

INSTITUTE FOR SECURITY STUDIES

SA CRIME QUARTERLY



The Child Justice Bill and civil society advocacy

Probation officers in the child justice system

The fight against corruption in prisons

The role of the SAPS in destroying firearms

The work of the SAPS Investigative Psychology Unit

No 25 • Sept 2008

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Cover photograph

Ambrose Peters / PictureNet Africa

The mothers of three toddlers who were allegedly murdered by a herd boy near George; Flora Geduld, 27, Jacqueline Pienaar, 21, and Mary Jane Koetaan, 23. The 16-year-old accused has been sent for psychiatric observation before his trial.

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Editorial

As this edition of South African Crime Quarterly was about to go to print the Child Justice Bill was entering the final stages before being passed into law. On 5 September the National Council of Provinces passed the Bill after the Select Committee on Justice and Security Affairs had made minor technical changes to it. It will now be returned to the Portfolio Committee on Justice and Constitutional Affairs for approval before being sent to President Mbeki for signature. In recognition of several years of research, advocacy and hard work put into the Bill both by civil society and civil servants, we have dedicated two articles in this edition of SACQ to the Child Justice Bill.

Veterans of the Child Justice Bill process, Ann Skelton and Jacqui Gallinetti, provide an overview of the process and commentary on the role of civil society in determining the content and philosophy of the Bill. According to them, civil society action around the Child Justice Bill has achieved positive results. In its current form the Bill reflects the views of the children's rights lobby in that (amongst other things) it provides the legal basis for children in conflict with the law to be diverted out of the criminal justice system so as to reduce long-term harm. Meanwhile, Thulane Gxubane takes a sobering look at some of the real problems of implementation from the point of view of probation officers and laments the fact that social workers have not played an active role in policy formation.

Perhaps fittingly, given the similarities in the role played by civil society in the drafting of the Firearms Control Act and the Child Justice Bill, Noel Stott and Ben Coetzee contribute an article to this edition that reports on the implementation of firearms control policies by the SAPS, in particular the destruction of confiscated firearms. Few pieces of legislation, aside from the Child Justice Bill, have attracted the concerted and sustained attention of civil society, or have benefited from targeted research by the research community, as did the Firearms Control Act. By the time it was passed in 2000 (and entered into force in 2004) the Gun Control Alliance, representing over 180 national, regional and local organisations and 4 000 individuals had spent several years engaged in active lobbying and research. The success of their campaign was evident in the stringent control that the Act places on civilian firearm ownership.

Since the Jali Commission there has been enormous concern about the high level of corruption in South African prisons. Lukas Muntingh reports on the actions taken by DCS to reduce corruption throughout the prison system, particularly the service agreement that was entered into with the Special Investigation Unit, and points to the structural difficulties associated with putting an end to corruption in a system that lends itself to the practice.

I hope you enjoy the new design of SACQ and I welcome your feedback about any aspect of Crime Quarterly.

Chandré Gould

A long and winding road

The Child Justice Bill, civil society and advocacy

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This article charts the journey of civil society's engagement with the Child Justice Bill. The story begins with activism in the early 1980s, and tracks the reform efforts through various phases. The Bill was rewritten in Parliament in 2003, and it then fell off the parliamentary agenda. When it re-surfaced at Parliament in 2008 civil society lobbied hard for changes that would bring the Bill closer to the original intentions. An account is given of the gains and losses, and, all in all, the picture looks positive. A brief description of important features of the Bill is included in the article.

The Child Justice Bill was missing in action for a while. Although it was first introduced into Parliament in 2002, and debated by the Justice Portfolio Committee in 2003, it thereafter disappeared (for reasons that are still not clear). At the end of 2007 the Bill suddenly appeared back on the parliamentary agenda. In the civil society child justice sector, all hands were needed back on deck to try to undo the damage that the Bill had suffered during its first round of deliberations in 2003. Intense activity on the part of civil society and of the politicians on the Justice Portfolio Committee in the first half of 2008 has paid dividends. The Bill was passed by the National Assembly, and as it now makes its way to the President, child justice advocates are taking stock of the gains and losses. All in all, the picture looks positive.

South African civil society has an illustrious past of advocacy and lobbying in the context of the struggle against apartheid. This activity continued

in the transition to a democratic government and is still prominent in various forms today. One of the areas in which the advocacy efforts of civil society has made a tremendous impact, and still has much scope for further action, is in the field of children's rights. Bayes (2000:10) argues that the importance of NGOs in assisting and exerting pressure on government lies in the fact that NGOs have particular knowledge of a child's situation, can consult with children and are able to identify effective means of intervention and protection. One very valuable function of NGOs and civil society in general is the role that they can play in ensuring that the law reform process is not only initiated, where needed, but also seen through to completion. In the child justice sector civil society and NGOs have assumed a valuable role in affecting change both in law and practice.

The child justice movement in South Africa emerged in the early 1990s and was focused on a number of issues, although interlinked issues of

detention of children and the need for law reform were the two most prominent. (Sloth-Nielsen 1999:470).

Key child rights academics have observed that the law reform process was initiated by non-governmental organisations in the early 1990s through advocacy campaigns that focused attention on children who were being detained for allegedly committing ordinary criminal offences (rather than for offences that were political in nature and linked to the struggle against apartheid, as was previously the case), and through publishing legislative proposals (Juvenile Justice Drafting Consultancy 1994). The demise of apartheid ushered in heightened awareness for the plight of all children in trouble with the law.

In the absence of a separate criminal justice system for children, the child justice movement has also created a platform, for a range of child justice related issues to emerge and develop within the field of criminal justice. One example of a particularly innovative initiative was the establishment of diversion programmes by the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO) (Skelton 2005: 368). These programmes offered an opportunity, in appropriate cases, to refer children away from the criminal justice system, thereby promoting their chances for re-integration into the community. The result of this initiative is that, at present, diversion services are widely available throughout the country through a variety of different service providers in and outside of government, and the concept of diversion is a central feature of the Child Justice Bill.

In 1996 the then Minister of Justice, Dullah Omar, appointed a project committee of the South African Law Reform Commission (SALRC) to investigate juvenile justice. This was in recognition of South Africa's international obligations under the UNCRC and the constitutional imperatives for children contained in section 28 of the Constitution. It also followed developments such as the appointment and ensuing work of the Inter-Ministerial Committee on Youth at Risk (IMC). A previous article in South African Crime Quarterly

17 addressed the South African Law Reform Commission process relating to the drafting of the Bill, as well as the initial debates in Parliament during 2003 (Gallinetti 2006).

THE MANY FORMS OF THE CJB

The Child Justice Bill that was developed by the South African Law Reform Commission, while retaining most features of our present criminal justice process, introduced a number of new concepts and procedures, some of which are presently used in practice but are not provided for in legislation. These included:

- Raising the minimum age of criminal capacity from seven to ten years
- Providing a legislative framework for the assessment of all children in criminal procedure
- Introducing a preliminary inquiry process
- A legislative framework for diversion
- Guidelines established in law to ensure that the detention of children happens as a last resort by requiring that courts first consider an alternative to detention before placing a child in a facility or prison

The procedures contained in this version of the Bill resulted in a separate system of criminal justice for children that balanced due process rights with the rights of children to be protected, while at the same time providing for the interests of the community.

The version of the Child Justice Bill that was introduced into Parliament as Bill 49 of 2002 was very similar to the SALRC version. However, the debates that took place in the Portfolio Committee on Justice and Constitutional Development during 2003 resulted in many proposed changes to the Bill. Although aspects of the Bill remained the same in that the processes of assessment, diversion and the preliminary inquiry were retained in the Bill, the Portfolio Committee adopted an approach that saw certain children being excluded from the application of these procedures.

The deliberations focused on trying to fashion a

far more punitive approach to children charged with serious scheduled offences than the Child Justice Bill in its original form intended. In particular, the Portfolio Committee strongly resisted the idea that all children could be considered for diversion, irrespective of the offence alleged to have been committed. Their view was that diversion should only apply to children charged with less serious crimes. Likewise, children charged with serious offences would not be assessed by a probation officer and would not appear before a preliminary inquiry – processes that were put in place in order to manage a range of issues from age determination to placement of the child.

However, after the debates in 2003 and before the Bill could be finalised, Parliament recessed for the elections in 2004 and the Bill was not placed back on the Portfolio Committee agenda in that year, nor was there any further progress on it in 2005 or 2006, sparking many debates as to what had happened to it.

FROM DESPAIR TO SATISFACTION

In October 2007, a new version of the Child Justice Bill was released by the Department of Justice and approved by Cabinet. The concerns regarding the approach to the Bill adopted by the Portfolio Committee on Justice and Constitutional Development during 2003 became very real. This 2007 version of the Bill differed dramatically from the 2002 version of the Bill. While it still retained the essential features of the Bill such as assessment, the preliminary inquiry, diversion and alternative sentences, it excluded certain children from the benefit of the processes and procedures, based on their age and category of offence with which they were charged.

In essence, children who were over 14 years and charged with serious offences would not benefit from the new child justice system. In addition, in certain respects the new version of the Bill was more retrogressive than our current law. At present children under 14 years are not allowed to be detained in prison awaiting trial, but the 2007

version of the Bill allowed for certain children under 14 years charged with serious offences to be held in prison awaiting trial. One of the puzzling aspects of the new Bill was that, although it contained all the proposed changes made by the Portfolio Committee in 2003, it was in fact the Department of Justice that had re-submitted the Bill, signalling a dramatic policy shift from its approach when first introducing the Bill in 2002.

In early 2008 the Portfolio Committee on Justice and Constitutional Development, with a new chairperson, held public hearings on the Bill and proceeded to deliberate on its contents. In yet another dramatic turn of events, the Committee indicated that they were prepared to revert to the original approach adopted by the Department of Justice in 2002 and provide that the processes and procedures contained in the Child Justice Bill be accessible to all children, irrespective of age or offence.

The Committee noted that many of the changes to the Bill which had resulted in the 2007 version had arisen out of a concern that the 2002 version would experience difficulties with implementation, but that five years on the problems that the former Committee were concerned with had to a large extent dissipated. This, combined with an acknowledgement by the present Portfolio Committee that there was unanimous support for the provisions of the 2002 version of the Bill from civil society, was one of the main influencing factors that led to the Committee ultimately passing a Bill, not that dissimilar to the 2002 version, but somewhat more tightly regulated.

The Child Justice Bill was passed by the National Assembly on 25 June 2008, and the National Council of Provinces on 5 September. This Bill ensures that all children will be assessed (see the article by Thulane Gxabane in this edition of the SACQ for a discussion about the practical difficulties relating to assessment); all will appear before a preliminary inquiry for certain decisions (such as whether the child should be released or detained awaiting trial); and that all children can be considered for diversion, although children

charged with more serious offences will only be diverted in exceptional circumstances.

