

SOUTH AFRICAN CRIME QUARTERLY



Towards a wider agenda for judicial transformation

Understanding crime through victimisation surveys

Pursuing a rape complaint through the criminal justice system

Sourcing crime intelligence from incarcerated house robbers

A critical review of the HSRC report on human trafficking

Interview with Advocate Menzi Simelane



No 32 • June 2010

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Editorial

By the time you read this edition of *SA Crime Quarterly* the 2010 FIFA World Cup tournament will have ended. The thousands of international fans who came to South Africa to enjoy the show will have returned home and one nation will be happier than the rest.

Contrary to all the negative hysteria projected through the national and international media in the weeks leading to the World Cup, tourists were not especially the targets of violent criminals; there are no signs that there was a dramatic increase in human trafficking or child trafficking during the event; and South Africa was not subject to terrorist attacks. While this should be a lesson for those who propagate negative publicity before major sporting events, it is likely that we will see the same level of hysteria the next time a major sporting event is held, whether in Africa or any where else in the world. In 2006 Germany faced the same kind of fearmongering before the World Cup event there. Nevertheless, we can breathe a collective sign of relief and continue where we left off before the month-long festival of sport.

Indeed, we should hope that the quick turnaround time of criminal cases facilitated by specialised courts and focused police investigations into all cases of crime during the World Cup will set a new standard for the criminal justice system in South Africa; one that can hopefully be maintained.

I am very pleased to share with readers that from this edition of *SACQ* an editorial board joins us to keep a watch over the contents of the journal, and in particular to share their vast expertise in ensuring that the articles you read here remain of high quality. The editorial board members are:

- Justice Jody Kollapen (High Court Judge, Gauteng)
- Dr Jonny Steinberg (Visiting Research Scholar, John Jay College, City University of New York)
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- Professor Rudolph Zinn (Senior Lecturer, Forensic and Crime Investigation, University of South Africa)

They bring to *SACQ* a wealth of knowledge and experience and I am looking forward to their contribution to the journal.

Also new is the environmentally-friendly paper that we are now using for *SACQ*. The journal is printed on Triple Green paper made from sugar can pulp. It is fully recyclable and chlorine- and acid-free.

Advocate Simelane, National Director of Public Prosecutions, has been the subject of enormous media interest since he took office. Most recently he has come under fire for 'restructuring' the National Prosecuting Authority, in particular the apparent demotion of senior prosecutors to lower courts. Iole Matthews interviewed him for this edition of *SACQ* and gave him an opportunity to explain his thinking and actions.

You will find a diverse range of articles in this edition. Jean Redpath examines the value of small-scale victimisation surveys and addresses the important issue of sample size for the analysis of victim survey data. Rudolph Zinn presents an argument for police use of incarcerated offenders as a source of crime intelligence. Lisa Vetten *et al* report on the findings of a now somewhat dated, but highly relevant, article on the extent to which rape cases are dropped by the criminal justice system; and Steven Friedman offers his insights into judicial reform in South Africa. We end with a critique of a recent study by the HSRC on human trafficking.

Chandré Gould

Winning public trust

Towards a wider agenda for judicial transformation

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The need for transformation of the judiciary in South Africa has been the subject of much public discussion and debate, both in the media and among legal professionals. This article argues that the key test of judicial transformation is not whether it meets some abstract standard established by students of the law, but whether judges and courts enjoy widespread legitimacy in society. It will suggest that this approach can explain why we need a more racially and gender representative judiciary if our justice system is to operate effectively – but will also argue that a concern for racial and gender change alone will not secure the public trust in the courts and the judiciary that transformation should seek to achieve. A broader reform agenda, which understands the intrinsic link between an improved judicial system and winning broad public support for a more representative judiciary, is thus needed.

The state of the judiciary – and its transformation – is entirely in the eye of the beholder.

At first glance, this seems like one of those platitudes we trot out when we are not sure that we understand where events are headed. But in reality, it expresses a key insight about the judiciary often missed in the debate on its future.

While calls for transformation and for reform of the justice system are not new – and the government has proposed changes far wider than demographic redress – the link between them is often ignored or, indeed, denied. The position adopted in this article is that racial and gender transformation will not succeed without wider reforms – and that these reforms will not produce a legitimate and effective justice system unless the demographics of the judiciary continue to change.

THE PROBLEM WITH LAWYERS' SELF-IMAGE

Why insist that public perception is key to judicial reform?

Many lawyers and judges and much public commentary assume that the difference between legal skill and the lack thereof is clear. From this point of view, legal training and practice impart understanding and knowledge: only those who have it can interpret the law accurately and fairly.

Those who practice law are, therefore, particularly clear examples of an 'epistemic community' – a 'network of knowledge-based experts ... with an authoritative claim to ... knowledge within the domain of their expertise'.¹ Like other such communities, they claim to know more about a particular field of knowledge than the rest of us. Since this knowledge is useful to society, they claim also that our interests are best served if those who have this expertise are allowed to apply it unhindered.

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According to this view, we are most likely to have the justice system we need if the judiciary is left alone to apply its knowledge unhindered by politicians or the citizenry.

But, like other epistemic communities, lawyers' and judges' claim that there is a 'right' and a 'wrong' way to apply knowledge – in this case, to interpret the law – and that the difference is clear, often turns out to be far shakier than it might seem.

Lawyers and judges are human and, like the rest of us, they have values and beliefs. Inevitably, these influence judgments not because the judge is biased but because many of the issues on which judges must pronounce are, in reality, moral choices disguised as judicial questions.

This is most obvious where, as in South Africa, the constitution is supreme and judges must interpret it. How does legal training establish whether the right to life means that we should execute murderers? How does it tell us what is hate speech and what is free speech? Or, to cite issues that have been decided by our courts, how does legal training decide whether an ill man should enjoy dialysis at public expense² or how much free water the poor should receive?³ In all these cases, the ruling will depend on the judge's values and political orientation, not on an 'objective' interpretation of the law.

This is why constitutional courts in centuries-old democracies such as the United States are constant sites of political contest⁴ and why democracies always ensure some sort of political process to choose constitutional judges. In much of constitutional law, political judgment is more at issue than legal training. And so the issue is not whether the best 'experts' have been appointed to the bench but whether members of that society – or, more accurately, those who enjoy access to the national debate – find the process by which these issues are decided to be fair.

But constitutional issues are, of course, not the only ones that require the judgment of the courts. Those who insist that legal knowledge is paramount would no doubt argue that competence matters a great deal more in weighing evidence in criminal trials or, perhaps more particularly, in sifting

through the complexities of a complicated civil action between large corporations. Obviously, legal training is important here. But even here the difference between a 'good' and 'bad' judgement is subjective. By their very nature, court actions are disputed: the accused is either convicted or acquitted, in civil actions one side wins and the other loses. And inevitably, what can seem a brilliant judgment to the victors may appear to the losers as a sign of judicial incompetence.

No 'objective' standard can tell us which side was right and the question of who is a 'good' judge will thus always be a matter of opinion. Thus a prominent legal scholar accepts that 'legal brilliance' may not be the chief qualification of the 'good' judge and that qualities such as an even temperament, a sense of fairness and a commitment to independence may be more important qualities than a view within the 'epistemic community' that she or he possesses outstanding legal ability.⁵

This observation can be extended beyond the individual judge to the institution: the test of a 'good' judiciary, one which serves its society's needs well, is that it should be seen by most of society as even-tempered, independent and fair. This is far more important than whether it is seen by the legal community to be technically expert. To put the same point another way, we ought to judge our judiciary and our justice system by its legitimacy among the citizenry, not by the peer review of the legal profession.

This is not simply a normative point. It might well be a question on which the survival of an independent judiciary depends.

A reality rarely recognised in South African debate is that threats to the independence of the judiciary are inevitable in new democracies and are not unheard of in much older ones. There is nothing normal or natural about the idea that judges can tell elected politicians that the laws they pass or the decisions they take are invalid. And so, wherever courts do enjoy this power, political office-holders are likely to see it as irksome and to seek to challenge it or to dispense with it. Given this, the tests of judicial independence South Africa has recently experienced – such as complaints by

political leaders that judges are biased against senior politicians⁶ – are not crises; they are simply evidence that South Africa experiences the same pressures as other democracies. The key is not whether judicial independence is challenged but whether it survives the challenge intact. This will depend on political support in society for the judiciary's independence: if key interest groups do not see the judiciary as a valuable guarantor of their rights, they will not defend judges' independence if it is threatened. Legitimacy is thus key to the survival of an independent judiciary. On this criteria, how does our judiciary fare?

THREATS TO THE JUDICIARY'S CREDIBILITY

South Africa's judiciary enjoys assets that are often taken for granted here but are not available in many other societies.

Firstly, citizens do not believe that judges are corrupt: survey evidence reveals that the majority of citizens still trust the courts, despite the controversies which have beset them over the past two years.⁷ While many South Africans might take this for granted, there is nothing automatic about the perception that, whatever may be wrong with our justice system, our judicial officers are not bought. Corruption among judicial officers is a problem not only in countries of the global South but also in developed northern countries like the United States of America.⁸

Secondly, and possibly flowing from the first, respect for judicial decisions is high in South Africa. Court orders are respected, at least in public, by those whom they negatively affect – even when they are politicians engaged in conflicts. Thus the Inkatha Freedom Party accepted the Constitutional Court's 1996 decision to certify the constitution even though it had objected to it on grounds that prompted a political battle which nearly derailed the constitutional settlement.⁹ Since South Africa became a democracy, the government has not defied any judicial orders, even though it may have dragged its feet in implementing them. (The celebrated Grootboom housing judgment would be a case in point, as would cases of provincial non-

compliance, which stem more from capacity constraints than a reluctance to comply.) But this happens even in societies where respect for the law is assumed. Even where citizens might be moved to criticise a court ruling, they do not contest its legitimacy.

These two assets are, as noted above, more important than those who take our democracy for granted seem to assume. They suggest that, despite the society's deep divisions, the judiciary does not yet face a legitimacy crisis. But there are significant warning signals that the legitimacy the judiciary and the justice system need is in danger.

Firstly, there is said to be a significant trend among more affluent citizens and companies to use private arbitration rather than the courts.¹⁰ While this is in line with international trends, it could be a response either to a perception that the judiciary is no longer to be trusted under majority rule, or to the severe overload of the justice system, or both. Some analysts have argued that private arbitration is functional to the system because it relieves pressure on already overburdened courts and judges.¹¹ But, whatever its concrete effects, its use does suggest that a key section of society, with considerable access to capital and skills, seeks to bypass rather than use the system, a trend with clear negative implications for its legitimacy as a means of resolving conflict.

Secondly, elsewhere among the business and professional elite, participants in a Black Management Forum symposium on the constitution held in April 2010 complained that the courts repeatedly found against black individuals or black-owned businesses seeking to use legal action to speed up black economic empowerment. They argued that this was a symptom of an 'untransformed' judiciary and that the solution was to ensure that far more black judges were appointed.¹² This highlights in a direct way the link between transformation – understood as enhanced racial representativeness – and legitimacy. Among some sections of the emerging black professional and business elite, then, court decisions on key issues will not be legitimate as long as whites continue to hold a disproportionate share of judicial posts.

Thirdly, grassroots citizens clearly have their doubts about the legitimacy of the judicial process. The issue here is not social and economic rights, but crime. In these cases residents respond to murders, rapes or other crimes against the person by insisting that the judicial process is inadequate to deal with the problem. Attempts by grassroots citizens to rely on vigilantism rather than the courts may not directly express dissatisfaction with judges; it may reflect frustration with poor policing. But more than a few are prompted by the belief that criminals are not convicted by the courts, either because they are able to afford lawyers who win their acquittal, or because witnesses will not testify.¹³ The issue here is not a perception that individual judges are incapable of dispensing justice, but that the system cannot do this. This has implications to which we will return. But it does indicate that the problem of judicial legitimacy may be more deep-rooted than an exclusive focus on the bench's demographics might suggest.

UNDERSTANDING THE PROBLEM – AND ITS SOLUTIONS

These trends do not necessarily mean that the judiciary's legitimacy is in terminal decline or that the justice system's integrity is in mortal peril. But they do suggest that the apparent consensus on respect for the judiciary is fraying at the edges. They also indicate the multiple pressures that face any attempt to win broad legitimacy for the judiciary and the justice system. What does this say about the way forward?

Firstly, the concerns of black business and professionals confirm that the racial composition of the judiciary is a core test of legitimacy in key constituencies. The argument that black judges will inevitably empathise with majority aspirations is simplistic – much like the expectation that women public representatives will be certain to champion women's concerns. But activist black lawyers and business people are not the only citizens whose support for the justice system would be enhanced if the judiciary more accurately expressed the society's demographics. In a society in which race has long been the key fault line, the race of judges is likely to enhance judicial legitimacy among the

majority even if it is not decisive. Much the same point might be made about enhancing the representation of women on the bench: it will not automatically ensure that the judiciary enjoys more legitimacy among women, but is likely to help.

Lack of progress on gender is clear: only 49 of 216 judges are women¹⁴ and pressure is building here for swifter change. On race, the picture is more complex. Most judges are now black but whites remain over-represented: by mid-2009, 44% of judges were white.¹⁵ It is difficult to evaluate this. While it is the policy of the ruling party to assess progress against the country's demographics, there is no evidence that strict racial proportionality is needed to ensure legitimacy. But, while it would be misleading to suggest that full legitimacy can only be achieved if the bench directly reflects society's demographics, it is equally clear that the bench does need to be predominantly black if the judicial system is to enjoy the required legitimacy among black elites who are, of course, likely to remain an important social constituency.

Obviously the society's racial divisions mean that these gains in black legitimacy may be won at the expense of further decline among whites, in particular professionals and business people. This may create the impression that the circle cannot be squared because what is legitimate to elites among the racial majority is certain to erode it among the minority. But racial attitudes are not immutable and in South Africa there is much evidence that minority views do change – during the period when apartheid was unravelling, it was not uncommon to find swift shifts in racial attitudes once changes, which were feared before they were introduced, turned out not to be threatening. White support for the Immorality Act, which banned inter-racial sex, dropped from 61% a year before it was repealed in 1985, to 38% after repeal became a *fait accompli*.¹⁶ In the post-apartheid period, the appointment of a black Minister of Finance prompted a sharp drop in the value of the Rand. Some years later the same minister, Trevor Manuel, was seen as a guarantor of white business confidence.

This suggests that a decline in the judiciary's legitimacy among whites is not an inevitable

consequence of a more representative judiciary – attitudes will depend on how this change is experienced by white professionals and people in business. And this implies that the challenge is not whether to change the composition of the bench, but how to do it.

An approach that rests solely on ensuring that racial quotas are met is likely to entail a significant loss in legitimacy among whites. By contrast, a strategy that recognises the need to ensure that change occurs in a way that makes a transformed judiciary more appealing to this constituency may be most likely to achieve legitimacy among black and white elites. And that requires, at the very least, processes of judicial selection which are seen to be fair – a requirement which seems often to have been forgotten in the recent round of Judicial Services Commission hearings. In a sense, JSC interviews of judges achieved the worst of both worlds – racial and gender change was fairly limited but the rhetoric of Commission members created the impression that white men were no longer tolerated on the bench.¹⁷ Precisely the opposite is required – a process that is seen to give each candidate a fair hearing but also produces significant racial and gender change. Clearly also, the more the JSC is seen to defend the interests of power-holders and sitting judges rather than citizens (a conclusion some have drawn from its refusal to hear the complaint against the Judge President of the Western Cape that alleged he had tried to influence fellow judges to find in favour of the State President),¹⁸ the less legitimate – and the less transformed – will the judiciary seem to be.

Enhanced legitimacy for racial change may also depend on a form of transformation that would assist grassroots citizens and that is not often seen as a key feature of the transformation debate – a swifter, more citizen-friendly justice system. Besides serving citizens better, this would signal to doubters that a demographically representative judicial system can be effective too.

A further reform task must be an attempt to ensure a judicial system more accessible to those who currently lack the resources to access it. A judicial system that is as transparent as possible is also a transformation priority – a judge who, for

example, rules on a racially sensitive dispute without giving any reasons for the ruling is certain to diminish the system's legitimacy.¹⁹ When the judge happens to be white and the person against whom the ruling is made is black, the legitimacy of the justice system may well be impaired by the perception that courts are being used to buttress minority values and interests as they were under apartheid. Judicial independence does not mean that judicial officers are unaccountable: explaining judgments to society as well as to the parties to an action is an elementary form of accountability, which should be mandatory for any judge. This issue is a challenge for the judiciary. The more it impresses on its members that their independence is not unlimited because it must be constrained by the need, at the very least, to explain why judges reach their rulings,²⁰ the more likely it is that the essence of judicial independence, the need to ensure that judges rule on the strength of their conscience, will be preserved.

A more efficient, accessible and transparent system – one in which access to justice is not delayed for long periods and is affordable to all, and in which judges see a need to account speedily and fully for their decisions – may not automatically allay grassroots suspicions that our judicial system allows criminals to escape sanction. Improved policing may do more to enhance confidence than a reformed judicial system, because citizens' perceptions that the guilty are often not punished may be a function of inadequate policing rather than weaknesses in the courts. But it is surely trite to point out that a system that does not convince citizens that it is accessible, fair and independent of private and public power-holders, will not retain widespread legitimacy, whatever the bench's demographic composition.

