

# The 'shoot to kill' approach

## Inflammatory rhetoric no solution to crime

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*As the countdown to the 2009 general election continues, the need to dig deeper for the real meanings of statements made by politicians on a range of issues affecting our nation is becoming increasingly urgent. But why bother about statements made in the often euphoric rhetoric of political campaigns? They are important because the utterances give us a preview of the thinking of those likely to become our president, ministers or local government leaders.*

With the 2009 election around the corner, many South Africans are listening carefully to hear how those vying for public office promise to rid our country of the scourge of crime. Conscious of this, politicians have made a myriad of promises, some of which are deeply worrying. Before paying closer attention to the implications of some of the statements, it may be necessary to reflect briefly on the state of crime in South Africa today.

### STATE OF CRIME: BETWEEN PERCEPTION AND REALITY

Crime is one of the uninvited guests that all too frequently encroaches on our social spaces. It is therefore to be expected that South Africans will be asking themselves what the new government will do with our criminal justice system.

From 2003/4 to date, the overall level of crime has dropped by about 24 per cent. The latest crime statistics (2007/8) also show a decline of about 4.6 per cent (SAPS 2008). While this is encouraging,

there is no disagreement that our crime situation remains extremely concerning.

The National Victims of Crime Survey conducted by the Institute for Security Studies in 2007 has shown that an overwhelming majority of South Africans find it hard to believe that crime is declining. It is important to interpret this against the backdrop of specific categories of crime that are at the core of public perception.

The 2007/8 police statistics show a disturbing rise in crimes that fall into the category of aggravated robbery, such as house robbery (increased by 13.5 per cent) and business robbery (increased by 47.4 per cent). Given this, most citizens would understandably ask: if I am not safe in my house and at my business premises, on what basis should I generally feel safe? This question is further complicated by the violence employed by criminals in our country.

### SYSTEMIC PROBLEMS

There is evidence that our correctional facilities are overfilled both with convicted criminals and

suspected offenders. South Africa boasts the unenviable position of having the world's seventh highest number of prisoners, about 166 000 in total, while our bed capacity stood at 114 559 in March 2008 (Walmsley 2003). The facilities also have to cope with a high number of awaiting-trial detainees, currently at about 52 000.

While the South African Police Service (SAPS) has grown exponentially in the recent past (from 120 000 in 2001 to about 170 000 in 2008), the growth has not addressed the lack of specialised skills in the Service. Last year, only 15 per cent of SAPS members were detectives; there were only 1 691 crime scene experts; and only 923 forensic experts had to service the entire country.

Given the shortage of specialised skills in the SAPS it is hardly surprising that a study conducted by the South African Law Reform Commission in 2000 found that only six per cent of serious and violent cases of crime that were tracked resulted in a conviction; three quarters of the cases did not make it to court; and of those that did go to court, half were withdrawn by prosecutors. The other half of these cases went to trial and only one quarter resulted in convictions. Surely this is indicative of a critically ill system; moreover, no substantial improvements have since been made.

In between the police and prisons lie prosecutors and judicial officers, who also play a part in clogging the system. If these officers worked harder and more efficiently, we would arguably not have such a large number of awaiting trial detainees; investigative weaknesses notwithstanding.

The current state of our court system leaves much to be desired. In his presentation to the Parliamentary Portfolio Committees on Justice and Constitutional Development and Safety and Security on 5 August 2008, Deputy Minister of Justice Johnny de Lange made startling revelations in this regard. Across the country, regional courts have a 35 per cent case backlog. The hours spent in court are low (courts close at 15h30 daily). This year, on average, only seven cases have been finalised by each regional court per month.

From the police through the courts to correctional centres, inefficiencies and dysfunctionality are ubiquitous. Indeed, the Mbeki administration lamented the lack of coordination within the criminal justice system. It remains to be seen what the new government will do to address the problem after the 2009 general election.

## **SOCIO-ECONOMIC DISEMPOWERMENT AND CRIME**

The systemic issues referred to above are further complicated by serious social challenges arising from the legacy of Apartheid, and are exacerbated by new complexities associated with the post-1994 social architecture.

Whilst major progress has been made in building a new social order, poverty remains a mammoth challenge.<sup>3</sup> Unemployment and poverty create conditions for social ills such as crime and also lead to a breakdown of socio-cultural systems. The impact of this in South Africa is indeed severe. Sadly, young people in our country are hard hit by unemployment, constituting over seventy per cent of the unemployed population of South Africa. As Frantz Fanon (1961) observed: 'The young people of the towns, idle and often illiterate, are a prey to all sorts of disintegrating influences.' Is it surprising, therefore, that early in 2008 we witnessed rampaging youths committing heinous acts against those suspected of being foreigners?

The economic growth and socio-economic progress made post-Apartheid has also been accompanied by the undesirable phenomenon of rising inequality. That the economy has for the past three years been growing at an annual average of 4.5 per cent is indeed positive. But the distribution of this wealth has disproportionately benefited those who were already well off. A recent study undertaken by the Presidency laments this reality: '[t]hose at the top of the income distribution on average benefited more than those at the bottom' (Presidency 2008). Thus, this growth trajectory has catapulted our

country into the unenviable category of the most highly unequal societies in the world.