However, there are still certain aspects of the Bill that are of concern. Firstly, the Bill still allows for minimum sentences to be applicable to children aged 16 and 17 years. This is despite the fact that the Constitution states that children should be detained only as a last resort and for the shortest appropriate period of time, whereas minimum sentences, by their nature, are a first resort. Secondly, while the sentencing provisions create a system of sentencing that seeks to ensure that children to whom minimum sentences are not applicable are imprisoned as a last resort, the Bill specifically allows for a court to impose a sentence of imprisonment of up to 25 years on a child, even for less serious offences (provided substantial compelling reasons exist). This, coupled with the fact that minimum sentences still include life imprisonment, means that children of 14 years and older may be sentenced to 25 years, whilst 16 and 17 year-olds can be jailed for life. In terms of international practice, 25 years imprisonment is considered to be a very long sentence for a child offender, and the UN Committee on the Rights of the Child has called for life imprisonment of child offenders to be abolished.

A further concern relates to the over-formalisation of diversion. Although the Bill provides that all children can be considered for diversion, the system of diversion itself is extremely tightly regulated. While there is a need for checks and balances to ensure that the system of diversion is credible and a viable alternative to the formal criminal justice system, the level of regulation that is now contained in the Bill was not originally envisaged. This level of regulation detracts from one of the major advantages of diversion, which is that it provides an informal way to deal with less serious crimes, and simultaneously takes pressure off the criminal justice system.

Nonetheless, the overall outcome means that South Africa has finally established a child justice system that will potentially reduce crime; promotes the accountability of children with a view to breaking the cycle of violence; treats

children in a manner appropriate to their ages whilst holding them accountable for their actions; balances the needs of the child, the victim and society; and creates a safer society for all.

CIVIL SOCIETY ADVOCACY

Van Zyl Smit (1999:202) recorded almost a decade ago that during the period of transition there was a conscious effort by criminologists and human rights activists to build a coalition of progressive forces that united around new ideas for dealing with children in the criminal justice system. Van Zyl Smit was of the view that during this period 'juvenile justice probably attracted more debate and development resources than any other criminal justice issue and therefore the ideas of how society should ideally be organised in the future were articulated most fully in this context'.

Civil society played a specific role in the law reform process. In the early days NGOs formed loose coalitions to run their campaigns and raise awareness. The sector became more organised around the year 2000. In November 2000, shortly after the South African Law Reform Commission handed the draft Child Justice Bill to the Department of Justice and Constitutional Development, a meeting was held that brought civil society organisations, NGOs and government officials together. As a result of this meeting, a campaign aimed at promoting and lobbying for the passing of the Child Justice Bill was initiated, and the Child Justice Alliance was formed to co-ordinate it. The Alliance is a collaboration of NGOs, CBOs, academics and individuals across South Africa committed to seeing change in the field of child justice. Early on, the Alliance established nine basic principles around which to arrange the campaign, and these proved valuable to the end of the process.

However, civil society was working against a moving background. The tough-on-crime talk of zero tolerance was in ascendance in 2003 when the Child Justice Bill was first debated in Parliament, and the Child Justice Alliance had to cope with difficult debates in an era when fear of

crime created a charged atmosphere. The Alliance proved to be very resilient; it learned the art of compromise and adjusted its expectations, whilst remaining firm to its principles.

Van Zyl Smit and Van der Spuy (2004) summed up their view of the situation as follows:

Thus far a spirit of political pragmatism has allowed the child justice lobby to recognise, rather than dismiss, concerns about desert and retribution. In some instances there have been concessions. Yet many aspects of diversion and conferencing remain intact - sufficient for the reformers to claim that communitarian justice is far from dead ... Pragmatism among the moral entrepreneurs may not, however, be enough to keep the communitarian ideas afloat. As elsewhere in the criminal justice system, the gap between theory and practice, between social policy and bureaucratic implementation may loom large. This may be the case despite the fact that the bill was placed before Parliament together with an implementation strategy and detailed costing. Notwithstanding such initiatives, the political will to sustain this model of child justice may prove to be fickle in the face of contradictory pressures to 'tough justice' elsewhere in the criminal justice system.

Another fairly predictable battle was the one about resources. With so many demands on the public purse, could South Africa afford a new child justice system, and would there be enough infrastructure on the ground to cope with the new demands? This curved ball was met with a deft hand. Civil society closely followed the process of the costing of the Child Justice Bill. Part of the strategy that developed during this time was to focus on practical issues, trying to convince the portfolio committee that the infrastructure was available (Sloth-Nielsen 2003). Thus NGOs made presentations demonstrating that diversion programmes were already operating on the ground, and pledging to provide civil society support to government in implementation of the proposed law. The strategy of focusing on 'delivery' appears to have served a dual purpose: 'It was firstly to fend off arguments that systemic transformation resulting in a separate child justice

system was an unachievable endeavour, and secondly, to deflect "popular punitiveness" by shifting the debate to "new pragmatism" (Skelton 2005:490).

Aside from making its own written and oral submissions on the Bill, the Child Justice Alliance also co-ordinated submissions from other civil society organisations, NGOs and academics. This ensured a large show of support for the provisions and principles of the Bill. In addition, the parliamentary deliberations were monitored in order to gauge the progress of the Bill during the deliberations, and supplementary submissions were made resulting from some of the proposals made by the Committee at the time. Civil society had a strong presence at the hearings and continued to have an influence through lobbying and discussion with parliamentarians.

After the Bill fell off the parliamentary agenda, the Child Justice Alliance continued to agitate for its reappearance. The Alliance used the media, the internet and *Article 40*, a lay publication dedicated to child justice issues, to keep enthusiasm for the Bill alive. Targeted advocacy was also undertaken with politicians and key officials in the Department of Justice and Constitutional Development, and in 2005 the Alliance started to serve on the Intersectoral Committee on Child Justice, a national committee comprising of senior officials from all the relevant government departments in the child justice field.

Although advocacy efforts continued, the Alliance also re-directed its work and started undertaking research. The research component of the Alliance's work focused on collecting baseline data in the current criminal justice system pertaining to children, against which the implementation of the Child Justice Bill, once enacted, could be measured. The reason for undertaking this research was that there were no accurate data on children in the criminal justice system. There were ad hoc pockets of data, but nothing comprehensive. As a result, two studies were undertaken at three magistrates' courts over a period of four months to collect and analyse information on various aspects of the criminal

justice system based on a set of developed indicators. This research was completed in 2007, published, and placed on the Alliance's website. While the intention was to use the data once the Bill was enacted to measure certain key areas of implementation, the research also proved useful in the 2008 parliamentary hearings. Using the information, the Alliance was able to show how the system was working on the ground, what the problems were, and how they could be addressed.

Once the Child Justice Bill was again approved by Cabinet in 2007, the Alliance co-ordinated advocacy efforts aimed at ensuring that the Portfolio Committee would consider reverting to the approach contained in the 2002 version of the Bill. The strategy concentrated on liaising with the media, and submissions to parliament on the Bill. At the public hearings civil society organisations made extensive submissions to the effect that it was never the intention to exclude certain children, based on age and offence, from the application of the processes and procedures of the Bill.

In addition, civil society was clear that the changes effected by the 2007 version of the Bill constituted a significant change in policy – away from ensuring that all children are afforded procedural protections in the criminal justice system, to a situation in which only a select few are entitled to a different procedural regime, a flaw which the Child Justice Alliance described as creating a 'bifurcated system'. The argument was made to the Portfolio Committee on Justice and Constitutional Development during the hearings that the exclusion of certain children from these processes and procedures would place them in a more prejudicial position not only to other children but also to certain adults who appear in criminal courts.

Civil society also addressed new issues during the hearings. Numerous NGOs and academics argued that recent developments in scientific neurological research and in child justice jurisprudence internationally have resulted in the original SALRC proposal to raise the minimum

age of criminal capacity to ten years of age becoming outdated. There were various calls for the minimum age to be raised to at least 12 years of age, with some calling for a higher minimum age. The Portfolio Committee engaged actively in the debate, and although the minimum age was ultimately set at ten years, the Committee decided to include a clause requiring Parliament to review this decision in five years after commencement of the Act.

Neither government, parliament, nor civil society had previously considered crime prevention as being an issue for inclusion in the Bill. However, submissions were made by civil society organisations calling for one of the objects of the Bill to be the prevention of crime, and this was readily accepted by the Committee.

In addition to the submissions, the Portfolio Committee allowed the Alliance to be represented at the deliberations on the Bill and actively participate in the proceedings, commenting on each clause of the Bill as the Committee proceeded through its first reading thereof. This opportunity that was afforded civil society should be seen as giving true substance to section 59 of the Constitution, which states that the National Assembly must facilitate public involvement in its legislative and other processes as well as those of its committees. Not all of civil society's submissions to the Committee were heeded. The Committee certainly gave serious consideration to the inputs made – but at times they disagreed, citing their duty as law makers for an electorate concerned about crime. The participatory approach adopted by the Committee is a good practice example of parliamentary participation. It has ensured that the Bill was rigorously debated and has culminated in a fairly balanced piece of legislation, reflecting both a child-rights based approach and a concern for the safety of society as a whole.

CONCLUSION

The Child Justice Bill has had a tumultuous and protracted history. However, it is an example of a

piece of legislation that has been influenced by civil society expertise on the issue of children's rights and criminal procedure; civil society's ability to undertake credible research; the introduction of innovative methods of child justice practice; and targeted advocacy and lobbying.

While great frustration was expressed at times regarding the delays in the finalisation of the Child Justice Bill, it has to be acknowledged that the final product may indeed have benefited from the long process, if only because of new leadership at the Portfolio Committee, which allowed for a new level of public participation. As the Chairperson of the Portfolio Committee on Justice and Constitutional Development, Yunus Carrim, stated at the National Assembly debate on 25 June 2008:

While the Committee regrets the delay in finalising the Bill, we would like to think the delay served to, ultimately, produce a better Bill. Certainly, the Bill is the outcome of considerable negotiations among a range of stakeholders and there is now substantial consensus on its content between Parliament, the executive, NGOs and academic and other experts.

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Agents of restorative justice?

Probation officers in the child justice system

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Probation officers, like generic social workers, have been and continue to be implementers rather than generators of social policies. Yet, probation officers have an important role to play in transforming the child justice system as they are central to the administration of child justice. This article argues that the Child Justice Bill (B49 of 2002) needs to be aligned with other pieces of legislation and policies that reflect a developmental approach and response to crime. The developmental approach will not only maximise the opportunities for meaningful interventions that could translate into prevention of crime and recidivism among young offenders, but will also have long-term benefits for the young offenders, their victims and society in general.

This article examines the role of probation officers in the transformation and administration of the child justice system in South Africa, with a specific focus on assessments and sentencing. The discussion will shed light on some of the major challenges associated with probation practice in the current and proposed child justice system in South Africa. The concept of restorative justice as a proposed philosophical and legislative framework for working with young offenders is also discussed in an attempt to challenge the bifurcation of offences¹ – which seems to be informed by the general misconception that diversion and restorative justice is inappropriate in dealing with youth sex offences.

