



**CRIME AND ITS IMPACT
ON HUMAN RIGHTS:
TEN YEARS OF THE BILL OF RIGHTS**

CRIME CONFERENCE REPORT
(Conference held on 22 to 23 March 2007)

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FOREWORD

Over the past few years, South Africa has witnessed high levels of crime. Manifestations of crime are happening at levels that impact seriously on individuals and institutions and impair their ability to enjoy the human rights guaranteed in the Bill of Rights.

Violent crimes affect the right to life, to personal security, to dignity and to bodily integrity of its many victims. Sexual crimes against women represent in the words of the Constitutional Court “the most formidable challenge to the self-determination of women, while incidence of child rape and abuse deny to children the special protection afforded to them by the Constitution”.¹

On the other hand, non-violent crime also wreaks its own damage and corruption, in particular, its devastating impact on social and economic development. Corruption, whether it relates to social security grants, school feeding

schemes or the building of homes, inevitably deprives beneficiaries of the services they would ordinarily be entitled to.

Crime also affects the moral fibre of the nation, especially the morale of victims. It has also seriously prejudiced South Africa’s profile at the international level. Crime has led to perceptions that the Constitution as well as the criminal justice system is criminal-friendly. There are also perceptions that the transformation of the criminal justice system in order to bring it in line with international human rights norms and standards, hampers law enforcement agencies to effectively deal with crime in the country. These perceptions have led to the loss of faith in the entire criminal justice system to prevent and combat crime in the country.

The challenge of crime and the effective response to it requires a co-ordinated, effective and spirited response. All South Africans share the responsibility of fighting

¹ *Carmichele v Minister of Safety and Security* (4) SA 938 (CC) para 62.
See also *Prinsloo v Van der Linde* 1997 (3) SA 1012 (CC) para 32

crime in varying degrees. It is therefore critical that the commitment to a partnership amongst various stakeholders in the fight against crime is made real. Measures aimed at eradicating crime must be shared as part of a vision and commitment to deal with this formidable threat to our human rights culture, our moral destiny and our ultimate success as a nation.

By hosting the Conference on “Crime and its Impact on Human Rights”, the South African Human Rights Commission (Commission) wanted to contribute to the prevention and eradication of crime in South Africa. We hope that the recommendations from the Conference would contribute to policy development and adoption of new strategies by government, law enforcement agencies as well as communities in dealing with crime. This report comprises the views expressed, as well as recommendations made by various stakeholders during the Conference.

I would like to take this opportunity to thank everyone who participated in the Conference. Much appreciation goes to the presenters, rapporteurs and facilitators who guided the discussions and debates. Special thanks goes to Justice Albie Sachs for his insightful keynote address.

Finally, I wish to thank the CEO and staff of the Commission who worked tirelessly to ensure the success of this Conference.

A handwritten signature in black ink, appearing to read 'Jody Kollapen', with a stylized flourish at the end.

Jody Kollapen
Chairperson, South African Human Rights Commission

EXECUTIVE SUMMARY

The Conference on 'Crime and its Impact on Human Rights: Ten Years of the Bill of Rights' was held from 22 to 23 March 2007, at the Southern Sun Intercontinental Hotel, Sandton, Johannesburg. The Conference was a response to the national outcry on the prevalence of crime and its negative impact on human rights. Crime permeates every detail of life – from individual personal security, business, diplomatic relations, legislation, governance to the criminal justice system. Apart from the tangible damage that crime causes, it also has long-term effects on the moral fibre of the nation, impacting even more negatively on the many direct and indirect victims. Crime is a threat to national security, and therefore a threat to South Africa's young democracy. Due to its crosscutting nature, the impact of crime is felt across all socio-economic strata, jeopardising the enjoyment of the universal benefits of the Bill of Rights. This is an issue of concern especially as South Africa celebrates ten years of the implementation of the Bill of Rights.

It is against this background that the South African Human Rights Commission hosted a two-day Conference as part of its Human Rights Day celebrations on 21 March 2007. The Conference was preceded by nationwide community

dialogues on 'Crime and Human Rights: Ten Years of the Bills of Rights facilitated by the Commission's Provincial Offices. The purpose of the Community Dialogues was to engage the whole country on the extent to which the Bill of Rights has been threatened by crime and the ability of people to fully enjoy the rights enshrined therein, ten years after its coming into force.

The objectives of the Conference were:

- i. To determine the root causes of crime in SA;
- ii. To consider the impact of crime on human rights, especially on the enjoyment of socio-economic rights;
- iii. To assess how various stakeholders in SA have contributed towards preventing and combating crime; and
- iv. To develop sustainable human rights-based recommendations in the prevention and management of crime.

In order to meet the above objectives, the Conference was divided into two main parts. Part one of the Conference captured presentations from various stakeholders on the subject. Part two focused on the formulation of human rights based recommendations to prevent and combat crime in South Africa.

Captured below is a brief abstract of the discussions of the two parts subdivided into relevant thematic areas.

Part one of the Conference was divided into five sessions that deliberated on various thematic areas:

Session one commenced with an Introduction to the Conference by the CEO of the Commission, Adv Tseliso Thipanyane, who underscored the purpose of the Conference and themes to be discussed. Justice Albie Sachs, a Judge of the Constitutional Court of South Africa delivered the keynote speech. The Chairperson of the Commission, Mr Jody Kollapen then gave opening remarks noting that crime is a fundamental violation of human rights, and that it not only poses a threat to individual security, but also constitutes a threat to the community and entire state security. In that regard, crime is a danger to South Africa's young Constitutional democracy. The presentations highlighted the perception that the Constitution, especially the Bill of Rights, seemed to favour criminals over victims. It was noted that the Bill of Rights should not be seen as a barrier to prosecution or from holding criminals accountable for their wrongdoing.

