POLICING THE TRANSFORMATION

Further Issues in South Africa's Crime Debate

Mark Shaw, Lala Camerer, Duxita Mistry, Sarah Oppler, Lukas Muntingh

Monograph No 12
April 1997

Introduction

Crime in Transition
Mark Shaw

Victims and Criminal Justice
Lala Camerer

A Review of Community Policing
Duxita Mistry

Partners Against Crime
Sarah Oppler

The Development of Diversion Options for Young Offenders
Lukas Muntingh

This publication is sponsored by The United Nations Development Programme in South Africa

INTRODUCTION

As the South African political transition has unfolded, the issue of crime has become one of the key challenges facing the new government. Public and political pressure on this issue has built up steadily since 1994. Initial impressions that the new ANC government lacked the political will to deal with crime have been replaced by a growing scepticism about the capabilities of the South African Police Service (SAPS). This has been reinforced by a growing tendency among those politically responsible for safety and security, at both national and provincial level, to criticise the SAPS in public.

This growing divide between the SAPS and its political masters emerged clearly from the recent dispute between the minister of safety and security, Sydney Mufamadi, and the national commissioner of the SAPS, George Fivaz. The dispute has had serious consequences. Public confidence in the police has been further eroded, and the morale of police officials lowered. Most seriously, though, it has created the impression that the tensions are caused purely by friction between personalities, and are unrelated to the policing framework in which they operate.

Ironically, informed debates around crime and policing have waned rather than developed in the post-apartheid environment. Universities should assume some of the responsibility for this. Academic institutions have, with few exceptions, not adequately confronted the issue of crime in their research programmes. While foreign experts regard the country as a criminological laboratory, local researchers have largely failed to respond to the challenge. Those who have tried (and this is also true of researchers at the Institute for Security Studies) are often restricted – given the urgency of the issues, and the nature of the demands around them – by limited capacity. Also, given the fact that research on this issue is so thinly spread, there is little healthy debate in which analytical ideas and proposed solutions are subjected to critical review. All too often, ideas are accepted simply because they are the only ones available.

The ISS Crime and Policing Policy Project contributes to the debate around possible solutions to crime by regularly publishing *working* papers on the issue. Thus the papers in this monograph are aimed at providing a broad overview of the debate to date, and making some suggestions for appropriate policy interventions. They present ongoing work at the institute, as well as analyses by two outside researchers. The contributions include:

- a review of recent crime trends and government policy responses;
- an overview of the debate on policy initiatives around victims of crime;
- an exploration of the problems surrounding community policing, as well as future prospects; and
- an examination of new forms of policing involving the building of partnerships with business and community groups.

There is still a great deal of work to do. The Crime and Policing Policy Project has concentrated on making short- to medium-term policy interventions, and has succeeded in engaging a range of policy-makers and the public. However, given the long lead time required for publishing ore rigorous research, there is a need to initiate sustained research projects on criminal justice issues, and to better equip our graduates with the skills needed for innovative criminological research.

CRIME IN TRANSITION

Mark Shaw

Political and social transformation have affected South Africa profoundly. New and non-racial forms of democratic government have been established at national, provincial and now local level, and reconstruction and development have (slowly) begun. But the process has been far from painless: while political violence has ended, except in parts of KwaZulu-Natal, the transition to democracy has been characterised by sharply rising levels of crime.

There is a clear and crucial link between South Africa's transition and the growth in crime which has accompanied it. But it would be dangerously simplistic to argue that crime is purely a consequence of the transition: indeed, there is strong evidence to suggest that its roots lie in the apartheid system which the transition sought to end. But there is little doubt that the increase in criminality from 1990 onwards – and during the preceding decade – cannot be divorced from the political, social and economic changes which marked the end of apartheid.

The increases in crime from 1990 onwards are consistent with the experiences of other countries undergoing transitions to democracy: as change proceeds, society and its instruments of social control – formal and informal – are reshaped. The result is that new areas open up for the development of crime, bolstered by the legacies of the past.

Inevitably, newspaper headlines, police reports and the experiences of citizens have placed the issue of crime on to the public agenda. To many, the problem has assumed crisis dimensions as the country is swamped by a 'crime wave'. And crime is seen by both political elites and the media as a threat to the stability of the new democracy, and a deterrent to investment. "*Crime"*, the populist premier of Gauteng, Tokyo Sexwale, has declared, "*is the soft underbelly of the reconstruction and development programme*."[1] Crime is therefore implicitly and explicitly seen as a key test of the capacity of the government to rule, and the new democracy to consolidate.

The transition has not brought with it a system of criminal justice which is immediately capable of responding to these challenges. The institutions of criminal justice remain weighed down by public perceptions that they are tools for enforcing the rule of a minority over the majority, rather than instruments for delivering protection to all. Also, the state security apparatus, while it was monstrously efficient in defending white rule through 'insertion' or 'fire force' policing, is too under-resourced and underskilled to take on conventional policing functions. And the new government – given the desire to control the pace of transformation, and ensure that policing functions remain firmly under its control – has sought to retain policing as a central function, despite growing evidence that a centralised approach to crime control and prevention fails to take local problems into account. Pretoria-centric controls undermine the establishment of clear links between local communities and the police, reinforcing perceptions that the SAPS remains unaccountable and unresponsive to citizen needs.

Of course, citizens have not necessarily always reacted to growing levels of crime by demanding that politicians do something about it: rising crime has effectively prompted South Africans to create substitute policing institutions, a trend which has strengthened throughout the past year. The private security industry continues to grow, while vigilante groups have consolidated their position. The dangers of the growth of alternative forms of policing are obvious: they represent initiatives outside of and uncontrolled by state authority, able (and often willing) to replace the formal public policing apparatus.

The challenges that await the new order should not be underestimated; nor are they easily resolved. Indeed, the new government is faced with a dilemma. A failure to act reinforces public perceptions that government is weak, while overreaction – by means of characteristic 'fire force' policing – leaves the impression that not much has changed. There is also little comparative evidence to draw on: most countries emerging from transition (many with lesser socio-economic cleavages than South Africa) have not yet succeeded in reducing their crime rates significantly. There is thus much to learn from other countries's experiences – but to date the lessons are few.

A CRIMINAL SOCIETY

Crime and politics in South Africa have been closely intertwined: in the era of racial domination, apartheid offences were classified as crimes; conversely, those people engaged in the 'the struggle', particularly from the mid-1980s onwards, justified forms of violence as legitimate weapons against the system. Instability prompted a growing number of South Africans to acquire weapons; the use of guns to settle personal and family disputes became more common.

On to this complex mix was grafted violence in KwaZulu-Natal from the mid-1980s onwards, and on the Reef from 1990. Actions which were strictly violent crimes were seen by their perpetrators as a legitimate defence against political 'enemies': the result was a society in which the use of violence to achieve political and personal aims became endemic.

Measuring crime during apartheid's last decade reveals contradictory trends: at the height of political conflict during the 1980s, increases in some crimes appeared to have bottomed out. Political liberalisation brought a crime explosion, apparently following other societies (such as states in eastern Europe and those emerging from the former Soviet Union) undergoing lengthy democratic transitions: as social controls are loosened, spaces open which allow growth in criminal activity. And in developing countries attempting to make the transition, fewer resources mean that the cost of a growth in crime is far higher (even if rates of increase are comparatively smaller).[2]

But, at the outset, any understanding of criminality in South Africa is complicated by the fact that it is difficult to effectively measure the extent of lawlessness, or its costs. Recording crime relies on a two-stage process: victims or bystanders need to report the crime to the police, who then need to record it. In fact, only a portion of some offences make it that far. In South Africa the collection of statistics has been complicated by the historical divide between people and police, and the vagaries of apartheid record-keeping. South African Police figures, for example, historically excluded the bantustans – statistics in the late 1980s showed all recorded crime in KwaZulu-Natal, for example, as occurring in the 'white' section of Natal. This implies that the 'dark figure' of unrecorded crime in the country is substantial.

Barring the carrying out of a comprehensive victimisation survey in South Africa, official crime statistics are the only ones available. If they are to be useful, they should not be analysed for minutiae and rejected out of hand, but probed for broad trends. There is a common perception, for example, that crime in South Africa only began to increase from 1990 onwards, in conjunction with political transition. In fact, most serious crime, notably murder, robbery and housebreaking, began to increase from the mid-1980s onwards.

So it must be emphasised that South Africa's crime problem is not recent: this society, given its high levels of inequality and political conflict, has always been 'crimo-generic'. Crime increased significantly during the 1980s, when the apartheid state was most strongly challenged. According to police figures, serious offences rose by 22 per cent, and less serious ones by 17 per cent; murder increased by 32 per cent, rape by 24 per cent, and burglary by 31 per cent.[3]

The increase in levels of crime peaked in 1990, the year in which the political transition began. Recorded levels of almost all crime showed absolute increases in 1990–4. While the murder rate declined by 7 per cent, in line with declining levels of political violence (from 16 042 fatalities in 1990 to 14 920 in 1994), other crimes increased phenomenally during this period: assault increased by 18 per cent, rape by 42 per cent, robbery by 40 per cent, vehicle theft by 34 per cent, and burglary by 20 per cent. There was also an increase in crime among by the affluent: although no accurate figures are available, commercial crimes increased significantly during this period. Trends throughout the country were not uniform, with the greatest increases occurring in the urban complexes of Johannesburg, Durban and Cape Town.

The problems related to the recording of crime suggest that government will need to continue to manage perceptions of increasing levels of crime for the next decade. Even if police reform succeeds, and wealth is distributed more evenly over time, recorded levels of crime will continue to rise. This will apply particularly to property crime: a growth in the insurance industry, the

numbers of cars on the road, the number of telephones and the approachability of the police (through, for example, a unified emergency phone reporting system) will allow higher levels of reporting. These recorded increases will need to be managed by government – something which the ministry of safety and security has conceded that it is not particularly good at doing.

This outcome, though, will apply mainly to less serious crimes. Given the greater likelihood of reporting, figures for crimes such as murder may be more accurate. South Africa leads a comparative measure of citizens killed in crime-related instances in a range of countries. The figure for the first six months of 1996 of 30 citizens killed per 100 000 head of population is nearly four times that of the United States. And hospital records (which are often more accurate than crime statistics) show that 2 500 South Africans required treatment as a result of stabbings, beatings and shootings every day. Indeed, figures for the first part of 1996 continue to show dramatic increases in levels of assaults, domestic violence and rape.[4]

The growth in organised crime in the new democratic order has also been dramatic. There are now said to be 481 criminal organisations in the country (although police definitions of these remain unclear) engaging in a wide range of activities, including weapons, drug and vehicle smuggling. Countering organised crime is a priority. Comparative evidence from other states in transition suggests that unless organised crime operations are countered quickly after their formation, they have the potential to harden, penetrate the state, and form parallel and competing centres of power. The rise of criminal enterprises in parts of eastern Europe, the former Soviet Union and West Africa illustrate these developments.[5]

But the impact of crime on South Africa is not uniform, and increases in crime appear to affect different parts of this society in different ways. This implies that since not all South Africans are exposed to equal dangers, different strategies should be used in different areas to curb crime. Thus, while crime in general has increased over the past decade, this does not necessarily apply to all crime, nor do all areas of the country suffer equally. Broadly, an examination of statistics over time shows that Northern Province displays high levels of crime against property, but a comparatively low figure for crimes of violence. KwaZulu-Natal shows high levels for property- and violence-related offences. Northern and Western Cape show high assault figures, yet comparatively smaller readings for theft and housebreaking. Free State consistently shows the lowest reported rate for all categories of crime.

These provincial variations suggest that national crime figures may be deceptive, since levels of victimisation and forms of criminality vary between provinces. For instance, while vehicle hijacking is feared nationally, almost all cases occur in Gauteng. This conclusion is reinforced by local police station figures which show that categories of crime vary considerably between station areas. A detailed examination of crime totals for various magisterial districts in Gauteng show that districts with very high crime rates and those with very low crime rates are often situated close together.[6]

These conclusions are hardly surprising: it is an established truth in policing that the causes and consequences of crime are often locally specific, and as such require locally driven answers. While this principle is generally recognised in South Africa, given the political imperatives of a country in transition, it has not necessarily been subscribed to by policy-makers. The result is a messy breakdown of police functions and levels of accountability which serve to hinder police effectiveness.

Most serious is the fact that there is currently no connection between elected local governments and police agencies. Community police forums (CPFs), designed to give local communities a

say in policing priorities, have been written into the constitution. But the introduction of CPFs has not been unproblematic. To begin with, such structures, given their volunteer nature, are seldom representative. Moreover, since CPFs can do little to influence the operational priorities of the police – depending of course on the personalities involved – they are often little more than 'toy telephones'.

In any event, local station commissioners report straight through the police command structure to the national commissioner in Pretoria, and so have little incentive to respond to community needs. Promotions and transfers depend on the hierarchy in Pretoria, and not on the community's voice on the ground. The problem of accountability is compounded at provincial level. Under the new constitution, provincial MECs for safety and security are tasked with monitoring and overseeing the police in their provinces – in reality, they have little say (beyond political influence) over operational policing issues in their provinces.

The result is often (although not always) that local policing priorities are subsumed under a complex bureaucratic structure run from Pretoria. The centralisation of police functions is based on a political imperative to retain central control over the coercive apparatus of the state. Breaking up the police service, the argument goes, will invite exploitation and abuse from the provinces, as well as at the local level. Also, there is some doubt about the capacity of localised structures and station commanders to assume full responsibility for policing in their area. Furthermore, proponents of centralised policing argue, to devolve policing functions would mean good services in some areas and poor ones in others. These arguments are spurious: given adequate degrees of regulation, maintaining certain key police functions – such as maintaining public order and investigating organised crime – at national level would prevent abuse from occurring. The key to better policing is to allow communities to take responsibility for safety and security, rather than assuming that they are incapable of doing so.

Colonialism, with its specific brand of policing, required a centralised police agency, as did apartheid, with its desire to control and suppress opposition. Ironically, in seeking to establish order and transform the policing functions of the state, the post-apartheid government is also arguing for centralised control over policing. The result is increasing levels of disorder in many local communities, and little democratic linkage to ensure accountable forms of policing at the local level.

CRIMINAL JUSTICE IN CRISIS

Beyond its policing function, South Africa's system of criminal justice is in crisis. If its ability to prevent, process and deter crime is to be taken as a measure of its effectiveness, then reforming the system is now not only essential but an urgent national priority. Unfortunately the system is not easily repaired; it is not characterised by a single problem which can be resolved speedily, but is beset by multiple blockages, many of which cause delays in other parts of the pipeline. The system, stretching across the departments of safety and security, justice and correctional services, has never been a unified one. The links between the various departments are weak, and the involvement of departments such as welfare, education and health – which have a key role to play in the prevention of crime – is minimal.[7]

Broadly, if it functioned effectively, the system should consist of both proactive and reactive components. Proactive crime prevention strategies are crucial to the longer-term reduction of crime in South Africa. But they themselves are limited without effective institutions to process (and rehabilitate) offenders once crimes have been committed. While the development of proactive solutions to crime should be a priority, the focus – at least in the short to medium term

– should be transforming the reactive components of the criminal justice system. Within this context, however, there is significant scope for the development of proactive strategies – the rehabilitation of offenders being the most obvious one.

Inevitably, reform efforts after 1994 concentrated almost exclusively on the front end of the criminal justice system – essentially the visible component of policing. Community policing has been the watchword of police efforts to make the service more acceptable to the South African public – in truth, that focus has been as important a tool for transforming citizens' views of the police as it has been to change the ethos among police officers themselves. The transformation of the most publicly visible component of the criminal justice system is still far from complete. But equally serious problems characterise the system further along – these are primarily in the areas of detecting crime, prosecuting offenders, and incarcerating the convicted.

What has virtually been ignored by policy-makers has been the issue of detecting crime. The consequences have been severe. In 1995 only a quarter of all robberies were resolved, one fifth of all housebreakings, one tenth of all vehicle thefts, and about 50 per cent of all murders.[8] Hardly surprisingly, South Africa's detectives have always been a threatened breed – under apartheid, the quick road to promotion for bright and ambitious officers was through the security branch; in the new order, the fast track is uniform or visible policing. This has been exacerbated in the past year by the large numbers of experienced detectives leaving the service for more handsome pickings in the private sector, and the difficulty of recruiting more detectives.

Currently there are few incentives for detective work – uniform officers work four days on and fours days off, while good detectives often work seven days a week with no overtime, under poor and dangerous conditions, and with little support. Most detectives, often with no training (only about 26 per cent have been on a detective course), carry upwards of 50 dockets. There is no mentoring or assistance programme to speak of, and the vast majority of new detectives are thrown in at the deep end. There is also a high degree of inexperience – only 13 per cent of all detectives (and these mainly in specialised units) have more than six years' on-the-job experience.

The situation had been aggravated over time by structural changes in the police force. After station-level detectives were seen as ineffective, specialised units were created; the result has been the removal from stations of experienced officers, and a loss of morale among ordinary street-level detectives. In a recent development, the SAPS has mooted a detective academy to begin to train detectives and pass skills from specialised units on to station-level officers.

The department of justice is also not blameless. Most public prosecutors have little experience, and magistrates' courts are often badly managed. Constant postponements frustrate witnesses, who often fail to appear when cases are finally heard. Most critical, though, is the interface between detectives and public prosecutors. Greater co-operation and co-ordination between justice and police officials at this point in the system would ensure a higher rate of prosecutions. At the moment, prosecutors and investigating officers in the lower courts often only meet each other for the first time when the latter enter the witness box.

While both departments protest that the necessary systems are in place to ensure their effective functioning, a lack of skilled (and motivated) middle management is a major problem. Old order civil servants are disillusioned; new or recently promoted officials have little experience, and (often deliberately) receive no support.

South Africa's prisons are also in dire need of reform. Ironically, the prisons have been fuller in

the past – in the mid-1980s more than four in every 1 000 citizens were in jail – but were also apparently better managed. Staff shortages, prisoner and warder unrest and increasing corruption – the majority of escapes are apparently a result of bribing prison officials, and the department is known by its employees as the 'department of corruptional services' – are bringing the crisis to a head.

