

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

With very few exceptions, the role of traditional leaders in crime prevention has, until very recently, been ignored. In a country that struggles with a serious crime problem, one would have expected the utilisation of every structure in the pursuit of crime prevention and combating. This should have included investigating the role that traditional leaders can play in crime prevention. While noting that crime prevention is an ill-defined rubric for the many strategies employed in dealing with crime, the nature of traditional leadership is elastic enough to allow for whichever definitional approach is employed, as it is in effect the one-stop facility in the community.

Traditional leaders deal with matters relating to every aspect of life within the traditional community. It is this elasticity that puts traditional leaders in a position to interact with every state department as well as non-government organisations (NGOs) and community based organisations (CBOs). This is a potential role identified by the 2003 Act, which received the following accolade from a state official:

Chieftainship can benefit democracy and has a future because of the Act and other government efforts.⁷²

The 2003 Act not only identifies the role of traditional leaders in safety and security and in the administration of justice, but also in arts and culture, land administration, agriculture, health, welfare, the registration of births, deaths and customary marriages, economic development, environment, tourism, disaster management, the management of natural resources, and the dissemination of information relating to government policies and programmes (section 20 (1) (a-n)). In short, the traditional leaders or councils can do anything that the national or provincial government asks them to do.

The potential role of traditional leaders in crime prevention and justice becomes obvious when one looks at it from the perspective of the NCPS. With the possible exception of transnational crime, all the pillars of that strategy⁷³ can be accommodated within traditional leadership, as can those of the White Paper on Safety and Security. This is especially true in the light of the fact that the majority of crimes committed in rural areas are either crimes

of need or social fabric crimes.⁷⁴ This makes a case for a comprehensive, socially anchored crime prevention strategy, one that is more appropriate than the crime combating approach. The latter is arguably more suited for violent and property crimes prevalent in urban areas.

Another important reason why it makes direct sense for traditional leaders to be involved in crime prevention is that most crime prevention and control activities work best when planned and implemented at LOCAL level. It is for this reason that local government is, internationally and in South Africa, identified as the key level of government for leading crime prevention efforts. Because traditional leaders are part of the local governance infrastructure, they should be as involved in crime prevention in their areas as the municipalities are (or should be).

A disturbing factor is that many traditional leaders see their authority as diminishing. For example, some traditional leaders stated that young members of traditional communities do not recognise traditional leaders. As one traditional leader put it:

There cannot be control because these days we have “setshaba ka gare ga setshaba” (a community within another community).⁷⁵

He cited the example of people who are aligned to civics and prefer civic leaders to traditional leaders. Many traditional leaders state that they are frustrated because they are powerless when it comes to ruling people who stay within the area of their jurisdiction. For instance, if one member of that community comes to the traditional leader and lays a complaint against another, the traditional leader cannot do anything more than requesting such a person to come to his office. Should this person refuse to attend, the traditional leader can do nothing more. This problem was ostensibly overcome by a legal provision making it an offence to refuse to attend when called by a traditional leader. Asked why they do not apply this provision, one traditional leader responded:

I once went to report a person to the police for not asking for permission before occupying a stand. The police said there was nothing they can do. The laws have changed.⁷⁶

The previous chapters sought to show the role that traditional leadership currently plays in the rural areas. One of the core observations of this monograph is that the state's criminal justice system cannot substitute

traditional forms of justice as practised within the institution of traditional leadership. In the same breath, the institution of traditional leadership cannot realistically operate independent of the state's criminal justice system. Sheer practicalities, such as the coercive component of the administration of justice, are simply not constitutionally available to traditional leaders and their forums of justice.

Moreover, there are some cases that, in terms of the law, traditional courts do not have the jurisdiction to deal with, for instance serious offences such as murder, rape, etc.

It is also clear that the involvement of traditional leaders in the *formal* structures of crime prevention (e.g. CPFs, municipalities, etc) is either limited or non-existent. This becomes evident when one evaluates the instruments of crime prevention such as the NCPS and the White Paper on Safety and Security. Both documents do not make reference to the institution of traditional leadership when it comes to crime prevention. This conspicuous exclusion of traditional leaders from the formal structures of crime prevention seems to be the basis for their (traditional leaders') frustration with their lack of authority in crime prevention and crime control.