The Bill of Rights requires that the rights of the accused should still be upheld, even during prosecution. What is important is to ensure that there is a proper balance between the rights of victims and of the accused.

Session two sought to provide an **Understanding of Crime and Violence in South Africa particularly its causes and impact**. In understanding crime and its causes, the presentations highlighted that it may be important to consider factors that contribute to crime, as opposed to the root causes of crime. This is because there are a variety of factors and none takes precedence over others. Indeed, it is the combination or interaction of the various factors that contribute to crime. Some of the factors mentioned, include socio-economic factors, in particular inequalities and the psychological impact thereof; historical factors where violence was institutionalised within the state machinery; weak regulatory systems and the need for a closer look at the effectiveness of the criminal justice system. There are also community factors such as social disorganisation and other influences like substance abuse. The presentations revealed at the time of the Conference that the poorest provinces in South Africa and those with the biggest gap

between the rich and poor did not have high levels of crime. It was noted that, nonetheless statistics on crime are not always accurate and conclusive.

Some of the recommendations from this session required participants to consider drafting a Bill of Moral Ethics, reviewing the National Crime Prevention Strategy and strengthening the criminal justice system to be able to respond to the current crime challenges.

Session three centred the discussion on the **Role of the Criminal Justice System in Preventing and Combating Crime in South Africa**. From the presentations it was established that South Africa's criminal justice system is under severe strain due to high levels of crime. For example, the police services are said to be ineffective and inefficient in responding to crime; courts have huge backlogs and the Department of Correctional Services has to contend with overcrowding in prisons and a high rate of recidivism. The presentations further pointed to the inefficiency of internal policing investigation units, and recommended that police oversight should not take the place of internal police units. A new notion of democratic policing was introduced which implies that policing embraces not only police practices, but also the place of policing in relation to the government and government institutions as well as to

the general public. It was suggested that although it may be difficult to demonstrate the intricate causes and effects of crime in society, it was appreciated that there is a nexus between crime and poverty that is compounded by the immense inequality gaps between the rich and the poor. Be that as it may, there was consensus among participants that it would be difficult to tackle crime unless the gaping levels of inequality were addressed.

The Conference noted that there is a perception amongst members of the public that the Constitution is more favourable towards criminals than victims. This was particularly in light of the limited support afforded to victims of crime. For example, the Witness Protection Programme, which is supposed to support victims of crime against harassment and intimidation is only limited to the period during trial. Thereafter, victims were left on their own. This may be one of the reasons why people were not reporting crimes to the police. It also emerged that members of society had generally lost confidence in the criminal justice system.

Participants called upon the various state organs in the criminal justice system to collaborate more effectively in ensuring better multi-sectoral strategies aimed at preventing and combating crime. Community

participation was noted as being an important factor in dealing with crime. The debates drew attention to the need for the media to strive towards positive reporting on crime in order to create a paradigm shift in communities' attitudes.

Sessions four and five focused on the '**Role of Other Stakeholders Towards Integrated Approaches to Crime Prevention in South Africa**'. The presentations emphasised that even though the fundamental responsibility to provide a safe and secure environment for its citizens lies with the government, partnerships between government, business and civil society were necessary and critical in the fight against crime. In addition, the ongoing co-operation of various cabinet ministers, provincial premiers, municipal and other private structures was essential for crime prevention. It was also agreed that youth development programmes should be encouraged as part and parcel of a crime prevention strategy. However, such programmes should be developed with the full participation of young people. This means that young people should not just be beneficiaries of the programmes, but should be involved as co-agents of the programmes. The discussions also noted the importance of having co-ordinated strategies and continuous dialogue amongst various partners.

The government, law enforcement agencies, human rights organisations and practitioners were called upon to affirm that 'too many human rights' are not the problem. Knowledge of, and respect for human rights is a tool for law enforcement and an essential element in building an effective and professional approach to fighting crime. The rights of victims further came to the fore with various presenters noting that there is a need for a better balance between the rights of the accused with the rights of the victims. This may include mechanisms to protect victims from reprisals in reporting crimes and in facilitating testimony in court.

The role of various stakeholders was discussed, with the media encouraged to have better balance on how crime-related stories are portrayed. In addition, a rights-based approach to reporting should be encouraged. The role of political parties was also unpacked with participants encouraging them to jointly declare crime a national crisis. Political parties should take lead in advancing crime prevention strategies such as utilising party networks and providing leadership in implementing national agreements on crime.

Some of the strategies and recommendations made include

offender reintegration and rehabilitation using restorative human rights based approach as an effective component of a broader comprehensive crime prevention strategy. This was likely to benefit society by reducing recidivism and victimisation. It was further acknowledged that there was need for long-term generational change through school curricula and special programmes that expose the youth to essential life skills, positive social values and healthy recreational opportunities.