In this paper the word young is used interchangeably with the word child, referring to any person under 18 (Constitution of the Republic of South Africa, 1996). Within this age group, different pieces of legislation make specific provisions with regard to age restrictions, type of

offences and circumstances surrounding the offence. A child offender would for example qualify as suitable for conversion to a children's court inquiry, or for a first or second or third level of diversion, or for sentencing to a reformatory school, and so on.

This article was inspired by the author's recent submissions to the Justice and Constitutional Development Portfolio Committee on behalf of the Department of Social Development, University of Cape Town, during the public hearings on the re-drafted 2007 Child Justice Bill (B49 of 2002).

PROBATION OFFICERS AND POLICY DEVELOPMENT

Responsibility and social justice were identified by Konopka (1972) as key values that should inform the social work profession. As probation is a

discipline emanating from social work, probation practitioners need to uphold and promote those values. However, social justice as a core value can only be realised when probation practitioners recognise that they are not only professionally responsible to the offender that they seek to help, but also to the victim, and society in general.

Contributing to social policy is a primary role of probation practitioners, particularly to those policies that relate to their daily practice. Pincus and Minahan (1972) theorised that the purpose of social work is changing people; linking people with resources; changing the environment; and contributing to development and modification of social policy. Probation officers offer a wealth of knowledge and insight based on their experience in working with young offenders and their families. Sadly, such contributions have not been forthcoming in South Africa.

By failing to participate in policy development, probation officers are missing a valuable opportunity to positively influence other role-players and policy-makers. Moreover, they are playing no part in decisions that closely affect them as social workers. It is suggested that this situation can be addressed by increasing the number of probation officers in the NGO and government sectors, and providing them with resources and incentives that will encourage and enable them to contribute to research, advocacy and policy development.

PROBATION OFFICERS AND THE ADMINISTRATION OF CHILD JUSTICE

Assessment

Assessment is defined in Chapter 1 of the 2007 version of the Child Justice Bill as the 'assessment of a child by a probation officer as contemplated in Chapter 5'. Chapter 5 in turn outlines the different purposes of assessment, which are to:

(a) establish whether a child may be in need of care for purposes of referring the child to a children's court in terms of section 51 or 64;

- (b) estimate the age of the child if the age is uncertain;
- (c) gather information relating to a previous conviction, any previous diversion or any pending charge in respect of the child;
- (d) formulate recommendations regarding the release or detention and placement of the child;
- (e) where appropriate, establish the prospects for diversion of the matter;
- (f) in the case of a child below the age of ten years or a child referred to in section 9(1)(c)(ii), establish what measures need to be taken in terms of section 7;
- (g) in the case of a child aged ten years or older but below 14 years, express a view on the factors contemplated in section 9(1)(b) that may affect the criminal capacity of such child as contemplated in section 10; or
- (h) provide any other relevant information regarding the child which the probation officer may regard in the best interests of the child or which may further any objective which this Act intends to promote or achieve.

The danger of this administrative approach to assessment is that it is likely to lead probation officers, especially novice practitioners, to merely performing the administrative tasks of the courts as outlined from (a) to (g) above. While it is essential for probation officers to provide support services to the courts it is equally important that they keep sight of the overall developmental mandate of the country relating to crime prevention. The function of assessment is to inform and guide therapeutic interventions that will help the child offender not to come into conflict with the criminal justice system again. Probation officers may not be in a position to provide the rehabilitation services themselves, but they need to be aware of various services and programmes that the child can be referred to.

In a submission made by the author to the Justice and Constitutional Development Portfolio Committee, reference was made to the fact that a lot of work has already been done in the development and amendment of different pieces of legislation (such as the Probation Services

Amendment Act 35 of 2002) to ensure that they are aligned with the developmental framework adopted by the state some years ago. Therefore it stands to reason that the Child Justice Bill should be harmonised and aligned with other pieces of legislation that reflect the developmental frame of reference. For example, the Probation Services Act No. 116 of 1991 states that assessment is:

a process of developmental assessment or evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factor.

Sentencing

In their daily practice, probation officers are involved in the sentencing of child offenders. They are responsible for guiding the court to alternative sentencing options through their pre-sentence investigations. Alternative sentences hold offenders accountable for their unlawful actions while giving them the opportunity to change their behaviour. But for alternative sentences to be effective they need to be accompanied by strict conditions and elements of restorative justice practices.

There are three practical challenges facing probation officers and other justice officials with regard to sentencing: poor and incompetent pre-sentence investigations; a shortage of skilled social workers; and a strong orientation towards punishment by the courts. Each of these is addressed in some detail below.

Poor and incompetent pre-sentence investigations

Magistrates frequently complain about the poor quality of, and gaps in, some probation officers' pre-sentencing reports. This seems to be a matter of insufficient training. In a study that investigated the training needs of probation officers in the Western Cape it was found that a profound lack of self-esteem among probation officers was due to an inadequately delivered probation service, particularly the pre-sentence

reports (Graser and de Smidt 2007). These researchers concluded that this is directly linked to social workers' lack of adequate training in probation work (Graser & de Smidt 2007).

In South Africa, any person registered with the South African Council of Social Services Professions as a social worker can be employed as a probation officer (PO). Yet Graser (2006) asserts that probation work is a specialised field of service that requires much specialised knowledge, skills and qualities in the person who performs it. Training in social work alone does not necessarily qualify a person to act as a PO. Whilst training in social work is necessary, a PO needs further training in certain aspects of the criminal law and procedures, criminology, treatment of offenders, the objectives of punishment, and the structure, functioning and psychology of the criminal justice courts.

A probation officer is a professional considered by the court of law as an 'expert witness'. The key elements of expertise are skills, knowledge and experience. As pointed out by Graser (2006), pre-sentence investigations and report writing requires knowledge in theories and the objectives of punishment, knowledge of legislation (such as the Criminal Procedures Act) that guides sentencing, particularly of convicted children and knowledge of a range of alternative sentencing options.

Apart from occupation-specific training, a PO requires certain personal qualities that are even more important than academic training. These include personal maturity and emotional strength; the ability to be firm and realistic; sound judgment; and warmth and understanding (Graser 2006).

Shortage of skilled social workers

In an attempt to address the delay in the finalisation of cases involving young offenders, due to a shortage of social workers to act as probation officers, Section 72 of the re-drafted Child Justice Bill makes provision for someone other than a social worker or probation officer to prepare a pre-sentence report (Section 72 (1)(a)). There is a real need to find alternatives to deal

with the shortage of social workers to act as probation officers, as it often leads to unconstitutional delays in the sentencing of convicted child offenders. The Justice and Constitutional Portfolio Committee was cautioned against this approach. It was proposed that such duties need to be performed by probation officers or persons with post-graduate training in probation and correctional practice – for example, the Honours or Masters qualification in Probation and Correctional Practice, as offered by the Department of Social Development at the University of Cape Town and the Departments of Social Work at the University of the Free State and University of Johannesburg. This is because a person who compiles a pre-sentence report needs to know the legislative framework and principles guiding sentencing of child and youth offenders. An appropriate sentence needs to be carefully considered, as it will have a long lasting impact, not only to the child offender, but also to the victim and society in general. A sentence therefore needs to be realistic and take into account the interests of all the parties affected by the criminal offence committed by the child.

Orientation of the courts towards punishment

Social workers working as probation officers often report that magistrates do not take their reports seriously, and rarely consider their recommendations.

Fatima Chohan, chairperson of the parliamentary committee on justice and constitutional development was reported in the Cape Argus as saying:

(I)t is unlikely that the Bill would be passed by the end of the year (2007)... the committee had sent the Bill back for redrafting so that it could be divided into categories of minor and serious offences.... even when the Bill was passed, a lack of capacity and structures could hamper its implementation. A lack of social workers to act as probation officers, as well as a shortage of places of safety for children were some of the constraints that would be faced.

However, the major delay in the enactment of the Child Justice Bill (CJB) seemed not only to relate

to a lack of human and material resources, but also to its emphasis on and orientation towards punishment. For example, one of the most striking features of the 2007 re-drafted CJB, which was criticised by many, was the bifurcation of child offenders. The re-drafted CJB excluded certain child offenders from the possibility of diversion, based on the nature of the offences they committed rather than the unique circumstances surrounding each offence. Yet it has been pointed out by many scholars, including Batley and Maepa (2005:16), that 'applying harsher punishment to offenders has been shown internationally to have little success in preventing crime'.

Imprisonment has long-lasting and devastating effects on young offenders, and the community in general. When young offenders are eventually released back to the community on completion of their prison terms they have been negatively affected by their institutional experience. Therefore a restorative approach to sentencing of young offenders needs to be considered as an alternative.

RESTORATIVE JUSTICE

A focus on the philosophy underlying restorative justice is very important, because it has implications for practice. And the practice of restorative justice will to a large extent be influenced and shaped by how people conceptualise it.

Kurki and Pranis (cited in Skelton and Batley, 2006:7) proposed the following questions as pointers in evaluating whether a process or programme is restorative in nature or not:

1. Does it address harms and causes?
2. Is it victim oriented?
3. Are offenders encouraged to take responsibility?
4. Are all three stakeholder groups involved?
5. Is there an opportunity for dialogue and participatory decision-making?
6. Is it respectful to all parties?

Skelton and Batley (2006) argued that it may not be possible or even desirable for every restorative

justice programme or process to address all six questions, but might possibly include some of them. Restorative justice has to be conceptualised as 'an approach, a mindset, or a way of thinking about justice' rather than a particular process or programme. Zehr (cited in Skelton and Batley, 2006:7) argued that 'it is becoming important to talk about what is not restorative as to define what it is', and supported a restorative justice continuum framework that can be used to assess whether processes are more or less restorative in nature. Some processes will be fully restorative, others will be pseudo or non-restorative, others may be partially and potentially restorative along the continuum (Zehr cited in Skelton and Batley, 2006).

Batley (2005:31) provides a comprehensive response to the question of whether restorative justice is appropriate in dealing with serious offences. He states that:

Applying restorative justice principles and processes in rape and murder cases does not imply minimizing the seriousness and tragedy of such incidents, nor does it suggest that perpetrators should be left off the hook simply because they have apologized. Serious cases present excellent opportunities for victims to feel that they are heard, and for perpetrators to be confronted with the real consequences of their actions. Specific steps can also be taken to ensure that victims are not dealt with insensitively, as restorative justice seeks to promote the respect and dignity of all concerned, especially those who have been hurt.

In a study conducted in central Johannesburg on victims' views regarding a desirable response to criminals, the results, surprisingly, indicated that the public might be more reasonable than politicians believe when it comes to the treatment of offenders (Leggett, 2005). The study showed that victims were not as single-mindedly retributive as many would believe, particularly considering that the area experiences one of the highest crime rates in South Africa. Although many victims expressed a desire for vengeance, they also consistently expressed an interest, across

offence types, in telling the offender how they felt. Leggett (2005) therefore concludes that his findings support the belief that victims in South Africa are open to creative and restorative approaches to resolving crime.

In another study that explored challenges and opportunities for restorative justice in the Western Cape from the perspectives of victims and perpetrators of youth crime, Shearer (2005) found that most victims and perpetrators welcomed the notion of restorative justice as a means of dealing with criminal cases involving young offenders.

