

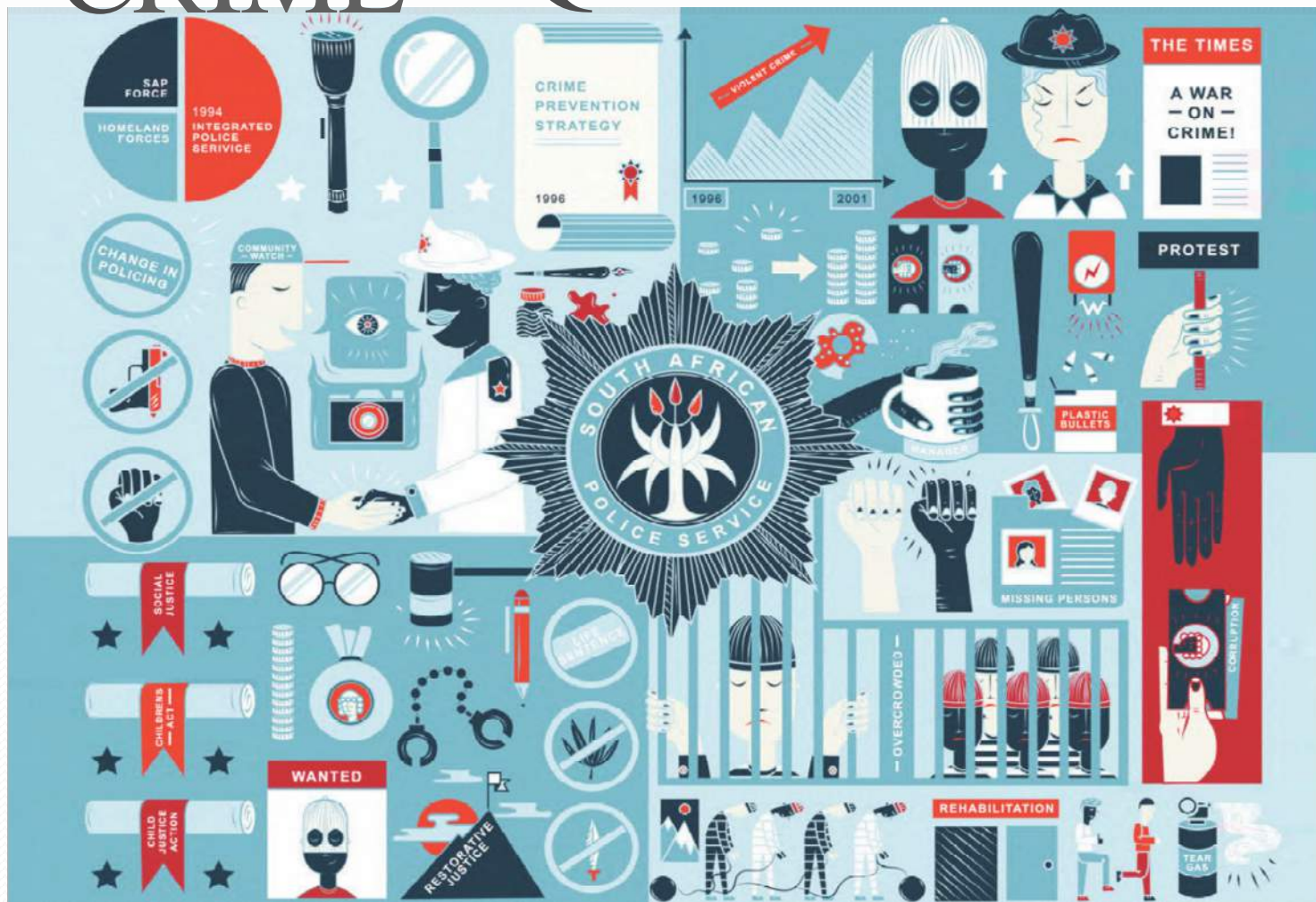
Criminal and social justice in South Africa after 20 years of democracy: prospects and opportunities?