CONCLUSION

In summary, further progress towards a more demographically representative judiciary is essential to convince most citizens that the judicial system is fair and independent. But, while this is a necessary condition for legitimacy, it is not sufficient, for two reasons.

Firstly, a concern only with racial and gender representivity is likely to ensure the continued erosion of the system's legitimacy in the eyes of whites, and perhaps of other racial minorities too. Evidence suggests that a demographically representative bench can win the trust of sceptics in the racial minorities, but only if progress is made in making the judicial system more accessible to most people, ensuring that proceedings are swifter, and encouraging the independence of judges and courts.

Secondly, while greater racial and gender representivity might satisfy some lobby groups, it will not on its own address the wider threat to legitimacy posed by grassroots citizens' doubts that the system protects them. Reforms such as those proposed here are needed if the judiciary is to retain public trust.

On both grounds, a broader transformation agenda than that which currently seems to be occupying the minds of key participants in the debate on judicial change is essential. To be sure, proposals for reform that address far more than demographics have been placed on the table, by government as well as other parties. But these broader questions of judicial transformation have tended to be lost of late in the polarised racial debate. They need to be revived, not only because change is badly needed, but because racial and gender change will be far easier in the context of a wider reform agenda.

South Africa's divisions mean that further demographic change is needed if the judiciary is to win sustained legitimacy. But despite these divisions and the pressures on the courts created by a high crime rate, it is possible to win broad public legitimacy for a more demographically representative judiciary – but only if demographic change is seen as a necessary component of a much broader reform agenda.



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<http://www.issafrica.org/sacq.php>

NOTES

- 1 Peter M Haas, Introduction: Epistemic Communities and International Policy Co-ordination, *International Organization* 46 (1), Winter 1992.

- 2 Soobramoney vs Minister of Health (KwaZulu Natal) (CCT 32/97) [1997] ZACC17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1606, November 1997, <http://www.saflii.org/za/cases/ZACC/toc-S.html> (accessed 5 July 2010).
- 3 Soweto's water fight heads for Appeal Court, *Sowetan*, 18 February 2009, <http://www.sowetan.co.za/News/Article.aspx?id=943099> (accessed 5 July 2010).
- 4 For a discussion of the politics of judicial review during Roosevelt's New Deal see William E Leuchtenberg, *Franklin Delano Roosevelt and the New Deal*, 1932-40, New York, Harper and Row, 1963.
- 5 Pierre de Vos, What makes a good judge? *Constitutionally Speaking*, April 19, 2010, <http://constitutionallyspeaking.co.za/what-makes-a-good-judge/> (accessed 5 July 2010).
- 6 Matuma Letsoalo, Mandy Rossouw and Sello S Alcock, ANC boss accuses judges of conspiracy against Zuma', *Mail & Guardian*, 4 July 2008.
- 7 Idasa, Afrobarometer Round 4 Survey Findings Question 49H, 36. <http://www.chapter2.org.za/mailler/NewsletterSource.asp?NID=38&LanguageCode=en> (accessed 7 June 2010).
- 8 See for example Christopher Beam, Un-Guilty! Do corrupt judges get their decisions erased? <http://www.slate.com/id/2211162> (accessed 5 July 2010).
- 9 *Certification of the Constitution of the Republic of South Africa*, 1996 (CC 23/96) [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC), 6 September 1996.
- 10 See for example Cliffe Dekker Hofmeyr, *Dispute Resolution Matters*, Spring 2009, 4. <http://www.cliffe.dekkerhofmeyr.com/news/files/CDH-Dispute-Resolution-Matters-Spring-2009.pdf> (accessed 5 July 2010).
- 11 Martin Schönteich, Anthony Minnaar, Duxita Mistry, KC Goyer, *Private Muscle: Outsourcing the Provision of Criminal Justice Services*, Institute for Security Studies ISS Monograph 93, January 2004, Pretoria.
- 12 Remarks by Adv Thabane Masuku and Max Maisela, Black Management Forum Symposium on the Constitution, Johannesburg, April 29 2010.
- 13 See for example, Stoned and torched: Angry mob's brutal revenge on mass killer, *Daily News* 1 November 2005, <http://www.dailynews.co.za/index.php?ArticleId=2975331>; Kameeldrift residents angry after murder, *The Citizen*, 21 November 2009, <http://www.citizen.co.za/index/article.aspx?pDesc=88780,1,22> (accessed 5 July 2010).
- 14 Franny Rabkin, Women need a foot in the judiciary door, *Business Day*, 28 April 2010.
- 15 Department of Justice, July 2009.
- 16 N Rhodie, C De Kock, and M Cooper, White perceptions of socio-political change in South Africa, in D Van Vuuren, et al. (Eds.) *South Africa. A plural society in transition*. Durban, Butterworths, 1985, 303-333, cited in Gunnar Theissen, *Between Acknowledgement and Ignorance: How white South Africans have dealt with the apartheid past*, Johannesburg, Centre for the Study of Violence and Reconciliation, 1996.
- 17 No moratorium on white Judges, SA Press Association 26 January 2007, <http://www.news24.com/SouthAfrica/Politics/No-moratorium-on-white-judges-20070125> (accessed 5 July 2010).
- 18 JSC Hlophe proceedings invalid, court rules, SA Press Association, 19 April 2010, http://www.iol.co.za/index.php?art_id=nw20100419161120175C106865 (accessed 5 July 2010).
- 19 Baldwin Ndaba, Malema gagged, *Saturday Star*, March 27, 2010.
- 20 For a highly controversial example of a failure to give reasons see Franny Rabkin, ANC should challenge song ruling, *Business Day*, 29 March 2010.

Using data to make a difference

Understanding crime through victimisation surveys

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Victimisation surveys have the potential to deepen our understanding of crime in South Africa. Using the example of a survey conducted in Galeshewe, this article considers the challenges facing analysts in analysing victimisation surveys and suggests ways to increase the information that can be mined from local and national victimisation surveys.

Surveys of a sample of a population can be used to show trends in the whole population. Mathematics has shown that a large enough random sample drawn from a population will show the same distribution of characteristics as appears in the population as a whole. Thus if a quarter of the population has experienced crime, then a quarter of a randomly drawn sample of the population will also have experienced crime. 'Random' in mathematics does not mean choosing respondents by convenience, but implies a rigorous method of choosing so that every person in the population has an equal chance of being selected.

Because national and local victimisation surveys can provide accurate information about crime in the population as a whole, they are important tools for measuring changes in crime trends. An independent national measure of crime rates is necessary because not all crimes are reported to,

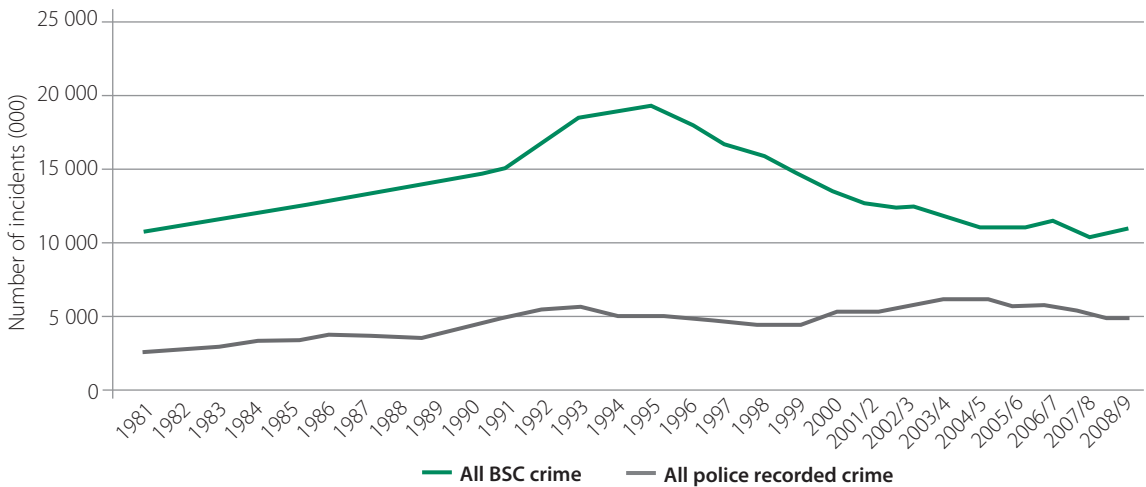
or recorded by, the police. For example, the British Crime Survey (BCS) is a national survey conducted on a regular basis, providing an independent measure of crime rates in England and Wales against which to gauge the impact of state policies on crime rates.¹ The figure on the next page shows crimes reported to the police in England and Wales as compared to crimes measured using the BCS, over the period 1981 to date. The number of BCS crimes is calculated by multiplying the distribution of victims found in the survey by the known size of the population of England and Wales (obtained via Census estimates).

What is apparent is the large gap between recorded crime and BCS trends – the BCS counts more than double the crimes counted in reported crime data. Furthermore the number of crimes reported to the police showed little change over the entire period; by contrast the BCS showed an increase in early 1990 followed by a decline (which the Blair government naturally attributed to the impact of its policies).

Similarly, small-scale local victimisation surveys provide a baseline measurement of crime rates

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Figure 1: BCS and recorded crime trends 1981-2008/9



Source: Presentation by Rachel Murphy and Phil Hall 'Introduction to the British Crime Survey' UK Home Office 19 May 2010

against which the success of crime prevention interventions can be measured. For example, the Galeshewe victimisation survey, conducted ahead of the implementation of a crime prevention plan, involved interviewing 800 respondents selected randomly by street address to provide a baseline measure of crime rates in Galeshewe. This baseline measure was considered necessary not only because not all crimes are reported or recorded, but also because crime prevention initiatives may lead to an increase in trust in the police, which in turn may lead to an increase in reporting rates and consequently higher rates of recorded crime. This means that successful interventions may seem unsuccessful if the only benchmark available is reported crime data. Such data would tend to show an increase rather than a decrease in crime rates.

Apart from providing a benchmark against which to measure change, local victimisation surveys can also inform the design of crime prevention initiatives by highlighting at-risk groups, areas and behaviours, and fill the gaps in information available from official sources.

However, the problem with victimisation surveys is that very large sample sizes are necessary to capture sufficient crimes for analysis. In 1981 the

BCS began with a sample of 11 000 respondents.² This increased to 20 000 in 2000 and to 45 000 in 2004/5. In 2005 the population of England and Wales was around 53 million,³ only slightly larger than South Africa's current population of around 48 million, suggesting South Africa needs a national victimisation survey nearly as large.

WHY ARE LARGE SAMPLE SIZES NECESSARY?

The size of the whole population is not the only factor determining the sample size for a survey. What is more important is the relative size of the issue being investigated. In survey analysis, the general rule of thumb is that at least 30 occurrences of any category of interest (such as robbery) are necessary for legitimate analysis of that category of interest.⁴ This implies that if reported crime data indicate a robbery rate of around 500 per 100 000 people per year, and the population size is around 100 000, a sample size of 6 000 would be necessary for a simple random survey to yield roughly 30 counts of reported robbery in the last year which could then be legitimately analysed (500 robberies per 100 000 is equivalent to 30 robberies per 6 000). A representative random sample of 1 000 people in a

population of 100 000 would yield only five people who would have experienced a robbery in the last year that they reported to the SAPS (500 robberies per 100 000 is equivalent to five robberies per 1000).

Large sample sizes have important cost implications. The size of a survey is frequently determined by the budget available to fund it, rather than by the requirements of analysis. For the analyst, one way to get around the problem of small samples for each category of crime is to confine analysis to larger categories of interest (such as 'all crime in the last year' or 'all violent crime').

However, conflation of crime categories makes interpretation of the data far more difficult, as there may be different trends pertinent to different crime types that influence the analysis in different ways. For example, whether a person is a victim of housebreaking or not may be influenced by the characteristics of the neighbourhood in which she lives, such as the availability of street lighting. Theft, by contrast, may occur outside the home, in the workplace, in recreational areas, and so on, and thus not be largely influenced by neighbourhood characteristics such as street lighting. An analysis of 'all economic crime' against whether respondents have sufficient street lighting around their homes may fail to show any significant association between street lighting and economic crime, because the inclusion of theft in the category 'all economic crime' weakens that association.

However, low *reported* crime rates (in comparison to actual crime rates) mean that the actual number of victims of crime in the population is larger than the number predicted by reported crime rates. Thus if the reported rate of robbery is 500 per 100 000 (or 5 per 1 000) and the reporting rate for robbery is 50%, this means the actual crime rate is 1 000 per 100 000 (or 10 per 1 000) and a sample of 3 000 would yield the required 30 victims of robbery. But because reporting rates vary widely by crime type and are not known prior to the survey being administered, reporting rates are calculated using the survey

itself (see below) – they cannot be used to suggest an appropriate sample size. However, reporting rates uncovered in prior surveys or surveys of similar populations can be used as a guide to likely reporting rates and can thus inform sample size.

Another factor that increases the number of victims of crime in a sample, compared to that predicted by police crime statistics, is the tendency of respondents to say they have been a victim of crime 'in the last 12 months' when in reality the crime occurred before the period of interest. This is known as 'telescoping' – because the crime looms large in respondents' lives it seems to them to have occurred more recently than it in fact did.

While telescoping does have the effect of bumping up category sizes, an analyst has no way of knowing which respondents have telescoped and which have not. This can affect the analysis. For example, the analyst may be investigating whether a victimisation prevention course conducted before the period under investigation had any effect on the likelihood of course participants being victims of crime, compared to the rest of the population. If respondents include crimes from previous years (i.e. before the intervention), evidence of any actual effects of the intervention will be weakened, because these crimes could not have been affected by whether or not they attended the intervention.

It is possible to estimate the overall extent of telescoping, using reporting rates derived from the survey and reported crime figures. Respondents are asked whether they reported the crimes against them or not, and the percentage claiming to have reported the crime committed against them is the reporting rate. Multiplying the reporting rate by the victimisation rate would result, in the absence of telescoping, in a figure which approximates the reported crime rate.

To illustrate the application of these concepts it is useful to consider a practical example. At the time of writing the Centre for Justice and Crime Prevention (CJCP) was developing a safety plan

for Galeshewe in the Sol Plaatje (Kimberley) Municipality. As part of the research to inform the safety plan, CJCP conducted a victimisation survey in Galeshewe. The victimisation survey will provide baseline data against which the success of the plan can be measured and will inform its design. Budget constraints dictated that the Galeshewe survey could involve interviewing 800 respondents selected randomly from the population of 100 000.

The Galeshewe survey asked respondents whether they had ever been a victim of six broad categories of crime (theft, robbery, assault, burglary, hijacking and sexual assault). If respondents had ever been victims of any of these crimes, they were asked whether the crime occurred during the last 12 months, and if so, whether they reported it. Further various details of the crime were then recorded, as well as demographic and other characteristics of the respondent.

Table 1: Galeshewe SAPS DATA and Galeshewe victimisation survey data by crime type

	2008/9 SAPS	2008/9 SAPS Total	Counts	Weighted counts	Counts reported	Weighted reported counts	Reporting %	Reported crime divided by reporting rate	Extent of tele- scoping	Tele- scoping %
Total sexual crimes	256									
Total sexual assault	256	256	9	1 125	5	625	56%	461	205	80%
Attempted murder	102									
Assault with the intent to inflict grievous bodily harm	1 617									
Common assault	870									
Total assault	2 589	2 589	58	7 250	46	5 750	79%	3 264	675	26%
Burglary at business premises	86									
Burglary at residential premises	593									
Total burglary	679	679	64	8 000	51	6 375	80%	852	173	25%
Theft of motor vehicle and motorcycle	46									
Theft out of or from motor vehicle	201									
Stock theft	18									
All theft not mentioned elsewhere	685									
Total theft	950	950	37	4 625	14	1 750	38%	2 511	1 561	164%
Robbery with aggravat- ing circumstances	571									
Common robbery	285									
Robbery at business premises	16									
Robbery at residential premises	4									
Total robbery	876	876	67	8375	49	1750	73%	1198	322	37%
TOTAL	5 350	5 350	235	29 375	165	16 250	70%	7 620	2 270	42%

In Galeshewe an estimated 'telescoping rate' for reported crime of 42% was calculated (see Table 1). In other words, 42% more respondents referred to a crime in the last 12 months which they said they had subsequently reported to the SAPS, than was indicated by the SAPS crime data. Analyses by crime type, however, suggest telescoping rates in Galeshewe varied widely from 25% (housebreaking) to theft (164%). Despite telescoping, some categories of crime did not yield sufficient respondents for analysis, necessitating analysis by larger categories of interest, such as lifetime experience of crime.

It was expected that lifetime experience of crime among the sample population would be far greater than experience of crime in the last 12 months. However, the Galeshewe results showed a small difference between experience in the last year and lifetime experience. While only just over a third of people indicated that they had ever been a victim of these crimes, as much as a quarter had been a victim of these crimes in the last 12 months.