Skelton and Batley (2006) argued that the assessment of whether a case is suitable for invoking restorative justice options should not only focus on the seriousness of the offence but also on the circumstances surrounding the offence. Cases in which there is an identifiable victim are all suitable for restorative justice (Skelton and Batley, 2006). The fact that restorative justice is available across the system is also an important factor in understanding that it can be applied to serious offences (Skelton and Batley, 2006). Even where the offender has served a part or all of his or her prison term, restorative justice can still be part of the resolution.

In research that was conducted by Gantana (2006), exploring the implementation of restorative justice by magistrates, prosecutors and probation officers in sentencing of young offenders in the Western Cape, the researcher found that her respondents were familiar with the concept of restorative justice and its value. However she noticed in the charge sheets that the justice officials still preferred the traditional way of sentencing. She interpreted this to mean that her respondents did not completely believe in the benefits that restorative justice would offer to the parties involved. She concluded that a holistic approach that involves the victim, offender and community, with more interdisciplinary cooperation between different role players, in the application of restorative justice to sentencing would be ideal.

CONCLUSION

This article has highlighted the importance of the often-neglected role of a probation officer in policy development. It is argued that it is the probation officer who will help other role-players and policy-makers understand what the probation profession seeks to achieve in its work with child offenders, their victims and their families. The article also argues that a restorative justice framework should underpin all legislation that relates to the management of child offenders in South Africa. Some progress has been made with regard to the integration of the restorative justice approach in both statutory and therapeutic interventions in South Africa. An increasing number of courts are beginning to insist that each pre-sentence report needs to be accompanied by a victim impact report. Whilst this is commendable this author believes that by adopting the restorative justice approach in both statutory and therapeutic interventions, the victims of crime need to be brought into the picture right from the beginning and throughout the statutory process.

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ENDNOTE

- 1 Bifurcation refers to a policy of separating out the minor offenders from the serious offenders with the intention of being tough on the latter.

The struggle continues

The fight against corruption in prisons

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Following a briefing by the Special Investigating Unit (SIU) to the Portfolio Committee on Correctional Services regarding its investigations into corruption, fraud and maladministration in the Department of Correctional Services (DCS), this was one journalist's response: 'Members of parliament were stunned by a report on the endemic nature of corruption in the Department of Correctional Services, detailing cases of tender rigging, medical aid fraud and petrol card abuse' (De Lange 2008). The report to Parliament raises a number of questions: Is this department irredeemably beyond salvation? What still needs to be done and what is being done to prevent and combat corruption? Are there any successes? These questions are explored in this article.

Successful approaches to fighting corruption are not aimed at removing the proverbial rotten apple from the barrel, but at tackling the barrel itself (Van der Beken 2002:273). Therefore, the aim of the DCS should be to fix the system that creates the conditions for corrupt acts to be committed. Prison systems are by their nature not transparent, and the risk of officials operating with little restraint or accountability is therefore considerable.

Institutions such as these have been referred to as 'calm biopes' - 'areas in which, with organisation and control, corruption structures develop, grow and prosper over the years' (Nötzel 2002:51). Good governance and anti-corruption measures intend to prevent such 'calm biopes' from developing in organisations and to prevent officials from controlling organisations or parts thereof that they might otherwise attempt to exploit for private gain.

The DCS has a special relationship with the SIU, but the assistance from the SIU should be seen as only one pillar of the anti-corruption effort of the DCS, the other three pillars being prevention, public awareness, and institution building (Pope 1999). As important as investigations and law enforcement are, they remain components of a strategy that must address the problem holistically. The key question then is whether sufficient progress has been made to disturb the 'calm biopes' and ensure that there is no safe haven for officials intent on misusing their public office for private gain.

THE SIGNIFICANCE OF PRISON CORRUPTION

Corruption in the prison system holds particular significance. Failing to address it holds severe

risks (for taxpayers and victims), but also undermines the very integrity of the penal system by eroding the intended just and morally justifiable punishment of the offender. The prison serves a particular moral function in society and, if there is to be any hope that the prisoner will perceive his or her punishment as justly administered, should execute its task to the highest possible standard, untainted by dishonesty or even impressions of impropriety (Muntingh 2006b:6).

For analytical purposes it is important to distinguish between types of corruption present in the prison system. They can be categorised by three fundamental relationships: between warders and prisoners, between warders (as employees) and the DCS as employer, and between external agents, officials and the department (Muntingh 2006a:19).

THE DCS, DIU AND THE SIU

Special Investigations Unit

Following the initial work of the Jali Commission, the Department of Correctional Services and the Special Investigations Unit entered into a three-year agreement in October 2002 that was later extended to 2006. The first agreement was focused on particular problem areas, namely the medical aid fund, corruption at prisons, management of DCS pharmacies, First Auto card fraud, and mismanagement of assets (Portfolio Committee on Correctional Services 2008). The second three-year agreement was entered into in 2006 with a particular focus on procurement (as the DCS is in the process of entering into a number of large contracts) and asset management, with particular reference to DCS farms.¹ Although it has not been confirmed by the SIU or the DCS, the so-called 'large contracts' are understood to refer to the installation of security technology, security fencing and nutritional services (Du Plessis 2006).

The results of the DCS-SIU agreement have to date been impressive: R34,9m was recovered (this

includes R5,6m in assets under restraint); savings amounting to R3,4b were secured; disciplinary action was recommended in 1 183 cases; criminal action was recommended in 327 cases; and ten professionals (primarily doctors) were reported to their professional bodies (Portfolio Committee on Correctional Services 2008). More recent figures indicate that 701 officials were investigated for medical aid fraud.² The services of the SIU do, however, not come free of charge and under the first agreement the DCS paid the SIU between R5,5m and R6m per year. Under the second agreement the costs escalated to R10m per year.

The SIU provides the DCS with specialist skills to provide integrated forensic solutions relating to forensic audits and investigations; remedial legal action; and systemic improvements and risk management. Importantly, the SIU is a state institution, which means that the state avoids the more expensive option of subcontracting the private sector for such services. Despite the escalating costs, there is really no alternative at this stage. The costs incurred are also dwarfed by the size of the DCS budget (R11,67b for 2008/9). At less than 0.1 per cent of the department's 2008/9 budget, the R10m per year spent on the SIU is a wise investment and yields reasonable returns for the state.

Even though public reports on the SIU's investigation results may be perceived by some to be detrimental to the department's public image, they nonetheless communicate the clear message that something is in fact being done about corruption. Unfortunately, recent media reports not only failed to make this point, but also failed to describe the systemic achievements facilitated by the SIU's involvement with the DCS. Increased transparency can, in the long run, only benefit the department's public image.

Departmental Investigating Unit

The Departmental Investigating Unit (DIU) was established in 2004 to meet the minimum anti-corruption capacity requirements developed by the Department of Public Service and

Administration (DPSA 2006). From the initial four investigators appointed, it has now grown to 18 investigators drafted from the SIU, SARS, Directorate Special Operations in the NPA, and the SAPS Organised Crime Unit. The capacity of the DIU is in the process of being further increased with 75 of a targeted 500 investigators trained to assist at regional level.³ Upon completion of investigation, cases from the DIU are referred to the Code Enforcement Unit of the DCS for disciplinary action. The results have been equally impressive with a conviction rate of 98 per cent over the past two years, involving more than 100 cases.⁴

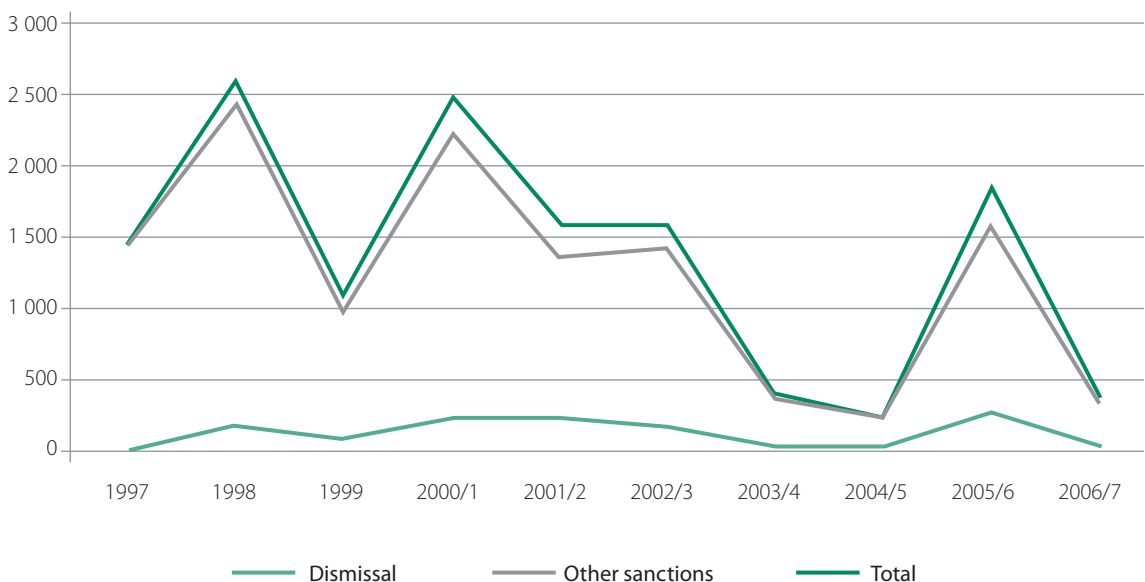
CHALLENGES AHEAD

Fighting corruption in the prison system is not without challenges and the following will highlight a number of these. The work of the SIU and DIU has demonstrated the successes possible with investigations aimed at fraud and corruption where the state had lost or stands to lose large amounts of money. The challenges described below emanate from the other pillars of an effective anti-corruption strategy, namely prevention, public awareness, and institution building.

SUSTAINED DISCIPLINARY ACTION

Given the findings of the Jali Commission and the work of the SIU one would have expected a consistent, if not growing, trend in disciplinary actions against DCS officials, resulting in a significant proportion of dismissals. The increase in the number of DCS officials (from 30 199 in 1998 (DCS 1999:39) to 40 795 in 2006/7 (DCS 2007:140)) should also have been reflected in a natural increase in the number of disciplinary sanctions. Trends in disciplinary sanctions imposed, however, suggest differently, as shown in Figure 1.⁵ The most obvious is the see-saw figure in total disciplinary sanctions imposed, from more than 2 600 in 1998, dropping to 1061 in the following year but climbing to just below 2 500 in 2000/1. The high number of disciplinary actions during 1997 and 1998 were the result of the investigations undertaken by the Public Service Commission (PSC) and the DPSA. The spike in 2001-3 can be attributed to the early work of the Jali Commission and the SIU. During the first three years of the SIU's involvement in the DCS (2002-2005), the total number of disciplinary actions dropped to a meagre 224 cases in 2004/5, but the fruits were harvested the following year when disciplinary sanctions climbed to 1 850, the highest level since 1998. These were cases

Figure 1



primarily related to medical aid and social grant fraud.