Part two of the Conference, was devoted to the theme **‘Towards a Crime-Free Society: Developing Integrated Recommendations for Crime Prevention in South Africa.**

The presentations laid the foundation for discussions on the development of a strategy on how the Commission could intervene on matters related to the impact of crime on human rights. This was followed by extensive group discussions that presented feasible strategies and recommendations that included, among others:

- Review of the National Crime Prevention Strategy with recommendations for possible reform of the strategy;
- Revision of policies and legislation governing the criminal justice system and related agencies to reflect an integrated and holistic approach towards prevention and combating crime. The co-ordination should ideally

be placed in the Office of the Deputy President;

- Improvement of efficiency and effectiveness within the South African Police Service (SAPS), the correctional services, the judicial system; and strengthening of the monitoring of transparency and accountability capacities of oversight institutions;
- Better use of restorative justice and greater community participation in resolving conflicts at local levels;
- Need to underscore the causes and effects of crime especially those associated with alcohol and drug abuse. Advertisements on alcohol and cigarettes should have an advisory message;
- Review of the Batho Pele White Paper and the examination of adherence to service level agreements amongst government departments, as well as the alignment of performance indicators for better coordination of crime prevention strategies;
- Revive Youth Committees for greater participation of young people in crime prevention at community level; and
- Develop communication channels in collaboration with the public broadcaster where crime prevention strategies can be exposed and debated in a public forum.

On the way forward, and in view of the Conference deliberations the Commission committed to do the following:

- Compile a report of the Conference proceedings and circulate it to all delegates via e-mail.
- Avail the executive summary of the report in all the eleven official languages and in Braille.
- Submit recommendations of the Conference to the President and to the Speaker of the National Assembly as well as other key stakeholders.
- Establish two posts namely, co-ordinator for crime and human rights, and co-ordinator for business and human rights.

- Take up the offer by the Group Chief Executive of the SABC with regard to using the media as a tool to raise awareness on the negative effects of crime on human rights.
- Establish and facilitate the first meeting of a forum to focus on issues of crime and its impact on human rights. The forum would consist of representatives from key institutions and constituencies from the public and private sector.

This report captures a summary of the presentations, discussions and recommendations that emerged during the Conference.



1.1 Background to the Conference

Over the past few years, high crime levels have been a cause for concern in South Africa. On a daily basis, newspaper headlines highlight increase in crimes such as rape, cash-in-transits, hijackings and murder at rates touted to be among the highest in the world – From April 2006 to March 2007, the murder rates in South Africa increased by 2.4% to 19 202 murders for that reporting year.¹ This has come to be perceived not merely as a high priority problem requiring technical resources, but as a threat to personal security and a potential source of state instability. This was also acknowledged by President Thabo Mbeki in his State of the Nation Address where he expressed concern over crime and lawlessness in the country when he remarked that:

*“... Certainly, we cannot erase that which is ugly and repulsive and claim the happiness that comes with freedom if communities live in fear, closeted behind walls and barbed wire, ever anxious in their houses, on the streets and on our roads, unable freely to enjoy our public spaces ...”*².

Crime permeates the smallest detail of life – from individual personal security, business, diplomatic relations, legislation, governance to the justice system. Apart from the tangible damage crime causes, it also has long-term effects on the moral fibre of the nation, impacting even more negatively on the many direct and indirect victims. Crime has also put the South African criminal justice system under severe strain. For example, community-policing forums set up in 1994, where police and community representatives sit together to sort out problems, have had limited success in improving the accountability of police officers to the communities in which they work; police brutality and corruption remain depressingly common; police have severe resource constraints.³

¹ At the time of publication the South African Police Service released these crime statistics

² State of the Nation Address of the President of South Africa, Thabo Mbeki: Joint Sitting of Parliament, 9 February 2007 www.info.gov.za/speeches/2007/070209/11001001.htm accessed on 20 April 2007 at 16h15

³ Newham, Gareth, “Sector Policing: A New Approach to Community Policing”, April 2003, Centre for the Study of Violence and Reconciliation

Similarly, the court system, and delays in the criminal justice processes have led to a vast backlog of cases awaiting trial, despite efforts by the National Directorate of Public Prosecutions (NDPP) to clear them.⁴ There are disturbing numbers of cases in which dockets (case files) go ‘missing’, apparently as a result of corruption among police or court officials. In response to these deficiencies, vigilante violence has increasingly become a problem to society.

From a human rights perspective, crime, especially violent crime leads to gross human rights violations such as loss of life, limbs, property and dignity. Gross human rights violations may also lead to further violence and crime. Deprivation of socio-economic needs may lead to crimes such as theft and house-breaking. In addition, sexual crimes against women represent, in the words of the Constitutional Court, “the most formidable challenge to the self-determination of women, while child rape and abuse deny the children the special protection afforded to them by the Constitution”.⁵

Furthermore, non-violent crimes such as corruption in state and non-state sectors undermine social and economic development. Crime is also intrinsically linked to poverty, unemployment, general socio-economic inequalities and gender inequality.

Due to its cross-cutting nature, the impact of crime is felt across all socio-economic strata, jeopardising the enjoyment of the universal benefits of the Bill of Rights. This is even more concerning as South Africa celebrates ten years of the implementation of the Bill of Rights.

It is against this background that the South African Human Rights Commission convened a two-day Conference on “Crime and Its Impact on Human Rights: Ten Years of the Bill of Rights”. The Conference brought together about 200 participants from across South Africa, including, members of the judiciary; government departments such as Correctional Services, Safety and Security, and Social Development; religious bodies; non-governmental organisations (NGOs); academics; Chapter Nine institutions; statutory bodies; trade unions; members of the media; and members of the business sector. Also, in attendance were officials of the Southern Sudan Human Rights Commission, who were on a study tour of the South African Human Rights Commission.

⁴ *Ibid*

⁵ *Supra* 1 above

The two-day Conference was preceded by nationwide Community Dialogues on “Crime and Human Rights” facilitated by the Commission’s Provincial Offices as part of 2007’s Human Rights Week campaign. As part of the build-up to the Conference, the Commission convened, at the end of 2006, a Roundtable Discussion on Crime, which recommended the hosting of a national consultative Conference on crime and human rights to take the debates to a bigger forum.