Conditions in South Africa's prisons are near-Victorian. The announcement that correctional services would begin issuing condoms – hoping at least to protect unwilling prisoners forced into sexual intercourse against Aids – has brought the issue into sharp relief. Most prisons are dank and dark – maintenance budgets are limited – and some areas are virtually controlled not by warders but by the prisoners themselves.

To be fair, the problem is not all of correctional services' making; about one quarter of South Africa's 130 000 prison inmates are still awaiting trial. In effect, correctional services must cater for those whose passage through the criminal justice system is blocked at the point where crime is investigated and processed through the courts. Ironically, as they have not been convicted, they are not eligible for privileges (albeit limited) such as prison clothes and recreational services.

The clearest indication that the system is failing is the fact that more than half of those who have been imprisoned will again commit a crime after their release. Rehabilitation in South Africa's prisons is a farce (admittedly, this is so in most other countries in the world) – and the likelihood of future improvements are slim, given that any new budgetary allocations will be for yet more prisons, and the staff to guard them. Public opinion is also geared more to ending crime than rehabilitating prisoners (although the two are closely linked), and convicts are widely viewed as deserving of the conditions under which they live. For example, while Business Against Crime – a prominent private sector initiative aimed at ending lawlessness – supplies resources to the front end of the criminal justice pipeline, where criminals are caught, it has displayed little interest in its backwaters, where crime is often learned – SAPS officers refer to prisons as 'the universities'.

At least part of the problem lies in the rigidity of the South African penal system – alternative forms of sentencing are virtually non-existent, and where they are, magistrates (influenced by public perceptions that the system is criminal-friendly) seem unwilling to use them. In Europe and North America, parole and correctional supervision are increasingly seen as modern alternatives to shutting people away. In some American states, up to 80 per cent of all convicted prisoners are on probation or parole – in South Africa the comparative figure is 20 per cent. And parole in South African prisons is determined by the department of correctional services itself – an open invitation to bribery, and an easy (but inappropriate) mechanism to release pressure on the prison system.[9]

In effect, the department virtually has the power to alter sentences established by an independent judiciary. What is urgently needed is an investigation into community forms of sentencing for some categories of offenders. This would mean the appointment of a greater number of supervisors (as opposed to prison wardens) – there are currently only 1 100 supervisors for 33 340 convicted offenders (including those who have been granted parole) serving their sentences outside the prisons – and enlisting business and government support to ensure alternative forms of sentencing.

Corruption in the criminal justice system is said to be pervasive; although few figures are available, the current prosecution rate can only be the tip of the iceberg. Corruption – bred by

declining morale and poor controls, management and training within the system itself – is a symptom rather than a cause. And it should not be viewed as an issue outside of and unrelated to the poor functioning and management of the criminal justice system. But its consequences for public perceptions of the institutions of criminal justice are severe.

There is a dilemma here. Any large-scale crackdown on corruption is bound to undermine already flagging public confidence in the criminal justice system. But denial of the extent of the problem will continue to undermine public confidence in the institutions of criminal justice. This will particularly be so if, in the longer term, ordinary citizens come to learn that the system's representatives – in the form of the police, court and correctional officials – are open to corruption. This dilemma is one of the most significant challenges facing policy-makers over the next five years. The only alternative – some high-profile prosecutions – is unattractive in the short term.

GOVERNMENT INITIATIVES

The growing weakness of the criminal justice system has not escaped the government. Thus the recently released National Crime Prevention Strategy is aimed at bringing together departments involved in crime control and prevention, and co-ordinating their activities. This suggests a more unified approach to the problems of the criminal justice system. But the greatest strength of the crime prevention strategy – its inclusive and comprehensive nature – is also potentially its greatest weakness. The very complexity and wide-ranging nature of the strategy suggests that co-ordination and leadership will be critical to its success.

While the strategy provides a vision for a society which has begun to confront the problem of criminality eating away at its core, what still has to be demonstrated is an ability to manage the reform of the criminal justice system in such a way that the strategy will be central to any crime prevention effort. The strategy – an 88-page document in small, single-spaced type – aims to draw together key role players in government in an attempt to provide the basis for the restructuring of the criminal justice system, and in the longer term, more effective crime prevention programmes.[10]

The development of the strategy involved six core government departments: correctional services, defence, intelligence, justice, safety and security, and welfare. This is in itself an important development – a holistic (as opposed to sectoral) approach to crime prevention, which has been sorely lacking. What is also clear from the document is the reorientation of the intelligence community which will now, and increasingly, it seems, concentrate on combating certain types of crime.

At a different level, the strategy indicates another significant shift in the discourse on safety and security in South Africa – from 'community policing' (which is barely mentioned in the document) to 'crime prevention' and the building of 'partnerships' both between government agencies and with outside organisations in business and civil society in an effort to stem the tide of crime.

The document provides a detailed analysis of the reason for the growth of crime in the country – which it sees (correctly) as a complex intermeshing of a diversity of factors – and outlines steps under way in various government departments to counter crime. Besides repairing the criminal justice process, three key issues – environmental design, education, and transnational crime – are identified as being critical areas of intervention. The strategy also lays down 18 nationally driven programmes to be implemented. These are diverse, ranging from improving information systems (poor information transfer, it says, is at the heart of the system's problems), victim

empowerment and support, and mechanisms to counter organised crime.

What seems notably absent from the list are specific preventative strategies related to drug use, the proliferation of small arms, and the gang problem in certain parts of the country. While all are covered either directly or indirectly in various sections of the document, it would have been worth consolidating current initiatives and developing specific strategies to form two or three additional (and high-profile) prevention programmes. These areas are of increasing concern, given that they hold the potential to spawn wider forms of criminality.

The issue of increasing drug usage, for instance, is a critical one. The government's response to the drug problem has historically been fragmented and poorly funded, with no co-ordination between reactive and proactive programmes. What needs to be explored is the establishment of a law enforcement body separate from the current police and intelligence structures, which would provide leadership in area of both prevention and enforcement.

On a different level, it is a pity that the strategy does not contain a more detailed section on initiatives by local government. International experience suggests that the key to crime prevention lies at the city level. The strategy could have substantially advanced the process and debate on this aspect had the issue of crime prevention at a metropolitan level, for example, been emphasised. A useful mechanism in other countries has been the establishment of city forums to compare experiences on crime prevention, and determine joint guidelines.

Nor have South African city authorities been idle. Many are beginning to work on crime prevention plans and the establishment of local police agencies. But central government has dragged its heels on these developments – no framework yet exists for local government policing or crime prevention strategies, and if current developments are anything to go by, local governments will run ahead of the national authorities in this sphere. Many, including crime-ridden Johannesburg, are in the process of formulating plans for city police services designed to supplement the SAPS.

What the National Crime Prevention Strategy does correctly suggest, however, is that local-level initiatives should take account of local conditions and circumstances in tailoring individual programmes. But it does not address the issue of what the consequences would be should local authorities stray outside the broad boundaries delineated by the strategy. The document could have suggested guidelines to contain or, where necessary, focus such initiatives.

The key to the success of the strategy is co-ordination – otherwise it will simply become a reflection of a broad range of programmes which might eventually have occurred in any event, in one form or the other. A related problem with such a large and complex initiative is that at a national level it is virtually immune to measurement – there is a danger that success will simply be equated with a flurry of activity (in this case, committee meetings) rather than any real decreases in crime.

Given the number of players involved, the complexity of the strategy should not be underestimated. Apart from, and in conjunction with, the 18 programmes, line function departments are to undertake various initiatives and seek partnerships with outsiders.

While the document allows for monitoring at departmental and programme level, it is not clear on the extent to which the whole enterprise will be subject to review. While it would be inappropriate, given the difficulty of interpreting crime statistics, to suggest that the crime rates should be cut by a given per centage by the year 2000, programme deliverables need to be

more clearly outlined. So it is a matter of concern that the strategy – despite the fact that it is a framework for implementation – contains virtually no time frames (although in some cases it appears that these are still to be determined) for the completion of the various programmes. And management is by committee; an interministerial committee will supplement the cabinet committee on security and intelligence, and will be made up of the ministers of safety and security, correctional services, defence, justice, welfare and intelligence. The committee will meet only quarterly, or can be convened on an *ad hoc* basis should this be necessary. Beneath the ministerial committee will be a committee of directors-general which will also be chaired by the lead department, namely safety and security.

The committees have apparently met, but with no deadlines to work to they have made little progress. A publicly released set of objectives and deadlines would have provided some accessible points of measurement for judging any progress. Without these, the danger is that the plan will be perceived as simply another paper strategy, creating expectations which the government will not be able to meet.

Indeed, this has already occurred. High-profile media coverage of specific instances of criminal activity has once again turned the spotlight on to the issue of crime. Government responses that these are just individual instances (or a media plot) fundamentally misunderstand the role of the press. Unless government law enforcement agencies are seen to work on the ground – in the short term – where most citizens experience crime, no amount of strategies formulated in Pretoria will bring relief. In fact, quite the opposite: if every fresh outburst of crime is met only with words and no visible implementation, public cynicism will grow. The success of the strategy is critical. Failure will bring growing disillusionment with conceptions of proactive crime prevention, which is central to the long-term solution of the problem of disorder in South African society. In this instance, there will also be a continued growth in reactive, self-help and increasingly violent solutions to crime.

CITIZEN RESPONSES

The increasing failure of the criminal justice system to deter or punish offenders has been marked by a growing trend among citizens to take the law into their own hands. None of these developments are new; all occurred in some form or the other under apartheid rule. What is significant now is the growth of extra-state mechanisms of law and order, in conjunction with declining confidence among the citizenry in the ability of the police to secure a safe environment. Forms of alternative protection vary – the wealthier components of society can afford to contract out responsibility for their safety to the private security sector; less fortunate communities are more likely to undertake their own initiatives.

Unlike the security business in Europe and North America, the South African private security industry has not been extensively studied. Since 1980 the sector has grown rapidly; initially it expanded at about 30 per cent a year, with growth slowing to 10–15 per cent over the past five years. (There has been an estimated annual average growth rate of 18 per cent since the late 1970s.) The exact value of the industry is difficult to quantify – a recent estimate suggested that the guarding industry alone was worth around R3,6 billion. Private security officers outnumber the public police by about 2 to 1. [11]

The South African industry, in comparison with security sectors elsewhere, shows some unique traits – a mix between a sophisticated electronic sector, and the physical provision of guards. It is also distinguished by a comparatively higher growth on the reactive side. Traditionally, both in South Africa and elsewhere, security companies have played a proactive role: guards patrol

defined areas to prevent crime, modelled very much on the concept of the 'bobby on the beat'. In South Africa the combination of electronic and guarding functions has led to a marked growth in the 'armed response' sector: panic buttons relay electronic signals via a control room to armed security officers patrolling in cars, who therefore play roles far more similar to the state's traditional law and order function.

The growth in the South African industry has not reflected broader trends in the economy. Indeed, there seems to be an inverse relationship, with the industry growing remarkably in poor economic conditions: in the pre-election months, when most business in the country stagnated, security reflected record growth. Since the election there has been some stabilisation, although rises in crime are again boosting security companies. But, to some degree, parts of the market, such as guarding, are showing signs of saturation.

The development of the private security sector in South Africa, however, has not been untroubled. Appeals for more powers for certain categories of security guards is likely to fall on deaf ears if the public and official perception is that private security officers are untrained and act unprofessionally. Public perceptions, whether the industry likes it or not, are shaped by individual instances of abuse – for example, the deaths of 16 people in a stampede caused by security guards armed with electric batons at Tembisa north east of Johannesburg in July 1996, or the notorious case of the security officer Louis van Schoor, who shot and killed 41 alleged burglars over a number of years.

The dangers of replicating the Tembisa incident are real. More and more, private security companies operate in the so-called private–public sphere; that is, private property which is open to public use, such as shopping malls or university campuses. And there is also a growing trend towards using private means in purely public spheres, such as policing urban neighbourhoods or central business districts. In more extreme cases, private firms engage directly in public order activities such as the clearance of squatters.

Growth in the private security industry does not necessarily relieve pressure on the public police. In fact, quite the opposite is true: the industry puts in place mechanisms – guards, alarms and detection devices – to gather information which can be fed to the police: rather than decreasing demands on the police, private security may overburden it in some areas. The clearest indicator of this is the issue of 'false alarms' – in KwaZulu-Natal, between January and April last year the SAPS travelled 170 000 kilometres in response to electronic alarm activations, accounting for 40 per cent of all complaints in the province, with only 1 per cent being valid.[12]

Also, to argue – as the industry increasingly does – that private security serves as a useful adjunct to state structures ignores their differing goals: the private company seeks to protect the interests of its client, while the police theoretically defend the rights of citizens. In the main (and barring some cases in the private investigation sector), private companies are more concerned with preventing loss than detecting offenders: in particular, the exercise of discretion by such private security personnel will often be far more influenced by their perceptions of their immediate employer than any generalised concept of the public interest. Thus offenders will only be handed over to justice if this is in the perceived interest of the client. This implies that in South Africa as elsewhere public and private policing do not fit as neatly together as was initially assumed.

But if the public policing activities of private security continue to grow, what are the policy alternatives? Greater regulation, beyond that offered by the Security Officers Board, a statutory

body staffed and funded by the industry, is only valid if it is possible to enforce – which is not currently the case in South Africa. One option, given that the public at large are exposed to private policing, is the establishment of an independent complaints mechanism – over and above any ordinary recourse individuals may have under the law – to provide a publicly accessible means to oversee the industry. But, with or without such a mechanism, the industry will remain contract-driven – responsible in the final analysis to individual clients rather than to the public at large.

While business and the wealthier sections of society seek to buy safety, the less fortunate have sought to confront the problem more directly. While by no means the first of such actions, the campaign by the vigilante group People Against Gangsterism and Drugs (Pagad) in the Western Cape – which has publicly murdered an alleged drug dealer, and maintained an armed presence in parts in some Cape townships – has brought the issue of citizen action to a head. But there are a real dangers to the new order should such initiatives become a permanent feature of the debate on community safety in South Africa.[13]

Indeed, South Africa is beginning to display characteristics similar to those of the crime-wracked states of Latin America. In Brazil, where the army has been summoned to control crime in major urban areas, vigilante policing is nothing new. The use of vigilante squads in the crowded urban complexes around Rio and São Paulo (and increasingly in small towns in the interior) are justified because of the inefficiency of Brazil's established judicial institutions. This experiences holds some profound lessons for South Africa.

Ironically, and this rings true here, vigilante action which (at least in the rhetoric of its proponents) is an attempt to strengthen state institutions often has the opposite effect: the further weakening and undermining of official criminal justice channels, and the creation of alternative centres of power (and by definition coercive ones) outside the state security apparatus. In South Africa, as in Latin America, vigilante actions against criminals are essentially a response to state ineffectiveness, combined with a culture of violence and an inability of the state to defend its own areas of responsibility against vigilante incursions.

Perhaps more to the point, vigilante actions are encouraged by perceptions that its perpetrators themselves will not be threatened by countermeasures taken by the state. Indeed, that conclusion is easy for citizens to draw: if a state is ineffective in deterring the criminals who originally contributed to the potential for vigilantism, it also lacks the capacity to deter the vigilantes. This is illustrated by state responses in Latin America to vigilantism – essentially an attempt to co-opt rather than to confront. Police commissioner George Fivaz's assertion that – while of course not condoning vigilante violence – the police wishes to work in 'partnership' with vigilante groups in the Western Cape is a classic response.

It must be recognised that what is achieved by vigilante behaviour is not necessarily useful. Vigilante action is essentially reactive; it aims to (violently) suppress. And vigilante action tends to be applied in an *ad hoc* manner – even though the violation of formal legal boundaries may be supported by the majority of the community (as in São Paulo and on the Cape Flats), vigilantism is disorderly and unpredictable, *having consequences unforeseen at the time it was initiated*. Often it simply solidifies the very opposition which it aimed to undercut – it is not for nothing that the gangs on the Cape Flats have resolved their differences in order to counter the common threat that now faces them.

Moreover, when law enforcement officials themselves participate, either directly or indirectly, in such acts of violence, the moral validity (or the remains of it) of the formal legal system is

undercut. So one of the most serious developments around vigilante violence in the Western Cape is the widespread public perception that the police (frustrated by its own inability) stood back and allowed 'natural justice' to take its course.

In the medium to longer term, the greatest danger related to vigilante action is that it will spread and become institutionalised – an accepted mechanism to police what is increasingly viewed as the unpolicable. New complexities will certainly develop over time. Police who are viewed to be in cahoots with criminals, for instance, could become targets for attack, upscaling and complicating the conflict.

Vigilante actions in South Africa, while their causes and aims may differ, are nothing new. The use of vigilantism to achieve political ends was a common feature of the last decade of apartheid and the transition to democracy. The difference was of course that some of these manifestations, such as the *witdoeke* on the Cape Flats and the impis in KwaZulu-Natal, enjoyed state support. The principle of using violent action outside the formal institutions of the state is already well-established.

The growth of self- and private policing provides a ready base from which violent vigilante actions can grow. In Soweto, for example, groups such as Youth Against Crime – a motley collection of youngsters who patrol some sections of the township – can easily be upgraded into violence-driven vigilante groups. Indeed, the events in the Western Cape were watched with interest by the groups in Soweto; while their organising principles are not as strong as those of Pagad, and they are not as tightly organised, they do contain the potential for violent action.

If the dangers of vigilante action are manifest, what are the solutions? The only alternative is the most difficult one: the establishment of an effective system of criminal justice as a matter of national priority. The South African state, no matter what the degree of breakdown within its institutions of criminal justice, still retains the capacity for such an alternative if it is confronted in a targeted way. Seeking to co-opt vigilante leaders and placate criminals, while it will ensure peace in the short term, will over time undermine the last shreds of public confidence in the criminal justice system. The greatest danger is to do nothing, and allow vigilantism, because it has short-term advantages to the state, to run its course.