Dismissals, however, remain a rare event in the DCS. The highest number of dismissals was 264 in 2005/6, or 14 per cent of total disciplinary sanctions imposed. In the following year, 2006/7, the total number of disciplinary actions dropped to 367 with only 33 dismissals.

The see-sawing in the number of disciplinary actions taken against employees of the department may reflect an attitude, or even a decision, by DCS management that the 'SIU and DIU will take care of discipline'. If this is indeed the case, it is extremely unfortunate. The two investigating units are there to support the DCS with specialist skills and knowledge and to provide comprehensive forensic solutions, but they do not replace the day-to-day duty of every manager in the department to enforce the disciplinary code and promote good performance. Enforcement of the disciplinary code by every operational manager also lends sustainability to the achievements of the investigations into corruption and maladministration, by making compliance with prescripts and codes part of organisational culture.

MAKING THE ACHIEVEMENTS PART OF BUSINESS AS USUAL

Many of the problems relating to corruption and maladministration that the DCS has faced over the past ten years have their roots in poor systems and inadequate controls. This, therefore, forms an important focus area of the SIU's interaction with the department. Particular risks identified in this regard are lack of internal controls; inadequate asset management; and lack of effective monitoring and evaluation systems (Portfolio Committee on Correctional Services 2008). Addressing these issues is difficult as the department is complex: it has 237 prisons, a staff corps in excess of 40 000, an estimated 360 000 people circulating through the prison system annually, and it is highly dependent on service providers for goods (e.g. food and material). The fact that the department had received five

consecutive qualified audits by 2006/7 (a feat shared only by the Department of Home Affairs) is indicative of the challenges faced by the department and its inability to deal with them.

The 2006/7 DCS Annual Report reflects a number of key outputs related to improving governance that were not achieved or partially achieved, whilst others were fully achieved. Although the asset register was not completed, 970 officials were trained in financial and supply chain management, yet this positive achievement was offset by the fact that the newly trained officials were apparently not deployed (DCS 2007:25). On the other hand, a baseline of risks was established, and 60 disciplinary hearings related to fraud and corruption were held, with a 92 per cent conviction rate. Vetting of departmental staff turned out to be a major challenge and of the 500 forms submitted to the NIA for vetting, only 290 were completed. The DCS has also developed numerous (21) policies aligned to the White Paper on Corrections but only five per cent of targeted managers were trained in these policies.

In short, while progress has been made, changing the direction and the culture of such a large organisation is not easy, especially one that has significant historical baggage. Accurate strategic planning with achievable targets must map the path ahead and it will primarily be up to Parliament, by means of the Portfolio Committee on Correctional Services, to see that these are indeed achieved. In this regard it can draw on the Department of Public Service and Administration and the Public Service Commission as the technical experts in building a clean and effective DCS.

CORRUPTION AND THE TREATMENT OF PRISONERS

The Jali Commission had a real and substantive expectation that the Office of the Inspecting Judge would be more active in combating corruption. It was disappointed that this oversight structure failed to use its powers to conduct its own investigations and to hold, for example, a

Commission of Inquiry as it is mandated to do (Correctional Services Act 1998:S90 (5) & (6)). Correctly, the Commission saw the treatment of prisoners as inextricably linked to corruption.

A 2001 amendment to the Correctional Services Act saw the removal of the power to inspect and report on 'corruption and dishonest practices' from the mandate of the Judicial Inspectorate (Act 32:2001:Section 31). The Jali Commission regarded this amendment as ill-conceived (Jali Commission 2006:587). The fact that reporting on 'corruption and dishonest practices' remained within the mandate of the Inspecting Judge of Prisons (JIOP) was in all likelihood the result of an omission on the part of the drafters of the amendment. The first version of the Correctional Services Amendment Bill (B32 of 2007) attempted to remove the power of the Inspecting Judge, but this failed and the final version of the Bill adopted by Parliament retained the power of the Inspecting Judge to report on corrupt and dishonest practices. During the deliberations on the Bill it was clear that civil society, the Portfolio Committee and the Judicial Inspectorate were in agreement with the Jali Commission that the treatment of prisoners is indeed 'inextricably linked to corruption'.

While the SIU and the DIU have focused on grand corruption, very little has been done to address the so-called petty corruption that takes place in prisons daily. When a prisoner has to pay R10 for an extra blanket in winter or R2 to make a phone call, it may sound like petty corruption, but seen across the entire prison system and adding up all the R10 and R2 payments, it is not so 'petty'. Moreover, the impact of such practices on prisoners who do not have enough money to pay the bribes is far in excess of their monetary value. Current efforts to address this type of corruption in the prison system have not been particularly successful and have not been a focus of the SIU, DIU or the JIOP.

Creating an environment where prisoners feel free to report corruption without fear of reprisal appears to be very difficult. The JIOP recorded a mere 398 complaints from prisoners alleging

corruption in 2007/8 (Office of the Inspecting Judge 2008:17) and 1 463 in 2005/6 (Office of the Inspecting Judge 2006:11).⁶ The PSC's National Anti-Corruption Hotline received only 21 complaints involving the DCS in 2006/7, after it received 141 complaints involving the DCS the previous year (Public Service Commission 2007:13).

Responding to these complaints presents a further challenge. Presumably these can be dealt with by the DIU. However, with 18 investigators for the entire department, it is too small to deal with the problem adequately (Muntingh 2006:21). Developing a mechanism to effectively investigate allegations of corruption from prisoners remains a significant shortcoming in the strategic response to corruption. Hopefully the additional 500 regional officials being trained in investigation will assist in this.

PUBLIC REPORTING

Reporting on the investigation of corruption in the DCS has been scant and the most comprehensive report remains that of the Jali Commission. Even the SIU reports only provide cursory details, leaving many questions unanswered as to the exact facts of the cases handled. Apart from holding offenders accountable, investigations into corruption should contribute to the broader process of prevention in a number of ways:

- Investigations should build knowledge by improving understanding of how a particular crime was committed, how it was detected and what effect it had; and indicate systemic weaknesses.
- Investigations should inform the risk assessment with reference to type of risk and the extent of the risk.
- The results of investigations, successful or not, should be made available to stakeholders from government or civil society with the aim to improve insight into the problem and to demonstrate that effective action can and will be taken against corrupt officials.

The New South Wales Independent Commission against Corruption (ICAC) regularly makes the results of its investigations public in the form of comprehensive reports. The reports are detailed, providing not only a description of the offence in question but also the history of the offence(s), giving particular insight into the chain of events preceding the offence and context in which it occurred. It is also noteworthy that the reports are available relatively soon after the investigation has begun, often with interim reports being followed by more comprehensive reports at a later stage; both interim and final reports are made public.⁷

Apart from making reports available in the public domain, the results of investigations ought to be reported to key stakeholders, such as the oversight institutions of Parliament, and in particular the Portfolio Committee on Correctional Services and the Standing Committee on Public Accounts (SCOPA). Given the particular history of the department and the findings of the Jali Commission, there is a strong argument to be made for specialised, regular and structured reporting to Parliament on progress made in addressing corruption.

Moreover, investigations must be communicated to the staff of the department to demonstrate that action has been taken and to provide staff with a deeper understanding of the risks presented by their work environment. Investigations have a strong symbolic value that should be capitalised on. Publishing the full results of investigations would also serve to stimulate the discourse on ethics and integrity among the staff corps. In short, there are several reasons why the findings of investigations should be made widely available, not only because this is required in terms of reporting duties, but also to create awareness and develop understanding among the staff of the department.

CONCLUSION

An organisation with more than 40 000 employees and a 'customer base' with a known history of criminal involvement pose significant

challenges from a governance and corruption perspective. In the aftermath of the Jali Commission it appears that the DCS has put in place the basic investigative measures to combat corruption. It also appears that systemic improvements are ongoing and that this will in due course limit the opportunities for corrupt officials. According to the DCS the work of the SIU and the DIU enjoy the support of officials in general and that there has been a positive change in the reporting of corruption.⁸ Challenges appear to be at operational level and more particularly with managers who seem to be reluctant in enforcing discipline and compliance with the relevant codes. It is indeed the indulgence by managers of minor transgressions, and their passivity, that pose the greatest risk to harvesting the fruits of six years of active investigations by the SIU and the DIU.

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ENDNOTES

- 1 See Proclamation R 44 dated 28 November 2007 for a full description.
- 2 Interview with Director of the DIU, 12 August 2008
- 3 Interview with Director of the DIU, 12 August 2008
- 4 Interview with Director of the Code Enforcement Unit, 12 August 2008
- 5 The data used in Figure 1 was extracted from the various annual reports of the DCS of the period covered. It should be noted that the report for 2000/1 covers a 15-month period when the department changed its reporting period from a calendar year to a financial year.
- 6 Note that in the 2006/7 Annual Report of the JIOP the breakdown of complaints received is not provided.
- 7 See ICAC *Investigation into the Department of Corrective Services: Fourth report - Abuse of official Power and Authority*, November 1999 and ICAC Report on the investigation into the introduction of contraband into the Metropolitan Remand and Reception Centre, Silverwater, September 2004.
- 8 Interview with Director of the DIU, 12 August 2008

Giving substance to political will

The role of the SAPS in destroying firearms

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The South African government has consistently stated that peace and security in the Southern African region and on the African continent must remain a top priority. This progressive attitude toward regional security is evident in South Africa's approach to the control of small arms and light weapons at a national, regional and international level. This article examines the firearm destruction policies and processes of the South African Police Service (SAPS). It analyses the positive effects and the negative outcomes of the decision to decentralise firearm destruction to provincial level.

The importance of disposing of surplus small arms, light weapons and explosives is nowhere better illustrated than by the tragedy of the explosions at the Mozambican Armed Forces (FADM) ammunition storage facility in Laulane, a suburb of Mozambique's capital city, Maputo, on 22 March 2007.

This blast, which killed more than 100 people and injured many more, took place at Mozambique's largest storage facility, containing thousands of tonnes of armaments and explosives. This was not the only such event in Africa. In January 2002, an ammunition dump in the centre of Nigeria's largest city, Lagos, exploded, killing hundreds, if not thousands of civilians. The depot was located at the Ikeja military base, situated in a busy residential area. Many buildings, including the market and a nearby church, were destroyed and a hospital and local school were damaged.

In February 2005 BBC News reported that an ammunition arsenal exploded in Juba, Sudan,

killing 24 people and injuring more than 50 civilians. This incident was attributed to the extreme heat in the region. Other deadly explosions in recent years have occurred in Conakry, Guinea, and Yaoundé, Cameroon. In March 2001 the BBC World Service described an explosion at an army base ammunitions dump in Conakry that killed 10 people. In February 2001, an explosion following a fire in a military armoury in the centre of Yaoundé disrupted citizens' lives and caused panic throughout the city (BBC News February 2001). These tragic events demonstrate the need for increased and more effective management of weapons arsenals.