Based on the foregoing discussion, the only reasonable way forward is to establish a working relationship between traditional leaders and functionaries of the state's justice system with specific regard to the administration of justice and crime prevention. Respondents (both members of the state machinery and traditional leaders) are unanimous that there is a mutual need for cooperation. This need is also echoed in the 2003 Act. The Act creates a framework that makes this cooperation possible and, importantly, allows for a locally orientated engagement between traditional leaders and relevant role players. What remains, however, is working out the structure and practicalities of such an involvement.

While it is clear that a mammoth task lies ahead in establishing a functional relationship between traditional leaders and the criminal justice system (and even the state at large), there are some issues that call for immediate attention. Without attempting to provide an exhaustive list, three will be mentioned.

Uncertainty among traditional leaders regarding their powers

Many respondents pointed out that since the dawn of democracy they have not been exposed to any form of training relating to what is required of them

in the new dispensation. Traditional leaders were going about their daily functions just as they had done in the past; however, their practices often affronted the post-1994 constitutional ethos.

For instance, traditional leaders are aware that corporal punishment is not permissible anymore, but are at a loss as to how to deal with cases that in the past would have been dealt with through corporal punishment. As another example, traditional leaders are conscious of the fact they are no longer at liberty to order the resettlement of any person from the community when they do not comply with the community's mores and regulations. Traditional leaders express this as the doom visited upon communities by 'ditokelo' (rights).

While this uncertainty among traditional leaders is understandable in many respects, it appears to be founded on many misconceptions as well as the actions of opportunistic individuals in communities who hold traditional leaders to ransom. For instance, a shebeen owner who sells liquor throughout the night and plays loud music within a residential area is for all intents and purposes breaking the law. First, the illegal sale of liquor by such a person constitutes an offence. Second, if licensed, staying open throughout the night and playing loud music in all likelihood constitutes a violation of the licence conditions.

The community, therefore, has a right to act against such a person. A traditional leader becomes an embodiment of the community; members of the community affected by a problem will therefore approach the traditional leader to seek relief. Unfortunately, the shebeen owner in this example may wave the constitution at the traditional leader and say that s/he has the right to earn a living. Compounding this problem is the fact that such a shebeen could be afforded credibility because it is frequented by people who command respect in the community. A headman of Mokopane described the problem as follows:

What can you say because you find men of law, prosecutors, magistrates and police in that person's shebeen. Who am I to say it is wrong? Even if you refuse to write a letter allowing the person to open a shebeen they just go to lawyers and get the papers (licence to sell liquor) without the ntona's consent.⁷⁷

What is necessary here is a basic orientation of traditional leaders regarding their rights, and the limitations of individual members of the community in the

exercise of their rights. This does not entail formal education of traditional leaders in the workings of the country's constitution and the various pieces of legislation. A mere outline of the basic rights and duties of community members would suffice.

This could be restricted to issues of immediate concern to traditional leaders, so that when approached by individual members of the community s/he will be able to give informed advice, take appropriate steps and/or refer the individual member to the relevant place for assistance. It is crucial for traditional leaders to be reasonably informed, as members of the community frequently approach them for advice.

Potentially unconstitutional (or inappropriate) practices within the institution of traditional leadership

There is concern among many people that the institution of traditional leadership is so inherently undemocratic that it simply does not have a place in an open democratic society. In support of this view, those against traditional leadership point to the hereditary nature of traditional leadership, the lack of representation of youth and women, as well as the unconstitutionality of some of the practices and sentences in the traditional court.

Indeed, there is a great deal to take issue with in the institution of traditional leadership. As we have seen from the Mokopane case, some of the procedural aspects can be faulted for unjustifiably infringing the rights of the disputants. Yet there seems to be more positive than negative about the chief's court, and criticism levelled against the traditional court should therefore be balanced against the need not to disregard the immense contribution that the institution makes to governance. This kind of reasoning should inform the approach to the democratisation of the institution of traditional leadership, and efforts to bring it in line with the constitution.