CONCLUSION: CRIME AND DEMOCRACY

Just as the transition affects crime, so crime affects the transition. Not long ago, the new government's willingness to compromise politically – and the affluent minority's willingness to compromise in turn – in the interests of racial accommodation seemed the most likely determinant of democratic prospects. Ironically, however, unexpected success in this area could be nullified by the emergence of crime as a – if not the – central determinant of the attitudes towards the new democracy of local affluent minorities, and perhaps also of international investors.

High levels of crime affect all South Africans, but in the new democracy the effects appear to vary among racial groups. For affluent, suburban whites, growing evidence suggests that it is the prime threat to confidence in the new order, and the factor most likely to prompt continued emigration among a sector of the society whose mobility is high and commitment to majority rule conditional. Since skills and resources are disproportionately concentrated in this group, its flight from attacks on persons and property would weaken democracy's economic foundation. There is also evidence that predominantly white residents of middle-class suburbs may react to crime by seeking to insulate themselves physically from the mainly black poor, who are seen as its

perpetrators. That would entrench a form of social distance which will hamper attempts to create a common South African loyalty.

For much of the black majority, exit is neither a feasible nor a desired option. And since this section of society has been living with high rates of violent crime for decades, concern at a relative increase is far outweighed by enthusiasm for a new order in which black people are full citizens: there is no visible evidence yet that crime is substantially denting black confidence in democracy. In addition, recent research suggests that black citizens see crime as a symptom of social and economic inequalities rather than a product of democracy's 'weakness'. Survey evidence suggest that white and black citizens view increasing crime and state responses from diametrically opposed positions: whites see crime as a breakdown of policing standards and the weakness of the new order; blacks view increasing lawlessness as a sign that the new democracy has not consolidated, and that its institutions need strengthening.[14]

This state of affairs will not last – indeed, the views of important constituencies in the growing black middle classes are beginning to converge with those of their white compatriots. If the personal safety of black citizens declines still further, enthusiasm for measures to 'restore order' which threaten democratic liberties could grow. The majority of black South Africans (and indeed ANC members) now support a return to capital punishment.[15]

The perception that achieving safer communities is beyond the means of the state, or that citizens' most rational response to the threat is to insulate themselves from society, could ensure declining political participation. The signs of this, although only partly a response to crime, are already there – recent survey evidence suggests that the ANC has lost 10 per cent of its support, but that this has not been distributed to any of the other parties in the political system.[16] The perception that an elected government cannot perform the most fundamental function of state authority, namely to protect its citizens, could reduce confidence in the new democracy.

What are the prospects, then, that crime will decline significantly? The evidence does not permit a clear and confident answer. Both here and in other societies, the roots and cures of crime are far too complex to permit definitive predictions or trends.

The polar conventional wisdoms of the debate – that crime will decline as soon as development takes off, or the moment the police are elevated to their 'rightful' place and adequately resourced – are at best unproven, and likely to remain so for some time. And even if crime stabilises, it appears likely that reported crime will rise. This could influence public debate by masking any success achieved, if any, in combating crime.

An underemphasised constraint on the reduction of crime, particularly its violent variety, is a grim legacy of the transition period: the ready availability of weaponry. This also erodes one of the key prerequisites of democratic transition, namely the state's ability to monopolise the instruments of coercion. This may be enhanced by a vicious circle in which the widespread use of illegal arms prompts continued demands for greater access to legal ones, despite the fact that widespread legal white access to weapons since the 1980s has not prevented the growth of violent crime (and in fact probably encouraged it).

These realities create ironic dilemmas for a new democratic government. On the one hand, confidence in the new order will decline if the authorities are seen to abandon any attempt to address crime in the (probably dubious) hope that citizens will adjust to an unpleasant reality. On the other, promises of a concerted 'war on crime' in a context in which the capacity to tackle the problem is clearly limited may have destructive consequences, not only for the authorities

but also for the democratic system – both by creating expectations which it may be unable to deliver, and by encouraging support for strategies which may be both inimical to civil liberties and unlikely to succeed.

The longer the dilemma remains unresolved, the more likely it is that the democratic authorities, and therefore the political process, will cease to be seen as credible guarantors of personal safety: for those unable or disinclined to emigrate, 'self-policing' and a reliance on private security will be seen as more viable protection. While the impact of these choices on democracy may be difficult to determine, at the very least they suggest a declining relationship between security on the one hand and accountability and legality on the other. As the more affluent, in particular, are forced to rely on their own responses to crime, the more likely they are to seek to insulate themselves from the rest of society, entrenching in a new form the old divisions which the transition was meant to overcome.

ENDNOTES

1. Quoted in **Business Day**, 4 August 1994.

2. For a more detailed argument on the relationship between crime and political transition, see Mark Shaw, **Partners in crime? Crime, political transition and changing forms of policing control***,* Johannesburg: Centre for Policy Studies, 1995.

3. See Mark Shaw and Lala Camerer, **Policing the transformation? New issues in South Africa's crime debate***,* Johannesburg: Institute for Defence Policy, 1996.

4. Unpublished crime statistics, January–June 1996, Crime Information Management Centre, Pretoria: South African Police Service.

5. See Mark Shaw, 'The development of organised crime in South Africa', in Shaw and Camerer, **Policing the transformation**.

6. Lorraine Glanz, 'Crime in Gauteng', unpublished paper, Human Science Research Council, 1995.

7. For an overview of problems across the criminal justice system, see **Re-engineering the criminal justice system**, a joint project of the ministries of safety and security, justice, welfare and correctional services as well as Business Against Crime, June 1996.

8. The actual figure is in fact probably lower than this. See Lorraine Glanz, 'The not so long arm of the law', **Indicator SA: Crime and Conflict**, no 5, Autumn, 1996.

9. See Molefi Thinane, 'End of the line: South Africa's overcrowded prisons', **Indicator SA: Crime and Conflict**, no 7, Spring 1996.

10. Departments of correctional services, defence, intelligence, justice, safety and security and welfare, **National Crime Prevention Strategy**, Pretoria, May 1996.

11. For a more detailed overview of the industry, see Mark Shaw, 'Privatising crime control? South Africa's private security industry', in **Partners in crime?**, pp 83 and 87.

12. **Re-engineering the criminal justice system**. The figures for the other provinces where

statistics are available are similar.

13. Mark Shaw, 'Buying time? Vigilante action, crime control and state responses', **Indicator SA: Crime and Conflict**, no 7, Spring 1996.

14. Diana Ehlers, I Hirshfeld and Charl Schutte, **Perceptions of current sociopolitical issues in South Africa**, Pretoria: Centre for Sociopolitical Analysis, Human Sciences Research Council, June 1996. This confirms previous survey data. A confidential government poll also drew similar conclusions.

15. *Ibid*.

16. *Ibid*.

VICTIMS AND CRIMINAL JUSTICE

Lala Camerer

INTRODUCTION

Attention has only recently been drawn to the plight of the victims of crime in South Africa. For various reasons, attention has mainly been focused on offenders and their rights within the criminal justice process. Internationally, however, the crime victim has moved to the forefront of criminological research, and criminal justice policy and victim protection and compensation laws have been enacted in most developed countries. South African attempts to cater for the needs and rights of victims within the criminal justice system do not compare favourably with those in other countries: there is no state compensation scheme, nor a uniform approach to the treatment of victims of crime by criminal justice authorities such as police and prosecutors.

From the initial contact with the police to encountering confusing court procedures, there are few mechanisms available to accommodate the crime victim's needs, or to reduce the impact of a traumatic experience. It is argued here that a growing awareness of victims' needs as well as the recent reforms, in line with international trends, of the South African Police Service (SAPS) and the court system may help to avoid secondary victimisation. In the interests of alleviating the harmful impact of crime on citizens, these needs, as well as drastic reforms of the victim's position in the criminal justice system, must be addressed as a priority by criminal justice authorities.

Recently, there have been several initiatives in South Africa aimed at placing crime victims firmly on the national agenda. These are reflected in the National Crime Prevention Strategy (NCPS), SAPS documents, and moves by the ministry of justice to examine the issue of a state compensation fund. Victims of crime have traditionally been ignored. From now on, the level of attention given to them must be closely monitored.

VICTIMS AND THE NCPS

Elsewhere in the world, support services for victims of crime are provided at a national level by organisations offering a variety of psychological and practical services. These multidisciplinary initiatives, involving both states and NGOs, have become known as 'victim movements', and they are lobbying internationally for changes to the victim's position in the criminal justice process.[1] In South Africa, awareness of the needs of crime victims and the provision of support

services compare unfavourably with developments elsewhere in the world.

It can be argued that the increasing attention being paid to victims of crime is largely resulting from public concern over rising crime rates. Whereas traditionally the response to rising crime has been to devote more resources to law enforcement, and to introduce tougher penalties in the hope of deterring offenders from committing further crimes (still the prevailing approach in South Africa), these so-called 'offender-based' strategies have become less prominent in recent years. 'Get-tough' policies involving harsher penalties have not had the desired results;[2] as a result, the focus in crime prevention research and policy internationally as well as in South Africa has shifted away from the actions and motives of offenders towards those of victims. Examples of this new focus are: 1) victimisation surveys which record victims' actual experiences as well as their attitude to crime, and are a more reliable indicator of actual victimisation than official police statistics;[3] and 2) studies of repeat/multiple victimisation, suggesting that police resources can be employed more effectively by protecting those who are most at risk.[4]

Recent developments in crime prevention policy in South Africa are embodied in the NCPS. Characterised as a victim-centric document, where the stated "*onus is on government to deliver a crime prevention approach which places the rights and needs of victims at the centre of the strategy*" (NCPS: 2.3.3.), the need for empowering and supporting crime victims is specified as one of 17 national programmes. A two-day consultative workshop on victim empowerment and support held at the World Trade Centre in August 1996 served to put meat on the bones of this initiative, by inviting relevant stakeholders to buy into the process and carry it forward.[5]

According to the NCPS, the national programme on victim empowerment and support is aimed at addressing the negative effects of criminal actions on victims by mediating these effects, and providing the support and skills to address them (1.9.1.1). It also states that available resources should be focused on those areas of crime which cause the most damage, and where victim empowerment has a substantial chance of reducing repeat victimisation and cycles of violence (1.9.5). Connecting the more favourable treatment of crime victims with a decreased likelihood that they will take the law into their own hands, the NCPS acknowledges that victimisation lies at the heart of much retributive crime, and that the absence of victim aid and empowerment plays an important role in the cyclical nature of violence and crime in South Africa.

This new direction underlines the belief that both victim support and victim empowerment programmes have an enormous contribution to make to crime prevention: that victim support, including counselling and steps to protect victims, can lead to a reduction in repeat offences (1.9.2.2); and that, in the longer term, a judicial process which provides a real role for victims imposes a more meaningful moral burden on offenders, hence reducing the justification for crime inherent in a system which conceals the victim entirely (1.9.3).

At this point, a note of warning may be raised about linking victim issues too directly with crime prevention. According to Helen Reeves, national director of victim support in England and Wales, crime prevention and victim support should not be confused with one another. Victims are victims in their own right, and need to be treated as an end in themselves. One must not allow various parties (such as the law and order or mediation lobbies) to hijack victim support and divert attention away from the real issues. Victims must not be used to make offenders feel good, or be classified as co-operative or unco-operative. Victim support is there to lessen the harmful effects of crime on the victim – ie, to reduce the effects of crime. If the effect of this is to reduce crime, this is only a bonus.[6]

VICTIMS AND THE CRIMINAL JUSTICE SYSTEM

In order to avoid accusations that the rights of offenders may be unfairly jeopardised by focusing on the victims of crime, the NCPS has framed its focus on victims in a human rights perspective. It argues that an uncompromising commitment to build popular respect for human rights (for both victims and offenders) can be best achieved by investing considerable energy in the development of a victim-centred crime prevention programme. This must be rooted in the effective delivery of victim aid and empowerment, which demonstrates that the human rights of victims are treated as a priority – without compromising the rights of any other citizens.

Critics have questioned the propriety of formulating the rights of offenders within the criminal justice process, and those of victims in a human rights framework. Because of the way in which crime victims have been marginalised in the past, it may be necessary to spell out the way in which they (as well as offenders) should be treated by criminal justice agencies. There are international precedents which South African policy-makers could follow. Drafting a South African charter of victim's rights forms part of the business plan of the interim steering committee on victim empowerment.

The United Nations declaration of basic principles of justice for victims of crime and the abuse of power[7] provides basic guidelines for the treatment of crime victims. In Britain, a comprehensive victims' charter setting out more than 25 standards of service for all criminal justice agencies will be published soon. Building on the 1990 victims' charter, this new and wide-ranging document will specify the minimum standards of service victims can expect at all stages of the criminal justice process. It sets out in detail how victims should be treated, and what information they will be given at every stage.

For instance, victims have a right to expect fair, considerate and responsive treatment from the criminal justice system, and timely information about the matters which concern them. Compliance with these standards is monitored by the victims steering group, which includes representatives of all the principal criminal justice services, as well as Victim Support, a national charity which provides emotional support and practical help to the victims of crime.[8]

It has been convincingly argued that South Africa's criminal justice system is in crisis.[9] The NCPS recognises the need to address inappropriate or unsympathetic responses by the police and the courts, ie secondary victimisation, which may actually serve to disempower and multiply the effects of crime on the victim. Recognising the system's deficiencies, the NCPS aims to enhance its efficacy as a deterrent to crime and as a source of relief and support to victims through:

- improving the access of disempowered groups, including women, children and victims in general, to the criminal justice process (8.1.5);
- redesigning the criminal justice process to reduce blockages, empower victims, and reduce unnecessary delays (8.2.1);
- providing a greater and more meaningful role for victims in the criminal justice process (8.2); and
- dealing with the damage caused by criminal acts by providing remedial interventions for victims (8.2.9, 1.9.1).

Motivations for making the system more accessible, user-friendly and understandable include

the enhancement of both its legitimacy and the public's understanding, in order to reduce incidences of intense dissatisfaction that lead to vengeful and retributive cycles of crime and violence.

Besides the national programme on victims, pillar one of the NCPS focuses on the re-engineering of the entire criminal justice process. This process has begun with a report by a consultative group tasked with identifying blockages in the system, which recognises that South Africa's system of criminal justice is in crisis. The report specifies that, as important stakeholders in the criminal justice process, victims of crime must be taken into consideration by criminal justice authorities at key junctures in the process. This includes being kept informed about the process, and being referred to community-based support services by policing and justice officials. It is understood that the secretariat for safety and security will use this report as a basis in deciding how problems in the criminal justice process should be addressed.

VICTIMS, POLICE AND SUPPORT SERVICES

As the gatekeepers to the criminal justice system, the police play an important role in shaping the crime victim's initial experiences. Although police depend on victims to report crime and co-operate with them during the investigation, the attitudes of police towards victims have been found wanting throughout the world. In South Africa – where the police were seen as agents of apartheid – historical circumstances have exacerbated the situation. To address these problems, a variety of reforms have been introduced over the past decade, including special training, statutory amendments, administrative guidelines, and state-funded or voluntary services connected with police stations to provide counselling and information to victims.

In South Africa, the current focus on community policing – which is strongly promoted in the new Police Plan – is an attempt to address a tradition of reactive policing that has led to the isolation of the police from the broader community. Developing proactive strategies and closer relationships with community representatives are effective on a pragmatic level, since the key to the establishment of viable crime control policies is the flow of information from the public to the police. As such, good policing requires the cultivation of a co-operative relationship between the public and the police, for instance to ensure that victims will report incidents, especially if they know that the police will keep them informed of progress made in their case. On the other hand, policing without consent, and an inefficient and generally ineffective flow of information, involves a massive deployment of personnel and resources in order to cover all contingencies.[10] In line with developments in international policing, the introduction of community policing and community safety plans in South Africa bodes well for improved co-operation with the public. However, community police forums have been characterised by apathy, a lack of resources, questionable representivity, and a lingering distrust of police personnel, who are inadequately trained in this type of policing.

It has been argued that the police need to be shocked into treating victims differently. In the Unitged Kingdom, this was the effect achieved by Maguire's path-breaking work (1983) in which he found that 25 per cent of crime victims were dissatisfied with the service they had received from the police. The police need performance indicators with regard to victim satisfaction, and should be penalised if they don't perform. In Britain it has taken 14 years for victim support to get to a point where victim care forms part of inspection procedures, and is taught at Bramshill, the national police training agency.

A scientific evaluation of the effects of better treatment of victims by the police, the prosecutors and the courts in The Netherlands has shown that these victims, when compared with a control

group, had a more positive attitude towards the police and the criminal justice system in general. Also, they were more inclined to respect the law, and less likely to commit crimes themselves. In other words, by treating victims better, the criminal justice system helps to maintain respect for the law, and therefore to prevent crime. Focusing on victims and addressing and accommodating their needs are among the most effective public relations policies the criminal justice system can pursue.

In terms of support services for victims, police activities internationally prioritise juvenile victims and the victims of gender crimes. South Africa is no different in this regard, and a limited number of specialised units for dealing with victims of certain crimes, such as sexual assault or child abuse, have been established countrywide. Police officers are specially trained to deal with these victims in a confidential and sympathetic manner. However, the training has been criticised as inadequate,[11] and has yet to be applied in a wider context. High on the agenda of the interim steering committee's business plan is the integrated training of all criminal justice officials. This process will have to be carefully monitored.

If real progress is to be made, all police officers should be trained in victim aid, and every police station, as a matter of priority, should provide services – whether in the form of a separate waiting room or immediate referral to community resources – to all victims of crime, not just women and children. Although this may sound difficult, there are existing international models that can be followed.

The initial establishment of victim support services at a limited number of police stations (the first opened recently in Port Elizabeth) are part of the SAPS's own reconstruction and development programme (1.9.4). Training police officials in victim aid, such as taking statements in a sensitive manner, will be complemented by referral systems for victims. This programme will eventually be extended to include justice officials. It also encourages the growth of a victim support infrastructure, in co-operation with the departments of health and welfare as well as relevant NGOs. Ideally, however, it is not up to the police to provide victim services, but the community, making use of volunteers. In a sense, police stations which offer chaperone or family liaison services are confusing roles, and this is problematic.