The Roundtable Discussion and the Provincial Dialogues directly informed the Conference in terms of its format and discussions. In hosting the Roundtable Discussion, nation-wide Provincial Community Dialogues and the Conference, the Commission recognises the pernicious effects of crime as one of the major contributors to the continuous violations of human rights and therefore a threat to South Africa’s young Constitutional democracy.

1.2 Conference objectives

The objectives of the Conference were:

- i. To determine the root causes of crime in South Africa;
- ii. To consider the impact of crime on human rights, especially on the enjoyment of socio-economic rights;

- iii. To assess how various stakeholders in South Africa have contributed towards preventing and combating crime; and
- iv. To develop sustainable human rights-based recommendations in the prevention and management of crime.

The above objectives represent one of the Commission’s underlying strategic objectives to understand the root causes of crime and its impact on the realisation of human rights so that it is able to develop sustainable, effective and efficient intervention strategies. The objectives were also designed with the acknowledgement that crime is currently one of the most serious challenges in the country and the Conference therefore, needed to be targeted and focused so that it yielded the results that would have a more long-term impact. In that regard, the Conference had to focus on those key aspects that would strengthen the Commission’s interventions.

The Commission also recognised that since the Conference was hosted over two days only, not every aspect of crime could be discussed. Therefore, the objectives needed to address only key issues that would have a spiralling effect into other areas that may not have been part of the discussions.

1.3 Summary of the keynote address and opening remarks⁶

The keynote address suggested a holistic and multi-pronged approach to dealing with crime in South Africa. It highlighted that the way to deal with crime is not to adopt the ideology and methods used by criminals, but to reinforce the values and principles of the Constitution. Justice Sachs stressed that the Constitution is there for everyone and highlighted the importance to find appropriate balance between the rights of victims and of those of the accused.

Justice Sachs emphasised the importance of the Constitution and of developing constitutional jurisprudence. In this regard he referred to a number of Constitutional Court judgments such as the Certification Case⁷ where the Constitutional Court turned down the certification of the first draft of the Constitution, because the first draft did not reflect the values that underlie the constitutional principles. This signified an important step in building constitutional jurisprudence and in enhancing respect for the Constitution. He also referred to the landmark case of *Grootboom*,⁸ which created a possibility of challenging action by the state and other non-state entities that hinder the realisation of socio-economic rights in South Africa. He highlighted that the court, in rejecting the concept of

minimum core obligations, had limited the circumstances in which people can directly claim socio-economic services from the state.

Justice Sachs further commented on whether or not South Africa needs stronger law enforcement mechanisms, dealing with poverty, cultural and moral principles, freedom security, economic development, etc. He averred that these were not alternative competing principles, but that they can co-exist side by side. He urged for the need to move towards a stage where these elements can be connected and operate alongside each other.

In his opening remarks, the Chairperson of the Commission, Jody Kollapen, observed that the keynote address had provided a good framework from which to begin the deliberations of the Conference. Jody Kollapen noted that South Africa is still a divided country as evidenced by the fact that half its population lives in fear of crime and what it can make them loose in the future. He emphasised the importance of personal responsibility in fighting crime.

⁶ The keynote address was given by Justice Albie Sachs, Judge of the Constitutional Court and the opening remarks were made by Jody Kollapen, Chairperson, South African Human Rights Commission.

⁷ Certification of the Constitution of the Republic of South Africa, 1996 (CCT 23/96); 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC)

⁸ *Government of RSA and Others v Grootboom and others* (CCT11/00); 2001 (1) SA 46, *Grootboom and Others v Government of the Republic of South Africa and Others* (CCT38/00); 2000 (11) BCLR 1169; 2001 (1) SA 46

CHAPTER TWO

Understanding crime in SA: Causes and impact

This session diagnosed and analysed the underlying factors that contribute to crime and violence in South Africa. In order to give a holistic and accurate account, the presentations by the Institute for Security Studies and the Centre for the Study of Violence and Reconciliation considered structural or systemic, as well as proximate or indicator factors that lead to crime. The presentation by the National Religious Leaders Forum provided a perspective of Religious Bodies on the fight against crime.

2.1 Understanding the Root Causes of Crime and Violence in South Africa: Links between poverty and crime¹

Studies on the links between poverty, income inequity and crime are not conclusive. Therefore, an understanding of the sources of crime should rather focus on the *factors* that contribute to crime, rather than the actual *causes* of

crime. According to research and statistics available to the Institute for Security Studies, it is suggested that poorest nations do not necessarily have the highest crime levels.

In the South African context, this would imply that poor provinces and those with a wider gap between rich and poor do not experience high rates of crime. For instance, although the Western Cape Province has low unemployment rate, it has high crime rates, whereas, other provinces such as the Eastern Cape and Limpopo with high unemployment rates, have lower crime rates in the country.² Therefore, crime and violence are about much more than just poverty, and unemployment alone does not necessarily cause crime. People commit crime for a wide range of reasons as it is indicated in the table below.