The effective management of arms and ammunition stockpiles is a crucial component of the UN Program of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in all its Aspects (UN PoA). Compliance with international standards and norms may include measures such as the destruction of surplus and

redundant arms and ammunition stockpiles belonging to the state, as well as the recovery and confiscation of weaponry illicitly held by civilians.

According to Adrian Wilkinson (2007:129) of the South Eastern and Eastern Europe Clearinghouse for SALW Control (SEESAC), an initiative of the United Nations Development Programme (UNDP) and the Stability Pact, at least 153 ammunition depot explosions occurred globally between 1995 and 2007, killing more than 2 500 people and injuring over 4 000.

SOUTH AFRICA AND SMALL ARMS

South Africa has endorsed the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (Bamako Declaration) of December 2000. South Africa has also prioritised a number of international and sub-regional agreements, declarations and treaties, including the Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and Other Related Materials and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

South Africa (2007) has made its position clear: the country supports the effective implementation of the UN Program of Action. During the United Nations First Committee Thematic Debate on Conventional Weapons/Small Arms in New York, South Africa stated that 'one of the most important undertakings in the UN PoA are the elements contained in its section II, namely, "implementation, international co-operation and assistance" (...) without serious efforts to assist those amongst us that are still experiencing capacity, financial and other concrete needs in key areas such as effective stockpile management and national arms control systems; theft, corruption and diversion will continue to fuel the illicit trade in these firearms and their ammunition'.

The need to combat the proliferation of small arms is also central to the Peace and Security agenda of the New Partnership for Africa's Development (NEPAD). Endorsed by all African leaders at the Organisation of African Unity (now the African Union) summit on 11 July 2001, NEPAD recognises that combating the illicit proliferation of small arms and light weapons is one of the important conditions needed to place African countries, both individually and collectively, on a path of sustainable growth and development. This is in line with the Bamako Declaration, which notes that in order to promote peace, security, stability and sustainable development on the African continent, it is vital to address the problem of the illicit proliferation, circulation and trafficking in SALW in a comprehensive, integrated, sustainable and efficient manner.

At national level, the South African government has taken a number of important measures to meet its international and regional obligations. It has, among other steps:

- Developed a Firearm Strategy to eradicate the proliferation of firearms, which exacerbates crime and violence in South Africa
- Developed new legislation on domestic firearms control
- Enacted new laws controlling the export and brokering of firearms
- Established a national point of contact for small arms
- Undertaken a comprehensive audit of all state owned firearms
- Reached an agreement with firearm manufacturers in South Africa with a view to standardising the marking of firearms and to thus make tracing easier.

In line with the United Nations report (1997:9) on small arms which recommends that states should consider the possibility of destroying surplus weapons, South Africa's National Conventional Arms Control Committee (NCACC) took the decision to dispose of all state-held redundant, obsolete, unserviceable and confiscated semi-automatic and automatic weapons of a calibre less

than and including 12.7 millimetres by destruction (Ramano 2000).

The SAPS was the first South African government department to develop a policy of destruction for redundant, obsolete, seized or any other firearms that could not be classified as standard. Today, the SAPS have an ongoing policy and programme to destroy obsolete and redundant arms as well as illegal or confiscated firearms. This practice, while not necessarily unique, is, in terms of its scale and duration, one of the most comprehensive undertaken on the African continent, if not internationally.

This article analyses the pros and cons of the SAPS' August 2003 decision to move away from a centralised destruction procedure to one that is decentralised to South Africa's nine provinces.

SAPS FIREARMS DESTRUCTION POLICY IN THE DOMESTIC CONTEXT

In terms of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), the aim of the Department of Safety and Security, under which the SAPS resorts, is to prevent, combat and investigate crime; to maintain public order; to protect and secure the inhabitants of South Africa and their property; and to uphold and enforce the law. Within this, the SAPS have identified four priority areas: combating organised crime; addressing serious and violent crime; reducing crimes against women and children; and improving service delivery (Selebi 2002). According to the SAPS, organised crime, serious and violent crime, violence against women and children and the inability to deliver socio-economic services to the public are exacerbated by the availability of firearms in the country – both in respect of licensed possession by civilians and the available illegal pool of small arms in the country and more broadly in Southern Africa.

Social crime prevention is a key element of South Africa's approach to crime prevention, and combating the proliferation of firearms and

preventing their use in violent crime through a comprehensive firearm control management system is an important aspect of the SAPS' day-to-day operations (South Africa 2005).

THE SAPS FIREARM STRATEGY

Historically and currently South Africa has a heavily armed civilian population. In 1994, there were 3,5m licensed firearms in the hands of 2,4m individuals, with approximately 1 500 new applications each day (Kirsten 2005:1). Applications peaked around South Africa's first democratic elections in 1994 with more than 200 000 new licenses being issued in that year alone. In 2008 it is believed that the number of firearms in civilian possession has decreased to around 2,8m.

South Africa has high levels of firearm-related crime. A 2003 report by the Medical Research Council of South Africa (MRC) maintains that 'firearms remained the single largest cause of [violent] death' in the country. The MRC study showed that, 'of firearm fatalities, 87 per cent were violence-related and 12 per cent were suicide'. Charles Nqakula, Minister for Safety and Security (2008), has stated that firearms are often used in the commission of aggravated robbery and in many organised crime cases in which people are killed.

In his budget vote address, Nqakula (2006), revealed that 'over the last three years [South Africans] lost 50 864 firearms. Between 1995 and mid-2003, almost 200 000 guns were reported lost or stolen in South Africa. This revelation is exacerbated by the findings of docket research by IDASA (2003) indicating that both legal and illegal firearms are used in crime. It is obvious that the great majority of [the lost] weapons have become part of the illegal guns that are in circulation at this time' (Nqakula 2006).

As a result, one of the South African government's stated priorities on small arms is to tighten up controls on legally owned firearms in order to reduce the high levels of gun crime and related

insecurity in the country. According to Nqakula (2006) 'the Firearms Control Act, 2000 (Act 60 of 2000), and the Firearms Control Amendment Act, 2003 (Act 43 of 2003), are intended to assist the South African Police Service in preventing the proliferation of illegal firearms and removing them from society, as well as to control legally owned firearms'.

The Annual Report of the National Commissioner of the SAPS, 1 April 2003 to 31 March 2004, revealed that during the two previous financial years, the SAPS implemented a firearm strategy aimed at the eradication of firearms for use in crime and violence in South Africa. The firearm strategy consists of five pillars:

- The development and maintenance of appropriate firearm-related regulators
- The development and maintenance of effective control processes and procedures for firearms
- The reduction and eradication of the illegal pool and criminal use of firearms
- The prevention of crime and violence through awareness raising and social crime prevention partnerships
- The implementation of regional firearm interventions.

Each of the strategy's pillars has different but connected responses. To adhere to the requirements of the strategy a new Firearms Control Act (No. 60 of 2000) was enacted. The SAPS continued to support the Mozambican police service in the identification and destruction of arms caches (Operation Rachel). South Africa enacted new legislation on the arms trade, including the National Conventional Arms Control Act (No. 41 of 2002) and decided to destroy surplus state-owned weapons in the possession of the SANDF and the SAPS as well as other state departments.

Since the development of the SAPS firearm strategy in 2003 the reduction of firearm-related crime has remained a high priority for the police.

SAPS POLICY OF DESTRUCTION OF FIREARMS

The SAPS has reinforced its policy of firearm destruction with action. In the period January 2000 to December 2007 it destroyed 530 977 firearms and components as reported by the SAPS Central Firearms Registry. In the context of crime, this policy is rooted in the results and recommendations of the Goldstone Commission of Inquiry (1993). The Goldstone Commission was, among others, established to hear evidence on ways of curbing illegal imports of automatic firearms into South Africa and their use in political violence that had engulfed the country as it moved towards its first non-racial and democratic election in 1994. But South Africa's policy is also grounded in its commitments to international norms and agreements, which call for the disposal of confiscated or unlicensed firearms.

At a Southern African level, the SADC Firearms Protocol commits member states to the adoption of co-ordinated national policies for the disposal of confiscated or unlicensed firearms that come into the possession of state authorities. The UN PoA recommends that states ensure that 'all confiscated, seized or collected small arms and light weapons are destroyed, subject to any legal constraints associated with the preparation of criminal prosecutions...' It also recommends that states regularly review the stocks of small arms and light weapons held by armed forces, police and other authorised bodies, and ensure that stocks declared to be surplus to requirements are clearly identified and disposed of, preferably through destruction.

According to the National Commissioner of Police, Jackie Selebi (2002):

it is the South African Government's policy on the non-proliferation and control of small arms and light weapons that the disposal of such stocks to be done by means of destruction.

Besides defining 'disposal' as 'destruction', the SAPS have also made it clear that their policy is as focused on the destruction of obsolete and redundant arms as it is on illegal or confiscated firearms. As part of its standardisation policy, the

SAPS has removed from its stores firearms that are redundant (e.g. surplus to requirements) or obsolete (no longer in service). The SAPS has followed through on this policy to the extent that fully functional firearms are destroyed rather than sold.

Firearms that are destroyed fall into four categories:

- Redundant
- Obsolete
- Seized/forfeited
- Non-standard for use by the SAPS.

Since the end of 2001, the destruction of firearms has become a regular function of the Logistics Division, now known as Supply Chain Management, of the SAPS. The reasoning behind the SAPS approach to redundant, obsolete and confiscated firearms is based on the commitment to prevent these firearms from entering (or re-entering) the illegal market in either South Africa or other countries.

One of the SAPS' long-term objectives is to reduce firearm-related crime by confiscating illegal firearms and ensuring that they do not get back into circulation. The destruction of firearms must be seen as a long-term investment towards crime eradication and a safer society. The emphasis placed by the SAPS on the destruction of firearms symbolises the serious intent of police officials when dealing with crime and criminals.

EARLY DESTRUCTION INITIATIVES (1997-2002)

The Department of Foreign Affairs (1997) noted that in October 1997, the police destroyed 20 tons of firearms by melting them down. The commercial value of the destroyed firearms was estimated at R2m (US\$200 000).

According to Lamb (2000:8), by early 1999, the SAPS had already destroyed 40 tons of surplus small arms, 9 tons of surplus ammunition, over 10 tons of confiscated arms and 11 tons of confiscated ammunition.

In a statement made by South Africa in 2000 it was said that between 1999 and 2000 more than 45 000 redundant state-owned firearms were destroyed together with 9 tons of obsolete and outdated ammunition. In addition, nearly 22 000 confiscated firearms and 11 tons of confiscated ammunition were destroyed.

In January 2001 the SAPS destroyed 102 tons of firearms, parts of firearms and firearm spares, with an estimated value of nearly R26,5m. The firearms destroyed ranged from pistols, revolvers, rifles and shotguns to homemade firearms, totalling 27 816 firearms. The firearms destroyed in this batch included 4 524 confiscated and homemade firearms as well as 23 292 redundant police firearms. Seven projectile launchers and 20 335 parts of firearms and spares were also destroyed.

By the end of 2001 the SAPS had destroyed 30 023 firearms with a total value of R16.8m (US\$1.6m).

