

CHAPTER 4

THE TRADITIONAL LEADERS' ROLE IN CRIME AND JUSTICE RELATED ISSUES

Crime prevention is a consequence of many institutional forces. Most of them occur naturally, without government funding or intervention. While scholars and policy makers may disagree over the exact causes of crime, there is widespread agreement about a basic conclusion: strong parental attachments to consistently disciplined children in watchful and supportive communities are the best vaccine against street crime and violence.

*Schools, labour markets and marriage may prevent crime....
(Lawrence W. Sherman)⁴⁷*

Prominent among complaints heard when interviewing traditional leaders is one that crime is rapidly on the increase and that the criminal justice system is unable to deal with it. As the Institute for Security Studies' 2003 national victims of crime survey⁴⁸ shows, there is a poor correlation between actual crime trends and fear of crime. The same could be said about the correlation between incidents of crime and perceptions about levels of crime and lawlessness within communities. Duxita Mistry's apt articulation of the South African position illustrates the point:

despite the decline in crime rates indicated by the victim surveys and the official crime statistics, South Africans feel less safe in 2003 than they did in 1998.⁴⁹

This discrepancy is more evident in the rural areas for a number of reasons. First, both police statistics and victims of crime surveys indicate that crime levels have, in the main, decreased since 1994. Second, crime levels in rural areas are lower than those in urban areas. In the light of these two facts, it becomes difficult to immediately understand the core of traditional leaders' complaints if they are not seen in the context of the relative nature of perceptions of crime and lawlessness. This is evident from the fact that many traditional leaders constantly refer to the past when there was control in the community, when people respected the traditional authority, when parents had control over their children, and so on. They look back and recall how

secure they felt in the past and how crime was a thing that took place in the urban areas. In that glorious past, if someone dared commit a crime the full might of the law would be visited upon him or her.

The case made by traditional leaders is that crime and lawlessness are rising in their areas. They argue that this situation is exacerbated by a feeling of impotence brought on by the new culture of human rights. Invariably in every interview a traditional leader raised the issue of crime and lack of 'muscle' to deal with crime prevention and crime control. This complaint by traditional leaders seems well founded if one considers that traditional leadership has not been actively and explicitly incorporated in crime prevention strategies and mechanisms deployed in the post-1994 democratic dispensation.⁵⁰ This is despite the fact that all traditional leaders interviewed expressed their willingness to be involved in the criminal justice system and crime prevention in an intensive way. As Kgosi Kekana put it:

I am prepared to do anything that will improve this community. Crime is the main problem here. It affects development.

The exclusion of traditional leaders from crime prevention must be seen within the context of the ambivalent and uncertain position of traditional leadership post-1994. While there has been a consistent endorsement of the institution of traditional leadership on the part of government, there has not been much clarity regarding the role that the institution will ultimately play in the democratic dispensation. Their political space has remained a grey area. This was clearly demonstrated in an interview with the matona of Mokopane. While all the matona interviewed expressed frustration about the approach of government to crime prevention in very broad terms, they also pointed out the following issues that concern them and affect the running of their communities.

Issues of concern for traditional leaders

Lack of control

Traditional leaders complain that they no longer have control over their communities. Ordinarily a traditional leader is responsible for the overall governance of his/her area (at least, many of them see that as their role). This ranges from allocating business/grazing/development/recreational areas to running initiation schools, officiating over marriages and resolving disputes. In order to perform these functions traditional leaders need support of their

traditional communities. Traditional leaders also have the responsibility of maintaining social order. If someone is seen by (or reported to) the traditional leader as deviating from or affronting the generally accepted social norms, the traditional leader has the responsibility to enforce such norms. In an organised traditional community no one would be able to affront the social norms of the community and yet proceed to be part of it. The essence of this fact is captured by the Se-Pedi saying, often fondly quoted by traditional leaders during the interviews, that 'go nyatsa kgosi ke go tloga' (roughly translated: 'if you undermine the authority of the traditional leader you have to leave').

According to traditional leaders, resettlement of the offender was part of the sanctions at the disposal of a traditional leader. A traditional leader vested with this authority would be able to effectively control behaviour within his/her community. Immediately pertinent to crime prevention is the fact that the traditional leader is well placed to deal with misdemeanours and/or lawlessness occurring within the traditional community. For instance, if someone in the community sells liquor and makes noise that disturbs his/her neighbours, such aggrieved neighbours could seek the intervention of the traditional leader. In that case the traditional leader would be able to set rules that would accommodate both the person selling liquor and the aggrieved neighbours.