Range of possible motivations for committing crime

- Acquisitive (redistributive) crime by the poor, such as stealing to feed a family
- Acquisitive (alternative employment) crime by the poor (making an income from crime)
- Acquisitive (greed motivated) organised crime
- Acquisitive (greed motivated) individual crime, such as fraud
- Instrumental & expressive violence in acquisitive crime, such as robbery
- Instrumental violence in power-related crime (including political violence, witchcraft killings, etc.)
- Expressive domestic and gender-based violence
- Expressive public violence (including hate crime)
- 'Rites of passage' risk taking crime & violence, especially among youth
- Cyclical ('vindicative') community violence
- Socio-pathological violence, such as baby rapes
- Crime related to the mental illness of the offender
- Social order crime

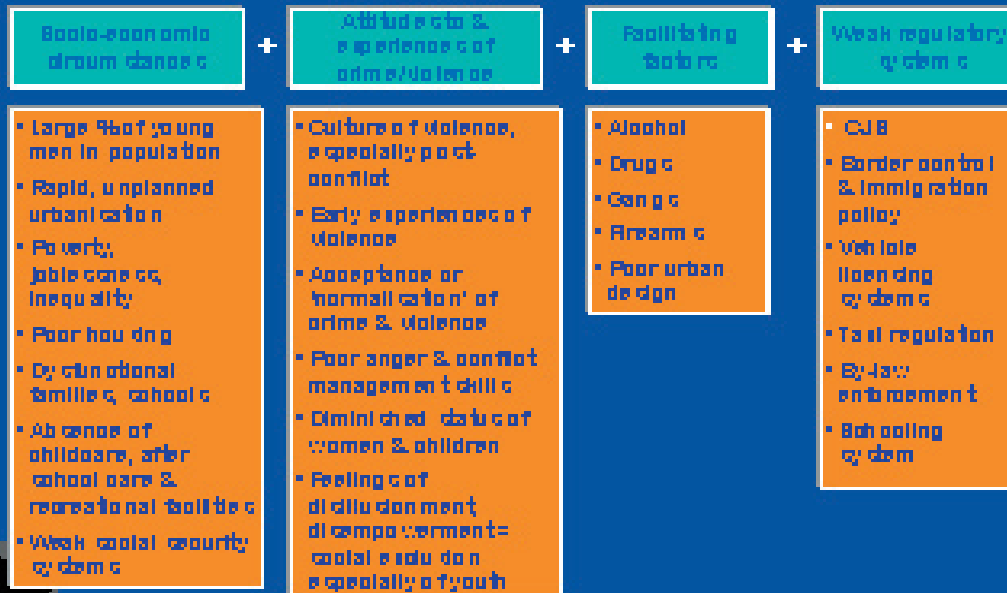


¹ Paper presented by Antoinette Louw, Institute for Security Studies

² Refer to 2005/2006 South African Police Service statistics

The table below provides a more holistic analysis of the factors that contribute to crime and violence in South Africa:

Factors contributing to crime & violence



2.2 Causes of Violence in South Africa³

While causes of violent and non-violent crimes generally overlap, it is important to note that they are partly indistinguishable. Nonetheless, for purposes of analysis, it is important to make a distinction. For example, there are property crimes such as fraud and corruption, which have devastating effects at an economical level, however these do not necessarily involve destructive physical violence. Crimes that involve violence include among others robbery, car highjacking, cash-in-transit, bank robberies, spousal abuse/domestic violence, sexual assault such as rape and sodomy.

Other forms of violent crimes include, conflict between groups over territory, gang warfare, taxi violence and political violence; violence against state and economic institutions including protest violence and terrorism; violence to resist law enforcement interventions; excessive force by public and private policing agencies and vigilantism; violent child abuse; culpable homicide which can be regarded as negligent fatal violence (often involving motor vehicles); murder and suicides (e.g., family killings).

There are also other forms of violent crimes including serial killing, ritual murders and other premeditated murders not covered by the above categories, and violence related to kidnappings.

In South Africa, various factors lead to crime, especially violent crimes. Firstly, there are risk factors that are indicated by the interaction of the following aspects:

- Community factors: social disorganisation; low household income; sparse social networks, family disruption. Link between exposure to violence and development of antisocial tendencies;
- Family influences: coercive and hostile parenting styles; poor supervision can lead to bad behaviour and turning to deviant peer groups. Substance abuse; early parenthood, broken homes; neglect; breakdown of traditional values. Relationship between offending by parents and siblings. Emotional and physical abuse;
- Individual factors: anti-social behaviour; hyperactivity; and anti-social behaviour.

Secondly, there are historical factors and the following are some of the considerations that need to be taken into account:

³ Paper presented by Amanda Dissel, Centre for the Study of Violence and Reconciliation

- High levels of violence were already manifested in townships in the 1950s prior to the escalation of political violence in 1970s and 1980s. This may be linked to 'tsotsi' element (i.e., township gangsterism);
- Official violence also has a long history – it was not only on the part of political authorities but it formed, for example a key form of control within the mines;
- Apartheid did not only establish racial inequality but also had destructive psychological impact in undermining self-worth. It also undermined traditional family structures and values;
- During 1970s to 1990s there were extreme levels of political violence including widespread use of torture;
- Role of youth in anti-apartheid violence and lack of integration in society on democratisation;
- Destructive impact of migrant labour, which impacted on family and other social institutions.

Thirdly, there are contemporary factors, which includes among others:

- Economic growth path which, impacts on strengthening inequality and consumerism;
- Psychological impact of inequality which reinforces impact of racism ;
- Wide range of factors contributing to social and economic insecurity;
- Alcohol and drugs;

- Guns; and
- Masculinity – gender norms, identity and behaviours

These factors contribute towards the increase in violent crimes in the country.