While wealth accumulation is not in itself necessarily a bad thing, an accumulation path that enriches a few while the majority sink deeper into poverty is bound to produce social instability and disorder. This, unfortunately, is the path our society has been following since the advent of democracy. Thus has a culture of conspicuous consumption and rapacious wealth come to characterise our communities. It is this culture that Thabo Mbeki (2006) decried:

[E]very day, and during every hour of our time beyond sleep, the demons embedded in our society, that stalk us at every minute, seem always to beckon each one of us towards a realisable dream and nightmare. With every passing second, they advise, with rhythmic and hypnotic regularity - get rich! get rich! get rich!

It is only in a society where this kind of mentality prevails that a socially disruptive flamboyance rules. The reality is that some of those who cannot afford the glamorous lifestyle that comes with the expensive material possessions, so often paraded in our communities, use criminal means to acquire those possessions.

Also related to the question of poverty is the mushrooming of informal settlements around metropolitan areas. Indeed, this is not a South African peculiarity. As the World Bank informs us: 'The rapid growth in developing world cities is making living intolerable for the urban poor and threatening the economic, social and environmental progress of these cities' (World Bank 1996). Combined with our violent political past, this trend adds to a powder keg of criminality.

This complex mix of social, political and economic factors is gradually eating into the heart of our social fabric. It is thus not surprising that 'social cohesion' and 'moral regeneration' have now become the golden thread of the discourse used by those who appreciate the complexity of our challenges.

## 'SHOOT TO KILL' MESSAGES: REVERSING OUR HUMAN RIGHTS PROGRESS

Returning to the political statements that give cause for concern: We have recently heard utterances and observed political behaviour suggesting that those who make such statements barely understand the complexity of our social quagmire. The 'shoot to kill' instruction issued to the police by Susan Shabangu, Deputy Minister of Safety and Security, immediately comes to mind. The new Minister of Safety and Security, Nathi Mthethwa, has also played his part by instructing the police to 'fight fire with fire', with no emphasis on what the law prescribes. And the president of the ruling African National Congress (ANC) has signalled that under his administration, rape and murder suspects would not be granted bail.

While this kind of talk may appeal to those who place emotions above reason, our society should be wary of politicians who appeal for the deconstruction of our human rights-based jurisprudence. The 'presumption of innocence until proven otherwise' is a principle civilised societies embrace. When the new South Africa adopted this approach, attention was equally paid to the reality that crime would need to be firmly dealt with. It is, among others, through the Criminal Procedure Act that our nation has demonstrated its dexterity at striking a necessary balance between safeguarding human rights and intolerance to crime. For example, Section 49 of the Act empowers the police to use force:

[1] if any person authorised under this act to arrest or to assist in arresting another, attempts to arrest such person and such person -  
[a] resists the attempt and cannot be arrested without the use of force; or  
[b] flees when it is clear that an attempt to arrest him is being made, or resists such attempts and flees, the person so authorised may, in order to effect the arrest, use such force as may in the circumstance so be reasonably necessary to overcome the resistance or to prevent the person concerned from fleeing

[2] where the person concerned is to be arrested for an offence referred to in schedule 1 or is to be arrested on the ground that he is reasonably suspected of having committed such offence, and the person authorised under this Act to arrest or to assist in arresting him cannot arrest him or prevent him from fleeing by other means than by killing him, the killing shall be deemed to be justifiable homicide.

Those who remember our past will object to political discourse reminiscent of Apartheid. More importantly, no amount of war-talk can eradicate crime. The complex socio-economic situation referred to above suggests clearly that our country needs more than the police or the criminal justice system to deal effectively with crime.

However, it does not mean that we should not pay attention to the challenges facing the system. Attempts to address the ills that bedevil our criminal justice system need to be linked to wider efforts aimed at addressing bigger social challenges that complicate our nation's endeavours against crime. Simply pumping resources into the system alone will not have the desired effect. It should be remembered that in 2001 the SAPS budget was R17 billion and rose to R36 billion by 2008 – yet our crime situation remains worrying.

Threatening to kill and deny bail to suspects is also not a solution to our crime situation. In this regard, it is worth recalling the profound question posed by Karl Marx: 'Is there not a necessity for deeply reflecting upon an alteration of the system that breeds these crimes, instead of glorifying the hangman who executes a lot of criminals to make room only for the supply of new ones?' (Marx 1853).

Marx poses a formidable challenge to our political leaders in South Africa: to demonstrate a higher level of sophistication and deep thinking. Instead of listening to them instruct the police to 'shoot to kill', 'fight fire with fire' and 'deny criminals bail' we should be waiting to hear how politicians intend to alter the social conditions that breed

criminals. In other words, Marx goads our politicians to think seriously about addressing the socio-economic conditions that have guaranteed us the seventh place worldwide based on the size of our prison population.

## CONCLUSION

Eradicating crime in South Africa is a noble goal, and all those who demonstrate seriousness in this regard indeed deserve praise. However, any such efforts should be based on a clear understanding of the complexity of the challenge, in order to avoid politically expedient statements that threaten to reverse our hard-won democratic gains. The recent war-talk by politicians certainly holds no solutions to our dire crime situation. Our society should be vigilant and raise critical questions each time politicians make easy but dangerous statements such as 'shoot to kill', 'fight fire with fire' or 'deny suspects bail'.

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