There is no reason to believe that the last 12 months were any different from preceding years, i.e. there was no crime wave in Galeshewe in the last 12 months according to SAPS statistics. In fact, reported violent crime has dropped from about 5 000 to 4 000 crimes over the last five years).⁵ So, how do we account for the fact that as much as a quarter of the population was victimised in the last year, but only a third had ever been victimised in their lifetimes (including the last year)? Obviously telescoping may also be at work here: crimes which occurred more than 12 months previously are remembered as having occurred in the last year, thus boosting the 'victim in the last year' figure.

Telescoping does not however account for the apparently low *lifetime* victimisation rate. As much as two-thirds of the sample population say they have *never* in their lifetimes been a victim of any of these crime types. A possible reason for this may be the tendency of respondents to forget crimes that occurred a long time in the past (thus reducing the 'victim ever' figure).

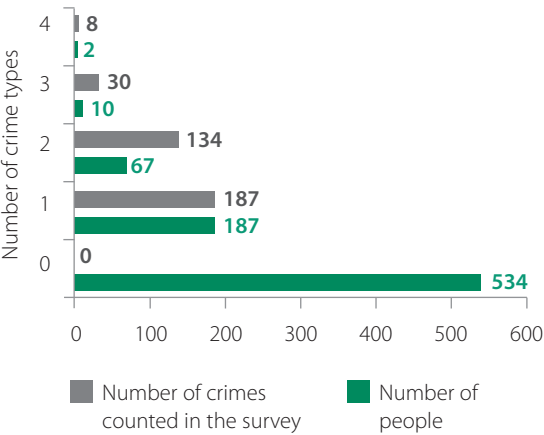
But such collective amnesia cannot on its own account for the phenomenon. Other factors must be at work to account for the lower than expected lifetime victimisation rate. Just over 5 000 relevant crimes (i.e. crimes that the victimisation survey sought to find out about) are reported to the SAPS each year in Galeshewe. If 5 000 crimes are reported each year, in six years around 30 000 crimes will have been reported. Thus in six years enough crimes are reported in Galeshewe to match the third of the Galeshewe population who have 'ever' been victims of crime. From year seven onward, the number of crimes begins to exceed the number of people who have ever been victims of crime. This suggests many people in Galeshewe must have been victims of more than one crime.

Statistical analysis of the Galeshewe survey reveals that only 29% of those who were victimised in the last year, had never been previously victimised. This suggests that having been a victim of crime at some stage in life in Galeshewe is a strong predictor for more recent victimisation ('victimisation in the last year'). Furthermore, the data suggest that victims of more than one crime type account for a disproportionate share of crimes counted in the survey; but a diminishing share of crimes reported. That is, a person victimised in respect of more than one crime type is less likely to report crime.

This conclusion was reached by analysing the extent to which respondents had been victim to more than one crime type. The survey, like many other victimisation surveys, did not record whether respondents were victims of more than one of the same crime type in the last year. However the survey did record different crime types separately. Thus it is possible to deduce from the data whether respondents were victims of *more than one crime type* ever or in the last year (see Figure 2 on page 14). Each respondent would thus record being a victim of between no and six crime types.

Almost half (48%) of *all crimes* counted by the survey (only the most recent of each crime type was counted by the survey) were committed against people who were victims of more than one

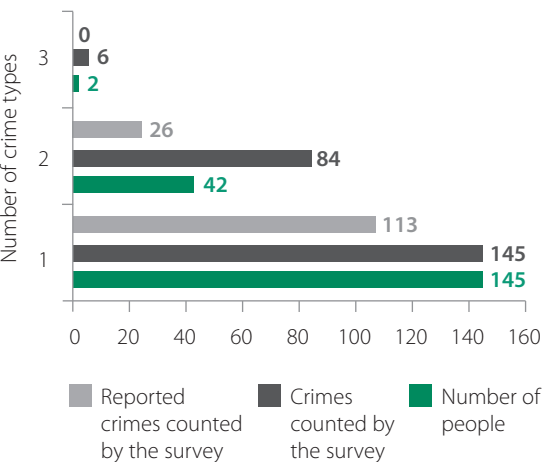
Figure 2: Lifetime experience of crime by number of different crime types experienced



crime type. Ten per cent of the sample population experienced more than one crime type, 20% experienced only one crime type, and 70% experienced no crime.

In other words, half of the crimes counted were committed against less than a third (30%) of the victims identified – or perhaps more starkly, half of the crimes counted were committed against only 10% of the sample population. Unfortunately, because the survey only counted and considered in detail the most recent of each crime type, the true extent to which victims may have been victimised (repeated instances of the same crime type) cannot be established.

Figure 3: Last 12 months experience of crime by number of different crime types experienced



When considering *crimes against victims in the last year*, the data show how SAPS reported crime data may tend to mask the degree to which there are multiple victimisations of the same person, due to poorer reporting rates after a greater degree of victimisation. Some 78% of those who were victim to only one crime type in the last year said they reported the most recent of these crimes to the police. This compares to only half (50%) of those victim to more than one crime type in the last year, who reported all of the relevant most recent crimes.

These findings suggest that crime prevention initiatives in Galeshewe should target past victims of crime. This is because past victims are highly at risk of crime. Targeting past victims successfully is likely to yield greater reductions in real overall crime rates than more general interventions, because past victims are likely to comprise the majority of new victims. Note however that the impact of a successful intervention aimed at preventing re-victimisation is unlikely to be properly reflected in *reported* crime data. Without a survey to benchmark such change, the likelihood is that official data will fail to highlight the successful prevention of multiple victimisations.

Furthermore, these findings suggest that victimisation surveys – whether at local or national level – need to be designed adequately to capture the extent to which re-victimisation may be occurring. Understanding repeat victims would require surveys to ask only an additional two questions about *the number of times* ever and in a specific year (e.g. 'during 2009') the respondent had been victim of the crime type under consideration. Further, more detailed, questions could then relate only to the most recent of these crimes, thus keeping the survey short.

Victimisation surveys can also collect a range of additional information about both the victim and the offender, and information regarding the attitudes and perceptions of the general public in relation to the criminal justice system. This information can then be mined for informative

correlations to inform crime prevention as well as trust in the criminal justice system. The BCS has four sub-components on such issues that are randomly applied to respondents. Thus each respondent will only answer one of the sub-components, keeping the survey interview to manageable length.⁶

THE PROBLEM OF SMALL CATEGORY SIZES AND SERIOUS CRIME

The prevention of serious crime such as aggravated robbery and rape is the most fervent goal of crime prevention initiatives. Yet it is precisely these serious (and relatively rare) categories that suffer from small numbers in victimisation surveys, thus preventing detailed analysis which may inform crime prevention initiatives.

Sexual crimes in particular are understood to suffer the most from under-reporting, both in surveys and in official data.⁷ The reasons for the under-reporting by victims of sexual crimes to both victimisation surveys and crime data are well known and need not be repeated in detail here. The Galeshewe survey recorded a count of nine victims of sexual assault in the last year, of whom five said they had reported the crime to the police. Because of the small number, it is not possible for more detailed analysis by demographic, social and behavioural characteristics to be carried on the category of sexual assault victims, which would assist in understanding sexual assault in Galeshewe.

However the figure of only nine victims is actually larger than expected. Published SAPS figures indicate reported sexual assaults of 265 in 2008/9 (per 100 000). Given that the population of Galeshewe is around 100 000 and the sample size is 800, the likely category size for reported sexual assault is $265/100\,000 \times 800 = 2.16$. This is less than half the number of reported rapes recorded in the survey (5).

This gives the magnitude of the combined impact of the opposing effects of under-reporting to interviewers (which would tend to reduce the

incidence by excluding some sexual assaults) and telescoping (which would tend to increase the incidence by including sexual assaults from previous years).

SAMPLE SIZE AND THE VALUE OF VICTIMISATION SURVEYS

The Galeshewe results provide some guidance on sample size for a national survey by estimating a reporting rate for sexual offences.⁸ The average national yearly reported incidence of sexual assault of around 45 per 100 000 suggests a sample size of 67 000 (30 per 67 000 is the same as 45 per 100 000) is necessary if serious relatively 'rare' crime types such as sexual assault are to be adequately interrogated by a simple random survey. If it is assumed the Galeshewe reporting rate (5/9) can be applied to the rest of the country, the sample may be roughly halved (to around 33 000).

If clustering is adopted, this will necessitate an increase in the sample size. Clustering means that instead of conducting 30 000 interviews in 30 000 disparate households, interviewers conduct for example 10 interviews in 3000 areas – this reduces costs per interview. Because the survey is no longer random, the impact of clustering on survey reliability must be taken into account – but this can only be determined after the survey is completed.

Apart from providing a more accurate picture of crime trends, is there any other reason why it is worth going to the expense of ensuring a large sample-size victimisation survey?

SAPS data are collected at a rich level of detail (down to street address level) but this level of data is not made publicly available.⁹ SAPS data are usually only available in the form of crime counts by policing area per year. Analysis of SAPS crime data by policing area can only provide correlates of crime by area characteristics, not correlates by person characteristics. This is one of the key advantages of victimisation surveys. To give an idea of the kind of insights which can be obtained, it is worth returning to Galeshewe.

In Galeshewe, five statistically significant demographic risk factors emerged in relation to ever being a victim of crime. The independent effect of these risk factors is listed below in order of magnitude or effect.

- Age 27-31 (43% ever-victim versus 31% among persons of other ages) (39% increase in risk)
- Having ever taken drugs (41% ever-victim versus 30% among the drug-free) (37% increase in risk)
- Being male (39% ever victim versus 29% of women) (34% increase in risk)
- Not having children (40% ever victim versus 31% among those with children) (29% increase in risk)
- Having completed high school (38% versus 30%) (27% increase in risk)

These risk factors were considered together in a multivariate analysis. Multivariate analysis looks at the impact of one variable, assuming the others remain the same, e.g. is the effect of being male still positive (in the sense of increasing risk), taking past drug use into account? The multivariate analysis found that all the factors listed above remained positive (increased risk) even when considered together. This suggests that the risk factors are robust. Interestingly, the likely victim in Galeshewe is not that different from the likely perpetrator, suggesting that risk-taking may play a role.

Further analysis of the Galeshewe survey indicates that characteristics frequently presumed to be 'good' or 'bad' for crime in an area have different effects at the individual level. Thus while it may be presumed that a high degree of social capital activities (participating in sports, attending church and the like) work to prevent crime at the area level, at the individual level, participation in these activities may operate to increase personal risk in areas such as Galeshewe.

This in turn suggests that there is a 'threshold level' of participation required in an area before the benefit of such activities is realised at the individual level. Similarly service delivery

variables such as the following were generally found not to be significant in relation to 'ever' victimisation at the individual level:

- Living in a shack/house/RDP house or not
- Living in a household of four or more or not
- Going hungry or not
- Having a toilet in the home or not
- Being unemployed or not
- Having to collect water outside the home or not
- Living in a household which receives a social grant or not

These findings that some service delivery indicators are generally *not* a risk factor for victimisation in Galeshewe may seem counter-intuitive, particularly to those who espouse social crime prevention views. This is because these results speak to the *risk experienced by individuals in the Galeshewe context*, and not to the impact of *changes to the context*, with which social crime prevention is concerned.

In other words, these results should not be interpreted as providing support for the view that, for example, rolling out a universal social grant would have no impact on crime trends in Galeshewe. What the result *does* mean is that for any individual in the current Galeshewe context, given the current levels of social grant provision, whether or not their household receives a social grant has no impact on whether or not that individual is likely ever to have been a victim of crime in Galeshewe.

It is notable that one of the exceptions (to the general irrelevance of service delivery indicators to *individual* risk in Galeshewe) was that increasing distance from a police station was correlated with greater risk of *victimisation of more than one crime type*:

- Long travel time to police station (>30 minutes) (12% v 8%) (50% increase in risk)

This suggests that the proximity of the police, at least in Galeshewe, does have an impact at the individual level via a reduced risk of victimisation by more than one crime.

One marker of context was also found to be a significant correlate in Galeshewe of being a multiple victim:

- High perceived prevalence of graffiti (17% v 9%) (89% increase in risk)

This may please those who hold to 'crime and grime' theories.

The fact that there are any correlates of crime at all for individuals who live in Galeshewe suggests that crime in Galeshewe is not entirely random. People who have certain characteristics, live in certain contexts, and engage in certain behaviours are more at risk of crime than those who do not share these characteristics. This is comforting, because it suggests there are things that can be done about crime. The more that is understood about crime the more specific, targeted and successful crime prevention interventions can be.

Furthermore, to understand crime trends in South Africa properly requires an expanded, reliable, national victimisation survey. Police performance is currently measured by changes in recorded crime rates. Measuring the performance of the police in terms of data they themselves collect provides an incentive to police officials to either not record crimes reported (the evidence suggests this happens frequently in relation to sexual offences) or for down-classifying crimes. For example, aggravated assault may be recorded as assault, robbery may be recorded as theft, and murder may be recorded as culpable homicide (see the articles by Bruce and Faull in SACQ 31).

Consequently if it is desired to measure police performance in terms of actual changes in crime, these changes in crime should be measured independently. A national victimisation survey is one way to do this.

An expanded large-scale national victimisation survey in conjunction with better access to detailed official SAPS data may begin to provide us with a very rich understanding of risk, and thus inform crime prevention for South Africa as a whole, by providing a deep understanding of victimisation in context. For a country as deeply affected by crime as South Africa is, it is of serious

concern how little data are really available to inform our approaches to crime. Without data, designing crime prevention interventions amounts to no more than a stab in the dark.



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NOTES

- 1 Presentation by Rachel Murphy and Phil Hall, Introduction to the British Crime Survey, UK Home Office, 19 May 2010.
- 2 Ibid.
- 3 Ibid.
- 4 Central limit theorem: David Nelson, *Penguin Dictionary of Mathematics*, 2nd edition, 1998, London. If n is more than 30 then a normal distribution is (often) approximated. If n is small (less than about 30) the normal distribution is no longer approximated and one has to use the Student t distribution for any analysis. As standard analytical software does not use one distribution for cells above 30 and another for cells below 30, it is advisable that cells with a small n are treated with great caution (or ignored). See <http://www.andrews.edu/~calkins/math/webtexts/prod12.htm> (accessed 5 July 2010).
- 5 See www.saps.org.za for crime data for Galeshewe and Kagiso, which together cover the area of interest.
- 6 Presentation by Rachel Murphy and Phil Hall 'Introduction to the British Crime Survey' UK Home Office 19 May 2010.
- 7 L Artz & D Smythe, Case Attrition in Rape Cases: A Comparative Analysis, *South African Journal of Criminal Justice*, August 2007.
- 8 Note that this is the rate of reporting to the police of incidents reported to survey interviewers. Surveys cannot indicate the true reporting rate (the rate of reporting to police of all incidents).
- 9 For some offences it may be desirable for such data to be widely available – for the purposes of preserving the anonymity of victims. However SAPS does not release such information even to other government departments responsible for crime prevention, such as provincial departments of safety and security.

Worth their while?

Pursuing a rape complaint through the criminal justice system

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If the criminal justice system were to advertise itself to victims of sexual violence, would its tag line be L'Oreal's 'Because you're worth it'? Or would the Foundry Premium Cider comment on the building of a pyramid: 'Twelve years in the making and it still doesn't taste very good' be more apposite? Certainly, a lack of faith in, or fear of, legal processes, is one of the reasons why eight out of nine women who are raped do not report the matter to the police.¹ This article explores the extent to which victims' lack of faith in legal processes is warranted and asks if laying a complaint is worth the effort.

This article describes a summary of key findings from a study undertaken in Gauteng Province that tracked the processing of rape complaints, as well as their outcome, from the time such complaints were reported in 2003, to the point at which they were disposed of, either by the police or the courts. This exploration of case attrition (the dropping or filtering of cases from the criminal justice system prior to a trial's conclusion) not only establishes the measure of justice afforded rape complainants, but also provides an insight into how and why justice may be eroded.

STUDY METHODS

The study was undertaken in Gauteng where, in 2003, a total of 11 926 rapes were reported at the province's 128 police stations. A two-stage procedure was developed to draw the sample. The first stage drew a sample of 70 police stations, using probability proportional to size, where size

was based on the number of rape cases reported to the police in 2003. Within each police station all the closed rape cases for the year were identified by their Crime Administration System (CAS) numbers, and a random sample of 30 dockets was selected (or all cases if fewer than 30 cases were reported in that year to the sampled police station). The dockets were then located either at the police station or at the specialist Family Violence Child Protection and Sexual Offences (FCS) Units, and data extracted. There was no replacement of dockets that were unavailable. This procedure provided a sample of 2 068 cases for the study. Records for those cases that went to court were obtained from both High Courts in the province, as well as all 30 magistrates' courts.

In 2003, the year chosen for the study, the common law definition of rape was still in effect (it has now been replaced by the statutory definition contained in the new Sexual Offences Act of 2007). In terms of the common law definition, only women and girls could be victims of rape and only men and boys be accused of the crime. Consequently, in this report we refer to victims as female and perpetrators as male.

