

CHAPTER 6

CONCLUSION

Opinion polls reveal that after unemployment, crime and lawlessness is of the greatest concern to all South Africans. High levels of crime lead to death, loss and destruction, feelings of despair and insecurity, emigration and the loss of badly needed skills, vigilantism and a loss of trust in the institutions of government and the constitution.

Throughout South Africa communities are increasingly engaging in vigilante activity. This is largely as a result of popular perceptions that the country's post-1994 constitutional order and criminal justice system are at best ineffectual when it comes to fighting crime or, at worst, afford greater protection to criminals than law-abiding citizens. In its annual report for 2000 the Independent Complaints Directorate (a statutory oversight body of the South African Police Service) described a "dramatic" hardening of public attitudes towards the rights of criminals. "There seems to be a growing, popular perception that the constitutional rights of criminals are being protected above those of their victims," the directorate reported.

Most vigilante actions are localised and disorganised affairs. There are important exceptions to this, however. Mapogo-a-Mathamaga, for example, which openly advocates corporal punishment for suspected criminals, claims to have 70,000 fee-paying urban and rural members.⁹⁴ Notwithstanding the fact that some of Mapogo's leaders are facing charges of murder, assault and kidnapping, the organisation enjoys widespread support among middle class suburbanites in cities such as Pretoria and Johannesburg. A Markinor poll amongst commercial farmers in early 2001 found that almost two-thirds of respondents would "take the law into their own hands" if farm violence were not stopped.

More recently, a spate of sexual attacks on young girls, including the alleged gang-rape of a nine-month old baby girl and the rape of a five-month old, has drawn harsh reaction from the public and politicians alike. A man suspected of raping a five-year old girl was stoned to death in Soweto after residents set his house alight.

Clearly something needs to be done. Colombia and the Russian Federation present a stark warning of what South Africa could become if vigilante groups, criminals and the corrupting power of organised crime are left unchallenged.

The South African transition brought about a restructuring of the criminal justice system, the abolition of a number of laws, policies and operating procedures, and the rapid formulation of a plethora of new ones. A range of institutional and other constraints mitigated against the success envisaged for these interventions and programmes. Chief amongst these was the lack of assessment of the actual requirements for implementation – in short, the gap between the development of new (sometimes very ambitious) policy, and the managerial capacity, skill and resource requirements available for its implementation. This, as well as the increase in the number of cases processed in the South African criminal justice system, has resulted in the operational weakening of a number of criminal justice functions.⁹⁵

Since mid-1999, after the appointment of new ministers responsible for safety and security and justice, there has been a notable shift away from long-term policy making and crime prevention towards improved, tough and visible law enforcement. This is illustrated by the high-density, zero tolerance-type police and army operations taking place in high crime areas since April 2000 in terms of the police's Operation Crackdown. Governmental policymakers have also responded to increasing levels of lawlessness by promulgating a range of tougher laws.

A tough law-enforcement approach can be helpful, but not if the criminal justice system lacks the capacity to deal with large numbers of arrests. As a result of Operation Crackdown some 462,000 crime suspects were arrested within a one-year period – an amazing figure, representing in excess of 1% of the country's population.⁹⁶ However, most of the arrested persons were never prosecuted, as the courts, unable to cope with such a massive influx of cases, withdrew cases in record numbers. While laws can help, they take time to be adopted by the operational personnel of the criminal justice system and often end up infringing the rights and civil liberties of all.

One of the major flaws in government's approach lies in its inability to expeditiously rectify glaring weaknesses in the criminal justice system. Yet, how well the criminal justice system functions is important for several reasons. Firstly, a relatively small proportion of offenders is believed to commit the majority of serious crimes, and especially organised crime. If these perpetrators are apprehended and convicted timeously and effectively, certain crimes

can be reduced. Secondly, a functional system helps to deter potential offenders from committing a crime. Thirdly, an effective and efficient justice system inspires confidence among victims and witnesses and encourages them to participate in the criminal justice process, thereby leading to the arrest and conviction of offenders. Finally, criminal justice successes – especially if well publicised – are essential for boosting public confidence in the government’s ability to reduce crime and make people feel safer.

Improving the day-to-day functioning of the criminal justice system is one of the most important but also one of the most difficult goals for policymakers to achieve. It is relatively easy to pass a law, produce a new policy or instruct police officers to be “law enforcers” instead of focusing on crime prevention. It is considerably more difficult to change people’s attitudes, and managerial and operating systems within – and between – government departments, and to instil a spirit of co-operation and enthusiasm among worn out and under-resourced criminal justice employees.

It is this latter difficult goal which the Port Elizabeth IJS Court Centre has achieved in three short years. Using the entrepreneurial talents and skills of the private sector, some external business funding, and the latent enthusiasm and talent of criminal justice employees, the Centre has radically altered the way the criminal justice system works at an operational level, at one of the country’s busiest courts.