South African CRIME

QUARTERLY

No 48 June 2014



OVERVIEW

- The current status of the criminal justice system
- A case study
- Some recommendations

CONTEXT

- The outcomes approach followed by government
 - A managerialist approach – bewildering, contradictory, messy and uneven - an example of a neoliberal approach to governmentality
 - Many features reflect the ineffectiveness of the criminal justice system
 - Many sources agree that the conventional concepts of criminal justice are inadequate

CONTEXT

- continued preoccupation with the amount of punishment necessary to censure and denounce a criminal act. In the context of a jurisprudence on dignity, 'the means used to effect the denunciation must be compatible with the values society seeks to affirm'
- The need to move beyond viewing punishment as the only tool to denounce, the value of restorative justice

CONTEXT

- JCPS cluster documents do not acknowledge any of these shortcomings
- Massive increase in SAPS budget over past 10 years
- No clear strategy to establish services that address competency development of adult offenders at a pre-trial and post sentence/reintegration level
- No strategy to progressively implement restorative practices.

CONTEXT

- 20 Year Review acknowledges:
 - The inadequacies of relying on law enforcement alone
 - The need to recognise ‘socio-economic determinants’
 - ‘The urgency of addressing moral decay and instilling positive values’

South African

CRIME QUARTERLY

No 48 June 2014



• Editorial:

- Narratives about progress in criminal justice are enormously contested
- dismisses the reference to moral decay as ‘a fiction’, and ‘absurd’

Connecting social and criminal justice: the need for fresh perspectives

- Focus on the central role played by prosecutors and sentencing officers in determining the outcomes of criminal matters
- Need to nurture their understanding of the context in which criminal acts occur, in a way that ‘takes account of cultural, structural, psychological and physical violence’, and to employ this understanding in the pursuit of social justice in the sentences they craft.

A contested case study: (*DPP, North Gauteng v Thabethe* 2011 2 SACR 567)

- Stepfather rape, a single incident
- Based on the testimony of the girl (nearly 16 at the time of the offence and over 18 when she testified) as well as the outcome of a victim offender conference, the North Gauteng High Court departed from the required minimum sentence and imposed a sentence of suspended imprisonment together with numerous, onerous conditions.
- On appeal to SCA by DPP, sentence set aside and replaced with 10 years imprisonment (by this time the girl was over 20 years old)

A contested case study: (*DPP, North Gauteng v Thabethe* 2011 2 SACR 567)

- Issues considered by the SCA
 - The voice of the victim
 - The seriousness of the offence
 - The interests of society
 - General deterrence

A contested case study: (*DPP, North Gauteng v Thabethe* 2011 2 SACR 567)

- Issues not considered by the SCA
 - Exactly how the victims' views should influence the sentence – no constructive guidelines provided
 - No effective and constructive denunciation
 - The real risk that the offender posed not considered
 - The victim's needs not explored or addressed in any way
- Who benefited from this sentence?
- Can this be considered a just outcome?

A contested case study: (*DPP, North Gauteng v Thabethe* 2011 2 SACR 567)

- Another way, using an expanded form of victim offender conferencing:
 - The original VOC was held with family members only – serious shortcomings
 - Recognise power imbalances, ensure specific support for the victim and mother
 - Understand the full context in which the incident occurred, including the prevalence of GBV
 - Include other professional stakeholders
 - Include representatives from the primary community of the family

A contested case study: (*DPP, North Gauteng v Thabethe* 2011 2 SACR 567)

- From this foundation address:
 - The full physical, emotional and social impact of the incident on the victim and on the family
 - An acknowledgement of the guilt of the offender and the innocence of the victim
 - Affirm the values of autonomy, boundaries and respect and denounce the behaviour of the offender
 - Explore ways to support the victim in her journey of healing
 - Explore ways to ensure that the victim is safe from further abuse

A contested case study: (*DPP, North Gauteng v Thabethe* 2011 2 SACR 567

- From this foundation:
 - Explore ways to support the offender and hold him accountable
 - Monitor over an extended period of time
 - Explore ways to address the public concerns
 - public opportunities at which sexual mores and values can be affirmed
 - stories of victims highlighting the impact of broken sexual mores,
 - encouraging others to speak out about abuse
 - emphasizing the need for parents and other family members to protect their children in situations of family violence and abuse.

Points of reference for prosecutors and sentencing officers in the future

- Sentences need to actively and constructively address social justice issues
- The framework of therapeutic jurisprudence – utilizing sentences to accomplish therapeutic aims
- Integrate restorative justice thinking into sentencing practice
- Recognise that the criminal justice system has a moral and public education function
- Revisit the amended purposes of punishment proposed by the SA Law Commission Sentencing Project
- Reprioritise budgets to provide for restorative practices and competency development programmes

Conclusion

- Insanity: doing the same thing over and over again and expecting different results. (Albert Einstein)

References

- Full references can be found in the narrative version of the paper, available on request

Contact

- Mike Batley, Executive Director Restorative Justice Centre
- mike@rjc.co.za