These days, traditional leaders complain, people do not respect their authority. Using the example of someone selling liquor, the person accused of causing problems may simply assert his or her right to earn a living and to do as s/he pleases on her/his property. Here an example given by Kgosi Moloto is illustrative of the point. He said:

"I think you have chosen a good research topic. For instance the other day we had a problem in this village. Members of the community held a meeting where it was agreed that shebeens should be closed early so that school children can study and rest. One shebeen owner decided to disregard the agreement. The police do not enforce the decision of the community. The owner and her children insist that they have a right to earn a living. Now I do not know what to do because the community expects me to act".

Resettlement is not an option for the traditional leader. As one traditional leader of Mokopane put it:

These days if you tell someone to go (i.e. leave the community), you have to pay him/her and build a house for him/her where he/she goes to stay.

Traditional leaders also complain that new members (i.e. people who join the traditional community) are not reported to the traditional leader. The dominant example relates to 'go kaola' (where a man from outside the traditional community finds a woman and cohabits with her). In the past, the interviewed traditional leaders stated, the presence of such a man would be reported to the traditional leader. At any given time, the traditional leader would know who was residing within his/her area of jurisdiction. The need for this practice is justified on the basis that it helps deal with crime, as it is difficult for a person running away from the law to be accommodated by the traditional community while at risk of committing further crimes.

Role of 'politics' in the affairs of traditional leadership

"Politics make our work very difficult", quipped one traditional leader of Mokopane. Traditional leaders have a notably uncomfortable relationship with political leaders within traditional communities. The nature of this uncomfortable relationship was dramatically captured during the Durban conference by a councillor from Mpumalanga province on 6 October 2004. He stated:

'I am a councillor and I know that traditional leaders are allergic to councillors. The other day we had a meeting with traditional leaders and when I was introduced as a councillor the traditional leader said "sa fihla stress (here arrives the cause of my stress)".

This is particularly true in respect of local councillors. The nature of this problem is both contemporary and historical in origin. It is contemporary in as far as it is based on the democratic nature of the post-1994 dispensation. Some political leaders assert that they have been democratically elected into office and therefore cannot be controlled by traditional leaders. Some local councillors feel comfortable merely informing traditional leaders of projects that they embark on and reporting to the community through traditional leaders' offices, even though the traditional leaders would not necessarily be involved in the conceptual and initiation stages of such projects.

The historical nature of this problem relates to the role that many traditional leaders in the homelands played during the apartheid era. Traditional leaders acted as instruments of the apartheid government to implement and enforce

its policies. Some even served as ministers in the homeland Parliaments. Because they were aligned with the apartheid government, their relationship with members of the liberation movement was a hostile one. In situations where traditional leaders used their power and control of traditional communities to serve as the ears and eyes of security forces, the situation was even worse. Given this history, the level of respect and trust between traditional leaders and political leaders in some areas is still quite low today.

Traditional leaders complain that some local councillors and members of civic organisations do not recognise the institution of traditional leadership. This is evident in the fact that some local councillors proceed with development projects without the blessing of the traditional leader.⁵¹ In Ramokgopa, for instance, the traditional council complained bitterly about the fact that the traditional office has been deprived of access to water and has had to resort to fetching water at times dictated by the local councillor. Similar low-key tension also manifests itself in instances where there is a dispute between a member of the community and a traditional leader.

Again in Ramokgopa, the traditional council was complaining that a member of the community had allocated himself a site at a place reserved for grazing purposes. When the traditional council tried to remove him from the site, the local councillor intervened, threatening legal action on behalf of the resident. This led to the traditional council suspecting that the person had settled at the site with the approval of that local councillor.⁵² In Mokopane a traditional leader complained bitterly about members of the civic organisation who constantly challenged his decisions and refused to attend when he called a meeting.

Related to this problematic relationship between traditional leaders and political leaders is the fact that some traditional leaders are often drawn into party politics. If a traditional leader is seen as aligned to a particular political party, the tendency is that those within his jurisdiction who belong to other parties undermine his authority. In places where the traditional leader is seen to be (or just suspected to be) aligning himself with a party other than the one to which the local councillor belongs, the result is the marginalisation of his area and himself in government projects.