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SELECTED CHARACTERISTICS OF REPORTED RAPES

A total of 2 068 individual victims' dockets was included in our sample. Four of these cases however, were little more than shells and consisted only of a CAS number and an indication that the charge was one of rape. They were excluded from the analysis, which focused on the remaining 2 064 cases. Twenty-eight of the rape incidents involved two or more victims and accounted for 60 (or 2,9%) of the women, teenagers and girls in our sample.²

Overall, 94,3% (n = 1186) of our sample experienced a completed rape involving an act of penetration. The remaining 5,7% (n = 114 cases) reported an attempted rape, or a suspected sexual assault where it was unclear from witness statements or other evidence whether or not a sexual assault had taken place. In the remaining 68 cases, there was insufficient information in the docket to determine the nature of the sexual violation that had occurred.

The role of age in rape victimisation

Almost two thirds of rapes (60,2%) reported in Gauteng in 2003 involved adult victims. Teenage girls (defined as girls between the ages of 12-17) comprised one in four victims (25,2%) and girls aged between 0-11 years, one in seven victims (14,6%). Age significantly affected many characteristics of reported rape, with adults three times more likely to be raped by strangers than were girls (48,1% vs 14,6%). Almost one in five women (18,8%) was raped by a current or former intimate male partner. Adults were also twice as likely as young girls to be the victims of gang rape (20,0% vs 8,2%).

Half (49,5%) of the rapes perpetrated against adults involved an abduction where the perpetrator encountered the woman in one place and then forcibly took her elsewhere. Adult women were the group most likely to be attacked outdoors with more than one in four rapes occurring in an open space (24,9%) and a further 7,8% occurring in an alleyway or by a road. A

sizeable proportion of women were also attacked opportunistically in the course of their routine daily activities such as walking (51,9%), or while simply being at home (19,7%).

Rapes directed against adult women were the most likely to involve weapons, force, threat and injury. Perpetrators were ten times more likely to be armed with some sort of weapon when they raped adult women (40,9% of rapes) than when they raped girls (4,7%). In one in five cases (19,3%) this weapon was a gun. Some form of bodily force was used against 70,1% of adult women and more than one in three (38,3%) was threatened with death or injury. Injuries to the body were 20 times more likely in women as in young girls and found in 39% of adult survivors. One in two adults sustained some form of genital injury.

Repeat and chronic abuse was most evident amongst girls aged 0-11, of whom 16,4% stated that they had been raped at least once before by the same accused. This percentage, however, under-reports chronic abuse in this age category. While some medico-legal examinations found both old injuries and scarring to the girls' hymens, as well as evidence of prior anal penetration, only one charge of rape had been recorded, even though it was clear that multiple incidents had taken place.

Repeat abuse was also evident amongst teenage girls, of whom 12,5% had been raped before by the suspect, but least likely amongst adult women, of whom 2,6% had been previously raped by the same suspect.

Rape and disability

A very small number of victims (41 or 1,9%) were recorded as having some form of disability. These figures fall below the prevalence of disability in Gauteng, calculated as affecting 3,8% of the female population in the province in the 2001 Census.³ It is impossible to know whether our figures reflect under-recording of disability on the J88s (the form recording the doctor's findings from the forensic examination) and dockets;

under-reporting of rape of disabled victims; or a lower vulnerability of rape amongst disabled people. The last explanation seems unlikely. Research internationally has found the incidence of sexual victimisation experienced by women with disabilities to be either similar to, or greater than that reported by non-disabled women.⁴

The next section describes what became of all these charges.

THE POLICE INVESTIGATION

Of the 2 055 cases for which information was available, 918 (44,7%) were withdrawn by the police. This proportion increased where adult women were concerned, with half of their cases (50,2%) withdrawn in comparison to only one in three (34,9%) cases involving girls under the age of 12. This proportion is somewhat better than that reported by the South African Law Commission (SALC) in 2000.⁵ Their study⁶ found that 68% of rape cases involving adult victims and

58% of those involving children did not progress beyond the police investigation. As we too found, failure to identify a suspect was the most common reason why cases did not proceed beyond the police investigation.

The majority of cases (52,3%) were closed because a perpetrator could not be traced. Within this category of untraceable perpetrators we included cases where a suspect could not be identified by name or appearance, as well as those cases where the suspect was known but subsequently disappeared. More than half of adult women (55,4%) and teenage girls' (51,8%) cases were closed because the perpetrator could not be identified or found. The high number of withdrawals resulting from the failure to locate the perpetrator can, in part, be attributed to the higher number of stranger rapes perpetrated upon these two groups of victims. By contrast, just over one in three (36,3%) girls' cases were closed because the perpetrator could not be found. This is to be expected, given that over 80% of girls were raped by family members, friends or neighbours, whose identities and addresses were more likely to be known.

Table 1: Reasons for complaints being withdrawn by the police, by victim age

	Total n=918	0-11 years n=102	12-17 years n=196	18+ years n=617
Perpetrator untraceable	52,3%	36,3%	51,8%	55,4%
Victim untraceable	30,1%	32,3%	27,7%	30,2%
No evidence of rape	2,6%	17,6%	1,5%	0,5%
False accusation	4,4%	5,9%	9,7%	2,3%
Victim too traumatised	0,1%			0,2%
Pressure from victim's guardian/caregiver/parent	0,4%	2,9%	0,5%	
Families of victim and accused have resolved matters	0,9%		1,5%	0,8%
Victim and accused have resolved matters	2,3%		0,5%	3,3%
Victim wants to get on with her life or otherwise uncooperative	5,3%	2,0%	5,6%	5,9%
Docket lost	0,2%			0,3%
Other	1,3%	2,9%	1,0%	1,1%

It is worth pointing out how police practice contributed to suspects remaining 'undetected.' Descriptions of the perpetrator were absent from more than three-quarters of victims' statements (78,4%). Additionally, in more than half the dockets (52,7%), an instruction to arrest the suspect had to be issued twice or more before the investigating officer complied with it. In 30,2% of the cases where an instruction was issued on two or more occasions to arrest the suspect, he had disappeared.

The 30% of victims who became untraceable could potentially also have been reduced. The victim's residential address was not recorded in the docket in 2,5% of cases and a work address not captured in three-quarters (75,2%) of the dockets. In only 17,8% of cases were the details of a contact person (in addition to the victim) captured. The median number of attempts made to contact untraceable victims was three, ranging from no effort whatsoever, to a maximum number of 15 attempts. In 25% of cases where the

Table 2: Indicators of problems with the quality of the docket completion, by victim age

	Total n=2 042	0-11 years n=292	12-17 years n=514	18+ years n=1 227
Address not recorded	2,5%	3,4%	2,5%	2,0%
Work address not recorded ⁷	75,2%	75,0%	72,9%	76,1%
Contact person not recorded	82,2%	76,2%	78,3%	85,3%
Address where rape occurred not recorded	13,7%	19,2%	13,3%	12,3%
Handwritten victim statement not in docket	7,5%	30,2%	6,6%	2,1%
Victim not asked to describe perpetrator	78,4%	87,4%	82,0%	74,7%
First witness statement not taken	45,8%	26,0%	38,1%	53,6%
Other witnesses but no statements taken	41,6%	35,2%	37,1%	46,7%
Instruction issued to make arrest before it was made	41,2%	36,9%	38,8%	43,3%
Instruction issued 2+ times to make arrest before it was made	52,7%	55,7%	54,5%	52,6%

victim disappeared, as few as four days had passed between the investigating officer's first and last attempt to trace her.

These particular examples of inadequate policing point to where attrition could potentially be reduced at the investigation stage. Table 2 sets out further indicators we used to assess the quality of docket completion.

Some of these indicators (such as the absence of a first witness statement) will influence the prosecutor's decision whether or not to place a case on the court roll to enable it to go to trial. The medico-legal evidence is another crucial factor influencing whether or not an individual rape case proceeds to court. Here too we identified problems with the quality of the forensic examination and handling of evidence.

Medico-legal evidence

The J88 was available for our scrutiny in 77% of cases. According to the dockets, a Sexual Assault Evidence Collection Kit (SAECK) was completed in 67% of cases and in 51% of cases it was sent to the police's forensic laboratory. However, in only 16,4% of cases was the suspect's blood taken. Collecting DNA evidence from the victim is a meaningless exercise if it cannot be tested against a suspect's DNA. This practice certainly

contributed to the fact that a report from the laboratory containing the results of DNA testing was available in a scant 2% of dockets.

Fewer children (39%) had a kit completed as compared to 61% of teenagers and 77% of adults. The SAECKs of girls were significantly more likely to be analysed and a report made available after being sent to the FSL, than for adults.

The forensic examiner's concluding statements on the J88 are particularly relevant to case progression. The examiner is required to draw two conclusions: one based on the gynaecological examination and the other on the general examination. Some one in six (16,2%) J88s did not have a concluding statement related to the gynaecological examination. A concluding statement was missing in a higher proportion (18,9%) of adult cases than girls' cases, where 11,9% did not have a concluding statement. A concluding statement was missing from the general examination section in 41,5% of cases – which could be due to clinicians focusing their examination on the gynaecological examination alone.

Clinicians often wrote 'Alleged Rape' in the conclusion section of either the general examination or gynaecological examination. This phrase does not qualify as a conclusion about the examination. In 13,4% of J88s, both concluding

statements were missing or the clinician had recorded 'Alleged Rape'. This was more likely to have occurred when the survivor was an adult than a child aged 0-11 (16,1% and 6,3%).

Analysis of the J88 forms also showed that penetration may actually be more forceful in rape in South Africa, with 57,5% of cases resulting in an ano-genital injury. This is a higher proportion of such injury than has been found in studies conducted in the developed world. Nonetheless, a key finding of this study is that in 42% of cases no genital injuries were recorded while in 72% of cases no injuries to the remainder of the body were documented. This confirms findings from other countries that vigorously argue that absence of injuries should not be interpreted as indicating that no rape took place. Yet, as shown below, in relation to adult women the presence of injury clearly played a determining role in judicial officers' decisions.

THE COURTS

Courts disposed of cases in three ways: nolle prosequi decisions (16,1%), the withdrawal of matters (20,1%) and striking of matters from the court roll (2,2%). The greatest proportion of cases were 'nollied', on the basis that there was too little evidence to warrant a prosecution (25,7%) while the greatest proportion of cases were withdrawn due to the victim becoming untraceable (33,5%).

One in four cases was withdrawn within five weeks (35 days) of the accused being charged. On average however, three months (92 days) elapsed between the accused being charged and the case being withdrawn. Three-quarters of cases were withdrawn within eight months (235 days). One case spent three years and four months (1 029 days) on the court roll before it was withdrawn.

Summarised in the next column are the outcomes of the 2 064 cases in our study.

As this table shows, while half of cases resulted in arrests (50,5%), a somewhat lower percentage (42,8%) were charged in court. Trials commenced in less than one in five cases (17,3%). Adult women fared worst at the hands of the criminal justice system relative to girls and teenagers.

Table 3: Attrition of cases of rape at each stage of the criminal justice system, by victim age

	Total	0-11 years	12-17 years	18+
Opening case	2 064	298	514	1230
Perpetrator arrested or asked to appear in court	1 036 (50,5%)	164 (55,0%)	291 (56,7%)	575 (46,8%)
Charged at court ⁸	885 (42,8%)	138 (46,3%)	247 (48,1%)	495 (40,2%)
Trial commenced	358 (17,3%)	66 (22,1%)	109 (21,2%)	181 (14,7%)

Those who raped young girls were twice as likely to be convicted of a crime (10,1%) as those who perpetrated their crimes against adults (4,7%). Differential case outcomes on the basis of age have been found elsewhere. In one study 9,1% of children's cases resulted in convictions, as opposed to 5% of adults' cases,⁹ while data for the year 2000 identified 8,9% of children's cases and 6,8% of adults' cases to have led to convictions. This rate varied across provinces.¹⁰

Just over one in 20 (6,2%) cases resulted in conviction. However, some of these convictions were for lesser charges such as indecent assault; so overall only 4,1% of cases reported as rape resulted in convictions for rape. Some one in seven (15,6%) convicted rapists received less than the mandated ten years minimum sentence. The other prescribed sentence for rape, life imprisonment, was very rarely applied. Thirty-four (or 41%) of the men convicted of rape were eligible for life imprisonment. This sentence was handed down in only three cases, all of which involved girls under 16. None of the cases involving gang rape, assault with intent to cause grievous bodily harm, or a victim with a disability resulted in life sentences – even though this is mandated in such cases.

SURVIVORS' ENGAGEMENT WITH THE CRIMINAL JUSTICE SYSTEM

Up to this point, the article has examined the contribution of the police, forensic examiners and

courts to case attrition. This section takes a closer look at the 37% of survivors who opted out of criminal justice system proceedings. Contrary to police and prosecutors' perceptions, only one in 20 victims withdrew their complaints following reconciliation with the accused or his family. The same proportion of victims withdrew because they found proceedings too upsetting or disruptive of their lives. What requires further investigation however, are the circumstances leading to the disappearance of almost one in four victims (23%).

When victims became untraceable, they were most likely to do so after reporting the rape and during the course of the police investigation. Two thirds of those who disappeared (67,2%) did so at this stage in criminal justice proceedings. It is possible that at least some of these survivors may have wanted to remain in contact with the police, but were unsure of their rights and the extent to which the police would welcome their inquiries. They may well have lacked the confidence to demand information from the police and waited instead to be contacted by them. Such follow-up contact would never have happened in cases where the police took down inadequate contact details from victims.

In some instances, victims becoming untraceable could be ascribed to the police's failure to confirm victims' addresses and contact details at the time the reports were made. Some of the statements also suggested that victims belonged to a mobile section of the population that migrates across provinces, as well as within the province, either looking for work or moving between family and friends. They therefore did not have fixed, permanent addresses. Survivors' continuous cell phone ownership and airtime availability were also not guaranteed, given that the majority of women in the study were unemployed. Also, some women may not have wished to be found, only wanting to register that a crime had been done to them without having to engage with the criminal justice system on a longer-term basis. Indeed, engagement with the system often prompts traumatic memories that survivors may wish to put behind them. Intimidation by the perpetrator

or his friends and family may also have contributed to survivors' disappearance.

Finally, it is impossible to know how many of these disappearances are the result of police corruption or, in the face of case overload, the selective prioritisation of cases based on an assessment of the victim's perceived cooperativeness. Earlier it was reported that some police officers made no or only one attempt to locate the victim before filing the case. In another suspicious example, the investigating officer arrived at court claiming the victim could not be found and suggesting the matter be closed. The victim had, of her own accord, arrived at court and so the matter was postponed instead. However, by the next court appearance the victim had indeed become 'untraceable' and so the matter was withdrawn.

IN CONCLUSION

A certain amount of attrition in rape cases is inevitable. Some perpetrators may never be identified and some victims, for a variety of reasons, may well decide that pursuing a complaint is not in their best interests. In still other cases, there may genuinely be insufficient evidence to prove a matter beyond reasonable doubt. What becomes of central concern then, is the extent to which a reasonable rate of attrition is exacerbated by weak administrative practices and prejudicial attitudes towards rape victims. If society is to persist in demanding that women 'break the silence' and 'speak out' then the criminal justice system must ensure that it is worth their while, rather than an exercise in futility.

To read the full report please visit:

http://www.tlac.org.za/images/documents/tracking%20justice_web.pdf

R. Jewkes, N. Christofides, L. Vetten, R. Jina, R. Sigsworth et al, *Medico-Legal Findings, Legal Case Progression, and Outcomes in South African Rape Cases: Retrospective Review*. PLoS Med 6(10): e1000164. doi:10.1371/journal.pmed.1000164 (2009).



NOTES

- 1 R Jewkes and N Abrahams, The epidemiology of rape and sexual coercion in South Africa: an overview, *Social Science and Medicine*, 55(7), 2002, 1231-1244.
- 2 In this study, the word 'girl(s)' is used to refer to victims aged 0-11, 'teenager(s)' to refer to victims aged 12-17, and 'adult(s)' to refer to victims aged 18 and older.
- 3 Statistics South Africa, *Report-03-02-44 – Prevalence of disability in South Africa*, 30 March 2005, <http://www.statssa.gov.za/publications/statsdownload.asp?PPN=Report-03-02-44&SCH=3359> (accessed 8 June 2010).
- 4 NE Groce, Disability in cross-cultural perspective: rethinking disability. *The Lancet*, 354(9180) (1999), 756-757; M Saxton, M Curry, L Powers, S Maley, K Eckels, and J Gross, "Bring my scooter so I can leave you": A study of disabled women handling abuse by personal assistance providers. *Violence Against Women*, 7(4) (2001), 393 – 417; MA Nosek and CA Howland, *Abuse and women with disabilities*, 1998, <http://www.vaw.umn.edu/finaldocument/vawnet/disab.htm> (accessed 25 August 2008).
- 5 South African Law Commission, *Conviction rates and other outcomes of crimes reported in eight South African police areas*. Research Paper 18, Project 82, 2000. This study was conducted in the eight police areas of Western Metropole and Boland in the Western Cape; Port Elizabeth and Cradock in the Eastern Cape; Durban and Midlands in KwaZulu-Natal; and Johannesburg and East Rand in Gauteng.
- 6 SALC, 2000.
- 7 This referred to either the adult victim or guardian's work address (in the case of a child).
- 8 After being arrested, suspects must then appear in court to be formally charged with a crime and apply for bail.
- 9 SALC, 2000.
- 10 Interdepartmental Management Team, *Towards Developing an Anti-Rape Strategy: Report of the Interdepartmental Management Team*. Report by the National Directorate of Public Prosecutions (NDPP), the SAPS, the Department of Health, the Department of Social Development and Monitor Group, 2002. Mpumalanga, the worst performing province, recorded a 3,1% conviction rate for cases involving children and a 4,1% rate for cases involving adults. Gauteng was the third worst performing province, recording a 7% conviction rate for cases of child rape and 4,9% for adult rape. The best performing province was the Northern Cape which recorded a 16,8% conviction rate overall.