2.4 Discussions

The discussions that ensued highlighted a need for a coherent approach to be adopted in understanding both violent and non-violent crimes in South Africa. It was also suggested that a more centralised and co-ordinated approach in tackling crime should be implemented. There was also a call for the criminal justice system to be more effective in handling backlogs of cases. The regulatory systems also need to be strengthened. In addition, the criminal justice system needs to address the rehabilitation of youth or provide alternative sentencing other than prisons, where possible. Furthermore, schools may also need to be involved in tackling crime to provide for a safer environment for learners. Partnerships between schools and the South African Police Services may assist in addressing problems related to drugs, gangsterism, firearms in schools and such others.

A consensus emerged during the debate to revise the 1996 National Crime-Prevention Strategy document.

CHAPTER THREE

Criminal Justice system

THE ROLE OF THE CRIMINAL JUSTICE SYSTEM IN PREVENTING AND COMBATING CRIME IN SA

This session discussed the role of the criminal justice system in preventing, managing and eradicating crime in South Africa. Various stakeholders, particularly government and other state institutions whose mandates relate to issues of the criminal justice system made presentations. These include the following: 'Crime and its Impact on Human Rights' from the Eastern Cape Office of the Premier; 'Safety Views' from the Department of Safety and Security; 'Corrections Reflections' from the Department of Correctional Services; 'Enforcement Experiences' from the South African Police Services; 'Prosecutions Challenges' facing the National Prosecuting Authority; 'Oversight Perspectives' from the Independent Complaint Directorate; and 'Security views' from the Private Industry Security Regulator.

Prof Lovell Fernandez of the Faculty of Law at the University of the Western Cape provided a perspective on the country's criminal justice system from an independent, non-governmental view as a respondent.

3.1 Views on Crime and its Impact on Human Rights - Office of the Premier, Eastern Cape

A school nutrition project in the Eastern Cape was used as a case study to illustrate the relationship between human rights and crime, in particular corruption. The project targeted public primary schools in poorest communities and provided school children with food (soup, bread and fruit of the season). The rationale behind the project was that it is impossible for children to learn on empty stomachs. Therefore, the provincial government made available resources to make it possible for children to access their right to food, which in turn enabled them to access their right to basic education.

Through this project, school attendance and performance improved as learners were provided with basic food and learners were able to progress from one grade to another. However, the school nutrition project had to be discontinued due to corruption including, among others, misappropriation of funds and fraudulent payment of claims. The quality of food provided was also questionable as providers sought to enrich themselves rather than pro-

vide the best quality food to learners. The provincial government had to intervene as the rights of learners to nutritious food and to basic education was compromised. This also meant that the benefits of the supplementary feeding scheme and the limited resources allocated to the project were lost. The logical conclusion to this is that crime, in this instance, misappropriation of funds, deprived children of their right to nutritious food and to basic education.

3.2 Magisterial Experiences from a Magistrate's Court¹

A case study of the Magistrates Court in Soweto provided an illustration of how crime impacts on the rights of both accused and victims. According to section 35 of the Constitution, accused persons should be provided with legal representation. However, this constitutional right cannot be fully exercised due to the high demand on legal representation because of the high number of accused who require such services. This has further placed tremendous pressure on legal aid where shortage of legal representation to meet the demands of the high case loads further lead to continuous postponements. The effects of such postponements are that they directly impact on the ac-

cused's right to a fair and a speedy trial. In addition, the delays deny the accused to be informed of the charges, as the charge sheets are usually completed only at the time when the accused is ready to plead. The effect of these delays further attribute to the high numbers of awaiting trial prisoners in detention, thereby increasing overcrowding in prisons. This further impact on the constitutional requirement that accused persons are entitled to conditions of detention that are consistent with human dignity.

On the other hand, victims of crime who look towards the courts for justice may suffer further injustices and pain. For example, victims suffer the psychological impact of exposure to crime and violence, which leads to human rights violations such as insecurity, loss of dignity and self worth. Child victims suffer even greater injustices in that the principle of the "best interest of the child" provided for in section 22 of the Constitution, is often violated, especially in child rape cases. Children who have been raped are often further violated because of social condition, such as lack of information or funds to go for test, or where parents do not want their children tested for fear of discrimination if they were to be found to be HIV positive. Children also face pressure from perpetrators to withdraw charges, which increases the psychological impact of the crimes committed against them.

¹ Honourable Magistrate Dario Dosio, Soweto Regional District Magistrate Court

3.3 'Safety' Views from the Secretariat for Safety and Security²

The Secretariat for Safety and Security is tasked with the responsibility of combating crime in South Africa. Its operational arm, the South African Police Services (SAPS) is guided by the provisions and spirit of section 198 of the Constitution, which states that; "national security must reflect the resolve of South Africans . . . to live in peace and harmony, to be free from fear and want...". Furthermore, SAPS has a Constitutional directive to "prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold the law".³ In implementing its mandate, SAPS is required to collaborate with various spheres of government.⁴

With regard to its mandate, the SAPS developed a National Crime Prevention Strategy that contributed to the transformation of policing strategies in South Africa. For instance, the concept of community policing was acknowledged as part of official policy. To that effect, the South African Polices Service Act⁵ established Community Police Forums as well as Metropolitan and Municipal Police Services.

The emphasis is on community participation in addressing the needs of communities. This is in recognition of the fact that the capacity to address and solve crimes does not

depend on police alone, but rather on the relationship between the police and the communities they serve. Therefore, the effectiveness of police crime prevention strategies will always be limited unless crime prevention is seen as a joint responsibility of communities at all levels and of the government at all spheres.