Research conducted in 1990 and 1995 on South African victim support services[12] revealed many fragmented initiatives, heavily reliant on foreign funding, providing a limited and patchy service to specific types of victims. The results of a survey conducted among service providers present at the national workshop on victim empowerment and support gives some indication of their scope and nature.[13] But this questionnaire is only the beginning of a comprehensive audit of services geared towards victims of crime, to be conducted by the NCPS VESP team.

COURTS AND COMPENSATION

In South Africa, criminal procedure is focused on apprehending the offender rather than consoling the victim. Deterrence rather than restitution is the pivot of South Africa's justice system, and of all the role players, the victim tends to be the most marginalised. If an offender is arrested, the case is conducted as a matter between the state and the accused; in effect, the state 'steals' the conflict from the victim, to render a crime that has been committed a crime against the state.[14] The victim is often merely a witness to proceedings, and is commonly regarded as an 'item of evidence' or a 'non-person'.[15] Apart from the consequences of such an approach for compensation and restitution, the victim is made to feel that justice is on the side of the offender, giving criminal justice a whole new meaning. Since the system is not designed to deal with the practical, financial, medical or mental health problems that victims may face, many

might resort to retributive action – a scenario well-documented in the NCPS – if the situation does not improve. However, focusing on the victims of crime may impact on wider perceptions of courts as places where justice is done, and may inhibit retributive action.

Internationally, during the past 20 years, the role of the victim in the criminal justice system has been 'rediscovered', and certain measures have been introduced to counter secondary victimisation that may occur in court. Reforms have been introduced which ensure that victims are not treated as mere witnesses, but are provided with information on the outcome of their case, as well as compensation and counselling.

In some countries, improvements to the victim's position in the criminal justice process have been embodied in a victims' charter, such as those referred to earlier, spelling out certain specific rights. These include the right of victims to tell the court what impact the crime has had on their lives; their right to tell the court of their wishes and desires, and for those to be taken into account during sentencing; and the right to restitution, protection, and separate waiting areas at court.[16]

In the United States, for example, victims are now allowed to participate more actively in the criminal justice process through, for example, 'victim impact statements' or 'victim statements of opinion'. These are documents intended to provide information to the court on the physical, financial, emotional and psychological effects of a crime on a victim, and, where relevant, his or her family.[17] However, while there is emerging consensus that the balance between victim and offender must be restored in the criminal justice system, these measures are by no means uncontroversial.[18] It has been argued that such statements can prejudice the criminal justice system's ability to maintain equality in punishment, and that the call to address victims' needs and reorient the criminal process away from the offender towards the victim may have certain dangers.

A 'law and order' approach that characterises victims as weak innocents may lend itself to movements towards harsher penalties, stiffer bail conditions, and more oppressive treatment of offenders generally – all disguised under the noble cause of securing a better deal for victims. The danger thus exists that a healthy victim movement will be transformed into a backlash against criminals, and that advances made over the years to humanise the criminal justice system will be reversed.[19] Research indicates, however, that victims are not excessively punitive or vengeful, nor do they desire heavy sentences.[20] While wanting to 'provide a greater and more meaningful role for victims in the criminal justice process' (NCPS 8.2), it will undoubtedly take some time before victim impact statements are seriously considered by South African lawmakers, although initial research undertaken on the viability of introducing such measures here showed that "*allowing a victim to submit into proceedings details of how the violent crime affected his or her life will help deliver more appropriate sentences and promote credibility for the criminal justice process*".[21]

However, even where victim protection and compensation laws have been enacted, for instance in Germany, justice officials such as judges, lawyers and prosecutors still regard victims as outsiders and 'troublemakers'. Increased victim attention is seen as involving additional trouble, effort, time, and possibly creating longer delays in proceedings.[22] As a result, criminal justice officials should be made to 'buy into' victim support at a very early stage, and all measures should be adequately enforced.

COMPENSATION

There is growing support in South Africa for the idea that victims of crime should be compensated by the state, or receive restitution from offenders.[23] The Law Commission's recent appointment of a project committee to consider proposals made in this regard is a move to be welcomed. It has also been suggested that a white paper will be produced on the issue. The NCPS VESP team will monitor this initiative.

Internationally, state compensation rests on the premise that since the state is obliged to maintain law and order, and crime results from the state's failure to fulfil this duty, the state is liable for compensation.[24] Compensation schemes may differ depending on the following: definitions of crimes; the degree of loss or harm; the obligation to co-operate with the authorities; and consideration of the victim's conduct.

Usually, only victims of violent crimes receive compensation. Research has found that victims of violent crime are not necessarily interested in the size of the settlement. Instead, compensation is regarded as an important symbol of society's recognition that they have suffered a loss.[25] In most countries, however, the prevailing notion is that compensation is not a right but a reward given to 'deserving' victims. Consequently, compensation schemes only reach a small proportion of victims, with most either being unaware of their eligibility for compensation or not being encouraged to apply.

State compensation for and protection of the victim has been developed in many countries since the late 1970s. England and Wales have the most generous scheme in Europe, with the criminal injuries compensation scheme compensating the innocent victims of violent crime from public funds. In 1994–5, 175 million pounds sterling were paid out to nearly 40 000 victims through a simplified tariff scheme which seeks to provide a balance between the needs of victims and the interests of the taxpayer, and is simple, transparent, and easy to administer. Restitution by offenders is facilitated by compensation orders enforced by courts; in 1994, 97 000 such orders were issued, valued at 28 million pounds sterling.

The current situation in South Africa is the following: sections 300 and 301 of the **Criminal Procedure Act** (1977) deal with compensation and restitution claims. Research has shown that the courts are reluctant to make use of these powers, and in most cases victims are left empty-handed.[26] Since the state acts on behalf of victims of criminal offences, the state is usually the beneficiary of the fine. Victims are often unable to institute civil charges, thus forfeiting any possible monetary restitution.

Among the proposals to be considered by the Law Commission are that all court fines and forfeited bail money – except those paid to local authorities – should be paid into a central fund, and that victims should be compensated from it. This means that those costs will not be borne directly by the taxpayer. Compensation claims are to be assessed by a board of trustees – a multidisciplinary group of experts – appointed by the minister of justice for a five-year period. If successful, victims of violent crime or their dependants could receive between R200 and R30 000 each.[27]

Similar schemes are operating elsewhere in the world to ameliorate the social damage caused by violent crime, and there is no reason why such a scheme cannot work in South Africa. The minister of justice has argued that increases in violent crime have rendered justice for victims, including expeditious restitution, particularly relevant, and the NCPS aims to 'develop a programme for the extension of policy proposals around victim compensation and restitution' (1.9.9.7). While the political will may be there, these proposals need to be enacted as soon as possible.

CONCLUSION

At the August 1996 workshop, an interim steering committee was elected to plan a national victim policy for South Africa. This gathering, which brought together stakeholders ranging from organisations providing rape and trauma counselling to researchers, the police, government and the media to thrash out issues around victims of crime, may have seen the birth of the institutionalising phase of South Africa's victim movement. Introducing a new approach to victims will mean changing the attitudes of police personnel and justice officials towards a newly rediscovered role player in the crime scenario; as such, the magnitude of this challenge cannot be overestimated.

Aiding and empowering the victims of crime – and making the heavily bureaucratised justice system more victim/user-friendly – will require hard policy decisions, considerable resources, and a strong commitment, particularly from the departments of justice and safety and security. Rather than focusing exclusively on offender-based crime prevention strategies, such as stiffer penalties and harsher bail conditions, South Africans needs to be persuaded that mobilising the agents of civil society and the criminal justice system around the victims of crime could form the successful basis of a long-term, proactive crime prevention strategy.

ENDNOTES

1. L Camerer, 'Settling the score', **Crime and Conflict**, Summer 1995, pp 25–28.

2. Schwendiger and Schwendiger, 'Giving crime prevention top priority', **Crime and Delinquency** 39 (4), 1993, pp 425–446.

3. See J van Dijk and J van Kesteren, 'The prevalence of perceived seriousness of victimisation by crime: some results of the international Crime Victims Survey', in **European Journal of Crime, Criminal Law and Criminal Justice**, 4 (1), 1996, pp 48–70.

4. See G Farrell, and K Pease, **Once bitten, twice bitten: repeat victimisation and its implications for crime prevention**, Police Research Group, Crime Prevention Unit Series Paper No 6, London: Home Office Police Department, 1993.

5. For decisions taken at the workshop, see L Camerer and J Nel (eds), **Putting victims on the agenda: proceedings of a national workshop on victim empowerment and support**, IDP Monograph no 7, November 1996.

6. Interview with Helen Reeves, Victim Support, 20 September 1996, London.

7. See appendix 6.

8. See chapter 6, **Protecting the public: the government's strategy on crime in England and Wales**, Home Office: London.

9. M Shaw, **Reforming South Africa's criminal justice system**, IDP Paper no 8, August 1996.

10. R Matthews, **Crime prevention, disorder and victimisation**,

pp 87–101.

11. See Camerer and Nel, **Putting victims on the agenda**.

12. J Rauch, 'An independent assessment of basic training on the police response to rape', in P Skiwward, S Jagmanth and B Grant (eds), **Women under the criminal justice system in South Africa**, HSRC*,* Pretoria, 1992.

13. See H F Snyman, "n Kriminologiese perspektief op dienslewering vir slagoffers van misdaad', unpublished D Phil thesis, University of South Africa, Pretoria, 1990; L Camerer, 'A comparative perspective of victim support services with specific reference to South Africa', unpublished M Phil thesis, Oxford University, UK, 1995.

14. See N Christie, 'Conflicts as property', **British Journal of Criminology**, 17, 1977.

15. J Shapland, 'Victims, the criminal justice system and compensation', **British Journal of Criminology***,* 24, 1984.

16. B Naudé, 'Taking victims to court: a call for victim impact statements in South African courts'*, Crime and Conflict* 5, Autumn 1996, pp 22–24.

17. *Ibid.*

18. See A von Hirsh and N Jareborg, 'Gauging criminal harm: a living standard analysis', **Oxford Journal of Legal Studies***,* 2, 1991.

19. E A Fattah (ed), **From crime policy to victim policy: reorienting the justice system***,* Macmillan, London, 1986.

20. Naudé, 'Taking victims to court'*.*

21. *Ibid.*

22. H Kury, M Kaiser and R Teske, 'The position of the victim in criminal procedure – results of a German study', **International Review of Victimology** 3, 994, pp 69–81.

23. Compensation involves payments to the victim by the state, often from a central fund, and restitution involves payments to the victim by the offender, typically as a result of a court order.

24. Council of Europe, **Convention on compensation for victims of violent crime**, Strasbourg, 1983.

25. M Maguire and J Pointing (eds), **Victims of crime: a new deal?**, Oxford University Press, Milton Keynes, 1988.

26. The Home Office, **Protecting the public: The government's strategy on crime in England and Wales**, 1996.

27. D J McQuoid-Mason, 'The role of legal aid clinics in assisting the victims of crime', in W Schurink, I Snyman and W Krugel (eds), **Victimisation: nature and trends***,* HSRC,

Pretoria, 1992.

28. J Selfe, **Fund for Victims of Violent Crime Bill**, Parliament, Cape Town, 1995.

29. See Camerer and Nel, **Putting victims on the agenda**

A REVIEW OF COMMUNITY POLICING

Duxita Mistry

This paper attempts to examine progress made in community policing since its introduction in 1994. The adoption of community policing has to be understood against the background of the massive shortcomings of the 'old' policing system; therefore, policing before 1994 is briefly analysed in order to sketch why the new approach was adopted. Next, given that community policing is an attempt to overcome the shortcomings of the past, this paper will try to establish its effect to date.

BACKGROUND TO POLICING IN SOUTH AFRICA

Policing before the transition can be described as rules-based. Police behaviour, responsibilities and duties were determined by rules, regulations and hierarchies rather than initiative, discretion and consultation. The manifestations of rules-based policing were a militaristic style, both in dress and attitude towards communities. Police enforced and upheld the laws promulgated by the previous government. They could not use their discretion; as a result, consulting communities on policing matters was never considered. The style of policing was largely reactive, or rather incident-driven. This style permitted a lack of transparency in the old South African Police (SAP). As a result, the net effect of rules-based policing was that it lacked credibility among its supposed beneficiaries. Being incident-driven also meant that policing was inefficient, and failed to prevent crime. The end result was an enormous burden being placed on the police as well as the judicial and correctional system.

The police force also became associated with abuses of human rights, and when the government of national unity assumed power in 1994 it decided there was a fundamental need to restructure it. Community policing was identified as one mechanism for achieving this; it was hoped this new approach would overcome some of the inherent deficiencies of rules-based policing.

LEGISLATIVE INTENT

Policy-makers envisaged an entirely new style of policing, in which rules would play a less important role. Greater consultation and participation by communities were envisaged. Police work was to become more transparent, thus ensuring that the police would become more accountable for their actions; proactive policing would hopefully lead to more effective crime prevention.

The framework for the restructuring of the police force – including the introduction of community policing – was set out in the interim constitution[1] and the South African Police Services Act (hereafter referred to as the Police Act).[2] The objectives of the renamed South African Police Service were set out in the interim constitution. Section 215 stated that the police had to prevent crime, investigate any offence or alleged offence, maintain law and order, and preserve internal security. The Police Act provided for liaison with communities through community police forums (CPFs).[3] These new bodies were to serve as mechanisms for improving relations between

communities and the police. This was done in order to re-establish respect for the law, in the context of repealing discriminatory legislation. Communities would now have a say in how they wanted to be 'policed'.

The goals of community policing have been spelt out in detail in a draft national policy document, released in 1996 by the national ministry of safety and security.[4] It states that the "*main objective of community policing is to establish and maintain an active partnership between the police and the public through which crime, its causes and other safety-related issues can jointly be determined and appropriate solutions designed and implemented"*.[5]

The document identifies "*two main pillars of community policing, namely the active partnership between the police and the community, and the strategy of problem-solving"*. It states: "*In order to enhance and promote an active partnership, it is of utmost importance that sound police–community relations exist*."[6] In order to accomplish this task, it says, 'strategic tools which are important building blocks for such a partnership' have been identified.[7] These are "*the enhancement of human relations, a community-sensitive and user-friendly police service, consultation on the needs of communities, respect for human rights, cultural sensitivity, continuous positive contact with community members, discretion on the part of police officers when they enforce the law, and the establishment of mechanisms to enhance the accountability and transparency of the police"*.[8]

The document also describes law enforcement as only one of a range of tools to be used by police officials in crime prevention. "*In some instances*," it says, "*alternatives to invoking the criminal justice process (eg warnings, victim-offender mediation or referral for counselling) may allow for a far more acceptable, effective and efficient solution of the problem*."[9] In other cases, "*law enforcement action may exacerbate a problem instead of solving it"*.[10] The document emphasises that alternatives "*should be developed where appropriate to augment and even replace law enforcement action, and that police officials should be encouraged to develop and use such alternatives in appropriate circumstances"*.[11] This is a positive development in policing, and a significant departure from the previous *modus operandi*.

In the United States, Ensor has written, of the "*array of problems the police are called upon to handle, relatively few require solely a 'law enforcement' response*". Therefore, "*community policing provides law enforcement an opportunity to form new partnerships, and carries with it the potential for long-term solutions to persistent problems*". [12] As the police expert Herman Goldstein has observed, "*once police stop looking only at the criminal justice system for solutions, large vistas are opened for exploration",* and the police can engage in a "*far-reaching and imaginative search for alternative ways in which to respond to commonly recurring problems, uncurtailed by prior thinking"*.[13]

This is a very important point for police officials in South Africa to internalise. The concept of 'community engagement' ties in very neatly here. Having moved beyond the standard idea of community policing meaning building better community–police relations, community engagement is now understood as a "*meaningful engagement in that officers share their power and proprietary interest in handling neighbourhood problems"*.[14]

PROGRESS

"It is nearly three years since the notion of community policing began circulating among South African critics of the apartheid police. It is almost two and a half years since the community policing division of the SAP was formed. It is two years since the legislative framework for

community policing was laid down by the interim constitution, and seven months since the South African Police Services Act came into operation. It is time to take stock of why we are where we are ..."[15]

As Scharf suggests, an assessment of community policing is necessary to ensure that the change of direction is appropriate. If not, the SAPS may continue to suffer from a lack of legitimacy, and may remain alienated from the community it is supposed to serve. In 1994 the Policing Research Project (PRP) participated in the Gauteng Community Policing Project, in which police stations in Gauteng were audited and a number of (randomly selected) police officials of different ranks interviewed on various issues. These included:

- the communities they serve;
- the crime in a particular police station area;
- internal organisational issues; and
- what they understood by the term community policing, among other things.

Most of the officials interviewed understood 'community policing' to mean that the community should help them prevent crime; in fact, many thought the concept was synonymous with combating crime. This was prevalent from the level of the station commissioner down to constables. For instance, one senior police official stated:

"Community policing is a partnership between the community and the police that is entered into to manage the policing of a particular area and to offer the police a means of being transparent and ... more acceptable thereby assisting with fighting crime."[16]

However, crime prevention is just one of many components of community policing. Very few respondents acknowledged that community policing was a new style of policing entailing a problem-solving orientation, transparency, and accountability. Consequently, as stated by a senior Gauteng safety and security official, the police were "*not becoming more accountable to the communities"*.[17] This may be attributed to the fact that police officials do not always live in the areas in which they work; therefore, they do not feel part of these communities. If they did, they might be more committed to make the area the serve a safer place to live. Moreover, they would feel more accountable to the community, provide a better service, and the chances of them being involved in corruption would be reduced, for fear of the social repercussions. The golden rule of community policing, according to the draft policy document, is for the "*community to know the police, and police officials to know their communities"*.[18]

Another senior police official interviewed recognised the need to involve communities more actively in the actual running of a police station. He commented: "*Community policing means greater community involvement in running the police station. The community should be totally involved, so that it knows what the police are there for, what the structures are at the station, and the numbers available for policing – therefore, also a completely transparent approach. The community must feel free to approach the police*."[19] The police must be able to deal honestly and openly with members of the community. An ability to admit mistakes and explain their actions will be an asset to the police service. The police need to move away from their police culture, and give members of the community a chance to scrutinise their activities. This is where CPFs can play a meaningful role.