Sourcing crime intelligence from incarcerated house robbers

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'House robbery' is the term formulated by the South African Police Service (SAPS) to describe a robbery where the perpetrators overpower, detain and rob the residents (occupants) of a residential premise inside their residence.¹ There is evidence that the police have not been successful in preventing or investigating this kind of crime. Part of the problem appears to be that the police do not have sufficient crime intelligence about house robbers. This article focuses on the value of incarcerated offenders of house robberies as an additional source of crime intelligence to the police on the basis of research conducted by the author in Gauteng in 2007.²

It is evident that the SAPS experiences difficulties in combating house robberies and other violent crimes in South Africa. This contention is supported by the police's annual report on crime released in 2009:

The trio crimes (house robbery, carjacking, business robbery), increased by 22,6% in 2008/2009, despite the special emphasis on these crimes and various efforts to contain the latter.³

The SAPS's inability to effectively combat house robberies in South Africa appears to be linked to the police's largely reactive style of policing and the fact that they do not make use of crime intelligence to inform a defined and effective intelligence-led policing approach.⁴

THE ORIGINS OF INTELLIGENCE-LED POLICING

According to Ratcliffe,⁵ intelligence-led policing was originally articulated as a law enforcement operational strategy that sought to reduce crime through the combined use of crime analysis and

criminal intelligence. This strategy was implemented to determine crime reduction tactics that concentrate on the prevention of criminal offender activity and law enforcement in cases where offenders did offend, with a focus on active and recidivist offenders. This approach emphasises information gathering through the extensive use of confidential informants, offender interviews and the analysis of recorded crime, and calls for service delivery, surveillance of suspects, and community sources of information.

All of the crime information, as well as the sources from which the information was derived, are analysed so that law enforcement managers can determine objective policing tactics (for example through crime intelligence initiatives). While retaining the central notion that police should avoid getting bogged down in reactive, individual case investigations; intelligence-led policing is evolving into a management philosophy that places greater emphasis on information sharing and collaborative, strategic solutions to crime problems at local and regional levels.⁶

Initially most police forces in the UK and other countries in Europe where intelligence-led policing became known as an alternative policing

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model, were too focused on investigating crime that had already been committed to devote significant resources to the development of intelligence systems, even where they accepted the possibility that the predictive ability of good intelligence systems might eventually help to reduce crime levels.⁷ A further reason for the lack of emphasis on the development of intelligence systems was that police forces were reluctant to take a leap of faith in engaging in the new concepts of intelligence gathering, intelligence exploitation and intelligence-led policing in a formal sense.⁸

Despite its slow start, intelligence-led policing has gradually established itself as the modern approach to crime combating or crime management. Flood is of the opinion that there are essentially four things that can be done to manage criminal activity through intelligence-led policing:⁹

- the targeting of individual criminals or criminal groups and networks (instead of trying to police the entire community)
- the identification and management of crime and disorder 'hot spots'
- the identification and investigation of 'crime series'; and
- the application of a range of preventative measures, which may include requirements for legislative and policy changes, neighbourhood watch schemes, Closed Circuit Television (CCTV) systems and directed patrols, and innovations such as restorative justice programmes

The use of intelligence-led policing has been extended to many countries, including Australia, New Zealand and continental Europe, and, since 11 September 2001, it has become increasingly common in the USA.¹⁰ This use of intelligence-led policing does not come without its own risks. The police should not, for example, become overly reliant on intelligence being available, and be unable to perform their duties in the absence thereof. Furthermore, agencies that collect crime information should not collect information in such a way that it will be in contravention of

human rights principles or the law, or disregard good police-community relationships.

THE BENEFIT OF USING COMPREHENSIVE CRIME INTELLIGENCE

Crime intelligence, according to Brown, can be divided into two categories:¹¹ 'tactical intelligence', which is information that directly supports a specific policing objective, for example when and where a house robbery will take place; and 'strategic intelligence', which is related to wider incidences, for example the increase of motor vehicle hijackings near taxi ranks. Both can be used by decision-makers to do projections of future policing needs. However, according to Higgins,¹² some of the literature refers to strategic intelligence as if it had a separate data set to that of tactical intelligence. The distinction between the strategic and tactical levels of intelligence applies only to the use that is made of intelligence in strategic or tactical assessment. Any given item of intelligence may have tactical, strategic, or dual relevance.

The basis of the success of intelligence-led policing is that the police, through comprehensive crime intelligence, get a better understanding of who and what are driving specific crimes, as well as where, when and why these crimes are taking place. It also *inter alia* provides insight into markets for stolen goods, and why specific areas and persons are selected as targets by criminals. The police can then focus their policing initiatives on those motives, perpetrators, places, times and reasons with regard to the specific crimes.

Obtaining comprehensive crime intelligence can also identify further areas that need to be investigated, or the need for more intelligence to address a specific policing concern. This might be the case when, through crime intelligence, it is discovered that local crime is driven by organised groups. This realisation will then require more intelligence to be collected on the organised nature of local crime, as well as the syndicates involved in these crimes, before these crimes and criminals can be policed more effectively.

There are various international examples where the use of comprehensive crime intelligence has resulted in more successful policing and a subsequent reduction in crime volumes. Some of these examples will be briefly discussed to illustrate the point. A number of further examples are available in the original studies on motor vehicle hijackings¹³ and house robberies.¹⁴

Operation Hawk is an example of an intelligence-led campaign. An operation of the Greater Manchester Police, the campaign played a major role in tackling robberies within local communities. The campaign aimed to reduce robberies, educate residents and visitors on how to avoid becoming victims of street crime, and discredit offenders to break the cycle of re-offending. Over a period of 12 months (2005/06), the Greater Manchester Police brought 6 720 more robbery offences to justice than it had in the previous year. This success was achieved through high profile, intelligence-led policing and the targeting of persistent offenders.¹⁵

In the past the SAPS launched a number of campaigns based on crime intelligence in order to deal with high levels of crime. These campaigns included the searching of entire neighbourhoods, such as Hillbrow, and the formation of various task teams to deal with specific crimes and to carry out intelligence-led police interventions. These crime intelligence-based initiatives achieved various levels of success. Examples include a decrease in truck hijacking during 2004/05 to its lowest level since it peaked in 1998/99 (an 85% reduction),¹⁶ and bringing motor vehicle hijacking to 22% lower than when it peaked in 2001/02.¹⁷

However, in general the management style, approach to crime combating, and investigation of crime within the SAPS means that the organisation does not utilise the sources of crime information and crime intelligence to their full potential. The police, for example, still do not interview sentenced and incarcerated offenders as a matter of course in order to obtain detailed crime intelligence on the profile, motives, and all facets of the *modus operandi* of perpetrators.

SOURCES OF CRIME INFORMATION TO INFORM CRIME INTELLIGENCE

According to Higgins, one of the first things that needs to be done when following a crime intelligence approach is to identify relevant operational sources that can fill the gaps in police knowledge.¹⁸ This article draws on a research project conducted in Gauteng with the aim of evaluating the value of crime information obtained from prison inmates incarcerated for house robbery. House robbery is one of the crimes in South Africa about which, from a crime intelligence point of view, very little information is available. Higgins supports the idea of exploring new sources, stating that the assimilation of intelligence needs to extend beyond the data immediately accessible to the analyst, so that the end product reflects a collective understanding of the threat.¹⁹ The inmates thus become a relevant additional operational source that can contribute to filling the gaps in police knowledge about house robberies.²⁰

In a previous study on motor vehicle hijackers, the researcher established that incarcerated hijackers are a valuable source of crime intelligence.²¹ The approach of interviewing perpetrators of a crime is supported by Ronczkowski, who believes that analysts and investigators must keep open minds when transforming information into intelligence and should not discount learning from 'the enemy'.²²

Valuable information with regard to crime, including *modus operandi*, trends, syndicate formation, etc. as well as the profile of a criminal can be obtained by studying the profiles of relevant inmates and the crime information that they are prepared to furnish. The crime intelligence that can be processed from this information can contribute to decreasing the crime that occurs inside and outside of correctional centres by means of intelligence-driven policing.

A further benefit of crime intelligence is that the motives of offenders can be identified, and a

crime combating strategy formulated to deal with these specific problems.

For instance, satisfying financial needs may be the most general motive for burglaries in South Africa.²³ This type of information about the motive of the offender is important to assist in the formulation of rehabilitation programmes in correctional centres, and community crime prevention programmes that deal with the reasons, including the motives, for committing crime. However, all techniques used to obtain crime information must be in accordance with the law.

Gay, Beall and Bowers;²⁴ Rheinier, Greenless, Gibbens and Marshall;²⁵ Hough;²⁷ Ronczkowski²⁸ and Higgins²⁸ have all shown that the police are generally reluctant to use new technological aids and techniques. They ascribe this, *inter alia*, to a closed police culture, an unwillingness to experiment, fixed ideas, short-term financial planning, and in some cases a lack of vision and insight into the advantages associated with new technology or techniques.

The police can gather useful crime information on all crimes and criminals from inmates who are serving their sentences, as is done in the UK. This is because concrete information can be gathered about a criminal and his/her *modus operandi* after the criminal has been arrested. This information can be verified by the investigation conducted at the crime scene as well as by following up on the offender's history.

In several countries all available sources are used to obtain crime information on a specific crime in order to formulate crime intelligence that is as accurate and reliable as possible. These sources also include the offender of the crime that is being researched. Sentenced offenders are considered a valuable source of crime information, since they tend to be more willing to provide information after they have been arrested and sentenced than before they are prosecuted. Convicted and incarcerated offenders are debriefed as a matter of course by for example, the New York Police Department (NYPD),³⁰

Federal Bureau of Investigation (FBI),³¹ and the Metropolitan Police Service, London (New Scotland Yard).³²

Robbers are part of the crime 'underworld' and are therefore very knowledgeable about a wide range of crime issues. In South Africa, however, this wealth of crime information is not being fully utilised since no formal (let alone integrated, co-operative inter-agency) programme or process exists to obtain, collect, collate and analyse crime information from inmates, as is carried out in the NYPD-developed Compstat system.³²

The relatively new concept of debriefing inmates after their sentencing in order to obtain crime information, means that existing definitions and procedures with regard to crime information will have to be re-examined in order to determine whether definitions and procedures need to be updated to incorporate this new concept. This will include analysing the concepts and sources of crime information, profiling an inmate after s/he is sentenced, examining the procedures used to collect crime information from inmates, verifying such crime information, and collating and analysing the crime information, including the use of international intelligence databases.

OBTAINING INFORMATION FROM THE OFFENDER

Internationally, crime information is obtained by the police through interrogation, questionnaires, and/or interviews with sentenced and incarcerated inmates.

Crime information from inmates can enhance the information-gathering techniques and methods used by the police and correctional services authorities, and provide information about the profile of the inmate, including

- *modus operandi* information
- motives of the offender
- the type of crime, geographic details, choice of target, victim details, disposal of evidence and stolen goods, who committed which type of crime and why, when, and where, syndicate activities, etc.

It can also provide data with which to populate crime databases and inform policing initiatives.³³

Much of this information can be acquired through a profile analysis of the sentenced criminals and/or from information that is gathered directly from them during interviews.

ABOUT THE RESEARCH

The author conducted thirty detailed interviews with sentenced and incarcerated house robbers in the six largest correctional centres³⁴ in Gauteng. The decision to interview respondents in these correctional centres was based on the fact that the majority of house robberies occur in Gauteng and thus it was assumed that that the largest proportion of this type of offender would be incarcerated in this province.³⁵

WILLINGNESS OF INCARCERATED HOUSE ROBBERS TO PROVIDE CRIME INFORMATION

These data are in fact extremely important since this research project deals with, among other things, how the police internationally debrief sentenced and incarcerated offenders in order to collect crime information. For this to happen, sentenced and incarcerated offenders must be willing to cooperate with the very same police service that arrested them.

The study found that the majority of the inmates interviewed were willing to share information about themselves and their crimes after being incarcerated. And, subject to certain conditions mainly pertaining to their safety and privileges, they were also willing to provide the SAPS with information on the particular house robbery that they were incarcerated for, as well as other crimes in general. They explained that their willingness was due to the fact that they had been sentenced and incarcerated for the house robbery and could not suffer further legal consequences for it.

After being sentenced and incarcerated none of these respondents had been approached by the SAPS or officials from the Department of

Correctional Services (DCS) with the aim of obtaining crime information from them. The request by the researcher for an interview was the first such request received by the convicted house robbers. Moreover, this researcher could find no formal instructions or procedures compelling SAPS or DCS officials to debrief inmates after their conviction and incarceration. The only formal occasions (prior to the interviews conducted by the researcher) on which some of the incarcerated inmates who took part in this study had discussed aspects of their crimes had been when they went for counselling by a social worker or psychologist employed by the DCS. And the purpose of these discussions was solely to assist the inmates to deal with personal problems and not to obtain crime information from them for official records.

During their investigation and trial only just over a third of the respondents to this study provided the SAPS or the court with information about the crimes they had committed. This is mainly because they did not want to provide any information that could be used against them to secure a conviction. However, after sentencing and incarceration, a large majority of the respondents were willing to provide information about their crimes.

On the basis of this study it can be concluded that house robbers who have been incarcerated for between six and 24 months after being sentenced by a court would most likely be willing to cooperate with the SAPS in providing crime information. However, there is still a possibility that the SAPS might obtain crime information from those house robbers who have served between 24 months and six years of their sentence. These two groups combined (i.e. those who have been incarcerated for between six months and six years) constituted just under two thirds of the respondents who voluntarily took part in this research.

The above findings (on how long after sentencing incarcerated house robbers are willing to be interviewed) are interesting when compared to the findings of a similar study conducted previously by the author on incarcerated motor vehicle

hijackers.³⁶ In the study on motor vehicle hijackers, the researcher found that the group of respondents who had already served between six and 18 months of their sentences was most likely to be willing to be interviewed. The reasons for the differences between these two groups (hijackers and house robbers) need to be further researched.

What is most important, however, is that a large number of sentenced and incarcerated perpetrators of house robberies and motor vehicle hijackings declared themselves, under certain conditions, and subject to a set time of incarceration, willing to provide crime information to the SAPS.

VALUE OF THE CRIME INFORMATION OBTAINED FROM INCARCERATED HOUSE ROBBERS

The value of the crime information obtained from incarcerated house robbers for formulating crime intelligence has been clearly demonstrated from the crime information obtained from the respondents in this study.

The information the respondents were willing to share can be summarised under the following themes:

- personal information, enabling the drafting of a profile for incarcerated house robbers
- information about the most appropriate places and people, where and from whom the investigator can obtain information about a suspected house robber
- respondents' opinions on the relative effectiveness of security devices/electronic systems, including alarm systems, as a deterrent against house robberies
- respondents' opinions on what measures residents should take, or lifestyle habits they should adopt, to prevent them becoming easy targets for house robbers
- respondents' opinions about successful crime investigation methods for apprehending house robbers and for tracing stolen goods and/or stolen vehicles

- respondents' opinions about effective crime prevention strategies/methods which the SAPS could implement to prevent house robberies
- the disposal of stolen goods, including stolen motor vehicles
- the selection of target houses and victims
- actions that could lessen the risk of injury or death of victims
- the role of informers in providing inside information to house robbers; and
- detailed information on the *modus operandi* (in addition to what has already been listed) of house robbers during the planning and commissioning phases of the crime and after leaving the crime scene

Over and above the information about crime that can be obtained from a profile analysis of sentenced prisoners and their *modus operandi*, valuable information can also be obtained from inmates about house robbers who are still actively committing house robberies outside of correctional centres, as well as about other criminals who continue to commit crimes outside of correctional centres.

The crime information obtained from incarcerated offenders can also be used to confirm or disprove public and media speculation about how certain crimes are executed. For example, this study found that only a small number of house robbers were aware of methods or techniques used to mark (identify) the target house before a robbery. The respondents who marked a house or farm only used marking techniques in order to be able to find the target house when returning to the area after keeping it under surveillance for a period of time. This is contrary to the myth that unknown people (not the house robbers themselves) mark certain houses (e.g. by placing an empty coke tin on the verge outside a house) for house robbers to later identify as a target for a robbery.

The information that can be offered by incarcerated offenders is unique and cannot be obtained from any other source. This includes, for example, information about their personal motives, how they plan their crimes, their crime

associates, *modus operandi* before and after committing the crime, their crime preferences, other crimes they have committed but have not been linked to by the police, advice on how the public should go about more effectively preventing themselves from becoming victims of house robberies, and the actions victims can take during a house robbery to minimise the chances of being injured or killed.