The government established a cluster comprising of various departments to develop a more coherent, integrated and co-ordinated strategy for fighting crime. The cluster, known as the Justice, Crime Prevention and Security Cluster (JCPC) is made up of the Departments of Justice and Constitutional Development; Home Affairs; Correctional Services; Defence as well as the Secretariat for Safety and Security. The JCPC formulated a new approach to safety, security and defence by incorporating a two-pronged crime-fighting strategy, which involves law-enforcement agencies and the principle of community involvement. Furthermore, the government through the Secretariat for Safety and Security promulgated the Fire Arms Controls Act,⁶ which dealt with the proliferation of firearms in the

² Paper presented by Amichand Soman, Director-Legal Services, Secretariat for Safety and Security

³ The Constitution of the Republic of South Africa, 1996, section 205 (3)

⁴ The Constitution of the Republic of South Africa, 1996, section 41

⁵ The South African Police Service Act 68 of 1995

⁶ Fire Arms Controls Act

country. The objective of the Act is to reduce the propensity to commit crime, particularly violent crimes such as murder.

3.4 'Enforcement' Experiences from the South African Police Services⁷

The South African Police Services (SAPS) deals with two types of crimes, firstly contact crimes such as murder (and attempted murder); robbery; common assaults, rape (and attempted rape). The second type of crimes that SAPS deals with is property crimes, which include among others, theft of motor vehicles, stock theft, burglary in both residential and business areas. In terms of prioritisation, the National Crime Prevention Strategy focuses on contact crimes due to the following reasons: firstly the Constitutional obligation to protect life and property; secondly, the impact of crime on public morale and socio-economic factors such as financial growth and job creation; and thirdly the negative sensational reporting of crime.

⁷ Paper presented by Mr Jerry Thibedi, MEC for Transport, Road and Community Safety, North West Provincial Government

⁸ Some of the Units, such as the Crime Combating Unit have been disbanded. However, these were still in existence at the time of the conference

SAPS has developed a variety of strategies to prevent and combat crime, which include the establishment of units focusing on specific types of crimes⁸. The Crime Combating Unit performs medium to high-risk crime combating operations such as the apprehension of dangerous criminals on an intelligence basis. It also combats public violence through the application of crowd management techniques. The Unit also deals with taxi violence and deployed members to crime flashpoints areas.

The Organised Crime Unit, on the other hand, carries out under-cover operations and identifies prominent persons involved in crime and crime intelligence operations. It is responsible for among others, the investigation of crime, detention and apprehension of criminals and the identification of wanted suspects. The Crime Prevention Unit enforces, liquor and firearm related legislation and deals with maximum utilisation of reservists, optimisation of community police forums as well as effective implementation of rural and sector policing.

In addition to the above units, SAPS has initiated several operations to trace wanted suspects. These include among others, Operation Greed related to robberies of financial institutions; Operation Road Runner focusing on truck and freight hijacking and Operation High Density, which deals with robberies and deploys members to flash-point areas.

Like all other institutions involved in the criminal justice system, SAPS has its fair share of challenges. These include, among others, withdrawal of charges either because of agreement between victim and perpetrator or where victims are paid to, or intimidated into dropping charges; undocumented persons such as farm workers where no fingerprints are available; and non-compliance with the Liquor Act where children are allowed to go into shebeens and pubs. With regard to property crimes, some of the challenges include, among others failure of owners to mark their property; negligence of property by owners (e.g., leaving a house to go on long holiday without informing the neighbours); insurance fraud where false claims are made, buying of stolen goods and non-reporting of cases. One of the most prominent challenges that SAPS is facing is the high level of police suicides, which are also on the increase.

3.5 'Oversight' Perspectives from the Independent Complaints Directorate⁹

The Independent Complaint Directorate (ICD) was established in accordance with section 206 (6) of the Constitution. Its directive is "to investigate any complaint or misconduct by a police member, as well as deaths in police custody or as a result of police action."¹⁰ The ICD may also investigate any matter referred to it by the Minister for

Safety and Security or a Provincial Member of the Executive Council responsible for community safety. Over the past three years, the mandate of the ICD has expanded to include monitoring the implementation of the Domestic Violence Act 116 of 1998, and oversight of the Municipal Police Service. The Khampepe Commission also recommended that the ICD should also have oversight role over of the Scorpions.

Over the years, the ICD has experienced challenges in meeting the demands of its mandate as well as clearing the backlog of complaints. Some of the challenges that the ICD is faced with are:

- Limited material resources and staffing levels. (Currently the ICD has a staff capacity of 248, 75 of which are investigators) as opposed to an approved structure of 535 posts at establishment in 1997).
- Little feedback between the investigative arms of policing oversight and the authorities responsible for prosecuting cases of Police abuse. This leads to inadequate evaluation of the impact of the work of many of these bodies and little opportunity to build confidence in communities.

⁹ Paper presented by Mr Thomas Tshabalala, Chief Director, ICD

¹⁰ South Africa Police Services Act No 65 of 1995, section 10

- Quality of investigations – faced with a huge intake of complaints, which increase on an annual basis, there is pressure to conduct as many investigations as possible. This may lead to temptation to place more emphasis on quantity than quality.
- Police resistance against investigation – this is a universal challenge that many external oversight bodies like the ICD contend with most of the time. For example, there is more resistance at top management level at police head quarters, where policy-decision making takes place. However, there is better co-operation at the operational level, i.e., provinces and stations.
- Recommendations - there is limited report back from Police agencies on compliance of recommendations.¹¹ This begs the question of whether Police management takes seriously the recommendations of the ICD.
- Capacity - the ICD has an investigative capacity of 75 field investigators that have to deal with possible complaints from a strong contingent of over 160 000 police members”.