In 2002 the SAPS continued its destruction of redundant, obsolete and confiscated firearms and by September 2002 three destruction sessions had been completed, destroying a total of 33 474 firearms and equipment.

DESTRUCTION PROCESS

The SAPS initially destroyed the firearms and equipment by melting them down but this was abandoned for the more cost-efficient method of 'shredding' or 'fragmentising'. The company selected for the destruction is a commercial scrap yard that shreds old cars, equipment and any metal on a payment-per ton basis. It is also the same company used by the South African National Defence Force for the destruction of their surplus and obsolete weapons.

The Logistics Division under the supervision of the Divisional Commissioner was tasked to conduct and oversee the destruction process for the SAPS. The Logistics Division had to arrange for the secure collection and transportation of the

firearms from police stations and collection points to a centralised location. The final step takes place at the destruction site where SAPS personnel break the seals and the weapons are fed into the destruction process. SAPS personnel ensure that all firearms and components are completely destroyed, and monitor the process throughout.

The practical arrangements for the destruction of the firearms consisted of planning a suitable time for the arrival of the firearms at the destruction site to ensure that the firearms were destroyed immediately on arrival. The SAPS was responsible for securing the boundaries of the company's premises and the constant supervision of the destruction process. At this stage the SAPS was paid for the scrap metal delivered to the scrap yard, based on tonnage at the end of the destruction process. The contractor was not paid for destroying the firearms.

Transparency was identified as an important component of the destruction process. While future dates of destruction projects were not announced for security reasons, the SAPS invited the media, non-governmental organisations and other members of the public to a pre-destruction press conference and to the destruction site to witness and report on the event.

DECENTRALISATION OF DESTRUCTION

Since August 2003 the destruction of firearms has been decentralised to the provinces. According to the SAPS and in terms of the provisions of the Firearms Control Act, 2000 (Act No 60 of 2000) the state (SAPS) must destroy all firearms or ammunition forfeited to the state within six months of the date of the forfeiture. To comply with the requirement, alternative methods for destroying firearms had to be identified, including decentralising the destruction process to the nine provinces.

It should be noted that provinces are not allowed to destroy state-owned firearms or ammunition; this remains a national competency. Provinces are

allowed to destroy the following categories of firearms:

1. Unclaimed licensed firearms (Owner known)
2. Voluntarily surrendered licensed firearms
3. Unlicensed firearms (Owner unknown)
4. Firearms forfeited to the state
5. Homemade firearms.

DESTRUCTION PROCEDURE

In line with South Africa's national policy, the National Commissioner has issued a detailed instruction to all provincial commissioners on the process and methodology to be followed when destroying firearms on a provincial level.

Each provincial commissioner is authorised to decide on an appropriate service provider to destroy the firearms accumulated in his or her area, according to the availability of commercial infrastructure in the province. To reduce the amount of bureaucratic red tape and additional financial oversight of the process it was decided that there would be no exchange of money for the service the commercial industry delivers as part of the destruction chain. This policy decision means that the destruction of firearms does not have to adhere to the normal government tender process and no formal contract exists between the SAPS and the service provider. The SAPS does not pay the service provider for destroying the firearms; the only financial burden the destruction process places on the SAPS is the cost of transportation and security of the firearms during the destruction process.

The commercial entity destroying the firearms becomes the legal owner of the scrap metal after it has been destroyed to the police's satisfaction. The resulting scrap has monetary value for the scrap metal recycler, which offsets the cost of destroying the firearms.

The SAPS at national level expects provinces to destroy firearms in their possession on a quarterly basis. This requirement was put in place to limit the number of firearms accumulated in police storage facilities. However, according to the

Firearms Control Act (Act No 60 of 2000) the destruction of forfeited firearms must take place within six months of the forfeiture order being issued.

SAPS policy specifies two options for destroying firearms. These methods are fragmentation, or melting of the firearms and components. The choice of method is left to the provincial commissioners and is largely dependent on the available commercial infrastructure of each province. However, SAPS supply chain management division continues to offer advice on the destruction process and in provinces where the commercial infrastructure is not available, the destruction is still handled by national supply chain management (Director Motaung 2005).

ADVANTAGES OF DECENTRALISATION

The SAPS acknowledges the importance of transparency in the process of firearm destruction. It has put in place verifiable and transparent destruction procedures to enhance public participation and oversight so as to ensure all firearms identified for destruction are destroyed. The destruction process is based on principles of proper record keeping and multi-layered independent control measures, to ensure that firearms destined for destruction do not reappear on the illegal market. The same principles that formed the basis of central firearms destruction are employed in decentralised destruction operations. One of the advantages of decentralised firearms destruction is the reduction in transportation risk. The firearms destined for destruction do not have to be transported over vast distances exposing them to the risk of diversion. Decentralisation also reduces the financial burden on the SAPS by lessening the cost associated with transport and security arrangements.

The incidental benefit attributed to the decentralisation of destruction to provincial level is that members of the public living in the province where the firearm was voluntarily

surrendered for destruction or where the firearm was confiscated from a criminal can witness the destruction of the firearm first hand, as they are able to attend destruction events. This means that more public awareness is raised from smaller communities that are not always reached by centralised civil society organisations.

In addition, provincial commissioners are encouraged to take ownership of the process and they can take a 'hands on' approach during the firearm destruction. This has resulted in better control over firearms and firearm destruction in their provinces.

Decentralisation in brief:

- It is cheaper to destroy firearms in the provinces where they are found
- Decentralisation of firearm destruction empowers provincial commissioners by giving them the responsibility of arranging and overseeing the provincial firearm destruction process
- The delay between confiscation and destruction is significantly reduced
- The risk of firearms being lost or stolen from SAPS secure storage facilities or during transportation to Pretoria is greatly reduced
- Each province can now focus the provincial media's attention on the firearm destruction that took place in the province
- Provincial firearm destruction can focus the public's attention on the commitment of the SAPS to make the community safe, and builds trust in the police
- More firearms are destroyed in each province than previously when firearms had to be sent to Pretoria
- Decentralised firearm destruction has greater public exposure at a provincial level and may therefore have greater impact when it is conducted in an area where the firearms were collected.

While the advantages clearly outweigh any disadvantages, decentralisation is not yet possible in all nine provinces. In some of the smaller

provinces there are no commercial service providers capable of destroying firearms. In these instances, the provincial police still send the firearms destined for destruction to the logistics division of SAPS in Pretoria for processing.

CONCLUSION

Decentralised destruction of firearms and firearm components have more merit than the centralised destruction model. The success of the decentralised model can be seen from the drastic increase in numbers of firearms and components being destroyed in provinces since the beginning of 2003. Another positive outcome of the decentralised model is the reduction of the security threat associated with the transportation of firearms to a central point.

The decentralisation of firearm destruction has been a step forward in the process of making South Africa and the Southern African region safer and free from firearm-related crime.

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Investigating psychologically motivated crimes

The work of the SAPS Investigative Psychology Unit

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The investigation of crimes like serial murder and serial rape requires both experience and proficient detective work. It also requires specialist knowledge to identify the psychological and criminological elements of a serial offence. Within the SAPS, there is a specialist unit that deals with psychologically motivated crimes – the Investigative Psychology Unit (IPU). This article draws attention to the contribution the unit makes to the investigation and prosecution of serial crimes in South Africa.

High crime rates and in particular high rates of violent crime have plagued South Africa, at least since 2001. Despite the latest crime statistics indicating a decrease of 6,4 per cent in contact crimes for the financial year April 2007 to March 2008 (SAPS 2008a), the high rate of violent crime is still a concern to many. Violent crimes like murder, rape, and robbery traumatise victims and have a long lasting effect on their lives.

It is these types of crime that detectives from the South African Police Service (SAPS) are tasked to investigate. However, when a pattern of offences emerges that suggests the involvement of a serial offender, the complexity of the investigation necessitates the involvement of another component of the SAPS, the Investigative Psychology Unit (IPU).

WHAT IS THE INVESTIGATIVE PSYCHOLOGY UNIT?

The IPU was first established in 1996 as a division of the Serious and Violent Crimes Unit. It was later moved to the Detective Service, but since June 2008 the IPU has been situated in the division Criminal Record and Forensic Science Service (CRFSS). The unit is made up of only three members at national head office level led by Professor Gerard Labuschagne.

According to Labuschagne, the unit '... assists in the investigation of psychologically motivated crimes...crimes that have no external (usually financial) motive' (2008b). Crimes like serial murder, serial rape, muti murders, paedophilia, intimate partner murders, child abductions and kidnappings, mass murder, spree murder,

equivocal death scenarios (i.e. helping to determine if a death is as a result of an accident, murder or suicide) and extortion cases' (Labuschagne 2008a). When called to assist detectives to investigate a case, the IPU may assist in the analysis of crime scenes, in interviewing witnesses and suspects, and in giving evidence in court. In addition the IPU also profiles offenders, performs risk assessments, provides investigative guidance and compiles pre-sentence reports.

Provincial coordinators

The IPU works closely with provincial coordinators. These coordinators, who are detectives, are tasked to identify psychologically motivated cases within their provinces and notify the IPU. In some instances the IPU will independently receive information about a psychologically motivated crime. In that case they request the provincial coordinators to verify the report, and notify them accordingly.

Before the restructuring process of the SAPS provincial coordinators were based at the provincial policing level – some at the Serious and Violent Crimes (SVC) units, and others at the provincial office. After the 2006 reorganisation process, five of the nine provincial coordinators (Northern Cape, Western Cape, Free State, Mpumalanga and Eastern Cape) were redeployed to station level and ceased to function as provincial coordinators for the IPU. Of the remaining four, one was redeployed to the SAPS Organised Crime Unit, while three remained at the provincial police office. These four continued to act as provincial coordinators for the IPU. In an apparent turnaround, in July 2008, new provincial coordinators were appointed in the Northern Cape, Western Cape, Free State, Mpumalanga and Eastern Cape (Labuschagne 2008c), to fill the posts that had been vacant since 2006.

The provincial co-ordinators perform a number of functions aside from identifying psychologically motivated crimes. They play a coordination and communication role between detectives, the IPU, and any other relevant unit or

division and follow up with the CRFSS with respect to DNA results on particular cases (SAPS 2008b). Provincial coordinators assist in organising and setting up task teams of trained detectives when there is a need to investigate psychologically motivated cases. Their job also entails monitoring and inspecting case dockets and informing relevant organisational structures of the progress of investigations (SAPS 2008b). They are additionally responsible for communicating and liaising with the media on the progress and outcomes of investigations.

Training

One of the functions of the IPU is to provide training for detectives in identifying and investigating psychologically motivated crimes. Training is given to detectives from the Organised Crime Units, the Family Violence, Child Protection and Sexual Offences (FCS) units, General Investigations, as well as to crime scene photographers and uniformed members. Training is also provided on request to SAPS members in the provinces and to prosecutors and forensic pathologists. Training courses include a three-week course in Psychologically Motivated Crimes (PMC), a Local Criminal Record Centre refresher course, a Serious and Violent Crimes course, and a Family Violence, Child Protection and Sexual Offences course, all of which are presented by the three members of the IPU.