VALUE OF HOUSE ROBBERS AS AN ADDITIONAL SOURCE OF CRIME INFORMATION

The fact that respondents shared remarkably similar information suggests that the information they provided in this study is accurate. This includes information that enabled the compilation of a profile of house robbers; established what *modus operandi* was displayed by the respondents; provided knowledge of which crime prevention measures serve as a deterrent and which do not; and confirmed the deterrent value of anti-house robbery security equipment. On the basis of the validity of this type of information the SAPS would not only be able to develop and obtain an overview of the criminal and his/her *modus operandi* but also be able to anticipate how the house robber is likely to think and act in certain situations, and to be able to predict when and where future house robberies are most likely to take place.

The ability of the respondents to provide a large and detailed volume of information is a further indication that the information is most probably reliable. This is based on the assumption that if the respondents were deceitful in answering the questions, they would not have described in such detail their involvement in house robberies, and provided such a volume of information on the topic. Moreover, the respondents would not have concurred to such an extent on the details of the crime information they provided.

The information provided by the respondents also correlates with the relevant information on the conduct of robbers that the respondents in the study on motor vehicle hijacking (robbery)

provided.³⁷ The information on how a victim should react during a house robbery to minimise the risk of injury or death; the firearms robbers prefer; how and where they obtain the firearms they use for committing crime; the willingness of incarcerated house robbers and motor vehicle hijackers to provide crime information to the SAPS; and the disposal of exhibits after the crime are all demonstrable examples of the correlation of the information provided by the two studies. The information provided by the respondents also correlates with the information reported via media news reports by victims of house robberies on what transpired during the robbery in which they were the victims.

After the study the crime intelligence division of the SAPS independently conducted an analysis of a thousand house robbery cases that were reported to the SAPS. They did this to determine whether the information from a docket analysis concurred with the information obtained through this study. They reported that there was a high correlation between the findings of this report and the case docket analysis. This serves to further confirm the accuracy and validity of the information provided by the respondents during the interviews.

The fact that the convicted house robbers interviewed are willing to provide accurate, reliable and unique information will enable the police to compile comprehensive crime intelligence on house robberies.

Because these house robbers are incarcerated they are protected from active criminals about whom they might have incriminating information. This would otherwise be a restrictive factor for people who wish to provide information to the police. The safety of the inmate who informs, especially on specific individuals, will, however, still have to be guaranteed by the police in a practical and sustainable way, since it is known that criminals on the outside have contacts inside prisons who may retaliate against the informing inmate. There is also the possibility that those criminals might retaliate against the prisoner's family. The police will have to take all of these factors into

consideration when negotiating with a prisoners to provide information on specific individuals.

In order to obtain information about the crimes for which prisoners were convicted, as well as more general crime information, it may be necessary for the police to offer some form of benefit to the offender; for example, by offering the offender privileges while still incarcerated. These privileges could include some sort of payment; being moved to a section in the prison where more visits are allowed; or for his/her co-operation with the authorities to be taken into account when early parole is considered. These privileges are discussed in detail in the study on motor vehicle hijackers.³⁸ However, for undetected or unconvicted crimes the respondents have committed it may be necessary to consider a plea bargain in order to persuade them to reveal information about their accomplices and crime associates who are still at large.

CONCLUSION

The value of crime information obtained from convicted offenders can only be maximised if it is analysed, processed and used in conjunction with other crime information and crime intelligence. Analysing and processing crime information in this way will enable the SAPS to utilise and move to an intelligence-driven style of policing – a style that has proven to be very successful internationally. But this is an ideal that can only be achieved if sufficient information from a variety of sources is obtained, collected, and analysed, and if comprehensive and reliable crime intelligence is derived from this. Crime information collected from prisoners can make a valuable contribution to the process of developing reliable crime intelligence from a variety of crime information sources.

The adoption of a fully comprehensive, intelligence-led policing style, inclusive of crime intelligence based on integrated databases, will require law enforcement agencies to take a leap of faith in engaging with the new concepts of intelligence gathering, intelligence exploitation and intelligence-led policing.³⁹



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NOTES

- 1 The term is now 'officially' used by SAPS in its official crime statistics to describe a specific type of robbery, namely: house robbery, as a sub-category of robbery with aggravating circumstances. The term 'house robbery' is, however, not defined in South African legislation as a separate type of crime.
- 2 RJ Zinn, *Incarcerated Perpetrators of House Robbery as a Source of Crime Intelligence*. DLitt et Phil Thesis, Unisa, Pretoria, 2007.
- 3 South African Police Service, Crime Information Analysis Centre, *Annual Report: Crime Situation 2009*. South African Police Service: Pretoria, 2009.
- 4 Zinn, *Incarcerated Perpetrators of House Robbery*.
- 5 JH Ratcliffe, What is intelligence-led policing? <http://jratcliffe.net/research/index.htm#ilp> (accessed 2 November 2006).
- 6 Ibid.
- 7 B Flood, Strategic Aspects of the UK National Intelligence Model. In J.H. Ratcliffe (ed), *Strategic Thinking in Criminal Intelligence*, Sydney: Federation Press, 2004.
- 8 Ibid.
- 9 Ibid.
- 10 Ratcliffe, What is intelligence-led policing?
- 11 MF Brown, *Criminal Investigation Law and Practice*, Newton: Butterworth-Heinemann, 1998.
- 12 O Higgins, Rising to the collection challenge In Ratcliffe JH (ed), *Strategic Thinking in Criminal Intelligence*, 2004.
- 13 RJ Zinn, *Sentenced Motor Vehicle Hijackers Imprisoned in Gauteng as a Source of Crime Intelligence*. *Magister Technologiae* (MTech) dissertation, Technikon SA, Florida, 2003.
- 14 Zinn, *Incarcerated Perpetrators of House Robbery*.
- 15 Operations and Initiatives, Greater Manchester Police, <http://www.gmp.police.uk/mainsite/pages/operationhawk.htm> (accessed 1 November 2006).
- 16 South Africa. South African Police Service, Crime Information Analysis Centre, *Truck hijacking in the RSA for the Financial Year 2004/05*. From: [http://www.saps.org.za/ciac/reported serious crime situation in South Africa.htm](http://www.saps.org.za/ciac/reported%20serious%20crime%20situation%20in%20South%20Africa.htm) (accessed 28 October 2005).
- 17 South Africa. South African Police Service, Crime Information Analysis Centre, *Car hijackings in the RSA for the Financial Year 2004/05*. From: [http://www.saps.org.za/ciac/reported serious crime situation in South Africa.htm](http://www.saps.org.za/ciac/reported%20serious%20crime%20situation%20in%20South%20Africa.htm) (accessed 28 October 2005).
- 18 Higgins, Rising to the collection challenge.
- 19 Ibid.
- 20 Zinn, *Incarcerated Perpetrators of House Robbery*.
- 21 Zinn, *Sentenced Motor Vehicle Hijackers*.
- 22 MR Ronczkowski, *Terrorism and Organized Hate Crime*, Florida: CRC Press LLC, 2004.
- 23 J Van der Westhuizen, *Beskrywende Ontleding van Inbrake in die Norwoodse Polisieostasiegebied*. Pretoria: Unisa, 1987.

- 24 W Gay, TM Beall and W Bowers, *A Four Site Assessment of the Integrated Criminal Apprehension Program*, Washington DC: University Science Center, 1984.
- 25 B Rheinier, MR Greenless, M. Gibbens and SP Marshall, *Law Enforcement Assistance Administration Report*, Washington, DC: US Government Printing Office, 1979.
- 26 JM Hough, Managing with less Technology, *British Journal of Criminology*, 20, 1980, 344-357.
- 27 Ronczkowski, *Terrorism and Organized Hate Crime*.
- 28 Higgens, Rising to the collection challenge.
- 29 B Grestly, The New York Police Department: Managing the crime rates, *Police Research Group*, 7, March 1996, 16-17.
- 30 RK Ressler, JE Douglas, AN Groth and AW Burgess, Offender Profilers: A Multidisciplinary Approach. In Campbell JH and DeNevi D (eds), *Profilers*. New York: Prometheus Books, 2004.
- 31 Zinn, *Incarcerated Perpetrators of House Robbery*.
- 32 Zinn, *Sentenced Motor Vehicle Hijackers*.
- 33 United Kingdom, Directorate of Intelligence and Detection, *SO11 Police/Prison Liaison Manual*, 2nd edition, London: Metropolitan Police Service, 1997.
- 34 Baviaanspoort [Pretoria North], Johannesburg, Leeuwkop [Kyalami], Modderbee [Brakpan], Pretoria [Central], and Zonderwater [Cullinan].
- 35 A further factor in the decision to interview only respondents who were incarcerated in the six largest correctional facilities in Gauteng was that the larger correctional facilities are the only facilities in Gauteng that have high and maximum security detention sections. House robbers are more likely to be incarcerated in a higher concentration in these facilities than in lower security sections, owing to the violence used by the respondents that forms an integral part of the particular crime. See Zinn, *Sentenced Motor Vehicle* 39-41.
- 36 Zinn, *Sentenced Motor Vehicle Hijackers*.
- 37 Ibid.
- 38 Ibid.
- 39 Flood, Strategic Aspects of the UK National Intelligence Model.

Of Nigerians, albinos, satanists and anecdotes

A critical review of the HSRC report on human trafficking

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The deluge of news articles about human trafficking in South Africa, and the media preoccupation with trafficking in the run-up to the 2010 FIFA World Cup, could lead an observer to believe that South Africa is a 'hotbed' of human trafficking. Yet, there are no baseline data about the extent or nature of the problem. The Human Sciences Research Council (HSRC) released a research report in March this year that purports to provide 'the first comprehensive assessment of human trafficking in South Africa.' The report is beset with methodological problems and assumptions. It is based on very little original research. The authors of this review argue that it represents a missed opportunity to provide much needed information about human trafficking in South Africa and fuels sensationalism about human trafficking.

In 2009 the HSRC won a tender to undertake what should have been an important piece of research on human trafficking for the Sexual Offences and Community Affairs (SOCA) Unit of the National Prosecuting Authority (NPA). The research¹ was intended to provide data about human trafficking in South Africa to inform the NPA's approach to human trafficking.² The 206-page report that resulted from this tender states that it 'provides the first comprehensive assessment of human trafficking in South Africa',³ and that it would address Result 1 of the

programme of assistance to the South African government to '[deepen] knowledge and understanding of trafficking'.⁴ It is our contention that the research report did neither.

For reasons set out below we believe that a vital opportunity has been missed to establish a baseline on the extent and nature of the problem of human trafficking in South Africa. The report also fails to adequately inform governmental decision-making by failing to provide evidence-based interpretations of key concepts. There were many contributors to the report, each an expert in their respective fields. Those sections of the report that required desktop research, or analysis and descriptions of national and international legal instruments, for example, offer a valuable collation and analysis of existing material. However, the report is weakest where it should have been strongest – providing new evidence-based knowledge about the phenomenon

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of human trafficking in South Africa and a baseline against which future trends could be identified and measured.

Researching human trafficking is a notoriously difficult undertaking, not least because those involved in trafficking have a strong incentive to keep their activities hidden. However, the complexities of revealing hidden social phenomena are not a sufficient excuse for reporting weak data or generalising findings from qualitative studies. Several fields of study have made it their business to devise methodological strategies for overcoming the difficulties of accessing hidden populations or researching the extent of highly stigmatised or illicit social practices (such as drug taking, domestic violence, sex work and illegal immigration).⁵

The HSRC report has a number of disquieting limitations and failings. The researchers acknowledge that 'reliable information on the scale, direction and nature of trafficking remains sparse'.⁶ Yet, the report contains no detail about the limitations of the research. In particular there is no discussion about the extent to which the qualitative findings could, or could not, be generalised to South Africa as a whole. The report therefore creates the impression that trafficking is an overwhelming problem in South Africa, that it is evident everywhere and that it requires a massive social response. This fuels fear-mongering, sensationalism and public anxiety about trafficking and attracts attention away from other equally serious social and economic problems. In view of the fact that the research report does not provide evidence for many of its findings, it is deeply flawed.

In the executive summary the authors merely note that they faced three major challenges: the huge scope of the project; the difficulty they had accessing key South African government informants; and the lack of official data. Further on, the authors acknowledge that the study is 'exploratory'.⁷ Yet the report presents its research findings as if based on robust and systematic research that provides the basis for confident

assertions about the extent, nature and characteristics of trafficking in South Africa. Indeed, the press release accompanying the release of the report claims that '[H]uman trafficking in South Africa is a serious problem and warrants intervention on all fronts' and that '[T]he study confirmed that, as elsewhere, women constitute the largest group of victims in human trafficking in South Africa, with the main purpose of sexual exploitation. Young girls are also trafficked for sexual exploitation because they are perceived to present less of a risk in terms of HIV and AIDS and because of the "sexual desirability of youth".⁸ Nowhere did the researchers establish these as facts.

Since the HSRC report has received wide media interest⁹ and since policy makers and civil society organisations are likely to base their plans of action and resource allocation on its findings, it is necessary to critically interrogate the report's claims, methodology and findings. This article identifies a number of serious flaws in the report that compromise the integrity and rigour of the HSRC's research. In this article we focus on three issues only:

1. Unrealistic and unreasonable terms of reference
2. The use of problematic research methods
3. Unsubstantiated claims that result in a distorted view of the problem.

POOR TERMS OF REFERENCE

The shortcomings of the research and report cannot be laid at the door of the HSRC or the researchers alone. The terms of reference for the research and the short timeframe within which the research was to be conducted set it up for failure. The terms of reference required the HSRC to do the following:

- a. Identify trafficking trends in order to develop an appropriate response
- b. Identify national legislative measures, policy frameworks, and women's and children's rights instruments
- c. Analyse counter-trafficking responses regarding human trafficking (HT) in the

Southern African Development Community (SADC) region and other countries with comparative features

- d. Identify the profile of victims and characteristics and motives of the agents in human trafficking
- e. Identify the purposes of human trafficking and the key driving factors
- f. Identify the socio-economic aspects related to the demand for trafficking and the cultural values and practices influencing human trafficking
- g. Identify the interrelation between human trafficking and other forms of migration in the context of globalisation
- h. Identify the linkage between organised crime networks and corruption, and human trafficking
- i. Identify indicators for a national Trafficking Information Management System
- j. Make recommendations on the outcome of the above results.¹⁰

Even at first glance, the terms of reference clearly are an unrealistic basis for a study that is intended to provide definitive baseline information about human trafficking in South Africa. Particularly problematic are requirements (a), (d), (e), (f), and (h). Below we focus on (a), (d), (f) and (h).

Identification of trafficking trends

The analysis and identification of trends require that quantitative data about the phenomenon being studied are gathered and analysed over time. In order to identify a trend, one requires a starting point, and baseline data – data from a point in time that can be compared with data from a later point in time. For example, it would be possible to determine the trends in house robberies by comparing data about house robberies in 2000 with data about house robberies in 2009. The analysis could consider the time at which the crime was committed, the number of individuals involved as perpetrators and victims, the location of the crime, and so on.¹¹ The changes in these characteristics over time would allow for the identification of the way in which house robberies are changing, or remaining the

same, and perhaps even for a prediction of future patterns and trends. Identifying trafficking trends, as required by the terms of reference, assumes that data that can be analysed to determine trends must exist.

However, as the report notes often, there is a paucity of data about human trafficking in South Africa. Thus, determining a trend or trends would be conceptually and practically unachievable. Certainly it would have been possible to identify baseline data and to provide the basis against which data collected at a later point in time, or systematically over time, could be assessed. This would have been a useful exercise and had it been done, it would have added to the small body of systematic knowledge about human trafficking in South Africa. However, this is not what the terms of reference required.

Identify the profile of victims and characteristics and motives of the agents in human trafficking

In order to provide a reasonable profile of victims, a sample of victims would be required whose life experiences and circumstances could be analysed and compared. This is conceptually different from identifying the 'characteristics and motives of the agents in human trafficking' – which would require again the consideration of a sample of individuals involved in the trafficking of others. Yet, the terms of reference treat these two issues as if they are the same.

In order to meet the requirement of profiling victims, one would expect the researchers to have analysed the circumstances, characteristics and experiences of individuals involved in known cases of trafficking – those identified by non-governmental organisations (NGOs) and inter-governmental organisations (IGOs) and those that have already been prosecuted under existing laws (albeit not under a trafficking-specific law, which is yet to be passed). Indeed, the International Organisation on Migration (IOM), which seems to have been involved in informing the research, has dealt with 300 confirmed cases

of human trafficking in southern Africa since 2004.¹² These cases would provide a strong basis for an analysis of the profile and experiences of victims, and should provide at least anecdotal information about traffickers. Yet, there seems to have been no interrogation of the IOM data. Rather, the researchers relied on research conducted by the Western Cape-based NGO Molo Songololo and the IOM in 2000 and 2003 – the veracity of which the report itself calls into question, stating: 'While this study draws on previous studies of human trafficking in South Africa and the region, the evidence base of many of these studies is problematic and needs to be expanded and improved through more systematic investigation and analysis.'¹³

It should be noted that only four adult victims of trafficking were interviewed for the study.