A further purpose of CPFs, among others, is "*to promote communication and co-operation in order to fulfil the needs of the community"*.[20] They allow communities to intervene, without assuming the role and functions of the police service. The community is the client, and the police the service providers. Therefore, the needs of the community must be taken into account. The police must ensure that they provide an efficient and effective service.

HUMAN RIGHTS

Human rights violations by police officials have led to numerous protests over the years, resulting in censure by international agencies such as Amnesty International. To ensure that community policing becomes a reality, the issue of human rights must be addressed in the SAPS. The draft national policy document acknowledges the need to create a human rights culture among police officials. It states: "*[Since the] stability of a country, and the vitality and continuity of democratic ideals is dependent upon policing which is constantly concerned with maintaining the sensitive balance between collective security and individual freedom and never yields to the temptation to betray principles by using unlawful methods in order to achieve success."*[21] Training can transform the ethos of individual police officials. As a result, in the South African context, training becomes inordinately important.

Training

An evaluation of the curriculum for basic training at the Police College in Pretoria has found that there are components of human rights in each course, but human rights is not taught as a subject on its own.[22] Therefore, it can be assumed that the students are not well equipped to understand the essentials of human rights. The National Human Rights Education Forum has plans to provide human rights education for all police officials at station level. This will be done in three phases: basic, intermediate and advanced. In due course, a business plan will be submitted to the Reconstruction and Development Programme (RDP) office, with a request for funding. The monitoring and evaluation of human rights education for police will be essential, since it is value-based. This view is supported by the draft national policy document, which states: "*Community policing seeks to create a culture of respect for human rights and also to empower police officials to effectively deal with conflict, primarily through non-violent means*."[23]

In 1995 the PRP participated in a project aimed at evaluating the new elements of basic training designed to promote community policing. Police recruits – the first batch to be trained in community policing – were interviewed in focus groups to establish what their impressions of the basic training programme were. The study was commissioned by the British Overseas Development Administration (ODA) in Southern Africa, and undertaken by the Training Evaluation Group (TEG).[24]

At that time, the group's final report states, "*the idea and practice [of community policing] had not yet taken shape throughout the country, and as a consequence there was no common understanding about how to implement the principles [the trainees] had learnt at college*".[25]

When the trainees were questioned on their understanding of community policing, they "*admitted struggling with putting the principles of transparency, consultation, community service and accountability into practice"*.[26] Even their mentors "*had difficulty in operationalising the principles on which daily assessment was based"*.[27] Even within the scope of the range of misunderstandings about community policing, the report states, application of these concepts were uneven. "*In some stations that were considered 'rough' or 'busy', station trainees were of the view that community policing is not applicable in those areas, as the lives of policemen and*

women were constantly in danger."[28]

Despite these difficulties, the trainees saw themselves as change agents and a "*special new generation of police officers, who had a duty to the SAPS and the country to be bearers of the new police persona"*.[29] The report continued: "*The trainees were firmly of the view that they were not 'contaminated' by the 'old guard' at the stations, but instead were able to win some of them over, or at the very least were able to share their ideas about the new era and ethos of policing."*[30]

The fact that these recruits displayed little overt resistance to the idea of community policy bodes well for the transformation of the police service. However, concern has been expressed that, one they face the realities of police work, they will be intimidated by more experienced officials, and 'forget' what they have learnt.

While the importance of training has to be acknowledged, so does the lack of capacity of the SAPS to offer in-service training. NGOs, because of their close association with communities and CBOs and their resultant credibility in those communities, can help substantially to meet the service's training needs.

MEASURING THE EFFECT

Although community policing was only introduced two years ago, the effect of community policing to date must be measured. The fact that CPFs exist around most police stations in Gauteng should not be taken as an indication that community policing is working, or is being implemented. Furthermore, crime statistics cannot be used to measure the success or failure of community policing. In fact, there has been an increase in reported cases of some serious crimes, such as rape and child abuse. Perhaps this is because communities now have greater confidence in the ability of the police to investigate and solve crimes. People also expect the police to deal with victims more sensitively, due to the media coverage given to the launch of the Gender Sensitivity Training Programme. Jessie Duarte, MEC for safety and security in Gauteng, has publicly expressed her support of this training initiative, conducted by NGOs for the SAPS.

However, training itself is not enough, and its expected benefits can falter through resistance. Perhaps the old policing system attracted certain types of personalities which are resistant to change and notions such as community participation. Such personalities depend on structure and certainties. If this is correct, then these officials are caught between upholding the law and exercising their discretion. It could be assumed that they are waiting to be told how to use their discretion, but no one is doing that. Police officials in South Africa are not accustomed to using discretion in the course of their work. This is a result of the many standing orders and regulations designed to regulate the work of police officials. Police officials have to be empowered to use their individual discretion.

In practice, as a senior Gauteng safety and security official stated, they do not use their discretion 'at all' because they are 'too concerned with procedure'.[31] Station commissioners said they "*need more powers in order to make decisions, but this is actually unnecessary: they are afraid to make decisions"*.[32] This, the official said, stemmed from the way in which the police operated before.[33]

Senior management and those higher up the ladder have always told those below what to do and how to do it. Decisions on policing could not be made without prior consultation. The draft

policy document acknowledges that police officials "*value procedures (how the job is done) more than results (the nature of the services delivered to the public)"*.[34] Furthermore, the document warns that this will have to change.

Therefore, in South Africa the police still have to become accustomed to community policing, and learn, in this context, how to use their discretion to find alternative solutions to problems. Although police recruits are given courses in diversity and communication skills, it does not adequately prepare them for work at police stations.

As Glensor states: "*In order to reduce resistance and improve officers' skills for confronting today's problems, training is required in interpersonal communication, cultural diversity, resource identification, and community mobilisation*."[35]

Can we therefore assume that community policing has failed thus far, due to a lack of training? Ultimately, intercultural communication, conflict resolution and negotiation skills are needed by recruits as well as officials who have been in the service for some time.

CONCLUSION

When community policing was introduced, police feared that members of the community would take over their police stations and tell them what to do. The introduction of mechanisms enforcing transparency are breaking down old-style 'rules-based' policing. However erratically, community policing and CPFs are ensuring greater transparency at a local level.

The rapid transformation of the SAPS resulted in confusion, misconceptions, and resistance to community policing and CPFs. This confusion was aggravated by a lack of 'official' clarity on what exactly community policing entailed. The policy document on community policing was only developed last year, three years after the changes in the SAPS began.

To conclude, the success of community policing should be measured in terms of the efficiency and effectiveness of the SAPS. It is difficult to ascertain with any certainty whether or not progress has been made; however, the experience of the PRP suggests that it has not.

ENDNOTES

1. Act 200 of 1993.
2. Act 68 of 1995.
3. s18 (1)
4. National Ministry of Safety and Security: Draft policy document on the philosophy of community policing, 1996.
5. *Ibid*, p 1.
6. *Ibid*.
7. *Ibid*, p 2.
8. *Ibid*.

9. *Ibid*.
10. *Ibid*, p 13.
11. *Ibid*.
12. R W Glensor, **Community problem-solving in the USA: a new synergy**, Police Research Group, Home Office Police Department, Number 7, March 1996, p 1.
13. Quoted in *Ibid*.
14. *Ibid*, p 14.
15. W Scarf, 'Community policing - a preliminary critical analysis', paper presented at the workshop on community policing, Technikon SA, 7 May 1996, p 15.
16. Interview with senior police official, 1994.
17. Interview with Sally Sealy, deputy director: facilitation, Gauteng secretariat for safety and security, 1994.
18. Draft national policy document, p 15–16.
19. Interview with senior police official, 1994.
20. South African Police Service Act 68 of 1995, s18(1)
21. Draft national policy document, p 9.
22. Evaluation report: Curriculum for basic training, compiled by Dr Elise Engelbrecht, November 1995.
23. Draft national policy document, p 9.
24. Final Evaluation Report of the Training Evaluation Group, July 1995, p 1.
25. *Ibid*, p 137
26. *Ibid*, p 138
27. *Ibid*.
28. *Ibid*.
29. *Ibid*, p 142.
30. *Ibid*, p 141.
31. Interview with Sealy.

32. *Ibid*.

33. *Ibid*.

34. Draft national policy document, p 9.

35. Glensor, **Community problem-solving in the USA**, p 14.

PARTNERS AGAINST CRIME

Sarah Oppler

NTRODUCTION

Partnership Policing developed during the 1980s when the model of police paternalism embedded in community policing evolved into a new concept of independent agents working together in partnership. This form of policing conforms to the ideal of a multi-agency approach in terms of which the police, public, elected officials, government and other agencies work together to address the problem of crime and community safety. Increasingly, comparative experience suggests that the combination of a professional police service and a responsible public seems to be the most effective and fruitful way of creating a safer environment. Countries which have established or are establishing a partnership approach include the United Kingdom, Australia, Holland and South Africa.

As there is no single model that will fit every context, those involved in partnership policing are constantly having to use their initiative to formulate 'what works for them'. Each country is tailoring the concept to best fit its environment, community, and crime problems. This is the essence of how partnership policing should be implemented at a local level. Success stories have shown that to create safe communities, local players must adapt the various partnerships to their own needs. This principle of local solutions for local issues is very important for the development of partnership policing in South Africa, where diverse communities live side by side.

Partnership policing is not a new concept in South Africa, but a new and sometimes controversial term. Should it fall under the auspices of community policing, or actually replace it? Although many analysts believe partnership policing remains an element of community policing, this article supports the notion that partnership policing has evolved beyond community policing into an independent model. But partnership policing initiatives – particularly in countries such as South Africa, which are undergoing political transitions – bring with them both advantages and disadvantages. This paper seeks to explore these issues, based on information gathered by means of participant observation and semi-structured interviews.

The development of the partnership approach in South Africa does not only vary from area to area, but also from police station to police station. There are successful partnerships which are well established; partnerships which are dysfunctional; and areas without any existing partnerships. More often than not, the critical success factor has been active local community leadership and a dedicated station commissioner. Where no action has occurred, the problem of power relations has remained prominent. Community empowerment is a fundamental element of the partnership approach. Following the release of the SAPS guidelines for establishing police/community partnerships, and the upsurge in crime, partnership policing is developing apace. However, there are still various areas which need to be addressed.

Firstly, the SAPS is being rapidly transformed, but much remains to be done in laying the foundations for partnership policing. A major concern is the red tape adhered by the higher levels within the SAPS. At the local level, the police and the community are generally ready for the introduction or development of the partnership approach. At the national level, however, the rules and regulations do not cater for action taken by the police/community partnership at the grass roots.[1] Secondly, the lack of involvement of local government is a major shortcoming. Thirdly, preventing crime through education has received little attention. The way forward for South Africa is to share, learn, and absorb national as well as international 'good practice' which can help to resolve local problems. Effective communication, taking initiative and actively involving communities in creating a safe environment are the key elements in developing partnership policing in South Africa.

UNDERSTANDING PARTNERSHIP POLICING

Critics of community policing such as Gordon have argued that "*community policing is an attempt at surveillance and control of communities by the police, under the guise of police offering assistance*".[2] Although Gordon's remark is a cynical one, it highlights past perceptions of community policing. Since the 1980s the discourse surrounding community policing has increasingly been displaced by the emergence of the community as a network of expert agents and independent actors, entering into a partnership with the police.

During the 1960s and 1970s, the formative discourse of community policing was very much cast in the mould of the welfare state, and community police practices were commonly associated with welfarism.[3] Although the public was involved in crime prevention through neighbourhood watch and police consultative committees, it still depended on police expertise. In Britain in this period, many local projects operated within such a framework, placing the police in the central and co-ordinating role of providing their 'clients' (both offenders and community members) with assistance.[4]

In a classic example, the Victoria Police in Australia launched a 'We Care' campaign in the late 1970s, depicting police in a variety of social service roles. It focused mainly on the police assisting non-criminals, such as the elderly and children, attending distressed victims, comforting victims of burglaries and so on. Macdonald has noted that: "*the police were moving more towards being social workers than police officers*".[5] While in the 1960s and 1970s there was, as there is now, an emphasis on a multi-agency approach involving community police and other relevant agencies, there has been a shift in the content and meaning of community policing. This has been precipitated by various changes within society, including the ascendancy of a 'consumer' discourse, the decentralising of state services, and a cultural emphasis on individual enterprise and responsibility.[6] These elements have substantially contributed to reshaping the discourse of community policing during the 1980s and 1990s.

During the 1980s community responsibility was thoroughly rethought. A series of police-originated commentaries began to emerge which broke with the vision of the public 'welfare' client, dependent upon the police, to a new model of 'partnership' and 'shared responsibility'. This is supported by Avery:

"*The prevention of crime and the detection and punishment of offenders, the protection of life and property and the preservation of public tranquillity are the direct responsibilities of ordinary citizens ... It is destructive both of the police and public social health to attempt to pass over to the police the obligations and duties associated with the prevention of crime and the*

preservation of public tranquillity. These are the obligations and duties of the public, aided by the police and not the police occasionally aided by some public-spirited officer."[7]

This shift towards a partnership approach has already occurred in the United Kingdom, Canada, France and the United States.[8] In Australia, the chief commissioner of the Victoria Police has summed up the relationship between a professional police service and a responsible public as follows: "*Together we are in partnership – police and the people of Victoria – partners against crime*."[9] Although critics claim that this partnership does not really exist at the grass roots, it provides an image of empowerment of the community. Furthermore, as argued by O'Malley and Palmer, "*it constructs members of the public as active agents pursuing a localised, increasingly [consumer-oriented] service delivery*".[10] Thus the model of police paternalism and welfare clientism has been transformed into a new contractual image of 'working together' in partnership.[11]

Over the past 10 years there has been an explosion of media campaigns and training manuals intended to educate the public in the partnership approach. Typical examples are the booklet **Partnership in crime prevention**, published in 1990 by the British Home Office, which gives examples of successful crime prevention schemes in different parts of the country, together with an analysis of the apparent reasons for their success; and the Australian publication **Security and you and safer communities.** Groups such as home owners, women, small business proprietors, young people and other categories of citizens regarded as being at risk are advised on how to minimise the risk of criminal victimisation.

The partnership approach to policing emphasises that relations between the police and public should be consultative, and extend into the process of planning. Furthermore, the community and its leaders must be involved in determining the policing needs of a given locale, the style of police work which would be effective, as well as desirable or undesirable forms of police intervention.[12] Hence partnership policing may be defined as the police assuming a "*proactive leadership role in bringing disparate community groups such as the public, elected officials, government and other agencies together to focus on crime and community disorder problems*".[13]

Ultimately, the new role of the police is that of an 'accountable professional practitioner' and community leader, which harnesses community resources to tackle the problems which lead to crime and disorder.[14] Police professionalism is being cast in a new mould. In the case of the British and Welsh police, for example, McLaughlin has pointed to official policy changes involving 'the re-conceptualising of policing as a service, and the redesignation of the community as customers' linked with 'the prioritisation of customers' needs'[15] .

The new model of the 'neo-liberal' community involves empowered individuals who voice their opinions, offer their expertise, and take responsibility for their actions. Although this may be idealistic, it creates a sense of a responsible and empowered community. A professional police service and a responsible community in an open and honest partnership presents one of the most fruitful routes to achieving a safer living and working environment.

PROMOTING A PARTNERSHIP APPROACH

"*Partnership goes to the heart of what is meant by community safety.*"[16] Although this sounds like an advertising jingle, it highlights the fact that no single agency acting alone can hope to reduce crime. This has been acknowledged by Sir John Smith:

"*Any comprehensive strategy to reduce crime must not only include the contribution of the police and the criminal justice system but also the whole range of environmental, social, economic and educational factors which affect the likelihood of crime*."[17]

In this regard, it is the aim of South Africa's National Crime Prevention Strategy (NCPS) to establish partnerships between government agencies and, to a lesser extent, private organisations in addressing crime.

The basis of the partnership must be a recognition by all participating agencies that they have something to gain by working together. Just as business partners recognise their joint responsibilities, so each must be able to make a contribution. However, it must be recognised that there is no single model of a partnership which can be used in every context. Partnerships will naturally vary widely in their objectives, resources, and results achieved. A principle of local solutions to local issues is important. Each partnership should tailor the following six elements to suit its local environment:

- structure
- leadership
- information
- identity
- durability
- resources

The following principles are important to the partnership approach:

- **An equitable distribution of power**. A powerful agency should not impose its views, priorities and objectives upon others with less power.[18]
- **Trust is vital for making a partnership flourish**. An effective partnership is built on mutual trust, honesty, and the sharing of information and views.
- The involvement of local government is crucial. As the providers of a range of services which directly affect the causes of crime, such as education, housing and recreation, local authorities have a major role to play.

Comparative case studies of the partnership approach highlight that without the full participation of local government, the prevention of crime is clearly inhibited.[19] Thus the concept of partnership encompasses many components, which must all be addressed if the strategy is to succeed. But each partnership is unique, operating in a specific context.

CASE STUDIES IN PARTNERSHIP POLICING

Although the following case studies are drawn from international experience, and therefore don't reflect the South African environment, they do provide some principles and ideas which can be applied locally.

The Wandsworth Partnership[20]

A partnership in the borough of Wandsworth has provided positive results that have substantially improved the quality of life of local people, and it the envy of other London boroughs. Numerous projects have been implemented which have drawn key role players in the community into the partnership. The partnership, entered into between the metropolitan police and the Wandsworth council, began with a charter which outlined key tasks for the year ahead. Activities soon expanded to the point where a larger forum for discussion and consultation was required. To meet this need, the council set up a crime prevention and public safety subcommittee in 1994, advised by the police and the Wandsworth policing consultative committee. Inter alia, a series of leaflets has been produced which spells out simple crime prevention measures for use by local residents and businesses.

The representation of racial minorities as role players in the partnership was a consistent problem. To remedy this, the partnership staged a conference designed to explore crime prevention needs of the borough's minority communities. As a result, a special partnership reference group was created to address certain issues and further improve relations between the partnership and community groups.