The PMC course, originally developed by the previous commander of the IPU, Dr Miki Pistorius, and regularly updated by the current commander, Professor Labuschagne, has been presented to police from Belgium, Scotland Yard in Britain and Botswana. The unit boasts having trained both an offender profiler from France and the Belgian Behavioural Analysis Unit (Labuschagne 2008a).

The course includes components on human sexuality and the development of offenders; serial rape investigation; serial murder investigation; and the investigation and identification of other psychologically motivated crimes like sexual

burglary, autoerotic fatality, stalking, intimate partner murders and muti murders.

To date about 350 SAPS detectives have undergone the PMC course (Labuschagne 2008b). Director Piet Byleveld (2008b), head of the Serial Offender Investigation Unit and provincial coordinator of Gauteng has said that 'the PMC course is an excellent course and every detective should attend it'.

The success of IPU training for detectives can be measured by the successful investigation and prosecution of various cases. These include the Quarry serial murder case in Olievenhoutbosch, the Highwayman serial murder case in Pretoria, the Phillipi serial murder case in Cape Town, the Knysna serial murder case and the Umzinto serial murder case.

Research

In addition to supporting investigations and conducting training the IPU undertakes research on local cases. This serves to advance the unit's understanding of psychologically motivated crimes, assists in refining training, and informs future investigations.

One aspect of research undertaken by the unit has been the development of a database of solved and unsolved serial murders that is used for research purposes and for offender profiling. All records and information from case dockets collated over the years are stored on the database. The database includes demographic features of offenders, the offenders' *modus operandi*; and details of the crimes as deemed necessary by the profiler. The information is coded, validated and tested.

According to Labuschagne, what sets the IPU apart from other profiling units internationally is its direct involvement in serial murder and serial rape investigations (Labuschagne 2008c).

The IPU is also involved in collaborative research with the Universities of South Africa, Pretoria and the Free State, as well as with Liverpool University in the United Kingdom and John Jay College of

Criminal Justice in the United States of America (Labuschagne 2008c).

The research with John Jay College relates to serial murder and was the largest, most in-depth study ever undertaken on serial murder internationally. It included a study of victimology, suspects and the *modus operandi* of a crime (Labuschagne 2008c). The study was initiated by Labuschagne in order to develop 'a scientific basis for understanding serial homicide in South Africa ... to aid future investigations by providing both valid and reliable support for assertions made regarding linking [of serial murders]' (Salfati 2008). The study has also resulted in the largest dataset on serial homicide offenders in South Africa, which is in the process of being analysed for trends (Salfati 2008).

INVOLVING THE IPU IN CASES

Once a crime is reported, a uniformed member responds to the call. If further investigation is required the uniformed member notifies a detective who takes over the case. If the detective identifies that the case has the makings of a psychologically motivated case (serial murder or serial rape), the provincial coordinator should ideally be notified, although this does not happen in all cases. If alerted, the provincial coordinator would request the assistance of the IPU. This does not always happen, since many SAPS members do not know about the unit, or the services it offers (Labuschagne 2008c). In an attempt to address this, the IPU has taken to alerting SAPS members about training courses that are available via the detective service division (Labuschagne 2008c). In addition, information on the IPU is also provided in the monthly SAPS journal, *Servamus*. However, it would be impossible for members of the IPU to get to all crime scenes, even if more investigators were aware of the IPU and its services (Labuschagne 2008c).

Once the IPU has been called in, a task team of detectives – either SVC or FCS detectives – from the affected areas is mobilised by the provincial co-ordinator and an operations room is set up

from where the investigation is conducted. During the investigation the task team works hand in hand with the members of the IPU. If the services of the IPU are requested in another area or province at the same time, the task team will go ahead with the investigation while remaining in constant contact with the members of the IPU.

If an arrest is made and a suspected perpetrator charged, preparation for the trial begins. The IPU members will be involved in this process until the end – including testifying in court against the suspect. The IPU commander may be required to prepare a pre-sentence report to inform sentencing.

CASELOAD OF THE IPU

The following figures illustrate the total number of files opened by the IPU since 1998. The files include requests for assistance as well as cases that the IPU has been involved in solving. These figures are not indicative of the number of victims per case, as this varies.

Table 1: Number of enquiry files opened

Year	No. of files opened
1998	23
1999	20
2000	56
2001	67
2002	100
2003	144
2004	150
2005	174
2006	169
2007	139

Source: Commander, SAPS Investigative Psychology Unit

Serial cases form a large portion of the enquiries that the IPU attends to, but the proportion of these cases varies annually. For examples, of the 174 enquiries that the IPU opened in 2005, nine

were serial cases that resulted in six arrests. A year later 169 enquiries were opened, of which only two were serial cases that resulted in a single arrest (Labuschagne 2008a). The variance is both a reflection of variance in absolute case numbers, but is also influenced by the capacity of local detectives to identify serial cases and inform the IPU. As such, these numbers are unlikely to represent all serial cases that occurred, but rather those that were identified as such by the police.

PROFILING AND INVESTIGATION

Case study Sipho Dube: the Johannesburg Mine Dump serial killer

During the period mid September 2002 to late October 2002 four incidences of child rape were reported to the police in the Booysens and Jeppe areas in Johannesburg. The ages of the children ranged between nine years and 12 years, and the victims were three females and one male child, three black and one coloured.

In each case the suspect began his crime by abducting the children from public places, using a story to get them to co-operate. He asked for their help, pretended to be a policeman, or an electrician. He then took the victims to isolated places, not far from each other. Once there he controlled the victims using threats of violence or by assaulting them. Ultimately he raped (vaginal and/or anal) the children and then set them free, or they escaped after a period of time.

As the cases started coming in to the police, members of the investigating team became concerned that these could be serial cases, based on the story that the rapist told the children and the close proximity of the four crimes. The IPU commander was called in and compiled a criminal profile.

The profile was developed on the basis of numerous factors including the environment where the crimes took place; how the perpetrator chose the victims; the extent of the use of violence; steps taken by the perpetrator to avoid identification; the sexual nature of the crimes; and

pre- and post-crime behaviour of the perpetrator. Consideration of these factors enabled the IPU to develop a demographic profile of the offender. More importantly, the profile allowed the investigators to predict that the suspect was likely to escalate his crimes to murder – which indeed took place.

An accurate profile and good detective work can result in the quick apprehension of a suspect, but this is not always the case. In this case, six months after the police began the investigation the suspect raped and killed six other children in the same area (Serial Killers 2006). When he was eventually arrested by the uncle of the last victim, he refused to cooperate with investigators (Byleveld 2008a). He eventually confessed his crimes to the Gauteng provincial coordinator and even phoned from prison to point out other crimes he was involved in (Byleveld 2008a).

Although this case suggests the value of collaboration between the IPU and detectives, it also points to the fact that profiling alone cannot solve a case. As stated by the commander of the unit:

It is difficult to say that a report or a profile led directly to the apprehension of a suspect. It is one of many things in the investigation. A profile may be 100 per cent accurate but it not lead them to the offender - that would be done through normal investigation procedures. The biggest input would be in training detectives on how to deal with such cases and then the advice we give to them, which isn't necessarily in a profile or report (Labuschagne 2008c).

Byleveld (2008a) concurs, stating that 'profiling does not solve the case... the opinion of the IPU is important... and... the evidence provided in court on the psychological status of the offender is important to the case'.

IMPACT ON THE IPU OF THE SAPS REORGANISATION PROCESS

In 1996 the SAPS underwent a major reorganisation process that affected the IPU and

the investigation of psychologically motivated crimes; particularly their ability to rapidly mobilise task teams of trained, specialised detectives from the SVC units or the FCS units.

Prior to the reorganisation there were 32 SVC units with 909 members and 67 FCS units with 1 261 members nationally, each with training in psychologically motivated crimes. The staff complement of an FCS unit in a province like Gauteng was an average of 29 members per unit, while in Limpopo Province there were nine staff members per unit. Gauteng also averaged approximately 65 members per SVC unit, while Limpopo averaged 14 members per unit.

During the reorganisation process these units were decentralised and members from the respective units were redeployed to some, but not all police stations to strengthen capacity and improve service delivery at local level. The area level of policing was also closed down, being regarded as redundant. Thus, a total of 1 261 operational FCS members were redeployed to 120 accounting police stations, and 909 operational SVC members were redeployed to 171 contact crime stations and 26 organised crime units. Each accounting station, therefore, has benefited by the addition of approximately 10 FCS members; and contact crime stations and organised crime units have benefited by the addition of four SVC members each, as shown in the table below.

Table 2: Migration of SAPS members after 2006 reorganisation process

	Units prior to reorgani-sation	Members prior to reorgani-sation	No of stations members deployed to	No of members per accounting/ priority station
SVC unit	32	909	171+26	4
FCS unit	67	1261	120	10

Source: SAPS Head Office

The effect of the decentralisation of SVC and FCS members, and the closure of the area level policing offices, is that members have been

scattered. This increases the scope of the IPU's work considerably – it now has to be available to assist 1 115 police stations. It also means that the approval and mobilisation of a task team at short notice is more difficult, especially if there are only a handful of specialised detectives in a particular area. A task team should ideally be made up of six members from either unit, along with a station member from the area in which the crime occurred. Now mobilisation entails negotiating with at least three station commissioners from three police stations who may release only two members each from their staff (Labuschagne 2008a). The process is time consuming and riddled with red tape.

The reorganisation has also served to damage the spirit of teamwork of the specialist members who were used to working as a cohesive unit. Gathering and coordinating information and knowledge is difficult for these members, and there is an inattention to feedback with regard to cases that were previously being investigated.

As mentioned previously in this article, the reorganisation process also led to five provincial coordinators being redeployed to stations. This created a gap in the identification and investigation of psychologically motivated crimes in these provinces. This was partially corrected in July 2008 when five new members were appointed to the posts. However, the new co-ordinators lack the experience and skill of the previous co-ordinators. In addition, according to Labuschagne (2008c), 'at the moment no-one seems to have serial murder in their mandate like it used to be at the SVC units'.

The Gauteng provincial coordinator, based at the Serial Offender Investigation Unit, was one of the four provincial coordinators not affected by the reorganisation process. While still falling under the ambit of the provincial police office, the provincial coordinator, together with the task team dealing with serial murders, remained at local police station level, all housed under one roof. This effectively served to retain the specialist skills of the team and members could continue to work together as a cohesive unit. The provincial coordinator is of the opinion that 'success lies in specialisation' (Byleveld 2008a).

CONCLUSION

The experience and skill of the IPU remains important to the investigation of psychologically motivated crimes in South Africa. The sheer number of cases reported to the IPU suspected to be serial cases suggests that developing and resourcing the unit would be in the interests of solving – and ultimately reducing – these crimes.

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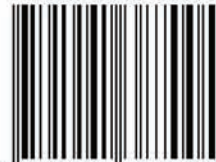
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