Identify the socio-economic aspects related to the demand for trafficking and the cultural values and practices influencing human trafficking

The information needed to identify the social, cultural and economic factors associated with trafficking would have called for primary research and analysis that goes beyond that which already exists. But, since the researchers seemed to have only just over 12 months within which to set up the research process, determine their methods, train field staff and collect data, it was impossible to collect much primary data.

In the end the report does not contain any original findings relating to the demand for trafficking or the cultural practices and values influencing it (if indeed such practices exist), and merely repeats assumptions and anecdotes that are contained in other reports on human trafficking. This material is often repeated without any critical analysis or the scepticism required by robust research. Indeed, the researchers present their findings as if they independently validate the findings of earlier reports – 'much of the data gathered supports the findings of previous studies'.¹⁴

This tendency in human trafficking discourses and research was noted with concern by Jyoti Sanghera, Advisor on Human Trafficking for the United Nations Office of the High Commissioner for Human Rights.¹⁵ The danger of uncritical repetition and circulation of anecdotes is that similar assumptions about who is vulnerable to being trafficked are circulated around the world without being interrogated by rigorous research. This often gives rise to the perpetuation of stereotypes and fears in public consciousness. While there may be some validity in the assumptions by the HSRC, not being able to verify this by systematic research means that interventions – particularly interventions aimed at preventing trafficking – could be targeted incorrectly. This leads to an unethical waste of resources and energy, and may even result in unintended human rights abuses against those presumed to be most at risk.¹⁶

In 'Collateral Damage' the Global Alliance Against Trafficking in Women presents the findings of research to analyse the effect of counter trafficking initiatives. They found that in several countries efforts to counter trafficking resulted in human rights abuses. For example, fears about women and children from rural areas falling victim to traffickers led to restrictions on the movement of women and children in those areas targeted for interventions.¹⁷

Identify the linkage between organised crime networks and corruption, and human trafficking

This requirement of the research also necessitates a reasonable sample from which to draw inferences about the role of organised crime. On the issue of the link between organised crime, corruption and trafficking, the report is ambiguous.

The report states that while the United Nations definition of trafficking 'bases itself on the model of transnational trafficking, which is often attributed to the presence of large networks of organised crime' this does not appear to be the case in Africa where 'trafficking is usually (but not

always) through small, family-related networks and does not always take place across national borders.' A perilous assertion certainly, and one that is difficult to assess the validity of since the report provides no further detail or any reference against which to verify the information provided.

In summary, the terms of reference and the time frame for the research did not allow for a rigorous research process that could significantly add to existing knowledge about trafficking. There is a lesson in this. It is essential that government departments and agencies that outsource research ensure that the terms of reference are appropriate and realistic. At the same time, if the HSRC had believed the terms of reference to be unrealistic, the researchers should have challenged the terms of reference and the short time frames provided and included strong caveats about these aspects of the research in their final report.

RESEARCH METHODS

There are a number of major methodological weaknesses and missed opportunities in this research. The methodology section of the report – which is less than a page long – provides no detail on how the data were collected or how informants were selected. Indeed, the only description given of the primary research conducted is the following:

Researchers obtained data using survey and questionnaire tools. Key informant interviews were conducted with law enforcement officials, immigration and or customs officials, embassy officials, social service representatives, government representatives, NGOs, international organisations, traditional healers, with victims of trafficking and with other relevant parties thought to have information on trafficking in persons. Obtaining data on the criminal activity of human traffickers necessitated the use of covert observation as there are some issues that cannot be studied overtly.¹⁸

No indication is given of the sample size, the relative samples of each of the sources of

information, the interview schedules or the nature of the questions directed to informants. This is significant because, for example, victims of trafficking are more likely to be in a position to answer questions about the methods traffickers employ than customs officials would be. At the same time, none of the groups interviewed would be in a position to assess the prevalence of trafficking or trends. Indeed, as described above, establishing such trends and patterns was the purpose of the HSRC's research and to simply ask key informants how many trafficking victims they believe there are, takes us no closer to understanding the true extent of trafficking in South Africa. It merely tells us what those individuals believe or perceive the extent of the problem to be.

A list of people and organisations interviewed or approached should have been appended to the report. The 'use of covert observation' and assertion that 'a component of the research was intelligence-led'¹⁹ sound intriguing, but are not referred to again in the report, nor is it indicated how, or the extent to which, this kind of investigation informed the findings of the study. There is also no discussion about the ethical issues that this kind of investigation is likely to confront.

UNSUBSTANTIATED AND GENERALISED CLAIMS

Perhaps the most alarming aspect of the report is how, based on key informant interviews (number unknown), over-generalised and unsubstantiated claims are made throughout the report and in its findings and recommendations. Some of the most pertinent examples are discussed below.

Early in the report the claim is made that 'there is an increased likelihood of HIV infection in the case of women trafficked for purposes of sexual exploitation'.²⁰ Given that there has not been a representative survey of victims, let alone one that determined their HIV prevalence, it is unclear where information like this comes from. The researchers also do not explain what they believe the cause of the increase might be. Indeed, the

statement raises a number of questions. Do they mean higher HIV prevalence levels than the general South African population, or higher than the prevalence levels of a control group of people who have not been trafficked?

Later in the report the claim is made that 'while the root causes of trafficking are complex, the vulnerability resulting from poverty is a major contributor.'²¹ This is a common assumption in the trafficking discourse,²² and one that has been challenged by research.²³ This assertion was not tested within the HSRC research project itself, but it has been the basis of counter-trafficking programmes and influences the selection of targets of such interventions.²⁴ Thorough investigation of such an assertion would have been useful for directing further intervention campaigns and resources. Furthermore, while poverty may be the cause of vulnerability to certain types of trafficking, this might not be the case for all kinds of trafficking. This complexity is glossed over in the report, but it may have important implications for government and civil society's ability to develop appropriate interventions for different kinds of victims and perpetrators of trafficking, or those trafficked into different sectors.

When describing the routes and 'trends' the report uncritically repeats the findings of IOM²⁵ and Molo Songololo²⁶ reports. It is claimed that 'traffickers in Russia and Eastern Europe recruit women to work in up-market clubs and brothels in Johannesburg and Cape Town on behalf of the Russian and Bulgarian crime syndicates that have bases in South Africa.'²⁷ This is drawn directly from Martens et al.²⁸

Claims such as this are startling, not least because they reflect a simple recasting of stereotypes into the language of research. Certainly no information is given about the number of cases that informed this 'trend'. However, given that the total sample of victims in the Martens report was 25, reflecting seven different trafficking syndicates, it is unlikely to be based on more than one or two cases.²⁹

In the current climate of xenophobia in South Africa, this is a dangerous and highly

irresponsible conclusion. The reliance on stereotypes over data is also conspicuous in the way that Nigerians are represented throughout the report. In describing the syndicates allegedly involved in trafficking, the researchers include a footnote stating that 'research suggests that a large number of these syndicates are Nigerian.'³⁰ No sources are given for this claim.

Similarly, the report states that 'evidence suggests that the diaspora communities are often channels for the trafficking of victims to South Africa'.³¹ No source is provided for this information, nor evidence presented. The generalisation associated with stereotypical perpetrators is equally evident in how victims of trafficking are described: victims are children, sex workers, the poor, or 'gay men in bars', again without sources being provided or evidence presented.³²

Similarly, over-generalised statements occur in the section of the report titled 'Domestic trafficking in South Africa'. The authors claim that:

The modus operandi of traffickers involved in internal or domestic trafficking is similar to that used for trafficking across international borders. Very often the same criminal syndicates are involved. South African nationals often become victims of human trafficking through various forms of deception. Kidnapping also has been documented in some cases.³³

No evidence is presented on where the information comes from and how many cases it is based on – thus making it impossible to assess its credibility.

Finally, there are claims made in the report which, whilst being methodologically weak are also not clearly related to human trafficking. For example, the report claims that '[I]n the areas of Bushbuck-ridge in northern Mpumalanga and the southern Limpopo region of Tzaneen, people who are albino are at the greatest risk of falling prey to traffickers for the harvesting of body parts'.³⁴ No details are provided. There is no indication of

how many cases this claim is based upon, whether there have been successful police investigations into the phenomenon, or how the conclusion is drawn that albinos are any more at risk than other groups. It is also not clear whether the victims are murdered or merely maimed in the process of the harvesting of body parts, or whether the body parts are used by the individuals who are doing the harvesting, or sold on. If the victims are murdered, as one would presume might be the case, the crime would surely be a murder rather than that of trafficking.

Even more obscure is the section of the report that deals with satanic rituals. Here it is claimed that through 'interviews with key informants'³⁵ it is known that there are people involved in Satanic cults who are affluent white women and men who buy their victims from Nigerians and who sacrifice children'.³⁶ Again, if human sacrifice is involved, it is not clear why the crime would be trafficking rather than murder. The authors claim that:

Respondents believe that victims are either recruited by cult members or purchased by criminal syndicates that specialise in human trafficking: these are said to be mostly Nigerian. Alternatively, satanic cults will kidnap victims often from rural areas. Other targets are street children and prostitutes ... If the ritualistic killing requires a man, gay men in bars are targeted and sedated to overcome physical resistance.³⁷

In some instances the above will constitute trafficking according to the Palermo Protocol,³⁸ and in other instances it will not. The above examples suffer from the same problems of lack of evidence and methodological integrity.

With regard to the extent of trafficking, the authors report on the perceptions of the scale of the problem offered by interviewed prosecutors. One prosecutor estimated that approximately '60 per cent [of victims of trafficking] had been involved in prostitution in their home countries....'³⁹ No prosecutor would be in a position to know this and the information is of no

more value than if any other member of the general population had been asked this question. It is not made clear why the perceptions of prosecutors about the scale of the problem are relevant to the report.

Under the section 'Human Trafficking Routes', the report notes that 'there appears to be no area within South Africa not affected by some form of human trafficking'.⁴⁰ This is alarming and sensationalist and contributes to the scaremongering evident in popular literature or the press on trafficking.

In addition, the reliance on stereotypes and opinions of key informants who are not in a position to answer the questions put to them, means that there is considerable risk that the authors may have missed trafficking in sectors where they typically do not expect to find it. There has been an extensive focus on trafficking into the sex work industry. However, we still know almost nothing about other sectors that include extensive exploitation, such as farm work or domestic work.

Yet there are at least two sources of information that would be useful in understanding trafficking in South Africa. The first is the cases that prosecutors have actually dealt with. The report does in fact provide an analysis of cases that occurred between 1996 and 2009.⁴¹ However the data analysed are drawn from interviews with prosecutors rather than from documentary evidence (such as statements of victims, court records and dockets), which weakens the analysis. Moreover, at least as far as the sequence of events in cases was concerned, 'some respondents found it difficult to recall the time frames with accuracy'.⁴² In addition, no detail is provided about the cases. This information could have helped to inform our understanding of the types of cases that come to the attention of the prosecuting authority. Indeed, the information provided is minimal.

The second source of information that could have been tapped is the IOM's database of victims. The IOM has assisted 300 victims of trafficking cases

in southern Africa over a six-year period.⁴³ An analysis of these cases could have provided a useful picture of what we know to date about the victims and the circumstances of their trafficking experiences. The report ignores the potential value of this data. Whilst such analyses cannot assist in determining prevalence, trends or profiles of trafficking victims and perpetrators, the information could have offered useful case studies that, reported along with their limitations, might have been employed to guide interventions and form the basis for future research.

CONCLUSION

In summary, there are two overwhelming problems with the HSRC report on trafficking:

1. Very little information is provided about methods used, there is no clear presentation of the data and no indication is given as to whether information has been verified for accuracy. It is therefore very difficult to know what one can trust in the report, and what is mere scare-mongering.
2. Through over-generalised claims that support popular and often xenophobic perceptions, the report provides the illusion that the researchers have uncovered a clear and comprehensive picture of the situation of trafficking in South Africa. This is misleading and dangerous at a time when there was a great deal of focus on trafficking, particularly in the run-up to the 2010 FIFA World Cup, which presents an opportunity to shape meaningful legislation for victims of trafficking.

Systematic and robust research can assist in the effort to eradicate trafficking and ensure that victims are properly assisted. Furthermore, vigorous research with trustworthy findings can help shape legislation that could better address the needs of victims and ensure that perpetrators are brought to book. Yet the HSRC report provides little more than a picture of current opinions, prejudices and common preoccupations regarding trafficking. It does not provide any new knowledge of the phenomenon, its trends or the profiles of those involved.

According to section 3(c) of the Human Sciences Research Council Act of 2008, the HSRC should 'stimulate public debate through the effective dissemination of fact-based results of research'. Indeed, the HSRC is funded by public money to do so. It is our contention that the *Tsireledzani* report fails to provide a fact-based representation of trafficking in South Africa and recycles a number of dangerous and sensationalist stereotypes. The report failed to live up to its own terms of reference and the HSRC's mandate. In view of above, the HSRC should withdraw the report and its findings.



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NOTES

- 1 Human Sciences Research Council, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, Research Report, March 2010, i.
- 2 South Africa committed itself to tackling human trafficking, and enacting domestic legislation to criminalise human trafficking, when it ratified the Palermo Protocol (United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime*, 2000) in February 2004.
- 3 HRSC, *Tsireledzani*, 2010, i.
- 4 Ibid.
- 5 See for example, Robert Magnani et al, Review of sampling hard-to-reach and hidden populations for HIV surveillance, *AIDS* 19, Lippincott Williams & Wilkins, 2005, S67-S72; Chandre Gould and Nicole Fick, *Selling Sex in Cape Town: sex work and human trafficking in a South African city*, Pretoria: Institute for Security Studies, 2008.
- 6 HRSC, *Tsireledzani*, 2010, iii.
- 7 HRSC, *Tsireledzani*, 2010, x.
- 8 Ina van der Linde: HSRC Media Liaison, Study reveals human trafficking as a serious problem in South Africa, Media briefs 2010 http://www.hsrc.ac.za/Media_Release-391.phtml (accessed 5 July 2010).
- 9 See for example Jacaranda FM, Human trafficking a serious problem in SA, 24 March 2010, <http://www.jacarandafm.com/kagiso/content/en/jacaranda/jacarandanews?oid=601491&sn=Detail&pid=6182&Human-trafficking-a-serious-problem-in-SA> (accessed 4 May 2010); and SABC News, HSRC report raises alarm on SA's escalating human trafficking, 24 March 2010, <http://www.sabcnews.com/portal/site/SABCNews/menuitem.5c4f8fe7ee929f602ea12ea1674daeb9/?vgnextoid=182bb8140a097210VgnVCM10000077d4ea9bRCRD&vgnextfmt=default> (accessed 24 March 2010).
- 10 HSRC, *Tsireledzani*, 2010, 2-3.
- 11 For a detailed discussion about crime trends analysis see Mark Shaw, Jan van Dijk and Wolfgang Rhomborg,

- Determining trends in global crime and justice: and overview of results from the United Nations Surveys of crime trends and operations of criminal justice systems, *Forum on crime and society*, 3 (1), 2003, 35 – 63.
- 12 Nordic Consulting Group, *Southern African Counter-Trafficking Programme (SACTAP): Review Report*, 29 March 2010. Unpublished.
 - 13 HSRC, *Tsireledzani*, 2010, 1.
 - 14 Ibid., x.
 - 15 Jyoti Sanghera, Unpacking the trafficking discourse, in K Kempadoo, (ed), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work and human rights*. Boulder, Paradigm, 2005.
 - 16 For detailed research and analysis about this see: Global Alliance Against Traffic in Women, *Collateral damage: The impact of anti-trafficking measures on human rights around the world*, Thailand: GAATW, 2007.
 - 17 According to the GAATW report 'Efforts to prevent adolescents from being trafficked seem... to have resulted in a wide range of young people's other rights having been subordinated to anti-trafficking measures which made no effort to take the principle of proportionality into consideration. Numerous prevention programmes have been based on an assumption that keeping adolescents in their home communities is a justifiable objective in itself, on the grounds that it enables children to continue attending school (thus, in theory, avoiding economic exploitation while enjoying their right to education.) In contrast, the child rights approach suggests that priority should be given to making it safe for adolescents who leave home, not keeping them in an environment which may not automatically promote either their ability to exercise their human rights or their general wellbeing.' GAATW, *Collateral Damage*, 2007, 9.
 - 18 HSRC, *Tsireledzani*, 2010, 13.
 - 19 Ibid., 2010, iv.
 - 20 Ibid., 2010, 5.
 - 21 Ibid.
 - 22 S Sihlwayi, Community stabilisation can reduce human trafficking, *Eye on Trafficking*, International Organisation on Migration, (20), 2009, 5.
 - 23 F Lackzo and M Gramegna, Developing better indicators of human trafficking, *Brown Journal of World Affairs*, X (1), 2003. The authors reported that research in the Balkans of trafficking trends showed that roughly a third of identified victims came from rural areas and most did not classify themselves as very poor.
 - 24 Programme of assistance to the South African government to prevent and react to human trafficking: Provision of services in the field of prevention, public education and awareness (127-108/D/SER/ZA). Terms of reference: Baseline study on understanding of human trafficking in South Africa, final draft 22 April 2009.
 - 25 J Martens, M Pieczkowski, and B van Vuuren-Smyth, *Seduction, Sale and Slavery: Trafficking in Women and Children in Southern Africa*. Pretoria: IOM Regional Office for Southern Africa, 2003.
 - 26 Molo Songololo, *The trafficking of women into the South African sex industry*, Cape Town: Molo Songololo, 2000; and Molo Songololo, *The trafficking of children for purposes of sexual exploitation – South Africa*, Cape Town: Molo Songololo, 2000.
 - 27 HSRC, *Tsireledzani*, 2010, 6.
 - 28 Martens et al, *Seduction, Sale and Slavery*, IOM 2003.
 - 29 Ibid., 13.
 - 30 HSRC, *Tsireledzani*, 2010, 15.
 - 31 Ibid.
 - 32 "If the ritualistic killing requires a male victim, they target gay men in bars and sedate them through the use of drugs, as it is more difficult to kidnap men directly from the street due to the level of resistance.", HSRC, *Tsireledzani*, 2010:153.
 - 33 HSRC, *Tsireledzani*, 2010, 16.
 - 34 Ibid.
 - 35 Ibid.
 - 36 Ibid., 16 and 153.
 - 37 Ibid., 17.
 - 38 The Palermo Protocol is the shorthand term for the "United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children", which provides a definition of trafficking.
 - 39 Ibid., 57.
 - 40 Ibid., 149.
 - 41 Ibid., 65.
 - 42 Ibid., 66.
 - 43 Nordic Consulting Group, *Southern African Counter-Trafficking Programme (SACTAP): Review Report*, 29 March 2010. Unpublished.