Cleaning up Kings Cross[21]

The King's Cross area of London, a fairly typical inner city area with a resident population of some 16 200, falls within the boundaries of Islington and Camden Councils and four police divisions. Long known for a street prostitution problem dating back to the 1840s, King's Cross underwent a marked change around 1990 when drugs began to flow into the area. It had effectively become a marketplace for crack, cocaine, heroin and sex, with far-reaching effects on the community. Local children were at risk from discarded syringes and other drug paraphernalia.

In October 1992, prompted by pressure from the local community, it was agreed to build a partnership among the two local councils (Islington and Camden), the Metropolitan Police, British Transport Police, other agencies such as Islington Safer Cities, and local community representatives. The following aim was agreed: "*Through partnership, to bring about a fundamental and positive change to the present image of King's Cross, and to improve the quality of life of those who live or work or travel through the area*."

Within this framework, the police formulated their own objectives: 1) to reduce crime (drugs, prostitution and associated criminality); and 2) to reduce the fear of crime. Following a sophisticated police intelligence operation against 150 dealers operating in the area, the King's Cross Partnership was launched with the large-scale arrests of drug dealers, supported by highly visible uniformed patrols. The partnership helped to create a long-term joint strategy, uniting a number of key agencies committed to sharing information and expertise in pursuit of a common goal.

Joint action between the various agencies continued. After co-ordinated representations from police and local residents, Camden Council restricted the licences of fast food outlets that had offered night-time cover to drug dealers and prostitutes. Police and Camden together targeted a hotel in which suspected drug dealing took place. Police crime prevention officers are now working with the two councils and the private sector to illuminate areas where drug dealing and prostitution take place by securing doorways and alleys, improving lighting, designing a closed circuit television system, and removing street furniture known to provide cover for dealing.

The impact of the partnership has been immense. King's Cross has become a safer and cleaner place for those who live and work there. The police have regained control of the streets, and residents believe crime can be overcome. Robust enforcement continues, with some 120 suspected dealers arrested since the start of the partnership, and a conviction rate of 96 per cent. Specialist training has been given to all officers who deal with drugs education in local schools. A free King's Cross newspaper funded by Islington Safer Cities, the Islington and Camden councils and the metropolitan police has been circulated to homes and businesses in the area, giving details of partnership aims and action. Further editions are planned, which will hopefully be sponsored through partnership with business. Although still in its infancy, partnership in King's Cross holds out the promise of dealing with the root causes of drug misuse in an inner city area, as well as its more obvious symptoms.

These case studies show that partnership policing is the way forward for crime problem areas in London, and that, if all local agencies work together, crime problems in a particular area can be solved.

HOW BUSINESS CAN CONTRIBUTE TO PARTNERSHIP POLICING

The business sector has three main contributions to make to the development of safer cities through the partnership approach. Firstly, most businesses suffer considerable losses as a result of criminal behaviour. In promoting and developing the partnership approach, it is important for business communities to acknowledge that crime threatens their enterprise and its stakeholders. Every business is embedded in a local community. Therefore, it should be in its own interests to help minimise the impact of crime on that community, thereby reducing the impact of crime on its own activities. Secondly, businesses have the opportunity to contribute directly and indirectly to the quality of life in their local community, and some do. In tackling the major social issues surrounding crime, it is appropriate to invite business leaders to offer their ideas and managerial and problem-solving skills to local partnerships.

Thirdly, businesses, be they local, national or international, have proved to be a very useful source of short-term project funding, through donations or sponsorships. However, developing this trend is limited by general economic factors and the intense competition for business sector funding among a wide range of agencies.[22] Although there are factors which may inhibit business involvement, the business community is a major partner in the partnership approach. The following example illustrates how business may help to create a safer environment.

The Dutch experience: security through public–private partnerships[23]

The Enschede-Haven industrial site in Holland covers more than 300 hectares. It is close to a highway, adjacent to the Twentekanaal, and transected by a railway line. Four hundred companies are located in 250 industrial buildings. Due to the location of the site, crime had become a daily problem.

At the insistence of local entrepreneurs, the police itemised recent criminal incidents in the area. Partly on the basis of this itemisation, the police concluded that crime should be dealt with on a project basis, and by means of a partnership approach. This led to the establishment of the Reduced Crime Enschede-Haven Project by the police and the business community. Local unemployed people were trained to perform preventive surveillance. Participants were selected by the regional employment agency, and received a basic security diploma upon completing the course. During the project phase, trainees accompanied police officials during their evening,

night and weekend surveillance shifts. As compensation for the irregular hours worked, the trainees received a small salary in addition to their unemployment benefits. A few months later, a government security firm agreed to employ the trained persons.

The project succeeded. Good communication and co-operation had been established between the business community and the police. Crime was reduced, and the local unemployed was used resourcefully, as well as given long-term employment. However, a current problem facing Enschede-Haven is that due to the substantial decrease in crime, companies are threatening to end their participation. This may be a continuing problem for successful partnerships. One way of avoiding the resignation of various agents from a partnership is by initially emphasising that the project is a long-term commitment, and that it will not continue to function well without all the agents remaining involved.

While business is a major role player in partnership policing, it is fundamental to a partnership to consider the business community as a real partner and not just a source of finance. Business involvement in a partnership must not be on the premise of promoting and increasing the financial benefits of the enterprise. The partnership should be a balance between creating a safer environment and achieving business objectives. This is particularly important in South Africa, where the business community is becoming actively involved in crime prevention initiatives. The Business Against Crime (BAC) initiative, begun in South Africa in 1996, was originally a lobby group focusing on business involvement in crime prevention. However, now seen as an implementing body, it appears to have become stretched beyond its means, and muted voices of criticism are being heard. **The Mail Guardian** recently argued that "*while [BAC] would have been helpful to the [SAPS], particularly with regard to supply of technology and expertise, indications are that it has been co-opted by the political establishment, and its critical voice is no longer heard*".[24] In turn, given a desire for central co-ordination, it seems that BAC control may be inhibiting partnership policing at a local level rather than allowing it to develop fully.[25] Expectations have been raised at local level but have not been fulfilled, leaving many partnership initiatives disillusioned with centralised business involvement.

THE STATUS OF PARTNERSHIP POLICING IN SOUTH AFRICA

At present, partnership policing in South Africa falls under the auspices of community policing. In some parts of the country successful partnerships are now well established, but in many others there is either no activity at all, or activity which appears to be *ad hoc* and unco-ordinated. The prescribed SAPS framework and guidelines for the establishment of police/community partnerships are seen as the best way forward for policing in South Africa. The partnership approach is seen as a co-operative effort to facilitate a process of problem-solving, as well as to determine, through consultation, community needs and policing priorities.

However, it must be emphasised that these policy guidelines only provide the legal framework in which to enforce the concept of partnerships. Given that South Africa is in transition, and public organisations are not in a strong position, the formation of public/private partnerships are inevitable. Therefore, partnership policing is not an entirely new phenomenon. It should be argued that public/private partnerships had already emerged before the inclusive elections of 1994. The spawning of the private security industry in the 1980s, and the development of neighbourhood watch schemes in white residential areas, were certainly partnerships for combating crime.

These restrictive partnerships were only forged with certain interest groups, namely white communities. The police and private security industry worked in synergy: while private security

firms policed the suburbs, the former South African Police (SAP) concentrated on policing apartheid. Thus, the fundamental danger associated with any restrictive partnership is the undermining of civil liberties of one group or another.

However, since the 1994 elections the concept of partnership has changed. Public/private partnerships have become legitimate, accountable, and transparent. South Africa is making great strides in developing more and more partnership projects involving various community groupings and the police. The national implementation of community police forums (CPFs) was a very important step towards getting the police and the community to work in partnership. Each operational CPF has formed partnerships with other community interest groups in its locality. The partnerships formed are tailored to local needs. In Orlando in Soweto, for example, a partnership between the youth and the police has resulted in a youth subforum being formed in order to help address the high rate of crime committed by youths in the area.[26] In Gallo Manor, a suburb north of Johannesburg, domestic workers have formed a subforum to address the problem of house break-ins.[27] And in Benoni the local police, in partnership with the local chamber of commerce, has created a business watch, providing a kiosk in the centre of town to encourage the reporting of and action against crime in the central business district.[28]

Besides local partnerships, there are several national projects either in operation or in the pipeline. The Adopt a Cop project, involving a partnership between the police and schools, is proving to be a great success. Each school in an area 'adopts' a policeman/women from their local police station. That particular 'cop' then forms a partnership with the school by attending events, talking to the children about safety and security, and providing a ready ear for any problems the children may have. This project has helped significantly with the problem of child abuse.[29]

National and local business have also involved themselves in various partnership initiatives. Firstly, McKinsey, an international management consultancy firm, is helping the most 'needy' police stations across the country to overcome their specific problems. The initiative, Project Lifeline, has already helped various police stations to overcome their logistical problems, allowing them to focus on problem-solving and service delivery.[30]

Secondly, BAC has proposed developing further partnerships between the police and the business community through the Adopt a Station project. This will entail local businesses being matched with local police stations, enabling business expertise to be utilised for police training, resources, maintenance and fleet management. The project has not yet begun, but it will be interesting to observe the results. Thirdly, many CPFs are forming section 21 companies, enabling local businesses to donate funds towards various projects. This has been a very useful move for many police stations and CPFs, and the financial resources generated have played a key role in establishing and maintaining successful projects.[31] However, many of these successful initiatives are short-term solutions to the long-term problem of curtailing crime. The challenge remains of maintaining these initiatives, and involving local government.

Although the partnership approach in South Africa has had a promising start, numerous problems remain to be addressed. The internal structure of the police service has to be revised, and police officials need to be empowered at a local level. The present procedures of having to 'get permission from national level' for any decisions made at a local level is time-consuming and inefficient.[32] Furthermore, middle management at most police stations is proving to be unprofessional and disorganised. Employees at this level have not been carefully selected. Many are not dedicated to the job of developing partnership policing, or serving the community efficiently.[33] Thus it has become a vicious circle. Given that individuals at management level are

unable to take the initiative *vis-à-vis* crime prevention, it remains questionable whether the police are providing a professional service.

A recurring problem is the lack of participation of local governments in CPFs. As stated earlier, if local councils are not involved in the partnership approach, chances of creating a safer environment are minimal. Local governments include many role players who can successfully intervene in issues that precipitate crime. Basically, local authorities need to be introduced within the police framework provided by the constitution, in order to make them locally accountable.

Community empowerment is another issue which constantly raises its head. The ideal of sharing power equally in the partnership approach is proving almost impossible to put into practice. Realistically, there will always be a discrepancy in power between the police and the community, because ultimate power will remain vested in state agencies.[34] It is unrealistic to assume that police/community partnerships will reach consensus without conflict. Confrontation between the police and the community is a positive step towards defining a workable power relationship. The two problems of the involvement of local government and the balance of power are not unique to South Africa; international experiences of partnership policing have thrown up similar issues.

Thus the concept of partnership policing has been put into practice in South Africa, although it is known to most as community policing. Most people involved in policing agree that this approach is the only way forward for developing a safer society. Partnerships are likely to be become more multifaceted, and include more role players. Yet few structure or guidelines have been produced to support the increasing numbers of partnership initiatives.

THE WAY FORWARD

Partnership policing in South Africa is still in its infancy. For it to become more advanced and more successful, several aspects need to be developed. Firstly local governments must be empowered to play an active and leading role. This can be achieved by publishing a code of practice, agreed on between the various central government departments and local government, the SAPS and the department of correctional services. The code should set out 'good practice' in terms of the organisation, structure and functions of the partnership approach, and the role of the police, correctional services and the local councils within it. The active participation of local councils will encourage a wider acceptance of responsibility among the potential partners in the partnership approach, and will discourage the community from assuming that the police can and will do all that is required. However, if local councils are to become involved, the current *ad hoc* manner of developing local partnerships and projects must be replaced with a structured plan. The partnership should set out clearly defined aims and objectives at the start of any activity, and measure and report on the extent to which they have been met.[35] The following are general guidelines for developing a crime prevention programme for local partnerships:

Defining the problem	Prepare crime profile - data collection - consultation - analysis Review policy and practice
Deciding what to do	Prioritise problems Develop options Appraise options Prepare operational plan
Implementing the programme	Plan action

	Obtain resources Take action Monitor progress
Assessing what has been achieved	Evaluate impact Review programme[36]

Secondly, reducing crime through education is another area which needs far greater attention. Research here and elsewhere has provided plenty of evidence that family background, experience at school and personality traits all play a role in inclining people towards crime. Also, young people who persistently play truant from school are more likely to become offenders, as are those who commonly associate with other offenders. Effective family support and control can help to keep young people away from crime, and equip them to lead a law-abiding life. Clearly, there is a need for developing partnerships between parents, schools, provincial departments of education, the police and the provincial departments of health and welfare to reduce the opportunities for offending, and to determine how young people can be prevented from going astray. Local forums incorporating those bodies mentioned above need to be established to help address youth crime in South Africa.

Thirdly, a further way forward for South Africa and partnership policing is to learn which partnerships are working successfully, both nationally and internationally. The sharing of 'good practice' through documented case studies is an important resource.[37] South Africa must take the opportunity to learn from other countries which have adopted the partnership approach. For example, the issue of how to maintain the momentum of a partnership initiative has been a consistent problem in both the United Kingdom and South Africa. A British Home Office survey has produced the following themes, which can contribute to successfully maintaining a partnership:

- the need for better communication, and a better understanding of the duties and functions of other agencies.
- The importance of drawing in voluntary and non-government organisations.
- The value of dedicated staff and good training.
- The role of central government and in particular the need for greater resources, funding and leadership.[38]

Those involved in partnership policing in South Africa must absorb these international lessons and attempt to put them into practice, so that the partnership approach can develop and not remain stagnant.

Finally, the concept of partnership is central to the government's crime prevention strategy. All role players must be determined to do what they can to prevent crime and create safer communities by promoting partnerships between the police, local government, and the private and voluntary sectors.

ENDNOTES

1. Informal interview with vice-chairman of the Benoni community police forum, February 1997.
2. P Gordon, 'Community policing: towards the local police state?', in P Scraton (ed), **Law,**

order and the authoritarian state, Milton Keynes: Open University Press, 1987, p 141.

3. P O'Malley and D Palmer, 'Post-Keynesian policing', E*conomy and Society,* vol 25 no 2, 1996, pp 137–155.

4. J Bright, 'Crime prevention: the British experience', in K Stensen and D Cowell (eds), **The politics of crime control**, London: Sage, 1991, pp 62–86.

5. R MacDonald, 'Skills and qualities of police leaders required of police leaders now and in the future', in B Etter and M Palmer (eds), **Police leadership in Australia**, Sydney: Federation Press, 1995.

6. O'Malley and Palmer, 'Post-Keynesian policing', p 139.

7. J Avery, **Police: force or service?** Sydney: Butterworth, 1981, p 3.

8. See Home Office, **Crime, justice and protecting the public**, London: HMSO, 1990; and US department of justice, **Community policing in Seattle: a model partnership between the citizens and police**, Washington, DC: US Department of Justice, 1992.

9. Vicsafe, **Practical crime prevention**, Melbourne: Victoria Ministry of Police and Emergency Services, 1992, p 2.

10. O'Malley and Palmer, 'Post-Keynesian policing', p 145.

11. *Ibid*, p 139.

12. See *Ibid*, p 145; Sir G Newman, **The principles of policing and guidance for professional behaviour**, London: The Metropolitan Police, 1989; X Hunt, 'Strategic management in policing', in B Etter and M Palmer (eds), **Police leadership in Australia**, Sydney: Federation Press, 1995; and A Normandeau and B Leighton, **A vision of the future of policing in Canada**, Ottawa: Solicitor-General, Canada, 1990.

13. Hunt, 'Strategic management in policing', p 7.

14. T Lauer, 'Nurturing innovative patrol strategies', in Etter and Palmer (eds), **Police leadership in Australia.**

15. E McLaughlin, 'The democratic deficit: European union and accountability of the British police', **British Journal of Criminology** 32, 1992, pp 473–87. Although the SAPS has in theory become more service-oriented, achieving this in practice remains a continuing challenge.

16. Metropolitan Police–London Drug Forum, **Drugs and community safety: promoting a partnership approach**, London: Directorate of Public Affairs, 1994.

17. *Ibid*, p 5.

18. The debate surrounding power *vis-à-vis* the partnership approach is a heated one. There is extensive literature on the subject, documenting theoretical perspectives and proposed resolutions to the problem. See T Jones et al, **Democracy and policing,** London:

Frederick Muller, The Cobden Trust, 1984; N Frazer and N Lacey, (1993), **The politics of community: a feminist critique of the liberal-communitarian debate**, London: Harvester Wheatsheaf, 1993; C Murphy, 'The development, impact and implications of community policing in Canada', in J Greene and M Matrofski (ed), **Community policing: rhetoric or reality**, London: Praeger, 1986; A Crawford and M Jones, 'Inter-agency co-operation and community-based crime prevention', **British Journal of Criminology**, vol 35 no 1, winter 1995.

19. Home Office, **The local delivery of crime prevention through the partnership approach,** London: HMSO, 1994.

20. The Wandsworth Council, **The partnership in Wandsworth**, London: Wandsworth Borough Council, 1995-1996.

21. Metropolitan Police, **Drugs and community safety**.

22. *Ibid*, p 18.

23. E van den Burg, 'Crime prevention on industrial sites: security through public-private partnerships', **Security Journal**, 6 February 1995.

24. **Mail and Guardian,** 7 February 1997.

25. Informal interview with Captain Van Dyk and vice-chairman of the Benoni community police forum, February 1997.

26. Informal interview with senior superintendent Kekana, station commissioner, Orlando, Soweto, December 1996.

27. Informal interview with captain Odendaal, station Commissioner, Gallo Manor, November 1996.

28. Informal interview with captain Van Dyk, Communications Service, Benoni, February 1997.

29. Informal interview with superintendent Britz, station commissioner, Wierdabrug, January 1997.

30. Workshop facilitated by McKinsey on the progress of Project Lifeline, November 1996.

31. Interviews with Odendaal and Brits.

32. *Ibid*.

33. Information gathered from interviews at Lenasia SAPS and Hillbrow SAPS supported this argument.

34. T Jones et al, **Democracy and policing**, London: Policy Studies Institute, 1994; S Oppler, **Community policing in the 'new' South Africa: its implementation and development**, unpublished thesis, 1996.