Communication between state organs and traditional leaders

There are a variety of actors at the local level that pursue the same agenda as traditional leaders. These are structures such as the community policing forums (CPFs), victim empowerment groups, women's rights groups, research organisations, youth groups, municipalities, etc. While often targeting the same group of people, it is rare to find these structures in constant communication with one another.

If progress is to be seen in delivery of justice and crime prevention, it is crucial that a communication line be opened among all these structures. The mechanisms of how such a relationship will work should be left to local players. The 2003 Act makes a good start by placing an onus on the traditional leader to engage with other structures and lobby government so as to facilitate delivery of services to the people.

A corresponding responsibility, however, would be to require actors such as CPFs and municipalities to also recognise and engage with the traditional leaders in order to facilitate such delivery. This does not appear to be a matter that requires any legislative intervention, but simply an innovative approach on the part of all involved using existing legislation and policies as a basis.

For instance, municipalities have a responsibility to take care of the safety and security needs of their areas. Equally so, traditional leaders have a responsibility to perform safety and security duties as well as the administration of justice. Both structures are based at the local level of government and relatively accessible. At the same time both are represented at provincial and national government levels. Traditional leaders and local municipalities, therefore, stand to contribute significantly to crime prevention.

It is with the above in mind that it is recommended that local municipalities, in close consultation with traditional leaders – if not working together on the project as equal partners – should develop a comprehensive crime prevention strategy in line with the provisions of the national and provincial crime prevention strategies. The obvious advantage of such a locally engineered crime prevention strategy is that it will be relevant to local needs and priorities. Furthermore, the proximity of local municipalities and traditional leaders to traditional communities puts them in a good position to understand the socio-economic dimensions that may be contributing to crime in that particular locality. While other role players, such as the provincial department responsible for safety and security, remain important, their role should be to facilitate and/or complement initiatives and programmes led by municipalities and traditional leaders.

It is clear that traditional leadership as an institution will remain part of the post-1994 dispensation. It is also evident, from this monograph, that traditional leaders have not been integrated into the major crime prevention policies of the country. For their mere indispensability – as admitted by police

officers who work with them – state and its functionaries can only ignore traditional leaders at their own peril.

Comfortingly, after an inexplicable *de facto* marginalisation of traditional leaders, there seems to be a growing willingness to accommodate them. This willingness is matched by eagerness on the part of traditional leaders to be fully integrated into the current order. The appropriate question to attend to in dealing with traditional leadership is: “how do we integrate them into ‘the mainstream’” as opposed to “should we integrate them?”.

If crime prevention consists of proactively preventing crime from occurring, and reactively dealing with offenders as well as with causes of crime, then the role of traditional leadership cannot be ignored. Crime prevention by environmental design (one of the pillars of the NCPS) would benefit significantly in rural areas from the active participation of traditional leaders. Traditional leaders are at the centre of development in rural areas. This is a role that they have always played, as demonstrated by traditional leaders facilitating the building and maintenance of schools and clinics within their respective traditional authorities.

With 193 traditional authorities in Limpopo that have reasonable infrastructure, it would be prudent to effectively use these traditional offices in coordinating crime prevention projects. This is particularly pertinent given that the 2003 Act provides for accountability mechanisms for traditional leaders. For instance, women would enjoy at least 25% representation in the traditional council, and the traditional council would not be solely comprised of members of the royal family.

This representation should provide the necessary checks and balances to deal with suspicions that some traditional leaders and their courts are biased. Such bias could be against women or against people not related to the traditional leader. Kelley Moutt described the problem thus:

Numerous respondents expressed the opinion that women are put in a precarious position when the members of the family who are responsible for the abusive behaviour are also part of the headman's family or advisory. Not only does bringing the dispute before the headman's council put the complainant at risk of being shamed within the community for exposing what are often considered private issues, but she is often subjected to further (increased) abuse as a result of bringing such an action.⁷⁸

Equally, a community worker stated:

It is sad that with certain traditional leaders justice depends on who you are. Whether you are related to the royal kraal.⁷⁹

Within the current legislative framework – as provided by the 2003 Act – these concerns about traditional leaders can be dealt with.