

## CHAPTER 5

# CHALLENGES FOR INCORPORATING TRADITIONAL LEADERS INTO DEMOCRATIC GOVERNANCE STRUCTURES

---

Policy and legislative developments detailed in chapter two clearly show that government is moving towards incorporating traditional leaders into democratic government structures. It is a reality, however, that this will present many challenges. These include perceptions about who is responsible for crime prevention and crime combating, traditional leaders' understanding of justice, and recognising traditional leaders as role players in both crime prevention and the administration of justice. Each of these challenges shall be dealt with below.

### **Crime prevention and combating: whose responsibility?**

Asked whether communities would be willing to participate in SAPS activities as police reservists and/or neighbourhood watch members, one traditional leader at Mokopane responded:

If they pay us we will participate. The police are paid to do their work. Why must I help them if I do not get paid?<sup>63</sup>

It is clear that this particular traditional leader does not see it as the responsibility of the community to deal with crime unless there is remuneration. This is an honest response, given that community members often take part in voluntary activities with some expectation to benefit, directly or indirectly (police reservists who expect to be employed as police officers later on, or participation with the purpose to enhance a curriculum vitae). This view somehow sits uncomfortably with the work that these traditional leaders do on a regular basis, for instance:

People come to us to report crime that we know we cannot handle. We call the police to come and deal with the cases. Sometimes police come and at other times they do not come.<sup>64</sup>

The core of the problem is the reluctance of some traditional leaders to be involved in the operational side of policing while continuing to serve as a

conduit between the police and the community – something they see as their function. Linked to this seems to be a situation of misplaced expectations regarding police powers. For instance, one of the complaints that traditional leaders have is that the police are incompetent or unwilling to deal with crime.

It was on the basis of this belief that a traditional leader from Mokopane would often bypass the police station close to his place of residence to go to one at the centre of town. This same belief also explains the tendency of some community members to join vigilante groups.<sup>65</sup> Some of the traditional leaders fondly spoke of a time in the past when a criminal would not be treated with kid gloves – when police would deal with a criminal in a manner that showed the might of the law. This perception – disturbingly – is quite pervasive among traditional leaders and members of traditional communities.<sup>66</sup>

### **Traditional leaders' understanding of justice and its administration**

Some traditional leaders do not understand how the state criminal justice system works. They expect it – as we saw in the foregoing paragraph – to act harshly against criminals. Dealing harshly with criminals would not be restricted to the meting out of harsh sentences, but also to denying them bail. Needless to say, this stands in stark contrast to the democratic ethos of the post-1994 dispensation,<sup>67</sup> in particular the presumption of innocence until proven guilty.

While there may appear to be a fundamental philosophical difference between the approach of the traditional leaders and the criminal justice system, further probing shows that it is often a misunderstanding of the system on the part of traditional leaders. This is illustrated by the words of the Mokopane chief councillor:

I have a problem with the police, but I understand their difficult position. They arrest criminals, but justice (Department of Justice & Constitutional Development) releases them. Why don't they (the two departments) work together against the criminals?<sup>68</sup>

On explaining to him what the possible causes for such early release could be, he seemed to understand. For instance, asked whether he knows that being released on bail does not mean acquittal, he revealingly asks:

Why can't they simply explain these things the way you do? All you see is police arresting someone today and he is out tomorrow bragging and committing more crimes.<sup>69</sup>

The chief councillor's understanding of how the criminal justice system operates reflects the views of many in the traditional community. This is a mindset that cannot be changed overnight and is not restricted to the traditional communities in the rural areas. It is the mindset that has been aptly dubbed 'popular punitiveness.'<sup>70</sup> A solution to this problem – or at least a step towards a solution – would be improving communication between the police and traditional leaders.

### **Recognising traditional leaders' role in crime prevention**

The South African Constitution and other legislation<sup>71</sup> recognise the relevance of traditional leaders in many spheres of governance. However, there has not been explicit recognition in crime prevention policy documents such as the National Crime Prevention Strategy (NCPS) and the White Paper on Safety and Security of the role played by traditional leaders. Traditional leaders therefore remain at the periphery of crime prevention even though, in reality, they play such a crucial role in this regard in rural areas. Refreshingly, the 2003 Act provides government with the latitude to recognise the role played by traditional leaders in safety and security as well as in other related services. This recognition – relying on the views of traditional leaders – is set to play an important part in improving the relationship between traditional leaders and other role players in crime prevention.