crime.

Given the number of players involved, the complexity of the strategy should not be underestimated. Apart from, and in conjunction with the seventeen programmes initiated through the strategy, there will be various initiatives in line function departments and the seeking of partnerships with outsiders. While the document makes allowance for monitoring at departmental and programme level, the extent to which the whole enterprise will be subject to review is not clear.

It would be inappropriate, in the light of the difficulties in interpreting crime statistics, to suggest that the crime rates should be cut by a given percentage by the year 2000. Realistic programme deliverables need to be outlined more clearly. It is thus of concern that the strategy - despite the fact that it is a framework for implementation - contains virtually no time frames for the completion of the various programmes, although in some cases it appears that these will still be determined.

Furthermore, management is by committee. An interministerial committee will supplement the Cabinet committee on security and intelligence, and will consist of the ministers of Safety and Security, Correctional Services, Defence, Justice, Welfare and National Intelligence. The committee will be chaired by the lead department of Safety and Security, and will only meet quarterly, or can be convened on an ad hoc basis should it be required. Below the ministerial committee will be a committee of directors general, which will also be chaired by the Department of Safety and Security.

A National Crime Prevention Strategy co-ordinating mechanism, hosted by the Safety and Security Secretariat, and consisting of senior members of the departments concerned, will serve as a full-time secretariat. It is not clear whether any individual will be given the responsibility for the secretariat. Unless this occurs, decision-making at a bureaucratic level will fall through the cracks.

With no set deadlines, the committees, which have apparently already met, have so far made little progress. A publicly released set of objectives and deadlines would have provided some accessible points of measurement to judge any progress. Without these, the danger is that the plan will be perceived as simply another academic strategy creating expectations which the government will not be able to meet.

Indeed, this has already occurred. High profile media coverage of specific instances of criminal activity has turned the spotlight once again on the issue of crime. Government responses that these are just individual instances (or a media plot), fundamentally misunderstand the role of the press. Unless government law enforcement agencies are seen to work on the ground - in the short term - where most citizens experience crime, no amount of strategies formulated in Pretoria will bring relief. In fact, quite the opposite: if every fresh outburst of crime is met only with words and no visible implementation, public cynicism will grow.

The success of the strategy is critical. Failure will bring growing disillusionment with conceptions of proactive crime prevention which is central to the long term solution of disorder in South African society. And instead, there will be a continued growth in reactive, self-help and increasingly violent solutions to crime.

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