Protection against criminals

All traditional leaders interviewed raised the concern that they feel vulnerable to criminals. Interestingly, the charge is that, unlike in the past when

traditional leaders and law enforcement agencies would act in unison against criminals, today law enforcement agencies cannot be trusted. This is interesting because it points to the historical tension that exists between some traditional leaders and the current political leaders,⁵³ as pointed out above. A traditional leader of Mokopane puts it dramatically as follows:

How can you trust them (police)? You show them a criminal. They arrest him and say: "if it was not for the assistance of so and so we would not have arrested you".⁵⁴

While the above incident may or may not have happened,⁵⁵ it would obviously have been a serious case of breach of confidentiality. What is worrying about it is that it is reflective of the lack of trust that certain traditional leaders have in police officers (and criminal justice at large), which influences the extent to which they are willing to cooperate with the criminal justice system. There is a fear among some traditional leaders that, should they be seen as the ones behind police activities within communities, they may become targets of suspected criminals. This also happens when traditional leaders concern themselves with progress made in cases affecting people staying in their areas. A story related by a traditional leader illustrates the nature of this fear:

A woman is raped. She comes to my house. We go to the police. The police arrest the person who raped her but later he comes out. The woman again comes to me to report and I say, " I do not know what happened, these things happen, let us ask the police". When I make follow-ups the criminal comes and say "timer (old man), what is your problem?".⁵⁶

In essence traditional leaders worry that while the very nature of their traditional functions may put them in danger, they are not afforded protection against criminals. They do not ask for protection in the form of bodyguards – though a number said it would be a welcome but surely an unrealistic demand – but ask for recognition of their status. It is better explained in the words of a traditional leader:

When a police officer is killed it must show that a man of the law has been killed. Because police keep order, when you attack them you do not only attack the individual but also the law. Traditional leaders should be treated the same way because they are not attacked for

performing their personal duties. If criminals know that we are protected they will not threaten us.⁵⁷

Cooperation among traditional leaders

Traditional communities are geographically situated in close proximity to one another. This is especially true for matona who are situated in one area and fall under one senior traditional leader (kgosi). For instance, Moletji is divided into 96 villages, each headed by a traditional leader (ntona), while Mokopane has 14 traditional leaders, each heading a section of the traditional community. By virtue of their close proximity to one another, with virtually no clear-cut boundaries, traditional leaders have to cooperate with one another so as to maintain social order.

Such cooperation, however, is not always forthcoming. Many traditional leaders interviewed think there is not enough cooperation among traditional leaders. Even more disturbing to traditional leaders is the fact that in some instances even the relationship between the traditional authority and some traditional leaders is not a good one. Ordinarily, a traditional leader in the position of ntona is under the authority of the senior traditional leader who is normally in the position of a kgosi.

This hierarchy gives a person not satisfied with the decision of the ntona an avenue to take the case to the traditional court of the kgosi. Some matona think it would help if the kgosi's court were not seen as undermining the authority of the ntona. In other words, except in serious matters, the kgosi's court should not contradict the ruling of the ntona. Again, a pertinent example from a traditional leader:

... if I say a person must stop playing his/her music at nine it is fine if kgosi says no let him/her stop playing at twelve. But it is not right if kgosi says no, not at nine but at quarter past nine. When kgosi says this he undermines my authority. What is the difference between nine and quarter past nine?⁵⁸

In order to deal with the relationships among traditional leaders, especially between kgosi and matona, some traditional leaders felt the need for clear powers that should be given to them by kgosi. They also wanted to have uniformity within the traditional community under a kgosi regarding issues such as playing music during weekends when there is a funeral in progress, and closing hours for shebeens. The issue here is that if one traditional leader

makes rules different to those of another leader in the same or adjacent area, people affected by those rules find grounds to defy them on the basis that they are unreasonable, given that other traditional leaders do not prescribe such rules.

Police views on traditional leaders' role in crime prevention

The picture of traditional leaders' impotence, as painted by themselves, stands in stark contrast, however, to the views expressed by members of the South African Police Services (SAPS) regarding the role of traditional leaders in crime prevention. Members of the SAPS see traditional leaders as indispensable role players in crime prevention. They attribute this to the influence that traditional leaders have in traditional communities. The head of the crime prevention unit of the SAPS at Seshego – the station responsible for part of Moletji (comprising 52 villages) – categorically stated that, "without traditional leaders it would be impossible to deal with crime in the rural areas". He then went on to make the following comparison:

At this station we have problems with Seshego because it is a township. There is no chief in Seshego. A lot of crime happens there and there is no control.⁵⁹

Discussions with the police officers of Seshego not only showed the high regard that these officers have for traditional leaders, but also the cordial relationship that they have with the traditional leaders of Moletji, especially with the kgosi (senior traditional leader). If the traditional leader experiences a problem in the area, he can contact the station so that the station and the traditional authority can deal with the problem jointly. When there are important events taking place in Moletji, the kgosi approaches the station for joint planning of the security measures to be taken for the event.⁶⁰

Moreover, the crime prevention unit of Seshego police station visits the traditional authority office once a week (every Friday) to attend to a satellite police station situated at the traditional authority office. During these visits, which are dubbed 'taking services to the people' by the police officers, all services that are normally performed in a community service centre are rendered at the traditional authority. These include the opening of case dockets, certifying of documents and generally attending to queries from community members. Over and above these functions the community policing forum (CPF) coordinator (a member of the SAPS) is responsible for leading patrols that are conducted with police reservists in the community.