On the record...

Interview with Advocate Menzi Simelane

The National Director of Public Prosecutions, Advocate Menzi Simelane, has faced critical and often hostile media attention since his appointment on 1 December 2009. Both the fact of his appointment and his actions as NDPP have been dogged by controversy. In this interview with Iole Matthews, Adv Simelane speaks candidly about the National Prosecuting Authority (NPA) and the changes he is making to the way in which the prosecuting authority operates.

Iole Matthews (IM): You are the fourth National Director of Public Prosecutions of the National Prosecuting Authority in the last 10 years, if we include Acting NDPP Mokotedi Mpshe. Do you think your vision differs from that of your predecessors?

Menzi Simelane (MS): No, I don't think so. I don't think the vision for the NPA should necessarily be different from one NDPP to another. What might be different are approaches and areas of emphasis. I say that because in the context of government work, and especially our cluster, it's quite clear what the National Prosecuting Authority is supposed to do. Its role is very straightforward. We do prosecutions and work incidental to prosecutions such as investigations related to those prosecutions – so I don't see that work changing unless the criminal law changes. The vision centres on doing as many prosecutions as possible and ensuring success in as many prosecutions as possible. So it is very difficult to imagine any other vision for the NPA under the present circumstances.

IM: If one looks at previous strategic initiatives within the NPA it seems that under the leadership of Adv Bulelani Ngquka there was the beginning of a shift towards seeing the NPA as having a preventative role to play within the criminal justice system and thus moving beyond just prosecutions. Your description of the NPA vision seems to embrace a more reactive role?

MS: I think it will always be both. If the NPA were more effective in its prosecutions that might be seen by the general public as being important and thus might be seen as a deterrent for those who are tempted into conflict with the law. Since prosecutions all over the world take place after a crime has been committed, any prosecuting authority is seen as reactive in that respect.

IM: So your effectiveness could be seen to be preventative in some way?

MS: Exactly, but while the effectiveness of the organisation may have a deterrent effect, why a person commits a crime won't always be affected by what the NPA does. That will depend on the specific circumstances that face that particular person at a point in time, and this will vary from person to person.

IM: If perceptions of the organisation's effectiveness in the eyes of the public is important, how has the negative publicity around your appointment affected the organisation? And had you anticipated that level of negative publicity?

MS: Well first, it was not unexpected. I think the public's reaction is not properly informed by factual issues. The media reports are largely informed by the political and ideological debates that are out there. And in that respect I think it is not fair on the public who are in a way being provided with a particular perspective agreed to

by certain sections of the media. So to a large extent the media are misinforming the public as to what the real issues are. This has contributed to a general state of confusion in some quarters, including in some parts of the NPA. At the same time I wouldn't want to submit that it's a serious problem within the NPA, because NPA staff, who are more familiar with the facts, are able to separate the facts from opinions. From that point of view our normal work, that of conducting prosecutions, continues unaffected. I think what does create challenges for them is the constant negative information that one sees or hears about the institution for which one works. That does eventually get to some people.

IM: One of the key issues focused on by the media is the disbandment of the Asset Forfeiture Unit (AFU) and the other specialised units. What is your response?

MS: Firstly, there is no disbandment of any unit – I don't even want to use the word 'unit' because that is also not a proper representation of what the law says. The fact that they are seen to be units is a function of internal management in the organisation. According to the law these structures are not units. I prefer to use the word 'processes' and there are no changes proposed (or otherwise) that relate to policy on areas of asset forfeiture, or in fact commercial crime or sexual offences. So none of the structures are being interfered with in the manner in which they implement government policy. What has happened is that we have adjusted the reporting lines, that's it.

Remember that it was during Adv Ngcuka's time that there was a realisation that sexual offences needed special attention. So a proclamation was made and signed off by President Mbeki to appoint a special director who would advise the NDPP on the policy relating to sexual offences and not necessarily to conduct prosecutions. This special director was intended to help the NDPP assist the DPPs to conduct prosecutions in respect of sexual offences. However once appointed, the special director was provided with posts to be filled with prosecutors who would conduct those

types of prosecutions, not only at national level but also in each of the provinces. You then had a situation where administratively the NPA began to refer to this as a 'unit', and the way they were treated, and are treated to date, is that they are an addition to existing prosecutors in the courts. In the area of development of policy on sexual offences and best practice, this unit has done tremendously well.

So on the ground you get a prosecutor who prosecutes rape cases or sexual offence-related cases and who reports to the DPP through the normal channels but then you have another set of prosecutors, referred to as SOCA (Sexual Offences and Community Affairs) prosecutors, who do exactly the same job, in the same court but they are not accountable to the DPP in that province. Instead they ultimately report to the special director at National Office because they deal with cases from the Thuthuzela Centres. So we are arguing against this approach. Surely all prosecutors should be answerable to the DPP in whose jurisdiction they operate, as required by law?

IM: So you are saying that reporting lines have been changed for SOCA? What about the AFU and the specialised commercial crimes unit?

MS: Yes, we have proposed that this applies to all the specialised units. It is the same issue whereby a special director was appointed to advise the NDPP on such matters and to prosecute in specific cases only. Now we have a number of prosecutors on the ground in the areas of jurisdiction of the DPPs prosecuting special commercial crimes. How do you distinguish between these cases, how do you distinguish between a commercial matter being dealt with by the prosecutor from the SCCU from the commercial crime matter being dealt by an ordinary prosecutor reporting to the DPP? This needs more attention because we should not exaggerate successes when more should be done.

Also, because they function completely differently to the rest of the organisation, you end up with multiple prosecuting authorities within one

prosecuting authority and it starts affecting accountability. So ask a SCCU prosecutor who do you report to, and they say Chris Jordaan, who is head of that unit at National Office. So who does Chris report to? Well, he reports to the Deputy National Director of Public Prosecutions in the Office of the NDPP, Dr Ramaite. Again, I can follow that structure, but then what informs their approach to prosecutions as opposed to the approach of the DPPs? You find that they have their own way of doing things, different to the DPPs. The point I am making is one of coherence. At the moment what we have is a fractured organisation and that type of organisation leads to multiple problems. You have one prosecutor in a court doing one thing and another doing something different and they see themselves as independent of each other. The same thing with the Asset Forfeiture Unit, in so far as the DPPs are excluded from making applications in terms of the Prevention of Organised Crime Act. They should be authorised to do so.

This lack of coherence is evidenced by the fact that each unit established its own mini corporate services and want their own strategy sessions.

IM: And yet in the past these units have not only grown, they have been marketed by the NPA as centres of excellence?

MS: Without being cynical, I think it was a function of not thinking through the idea of what the organisation should look like, because of the pressure to deliver at the time. They were quick-fix measures to respond to the pressure to come up with results. There was also the confusion created by the Scorpions, as you now had a police service within the NPA. The focus became this office of the NDPP and the people in it. It became such a powerful office that it virtually rendered the DPPs redundant.

IM: So you're saying that the role of the NDPP has inappropriately taken centre stage – you've become like a rock star!

MS: (Laughter) Absolutely, it's become this unbelievable individual. Where does that come

from? But again it flows from the way the media has not properly reported on the institution as a whole, on the framework of the law, and how that works. We have lost an immense opportunity to educate the public on how the prosecution service works and its role in helping government transform society.

Look at this Jub Jub case, I didn't speak to any of those guys prosecuting the case. It's not my business. I only engaged with the acting DPP and while I might say 'this is how I see things' it is the DPP who talks to the prosecutors. And each DPP is independent in his or her decision-making. While they definitely work under my direction in terms of ensuring a common strategy and policy, in terms of decision-making, they are independent. The National Prosecuting Authority Act specifies clearly under what circumstances I can overrule the DPP and what procedure has to be followed. I cannot just go in and say 'I disagree with you so change your decision'.

These things are not really known by the public, largely because it's this office of the NDPP, this NDPP individual, who is seen as more important. The public as a whole don't even know that the DPP is independent.

IM: So you seem to be arguing that the NDPP is not the most important person in the organisation?

MS: When I speak to people I always say to them that in fact the most important person in the system is the individual prosecutor holding your docket; because that person is the one who decides to prosecute or not. If we want to focus on excellence you don't always have to create the super units, you focus on ensuring that the quality of prosecutors everywhere is such that you can truly depend on it. If you have a bad individual prosecutor, it doesn't matter what rank, if that person is not up to scratch then you have a problem.

So if you take your entry level prosecutor handling his or her first first traffic violation case, that's where you should start looking at quality.

You know the NPA focuses so much on rank when we should rather be focused on quality and competence. That entry level prosecutor is a professional. What we are managing more are people and less processes – I manage processes.

IM: And what do you mean by that, surely people management is key for ensuring quality?

MS: I always argue that I don't manage people because I work with professionals. I take it for granted that once you are a full time employee of the NPA you should know what to do, unless you are completely new and need some guidance initially to get started. A prosecutor with two or three years' experience in the district court has a lot of experience because he or she lives in the courtroom, reading up to 30 dockets a day, litigating. At the end of a year you have a wealth of experience. Now tell me why that person needs a senior person telling them how to make decisions?

IM: The problem with that is that if that prosecutor does a bad job on day one and continues building experience on that by the end of the year they are really bad.... Especially if no one has been supervising and picked that problem up.

MS: Absolutely, but first let me say that managing people is not a NPA challenge, it's a public service challenge. There is huge emphasis on rank and seniority. The minute someone in the public service is appointed a director they stop working and they start looking for people to manage. Now if you are in an environment where you are dealing with professional people you get frustrated because there is no one to manage, because such people tend to do their own thing. They want to be getting on with their jobs and they don't need someone breathing down their necks. Now if you are a manager who has to be seen to manage people you start checking registers, you want to know where they are, and all of those types of things. There is an element of control in it which I accept as important but there is a time when that level of control becomes counterproductive, because people stop thinking,

they stop finding solutions, because they are always waiting for a manager to make a decision. Nobody moves until there is an instruction. And so if the manager is off sick for a week nothing happens, because there is no instruction to follow, no approval.

I focus less on that type of management of people and more on process. When I say I am process orientated I mean that any route to a good outcome has to be informed by a process. If the process is bad, the outcome is bad, so we need to be clear on what our processes are. When I was at the Competitions Commission we always focused on processes first.

IM: And you apparently had a good reputation from your days at the Competitions Commission...

MS: (laughter) Absolutely, that's what always amazes me, one moment you are okay and the next moment it's gone. People's opinions shift. But processes are important because whenever a decision is challenged, it's the process that can be looked at for answers. From an administrative point of view, process is key. That is a high level of accountability. I want people to explain process, tell me what has happened from day one, how did you arrive at your decisions, etc. and for a lot of people that is very uncomfortable. They are not used to a hands-on approach and then they say 'hang on you are micro managing me'. With accountability, you have to explain each and every step of the way. In the same way, Parliament is not a grilling session. It is an opportunity to explain how you came to a decision and not necessarily everyone has to agree. Again that is the public service culture, where the boss decides and then everyone just agrees. Junior staff are not able to say 'hang on, how did you arrive at that decision yourself?' I hope that we change some of these practices that do not help us go forward.

IM: Is that something you are trying to change?

MS: Absolutely, I think one of the criticisms in the *Mail and Guardian* recently refers to the 'blistering pace' of transformation. But my sense is

that we are behind schedule, we don't have the luxury of time because it's 16 years post 1994 and people still don't know how the system works or what their rights are. People call here to find out about their cases and I say 'ask for the Senior Public Prosecutor, ask for the Control Prosecutor, demand an answer.' And people in the public service generally feel that if people do that it's being disrespectful. But in fact the quicker you explain to someone how you reached a decision the faster they will go away, because they will understand. They may not agree with you but at least they will understand how a decision was made. Because of this attitude we tend to be very impatient with people and that is what contributes to an environment where prosecutors don't really pay attention to process. They expect to make a decision and have everyone just comply. We need to correct this culture. In a participatory democracy we want to encourage the public to engage and get people used to being accountable.

IM: And yet, while you argue for more engagement you've in fact been accused of not consulting on strategy and of making unilateral decisions.

MS: You'll remember I was appointed in October last year as Deputy and given the responsibility to focus on NPS, and so I dealt directly with the DPPs. We met in October and again in November last year to engage around the general framework of the prosecution service. We looked at the scheme of the Constitution and the scheme of the NPA Act. We all agreed that what is happening in the organisation is not a true reflection of what is in the law and how things actually should be. We saw a lot of scope for improvement.

We have DPPs who are emasculated from really taking responsibility. And again it's because of the approach that focused on the NDPP rather than the people with direct responsibility for certain processes. For me, from the way I see it, there was a lesser focus on a process of prosecution and greater focus on individuals. So we agreed that things have to change and as you can see this is reflected in the minutes of those meetings.

We agreed on the role of the DPP office, its jurisdiction, and that senior prosecutors should spend more time in court. It was also agreed that we would start implementation at the start of next financial year, April 2010, which is why a lot of things were then done in March in preparation for the new financial year, and then for everybody it looked coordinated.

IM: And yet the instruction for senior prosecutors to be in lower courts has met with serious resistance in some quarters. What was the thinking behind this decision?

MS: It seemed unreasonable that a senior prosecutor with up to 20 years or more experience does maybe two or three cases a year while a junior prosecutor who has just graduated from university does 20 cases a month. Even if those cases are more complex, logic should tell you that the more senior you are, the more experience you have, the quicker you can make decisions and the more value you can add.

Also, prosecutions should never just be about court appearance for trials. Many cases can be dealt with administratively. And running a court case is a skill, like surgery, so we should reserve trials for the more serious cases that deserve a trial. In many cases one can get a plea and just deal with the case administratively but still get the appropriate outcome. Now who is in a better position to do this, someone experienced or someone less experienced? The more senior you are the better you can negotiate and execute that responsibility and if you are successful you save court time, reduce backlogs. And the seniors do court work anyway, so it is just the frequency that is in question. Many seniors also sell themselves as specialists, say in sexual offences, but then shouldn't they be prosecuting in those courts with the highest rates of sexual offence cases and guiding more junior prosecutors?

IM: Okay, so you are not just talking about seniors conducting prosecutions – which for me is problematic since there aren't enough of them to seriously impact on the cases in the system – but also acting as mentors and building the skills base in the organisation?

MS: Yes, there are not enough of them, which is why we can't have a system that is dependent on a few individuals. We have to get the whole system to work which is why for me it's a question of building competence. When a senior person arrives to conduct a case at a court, all the prosecutors are interested, they want to see what's happening, they want to ask questions, they want to learn. So you achieve a lot with just your physical presence. If you then engage with those people you have no idea of how much value is added. Now if there is the presence of a senior in that court on a regular basis you can fundamentally change that system and instead of you alone doing five or ten cases very well, you have 15 prosecutors doing 5 000 cases very well because you've taken the time to engage.

Also, the magistrate's court is a court like any other, maybe inferior in terms of physical structure or resources for historical reasons, but it's still a court. When a senior is going to appear you get a different quality of service in that court. It starts on time, the magistrates are sometimes former colleagues so there is a healthy respect and you get a better form of justice being done. So there is an immediate change. You see this better level of service in high courts and this is how it should be in the lower courts. Why should we act differently where 90% of our cases are heard?

That is why everyone robes, and while some NPS advocates objected to robing in the lower courts I insisted that if you work for this employer, you robe. The message that is communicated is that I respect this court as an important constitutional structure and I respect the magistrate as a judicial officer. This is not a fashion show, but there is dignity to the justice process. We are using the hierarchy of the system strategically. If I pay attention to a case, everyone pays attention. The importance of rank in the system can be used positively as well as negatively. We just have to find the time to care.

This is not new, so I am not a genius. These issues were being discussed during Adv Mpshe's time and he and I also talked about it. The only

difference is that I am insisting on it and I am implementing it now and not after further discussions, otherwise we'll never get started.



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