35. Home Office, **The local delivery of crime prevention**, p 29.

36. Home Office, **A practical guide to crime prevention for local partnerships**, London: HMSO, 1993.

37. At present the ISS, BAC and the SAPS are working in partnership to document partnership initiatives across the country which have helped to alleviate crime. The study will be completed by July 1997, translated into five languages, and distributed nationally to station-level officers, business representatives, community police forums, subforums and community interest groups.

38. Metropolitan Police, **Drugs and community safety**, p 11.

THE DEVELOPMENT OF DIVERSION OPTIONS FOR YOUNG OFFENDERS

Lukas Muntingh

INTRODUCTION

From 1992 onwards, NGOs launched several initiatives focused on juvenile justice issues, and as the debate heightened government departments became increasingly involved, although in an *ad hoc* manner. Conferences, workshops and forum meetings were held to discuss the many problems relating to the treatment of juvenile offenders, of which the most urgent was probably the detention of juveniles in prisons and police cells while awaiting trial. The suffering and injustices resulting from this practice were eventually highlighted by the media, and a national and international outcry ensued. But this was not enough to ensure the government's commitment to transforming the criminal justice system. Nearly three years later, on 17 July 1995, after much advocacy work and continued attention to the issue by the NGOs concerned, the government announced the appointment of an Interministerial Committee on Youth at Risk (IMC), to be chaired by the then deputy minister for welfare and population development, Geraldine Fraser-Moleketi.[1] The IMC's formation was more a response to the unco-ordinated release of more than 2 000 juveniles awaiting trial, and the ensuing political crisis, than to lobbying and pressure by NGOs.

The release of these juveniles on 8 May 1995 followed an amendment to section 29 of the Correctional Services Act, prohibiting the detention of awaiting trial juveniles under the age of 18 years in department of cCorrectional services facilities.[2] In fact, there were no other facilities where these juveniles could be kept while awaiting trial, which highlighted the extreme inadequacy of services for young people in general. Although the IMC's original brief was to find suitable accommodation for juveniles awaiting trial, it was soon expanded to include all matters relating to young people at risk, not only of being in trouble with the law.

The IMC believed the current situation warranted an extensive investigation into all matters related to child and youth care. After starting out as an inquiry relating to criminal justice only (the number of juveniles held while awaiting trial, and the duration and conditions of their detention), the committee's scope was significantly broadened, and its task became that of *designing and enabling the implementation of an integrated child and youth care system based on a developmental and ecological perspective*.

The period between the initial NGO campaign to have juveniles released from prisons, which started in 1992, and the eventual appointment of the IMC in 1995 was not uneventful; a number of influential documents were published, and conferences held, that will eventually shape

juvenile law in South Africa. At the time of writing (August 1996) there is still no comprehensive piece of legislation that embodies the values and principles which have been advocated. Legislation relating to juvenile offenders is spread across various sections of the Criminal Procedure Act (51 of 1977), the Child Care Act (74 of 1983), and the Correctional Services Act (8 of 1959). The most comprehensive NGO proposal to date, specifically relating to justice matters, has come from the Drafting Consultancy on Juvenile Justice. Entitled **Juvenile justice for South Africa – proposals for policy and legislative change**, this document lays down the principles for a future juvenile justice dispensation, which have been adopted, with additions, by the IMC. They are:

- *Accountability* – every person or organisation which engages with young people and their families should be held accountable for the delivery of an appropriate and quality service.

- *Empowerment* – the resourcefulness of young people and their families should be bolstered by providing them with opportunities to build their own support networks, and to act on their own choices and sense of responsibility.

- *Participation* – young people and their families should be actively involved in all stages of the intervention process.

- *Family-centred* – support and guidance should be provided through regular assessment and action planning, which will enhance the family's development over time.

- *Continuum of care* – young people at risk (and their families) should have access to a range of differentiated services on a continuum of care, ensuring access to the most empowering and least restrictive programmes appropriate to their individual needs.

- *Integration* – services should be intersectoral, and delivered by a multidisciplinary team wherever appropriate.

- *Continuity of care* – the changing social, emotional, physical, cognitive and cultural needs of young persons and their families should be recognised and addressed throughout the intervention process. Additional support and resources should be available after disengagement.

- *Normalisation* – young people and their families should be exposed to activities and opportunities which promote developmental needs from the perspective of normal development.

- *Effective and efficient* – all actions involving young people and their families should be performed as effectively and efficiently as possible.

- *Child-centred* – positive developmental experiences should be ensured for young people, both individually and collectively. Appropriate guidance and support should be ensured through regular assessment and action planning which enhances the young person's development over time.

- *Rights of young people* – the rights of young people as established in the United Nations Convention of the Rights of the Child shall be protected.

- *Restorative justice* – the approach to young people in trouble with the law should include:

resolution of conflict, family and community involvement in decision-making, diversion, and community-based interventions.

- *Appropriateness* – all services to young people and their families should be the most appropriate for the individual, the family and the community.

- *Family preservation* – all services should prioritise the need to have young people remain within the family context wherever possible. To this end, family capacity-building and access to a variety of appropriate resources and support systems should be a primary concern.

- *Permanency planning* - every young person should be provided with the opportunity to grow up in his or her family, and where this is proved not to be in their best interests, or not possible, a time-limited plan should be evolved which provides for lifelong relationships in a family or community setting.

These principles clearly indicate the shift, from 1992 onwards, from a pure concern with criminal justice to a more comprehensive approach which seeks to address child and youth care in a comprehensive manner. The IMC's proposal in terms of service delivery focuses on two broad areas, namely 1) residential and community care, education and treatment; and 2) youth justice.

This article focuses specifically on the second component of the proposal – youth justice – and particularly on diversion as a cornerstone of a future juvenile justice system. The major international instruments regulating the treatment of young offenders all have as a central theme the aim of limiting the exposure of young people to the criminal justice system, and thus emphasise diversion as a way of achieving this aim. Although the rights of young people in conflict with the law should be seen against a wider backdrop of human rights, there are four international instruments which have a direct bearing on the subject. They are:

- The United Nations Convention on the Rights of the Child;

- United Nations Guidelines for the Prevention of Juvenile Delinquency, adopted by the general assembly on 14 December 1990, Resolution 45/112. Also known as the Riyadh Guidelines;

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted by the general assembly on 29 November 1985, Resolution 40/33. Also known as the Beijing Rules; and

- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the general assembly on 14 December 1990, Resolution 45/113. Also known as the JDLs.

Diversion remains a relatively new concept in South Africa, although it has been practised in Europe, North America and Australasia for some years now. An overview of diversion will now be provided, focusing on the following:

- a conceptual clarification of diversion;

- a critical review of diversion;

- an overview of current diversion services; and

- guidelines for the future expansion of diversion.

DIVERSION – A CONCEPTUAL CLARIFICATION

The IMC's draft discussion document defines diversion as follows: "*Diversion is the channelling of prima facie cases away from the criminal justice system on certain conditions. These conditions are usually the participation in particular programmes, and/or reparation where possible*." While this definition is not factually incorrect, it does create some confusion if viewed in the context of the total criminal justice process, and even more so in the context of a 'comprehensive child and youth care system'. The way in which this definition is used in the IMC proposal fails to encompass the totality of diversion. The IMC's treatment limits it to 'pre-trial' diversion, meaning that an offender has been charged but has not yet been convicted. Unconditional diversion is not regarded by the document as diversion as such, nor is some form of non-custodial sentencing, and the proposal is therefore unable to propose an overall policy on diversion from the criminal justice system. Police cautioning, as a form of first level diversion, is therefore not covered by the IMC proposal.

The manner in which diversion programmes have developed, namely to divert young offenders at a pre-trial stage, as advocated by the NGO sector since 1992, is at least partially responsible for this somewhat limiting definition. In the early 1990s, Nicro personnel in Cape Town, Durban and Pietermaritzburg developed diversion programmes in response to the large number of juveniles who were convicted of petty offences, and received ineffective sentences such as caning and suspended sentences. The aim was, first, to prevent the conviction of these young people for petty offences, and, second, to give some educational content to the sanction being imposed, even though it was not a sentence. Thirdly, the diversion programmes were aimed at reducing the number of cases that needed to go to trial, which would mean that fewer juveniles would need to spend time awaiting trial in prisons and police cells.

Viewed from this perspective, diversion is a decision to halt the criminal justice process at any particular point and replace subsequent judicial actions (arrest, trial, conviction, sentencing, institutional care etc) with alternative measures, be they a warning, restitution agreement, community service order, etc. What is common to all these diversion options is the belief that the next logical step in the criminal justice process would not be in the best interests of the offender, the victim, or the community at large. For diversion to become an effective and functional procedure in the South African criminal justice process, the definition should be expanded to cover the entire criminal justice system, and this redefined concept should be integrated into the justice process and not solely depend on individual decision-making, as is currently the case.

A CRITICAL VIEW OF DIVERSION

Diversion is not without its problems and pitfalls, and it is important to be aware of the 'thorns on the rose'. A summary follows of a number of problematic issues associated with diversion. These issues relate to both procedural matters and service delivery.[3]

a) The net-widening phenomenon

A diversion programme widens the net of the criminal justice system when it extends the system's reach and increases the number of individuals subject to its jurisdiction.[4] However, net-widening and the dispersal of discipline[5] is not only defined by the number of people reached,

but also by the quality of intervention through the justice system. Where diversionary options are not available, a young offender might receive a warning from a police officer for a minor offence, but when these options become available, the offender may have to participate in an intensive programme focused on life skills, conflict handling, etc to avoid a conviction. It is in this sense that the quality of intervention changes, and rather dramatically too.

Somewhere the line has to be drawn between what we expect diversion to achieve and the degree to which programmes should limit their intervention in line with the legal rights of the individual, whether adult or juvenile. When working with juveniles, the temptation to criminalise certain behaviour is real, and should be acknowledged.

One would also expect that, when diversionary options are available, the case loads of courts would decrease. Wundersitz[6] reports that, during the first five years of children's aid panels in South Australia, the total volume of juveniles processed by the justice system increased by 36 per cent, while the estimated increase of the youth population was only 9 per cent. It is thus evident that youths whose behaviour would previously have been ignored were brought into the system.

b) The discretionary powers of role players in the diversion process

The manner in which diversion programmes are currently run, leaves a lot of decision-making to individual role players (specifically prosecutors and social workers). Decisions on which cases are to be diverted, the number of hours of community service and the evaluation of youths' performance in educational programmes are taken by individual role players. Cases are not discussed by panels, nor are procedures in place to ensure that decisions made are consistent. It is in response to these wide discretionary powers, characteristic of diversion and alternative sentencing, that Czajkoski and Wollan reply:

"The operators of the criminal justice system frequently perform as moral entrepreneurs: they set standards of conduct and promote citizen actions in the name of the criminal law, but beyond its substance. Evidence for this overriding of the law can be seen in juvenile justice; in conditions of probation, parole, diversion and clemency; and, recently, in various forms of creative sentencing involving restitution and community service work."[7]

The offender participating in a diversionary programme submits him- or herself voluntarily to the decisions of justice officials and social workers without being convicted of any crime in a court of law. In exchange for this, the offender has the reward of not being processed further through the criminal justice system. It follows that there is virtually no control over those individuals who decide which cases are to be diverted, and to which programmes.

The guidelines currently employed in South Africa are based on what diversion programme administrators deem fit, and what the prosecutors feel are apt. The lack of consistency in the diversion of cases presents a growing problem, and is directly related to the discretionary powers of prosecutors and social workers.

The second problem related to the discretionary powers of role players centres on the knowledge and expertise of decision-makers. Can we rightly assume that a public prosecutor with sound legal training can make a balanced decision on the overall wellbeing of a young offender, or that a social worker with some years' experience can *justly* determine the length of community service an offender should perform? These questions pertain to the principle of justice by precedent. When decisions are made concerning the conditional withdrawal of a

charge and the rendering of community service or participation in a diversionary programme, steps must be taken to ensure that this is done in a consistent and accountable manner.

The third problem regarding the discretionary powers of decision-makers in the diversion process relates to their position in a modified justice system. Sabol reports on the use of alternative sentencing (fines and community service) to divert offenders from imprisonment in Britain. He finds that, unless the discretionary powers of decision-makers (in this case sentencers) are restricted by law, there is no reason to assume that sentencing practices will conform to the modified penal policy. He explains as follows:

"... they [the Home Office] also demonstrate that in an environment in which penal policy changes but sentencers' goals do not, sentencers are more likely to shape penal policies into tools which enable them to achieve their aims, rather than comply with those of the Home Office. In such a context, it is necessary to restrict the discretion afforded to sentencers; otherwise, there is no reason to expect their compliance."[8]

The wide discretionary powers of decision-makers presents a fourth problem, namely discrimination in terms of race and social status. An evaluation of Nicro Cape Town's pre-trial community service programme and youth offender programme shows that there are clear racial biases in the cases diverted by public prosecutors. In the case of the pre-trial community service programme, nearly 60 per cent of the participants were white, 34 per cent coloured, and the remainder African and Asian. In the case of the youth offender programme, it was found that 81,3 per cent of white participants were pre-trial referrals, compared to 63,2 per cent of coloured and 62, 4 per cent of African referrals.[9]

In evaluating two English diversion projects in Westminster and Bromley making use of cautions by the police, Evans found that the cautioning rate did increase slightly after the programmes were introduced, but that there were indications of discrimination according to age and social status. Sixteen-year-old offenders had a much better chance of being diverted than 17-year-olds. Similarly, employed young adults were also diverted more regularly than unemployed young adults, and employed young adults doing non-manual labour also had a better chance of being diverted than offenders doing manual labour.[10]

In summary, then, when practising diversion there has to be clear regulations regarding offences and offender profiles, otherwise diversion will remain vulnerable to personal biases and misguided use. In the absence of clear legislation, diversion in South Africa faces a rocky and uncertain path.

c) Human rights and due process

Diversion, as it is currently practised, makes something of a mockery of due process. The accused has to admit guilt in front of the prosecutor, who will then decide whether the case is eligible for diversion. In the case of the youth offender programme the accused signs an admission of guilt form which can be used as evidence in court should the accused fail to comply with the conditions of the diversion.[11] This happens despite the fact that the rights of the accused are clearly set out in the constitution:

"Chap 3 para 25 (2) (c) Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right not to be compelled to make a confession or admission which could be used in evidence against him or her."[12]

The phrase providing leeway for diversion is 'not to be compelled', thus enabling programme administrators and prosecutors to assert that participation in a diversionary programme is voluntary. Research in the United States indicates that this principle is soon sacrificed. Blomberg explains that although most juvenile diversion programmes are supposed to be based on voluntary participation, they are in fact based on coercion.

The young offender being faced with the choice of either appearing in court (and probably being convicted) or participating in a diversionary programme has only one real choice: participating in the diversionary programme. Even if the accused believes he or she is innocent, diversion may still be the better of the two evils. The result can be that innocent people are diverted, while the aim is to divert guilty people from a conviction.[13]

Sanders reports on diversion in England and Wales, and explains that neither the police nor suspects are the best people to determine whether an offence has been committed. The police have a vested interest in securing confessions, while the suspects are not truly aware of all the legal options open to them and usually only seek legal advice once they appear in court.[14] Sanders concludes by providing three reasons why the current requirement that suspects voluntarily accept diversion is no protection:

"Firstly, many will not know that an acquittal would be possible; their choice is not real as long as it is uninformed. Secondly, many suspects do not realise that they have a choice (five out of 15 suspects at the Sandwell mediation and reparation scheme were unaware that they had an option). Thirdly, the choice is not real when prosecution is the real or perceived alternative: 'He sort of said, "Pay for the damage and you won't have to go to court," and I thought I'd better pay it, because it would be better than bringing my parents to court' (juvenile quoted)."

The establishment of guilt in a court, a fundamental right, is waived by the accused in order to be diverted. This is often not a well-informed decision, and is generally made by the accused without any legal advice, thereby doing away with the due process of the criminal justice system. The solution appears to be a system where the accused is properly informed of all his or her choices, not only by the police or prosecutor but also by a defence counsel of some kind, be it a public defender or private attorney.

d) Selecting for success

Under many new programmes, either for welfare or justice reform, clients are selected for maximum success in order to illustrate that the newly established option is in fact efficient and effective. It is difficult to determine whether this is intrinsically a good or bad strategy, but an attempted description follows of the results of this strategy relating to diversionary programmes.

A new programme, such as the youth offender programme, needs to establish itself, and convince skeptics of its merits. But even more important than this, the programme administrators need to gain practical experience and build up self-confidence. Selecting for success means that they will try to limit the number of variables that could disrupt the process by selecting clients (juvenile offenders) who are from stable backgrounds, have committed petty offences, and truly show potential for 'rehabilitating' themselves through the programme. The success of any educational programme, such as the youth offender programme, depends solely on the facilitator's ability to engage the attention of the offenders, and entice them into participating.[15]

Selecting for success can be an expedient strategy when clients' profiles are adapted over the shortest possible time span to be representative of the total client population. The danger comes when this initial selection strategy becomes entrenched in, and associated with, the programme. Accusations of a programme being biased in terms of its client profile could spell its end.

There is a second danger in the select-for-success strategy. Initial success achieved may create a false and unrealistic impression of the ability and capacity of the programme. The early success rate of the programme may soon dwindle when selection becomes more representative, and the programme perceived as ineffective. While this may be partially true, it is not the result of the programme's design or content, but rather of unrealistic achievements in the initial stages. When the number of clients increases, and the nature of offences covers a wider range, the success rates of diversion programmes normally decline. This is not because the programme does not work, nor because it is inefficiently administered or managed, but merely because it now deals with the full realities of the situation as against its prior unrealistic achievements.

e) The expressiveness of diversion

When a person is convicted of an offence, society declares in no uncertain terms that it disapproves of that (criminal) action. The criminal justice system exists as an institution to express the public's disapproval by convicting the offender, administering a sentence, and even making information available to the media on that action.