According to members of the SAPS interviewed, it is clear that traditional leaders are playing a vital role in crime prevention, even at present. According to the head of crime prevention at Seshego police station, there are areas within the jurisdiction of that police station that they (the police) never have to go to because

no crime takes place there. In some of these areas children are not used to seeing police. Some run away when police come.⁶¹

While the image of children running away when they see police is not an ideal reflection of police-community relations, it is in this instance useful in that it corroborates the thesis that rural areas are mainly self-policed under the guidance of traditional leaders.

Members of the SAPS think traditional leaders should be further empowered so that they can be more effective in their crime prevention role, and in crime control. The suggestions made by these members of the SAPS are outlined below.

Prosecutorial powers

Police officers interviewed suggested that traditional leaders should be formally granted powers to prosecute certain offences that take place within their traditional communities. While it could be argued that traditional courts have these powers in terms of the law, the police officers point out that many traditional leaders are either unaware of these powers, or unwilling to exercise them.

Moreover, there are no clear guidelines showing the traditional courts which cases to prosecute and how to go about it, which results in the situation that the only sanction available to a traditional leader when his authority to prosecute someone is challenged, is to threaten that the matter will be referred to the state court. The envisaged benefit of this suggestion is that traditional leaders will free police officers to focus on more serious cases. Cases that could potentially be prosecuted by the traditional court include *crimen injuria* and common assault.

Some of the police officers at Seshego police station feel that they spend a lot of time attending to trivial cases in the traditional community. They argue that the state court is not effective in dealing with minor cases in that such cases, for instance common assault and *crimen injuria* are normally symptoms of a

bigger problem. Typically, state courts will focus on the criminal act itself and ignore the context in which the criminal act took place. This is especially true in respect of people who belong to the same traditional community.

Criminal acts such as *crimen injuria* and common assault are most likely to take place between people known to each other and who may, therefore, need to live together after the criminal case. It follows that traditional courts are more suited to deal with such crimes, given that the *actus reus* (the criminal act itself) is just one of the issues forming part of the holistic and restorative approach of the traditional court.⁶²

Improvement of infrastructure

While calling for official and clear prosecutorial powers for traditional leaders, the interviewed police officers also see the need for improvement of infrastructure, such as traditional authority offices and roads leading to traditional communities. Their complaint is that roads leading to traditional authorities are often in a terrible state of repair, and untarred. The immediate impact of this on crime prevention and crime control is that it is hard for police vehicles to reach the area. It is obvious that time is of the essence when it comes to police reaction in a crime situation.

Improved accessibility of these traditional communities, especially the traditional authority office, will positively impact on patrol hours as less time will be spent on the road and more time spent in addressing the needs of the community (e.g. doing patrols). If this is to be achieved there has to be a consolidation of resources, with all the crucial state departments for service delivery housed at the traditional authority office. However, where it would be more cost-effective to move the traditional office to a more generally accessible place, that option should be considered.

Resources

Police members noted that resources were needed to sponsor departments that provide services. Prominent among these necessary resources are vehicles for the use of police officers in their daily activities in the traditional communities. Some stations, such as Seshego, pride themselves in having well-functioning community police forums as well as a well-organised pool of police reservists, whose members are used in patrols within communities (including traditional communities).

According to the officers at Seshego they are sufficiently resourced in terms of human resources. Their only potential problem, should vehicles become available for crime prevention or control purposes, is that there are few members of staff, including members of the CPF and police reservists, who are licensed to drive motor vehicles. The issue of resources, however, goes beyond material resources such as vehicles. Police officers envisage a situation where a variety of services will be provided at the traditional authority office. These would range from trauma counselling to first aid.

Workshops for traditional leaders

There was a general sense among police officers that many traditional leaders are not well-informed regarding their rights, responsibilities and duties. As traditional leaders perform diverse functions in their communities, the suggestion is that each department should take the responsibility to conduct workshops covering the particular functions that traditional leaders are expected to perform.

For instance, the department of Safety and Security and the SAPS should take responsibility regarding issues that are important in respect of arrests, police procedures and the human rights of people living in traditional communities. The department of Justice and Constitutional Development would be responsible for workshops on basic procedural safeguards that a traditional court is expected to respect, as well as providing clarity on the types of cases that traditional leaders are authorised to deal with.