There is a punitive component in the diversion process, depending on which form of diversion is utilised, but the deterrence effect is downplayed because the offender is not convicted and there is no public record of the case. The diversion of a case thus does not explicitly express society's disapproval of a particular act. Whereas a conviction is a recorded action, diversion becomes a clandestine operation alongside the criminal justice system – a private agreement between the accused, the public prosecutor, and the organisation responsible for administering the diversion programme.

Sanders explains that the use of cautioning (and diversion) will remain limited until it becomes expressive, which would largely defeat its aim of avoiding the stigmatisation of offenders.[16] Drawing on the British experience, Sanders explains further that the current 'law and order' atmosphere prevents the criminal justice system becoming less punitive, thus placing clear restrictions on the safe expansion of diversion. One response to diversion in the 'law and order' atmosphere is to process certain crimes through diversionary options (the soft machine), while others, which are perceived to be a threat to order, are processed through the traditional criminal justice system. This bifurcation of crimes results in diversionary programmes landing up with cases involving motoring offences, minor property crime, pollution offences, and tax evasion.[17]

In a sense, then, diversion is in a Catch-22 situation: on the one hand, it wants to protect the offender from stigmatisation and labelling; on the other, it does not adequately express society's disapproval of a certain action.

f) Diversion as an alternative or supplement to the criminal justice system

Diversionary options such as the pre-trial community service programme or the youth offender programme start off as fresh alternatives to the traditional practices of conviction and sentencing. However, it is soon realised that the function performed by these programmes

becomes supplementary to the criminal justice system – the alternative is suddenly not that 'alternative' any more. Positioning diversion in relation to the criminal justice system becomes problematic, and raises certain important issues. Firstly, do diversion programmes contribute to the ever increasing net of social controls, characteristic of modern societies? Secondly, do the administrators of diversion programmes, which are often attached to NGOs, become *de facto* public servants with a strong policing function? If this is the case, how do they justify themselves as NGOs and community-based organisations which have a strong tradition of being critical of government policy and social controls? Thirdly, what is the nature of the relationship between the public prosecutor's office and the administrators of the programme? In essence: who needs whom?

Often, if not always, one or more of the role players in diversion programmes has a vested interest in the success of the programme. For welfare organisations, such as Nicro, it is important not only that programmes succeed in order to secure government subsidies, but also to expand their field of social responsibilities and reaffirm their relevance in a changing society. From the perspective of the department of justice, it is a political decision to implement diversion and alternative sentencing options, such as community service orders. The criminal justice system has to respond in some way to pressures from progressive groupings, and implementing peripheral alternatives serves that purpose without changing the overall nature and operation of the criminal justice system. Thus, while creating a soft machine, little or no change is made to the hard machine.

Diversion programmes, in the sense that they are commonly understood,[18] cannot act totally independently of the formal criminal justice system, for then they would not be diversion programmes. The problem arises when these programmes act outside of their NGO tradition, and assume certain control and policing functions. It is largely inexplicable why NGOs voluntarily participate in these actions; this is probably based on a misconstrued belief that they can remain independent of the state while working extremely closely with the criminal justice system. The net result is that the diversion programme becomes not an alternative but a supplement to the criminal justice system, an extra avenue in the criminal justice process, firmly controlled by criminal justice officials.

g) Moving up the ladder of possible sanctions

Strange as it may sound, participation in a diversion programme can increase an offender's chance of receiving a harsher sentence if he or she is rearrested, reports Ezell after reviewing a juvenile arbitration programme in Orlanda, Florida.[19] The prosecutor or magistrate reviewing the case can argue that the offender has already used up his or her free chance, and should now be given a stern lesson. The problem with this line of reasoning is that if the diversion programme had not been in place, the case would probably have been handled informally, and would not have proceeded to court. The fact is that the young offender was never convicted of anything, and is technically in the system for the first time. However, the reality that the offender has participated in a diversion programme counts against him or her. If the diversion programme had not been in place, the offender may have received only a warning – but now the chances of a conviction are substantially greater.

When diversion programmes are in place, those offenders who do appear in court are automatically assumed to be there for more serious offences. The magistrate or judge hearing the case accepts that reasonable decisions were taken earlier on in the process regarding the possible diversion of the case. It then follows that for the person who may re-offend in a relatively short period of time, it may not necessarily be beneficial to be diverted.

h) The unintended consequences of diversion

The first and foremost unintended consequence of diversion is 'net-widening', which was discussed earlier and will not be dealt with further here. Klein identifies two further unintended consequences, namely alternative encapsulation and re-labelling.[20] Klein cites several American authors who investigated the relationship between community structures and social services for delinquents. Spergel states that moving youngsters from secure institutions into local alternatives may amount to nothing more than developing community incarceration.[21] In similar vein, Coates, Miller and Ohlin conclude: "*Instead of having 'institution kids', we now have 'agency kids'*".[22]

Klein explains further that freedom does not necessarily mean that an offender is not institutionalised:

"*So long as it is felt that diverted offenders, or deinstitutionalised offenders, need service or treatment when we turn them from the justice system, then ipso facto we are inserting them into an alternative system which may be equally pervasive or encapsulating. For all we know, it may be equally stigmatising although admittedly less costly*."[23]

Alternative encapsulation is related not only to the intervention by a social agency, but also to the duration of that intervention. Klein reports on a programme in Pima County, Arizona, where the service-providing agency will render a service whether this is necessary or not, and notes that it has a very low termination rate:

"Case workers are trained to believe that they have the capacity to help young people; the appearance of a client walking through the agency doorway may activate the assumption that help is needed."[24]

The urge to provide help brings with it certain social controls over the client who supposedly submits him or herself voluntarily to the programme. Diversion of this nature has not been fully developed in South Africa, but if we look at the correctional supervision system, we see that extremely stringent controls are exercised over the parolee even if he or she is not physically behind bars. In juvenile justice systems, this type of control is normally associated with curfews and loss of privileges as well as the attendance of some programme or community service. When a system develops these controls, one can truly name it community incarceration.

This phenomenon is closely linked to a second unintended consequence of diversion, namely labelling. Elliot found, when evaluating several American diversion programmes, that:

"From a labelling perspective, it appears that receiving help or treatment from agencies is more stigmatising than being arrested and processed in the justice system."[25]

The precise reasons for this perception are not entirely clear, and possibly relate to the environment in which the offender lives and what are regarded as acceptable social labels. Receiving help from a welfare agency may be regarded as a soft option, and being processed through the criminal justice system as a rite of passage. In other words, the status of the diversion programme as a justified and approved option is not accepted by the clients and communities whom it is suppose to serve.

OVERVIEW OF CURRENT SERVICES

Nicro currently provides the bulk of diversion services; in a few isolated cases, state social workers are also involved. These diversion services were developed by Nicro in consultation with other agencies. The services currently being provided are a pre-trial community service, a youth empowerment scheme, victim offender mediation, family group conferencing, and a programme called The Journey. A short description follows of each of these options.

Pre-trial community service: The charges (usually minor property-related offences) against the offender are withdrawn on the condition that he/she performs a certain number of hours of community service at a non-profit organisation, to the benefit of the community. The number of hours ranges from 10 to 120, and are seldom higher than the latter. Should the offender fail to comply with the conditions, the charges are reinstituted.

Youth empowerment scheme: This is a six-week life skills course, and groups of about 20 juveniles attend the course for one afternoon a week over a six-week period. The parents of juveniles attend the first and last session. Material covered in this participatory-style course include conflict management, responsible decision-making, parent–child relationships, and street law.

Victim–offender mediation: This option usually takes the form of a face-to-face meeting between the victim and the offender, facilitated by a mediator. The aim is to mediate an agreement between the two parties that will satisfy their needs. This can take the form of a restitution payment, community service, attendance of another diversion programme, or a combination of these.

Family group conference: FGCs are more suited to young offenders who show a pattern of problematic behaviour. The FGC is a meeting attended by the offender, the family of the offender, a youth justice worker (who facilitates the meeting), and any other parties who have a direct interest in the case or are significant to the young person. The aim is to work out a plan of action that will prevent further offending behaviour, and to devise a support structure for the young person.

The Journey: This option is a high-impact programme for high-risk juveniles who require intensive and long-term (6–12 months) intervention. The programme includes the utilisation of community support and mentors. The Journey involves at least one residential workshop utilising high-impact material, including wilderness and/or outdoor education.

The following table provides a quantitative review of diversion during the first six months of 1996, based on the cases handled by Nicro. As stated earlier, most diverted cases are handled by Nicro, and the following can thus be regarded as a fairly accurate estimate of the extent and distribution of diversion in this country. The table also presents an estimated total for the full 12-month period, as well as an estimated total at a growth rate of 7 per cent (based on the average for the first six months).

Table 1: Number of diverted cases handled by Nicro, January–June 1996, with estimates for a full year

Branch	Jan	Feb	Mar	April	May	Jun	Total	12 months	at 7%
Bloemfontein	8	10	8		23	9	58	116	124
Botshabelo		1	5			15	21	42	45

Cape Town	44	14	9	59	60	20	206	412	441
Durban	50	62	68	42	56	38	316	632	676
E London	10	11	20	19	13	5	78	156	167
E Rand	5	12		16	14	14	61	122	131
JHB	21	21	25	30	32	40	169	338	362
Kimberley	5	3	3	4	15	2	32	64	68
Mitchells Plain	6	44	37	7	16	23	133	266	285
Namaqua land	17	20	29	16	16	22	120	240	257
Nelspruit				8	10	9	27	54	58
Outeniqua		5	10		21	44	80	160	171
PMB	26	38	22	45	46	33	210	420	449
PE	7	7	27		12	21	74	148	158
Pretoria	45	17	37	13	30	11	153	306	327
Queenstown	8	7	4	6		3	28	56	60
Soweto	10	12	11	9	13	17	72	144	154
Tygerberg	33	31	39	11	32	42	188	376	402
Umtata			6		5	5	16	32	34
Vaal	29	24	26	4	6	10	99	198	212
Zululand	12	10		26	43	46	137	274	193
Total	336	349	386	315	463	429	2278	4556	4875

*T*he most significant trend in Table 1 is the low number of referrals for diversion. If this is compared with the total number of juveniles convicted every year, it comprises less than 7 per cent of the total, according to the 1993/4 figures.[26]

The distribution of Nicro offices further limits the number of cases diverted, and it does not appear as if other service providers, state or NGO, are willing to provide this service on a large scale. Nicro only embarked on a national diversion programme at the beginning of 1996, and is therefore still in the process of establishing such services at all its structures. Currently 21 of the 24 structures provide diversion services. It should also be kept in mind that not all the diversion options described above are available at the 21 branches providing such services.

Table 2 shows that the majority of juveniles (65–81 per cent) are diverted to Nicro's generic life skills programme Yes. The PTCS programme handles about 20 per cent of referrals, and the remainder is distributed across the other options, which handle a very small proportion of cases.

It is significant that the various diversion programmes are specialised according to the method being used and not according to the client offence profile, ie. shoplifting, assault, etc. Current diversion options are somewhat limited, and do not provide for wide-ranging specialisation. Previous evaluations of the Yes programme (See Muntingh,1995 and Kok, 1995) indicate that a very wide range of offenders in terms of age and offence are accommodated in this programme.

Table 2: Proportional distribution of diverted cases per programme per month

Programme	Jan	Feb	March	April	May	June
YES	75.60	65.81	68.39	74.60		

PTCS	18.15	23.93	14.51	22.54	15.62	19.53
FGC	4.17	5.13	4.66	*2.86*	3.04	3.50
VOM	2.08	5.13	2.85		0.22	0.47
The Journey			9.59			
Total	100.00	100.00	100.00	100.00	100.00	100.00

Table 3 shows that there is substantial regional variation in the number of cases referred for diversion. Most cases originate in the Western Cape, Gauteng and KwaZulu-Natal. These three provinces account for more than 75 per cent of diverted cases in South Africa. The distribution of Nicro branches and thus the availability of structured diversion programmes show urban concentrations. This situation will probably continue unless other service providers, specifically the state, begin to play a more active role in extending diversion into rural areas. It should also be noted that Nicro has a presence in only seven of the nine provinces. Northern Province and North West are therefore without this option for treating young offenders.

Table 3: Provincial distribution of diversion cases

Province	Number of cases	Percentage
Western Cape	607	26.65
Eastern Cape	196	8.6
Northern Cape	152	6.67
Free State	79	3.47
Gauteng	554	24.32
KwaZulu-Natal	663	29.10
Mpumalanga	27	1.19
Total	2278	100.00

THE FUTURE OF DIVERSION

Diversion, by its very definition, is not (currently) subject to stringent controls by means of legislation and other mechanisms of accountability, and exists parallel to the present criminal justice system. While this may have certain advantages, it is also cause for concern. The present unregulated diversion of criminal cases against juvenile offenders presents a range of problems, as described earlier, and these need to be addressed. Also, some of these problems could be addressed by means of regulation, but others will probably persist. Here are a number of guidelines that should be followed if diversion is to be effective and equitable, and expanded throughout South Africa.

First, criteria for diversion should be standardised. The decision to divert a case or not is a judicial decision, and the authority to do so is delegated by the attorney-general to the prosecutors. However, this does not mean that prosecutors should not consult before such a decision is made. The assessment centres being operated at the Cape Town and Wynberg magistrates' courts (among others) bear testimony to the fact that consultation before such a decision is made is not only in the best interests of justice, but is also practical.

Secondly, the quality of diversion programmes needs to be ensured. In other words, when a case is diverted, we (as the South African public) need the assurance that this decision will yield better results in term of preventing recidivism than any other decision, such as conviction and

sentencing.

Thirdly, diversion programmes need to be accessible to all juvenile offenders who comply with the relevant criteria. The present geographical distribution of services is unacceptable. However, this is not the only problem; there is also racial discrimination in terms of the cases diverted.

Fourthly, diversion presents a number of risks with regard to due process, but these risks can be managed if proper controls are built into the process. Very few young offenders have legal representation, or at least receive proper legal advice when they have to decide on participation in a diversion programme. It is not a practical option to provide every arrested juvenile with legal representation, but other avenues of providing legal advice need to be investigated in order to limit the risk of due process violations.

Fifthly, diversion needs to be integrated with the criminal justice process through legislation that sets out procedure, criteria and guidelines. As long as diversion exists parallel to the formal criminal justice system, it will remain peripheral and not achieve its basic aim, namely to limit the exposure of juvenile offenders to the criminal justice process.

Lastly, diversion services are currently provided by Nicro, an NGO funded by government subsidies and private donors. The government has committed itself to diversion as a principle of juvenile justice, but has done very little to provide such services in terms of either delivering the services or contracting them out. A far greater involvement by all the relevant government departments is required, especially in funding diversion services in areas where they are not being delivered at present, such as rural areas.

ENDNOTES

1. IMC, 'Draft discussion document for the tramsformation of the South African child and youth care system', Pretoria: IMC, 1996, p 1.

2. On 10 May 1996 the Correctional Services Act was amended once again to provide for the detention of awaiting trial juveniles in prisons, provided that certain criteria were met (Correctional Services Amendment Act No 14 of 1996).

3. For a more detailed description of this, see L M Muntingh, 'A critical review of diversion', in **Perspectives on diversion**, Nicro Research Series No 2, Cape Town, 1995.

4. M Ezell, 'Juvenile arbitration – net-widening and other unintended consequences', **Journal of Research in Crime and Delinquency**, vol 26, 1989, p 358.

5. A Vass and A Weston, 'Probation day centres as an alternative to custody – a Trojan horse examined', **British Journal of Criminology**, vol 30 no 2, 1990, p 191.

6. J Wundersitz, 'The net-widening effect of aid panels and screening panels in the south Australian juvenile justice system', **Australian and New Zealand Journal of Criminology**, vol 25 (115 –134), 1992, p 16.

7. E H Czajkoski and L A Wollan, 'Creative sentencing – a critical analysis', **Justice Quarterly**, vol 3 no 2, 1986, p 216.

8. W J Sabol, 'Imprisonment, fines, diverting offenders from custody – implications of

sentencing discretion for penal policy', **Howard Journal of Criminal Justice**, vol 29 no 1, 1990, p 40.

9. Muntingh, 'A critical review of diversion'.

10. R Evans, 'Evaluating young adult diversion schemes in the metropolitan police district', **Criminal Law Review**, July 1993, p 40.

11. There are some regional variations in this regard, and the procedure sketched here does not wholly apply to all diversion projects.

12. **Interim Constitution of South Africa**, Act 200 of 1993.

13. T Blomberg, 'Diversion's disparate results and unresolved questions – an integrative evaluation perspective', **Journal of Research in Crime and Delinquency**, vol 20, 1983, p 27.

14. A Sanders, 'The limits to diversion from prosecution', **British Journal of Criminology**, vol 28, 1989, p 516. Sanders further explains that although the suspect may have performed the act (such as destroying property), guilt in itself may still be contested. The principle of *mens rea* (no intent to steal or damage) or claims of legal defence (self-defence, drunkenness) may still be employed by the accused in order to secure an acquittal.

15. R van Swaaningen and J Uit Beijerse, 'From punishment to diversion and back again', **Howard Journal of Criminal Justice**, vol 32 no 2, 1993, p 143.

16. Sanders, 'The limits to diversion from prosecution', p 528.

17. *Ibid*, p 529.

18. In recent years community courts have become more common in South African townships; they are in essence a diversionary scheme, completely independent of the criminal justice system. There is one known example of a community court and a magistrates' court establishing a working relationship: the Mitchells Plain magistrates' court, and the Sanco (South African National Civics Organisation) street committees in Guguletu.

19. Ezell, 'Juvenile arbitration', p 374.

20. M W Klein, 'Deinstitutionalisation and diversion of juvenile offenders – a litany of impediments', in N Morris and M Tonay (eds), **Crime and Justice – An annual review of research**, Chicago: Chicago University Press, 1979, p 182.

21. Spergel in Klein.

22. Coates, Miller and Ohlin in Klein.

23. Klein, 'Deinstitutionalisation and diversion of juvenile offenders', p 182.

24. *Ibid*.

25. Eliot in Klein, p 183.

26. CSS, **Prosecutions and Convictions**, Report no 00-11-01, 1994, Pretoria.