¹¹ Strengthening Police Oversight in South Africa 2002/2004 Project Report, Open Society Foundation for South Africa and Open Society Justice Initiative, October 2005

With regard to measuring the effectiveness of policing, the ICD has embraced the principle of democratic policing which measures policing against desirable features of police in a democratic society¹². Democratic policing not only looks at police practices, but also the place of policing in relation to the government and government institutions as well as to the general public. The notion of democratic policing and how it is measured is set to revolutionise the way in which police and police reform are viewed.

3.6 ‘Prosecutions’ Challenges Facing the National Prosecuting Authority¹³

The National Prosecuting Authority (NPA) ensures justice for the victims of crime by prosecuting without fear, favour and prejudice, and by working with partners to solve and prevent crime. Over the years, the NPA has developed innovative responses to crime, such as the establishment of various units like the Directorate

¹² In further defining the concept and practice of democratic policing, reference was made to a handbook developed by the Centre for the Study of Violence and Reconciliation in co-operation with the Justice Initiative titled “The Police that we want: a Handbook for Oversight of Police in South Africa”. The handbook prioritises five areas of concern in relation to democratic policing, namely, protecting democratic life; governance, accountability and transparency; service delivery for safety, justice and security; proper Police conduct and Police and citizens

¹³ Paper presented by Advocate Sheriza Ramouthar, Deputy Director of Prosecutions, National Prosecuting Authority

of Special Operations (DSO) also known as Scorpions; Sexual Offences and Community Affairs (SOCA) Unit; Specialised Commercial Unit, etc.

Even though the NPA has successfully discharged its mandate, it has nonetheless experienced some challenges. These include among others, the Witness Protection Programme which currently does not protect victims after trial. In addition NPA does not have mechanisms to deal with secondary victims of crime, such as children who lose parental support as a result of crime. Like all statutory institutions responsible for promoting the Constitution, the NPA is also challenged by perceptions that the Constitution favours criminals more than victims. This may contribute to loss of confidence in the work of the NPA and in the entire criminal justice system.

3.7 'Security' Views from the Private Industry Security Regulator¹⁴

The Private Security Industry Regulator is a statutory, self-funding organ of the State. It is an independent body responsible for the regulation of the private security industry. Its primary statutory regulatory functions include the registration of applicant security service providers and maintenance of a computerised database consisting of all registered security officers and security

businesses. The Private Security Regulator also oversees the quality assurance of training standards within the security industry and monitors security service providers to ensure that they comply with statutory obligations.

The legal basis for the private security industry is encapsulated in the Constitution, particularly the Bill of Rights. The rights in the Bill of Rights will be meaningless without protection mechanisms such as the State agencies like SAPS and legitimate self-protection such as the private security industry. The private security service providers are instrument for lawful individual and corporate self-protection. Its strategic importance in the fight against crime cannot, therefore be underestimated. It is also one of the fastest growing industries from a human resources point of view with an estimated turn-over of R30 billion per annum. It therefore, also contributes to the economic growth in South Africa.

The role of the Private Security Industry is to provide increased protection for the rights to property and to persons and seeks to prevent crime in a pro-active manner i.e., prevention rather than apprehension and prosecution.

¹⁴ Paper presented by Mr Stefan Badenhorst, National Manager, private Security Industry Regulator

It works in co-operation with other stakeholders such as SAPS. The Private Security Industry Regulator, on the other hand, is intended to ensure a legitimate, trustworthy and competent security industry, which is optimally capable on contributing to the achievement and maintenance of sufficient levels of security in the country. It also promotes a security industry that is characterised by professionalism, transparency, accountability, equity and accessibility. In addition, it is a valuable partner to the public and the police in dealing with crime in society.

3.8 'Corrections' Reflections from the Department of Correctional Services¹⁵

The Department of Correctional Services (DCS) contributes to the maintenance and protection of a just, peaceful and safe society by, among others, detaining all offenders in safe custody whilst ensuring their human dignity and promoting social responsibility and human development. The Department's core values, which are based on a human rights framework, include among other, human dignity, justice, equity, accountability, development, etcetera.

¹⁵ Paper presented by Sinah Moruane, Director-Social Services, Department of Correctional Services

The Department of Correctional Service's role in the criminal justice system in preventing and combating crime is guided by its new strategic document reflected in the 2005 White Paper on Corrections. The strategy has two fundamental pillars. The first pillar is achieved by putting rehabilitation at the centre of all activities and programmes, thereby moving from punitive to more humane oriented approaches to corrections. There are three approaches to rehabilitation. The first is breaking the cycle of violence by inculcating moral values, promoting social responsibility and whole life reconstruction. The second involves security risk management, which entails the general protection of offenders, officials and the public as well as to create a balance between security and rehabilitation so that security is not compromised. The third is enhancing productive capacity and employability by building market related skills so that offenders are self sufficient and able to compete in an open market upon their release.

The second pillar of the DCS strategy promotes corrections as a social responsibility which requires the involvement of various stakeholders in the corrections process. For example, the family is seen as the first seat of corrections where basic social values are to be inculcated. The community serves as the second seat of corrections

where causes of crime should be addressed before the involvement of the criminal justice system. Accordingly, the corrections system becomes the last option when all others have failed. Internally, DCS has supportive programmes such as assisting people on parole and those serving community services sentences. In addition, DCS has built support for re-entry and restoration of released offenders into society.

DCS is guided by the Constitution and other regional and international standards and treaties. At the regional level, the Southern African Development Community (SADC) has developed some principles for the treatment of institutionalised offenders and those serving on community corrections. These include, among others that the corrections system should be seen as distinct from a punitive prison system and that it should ensure suitable reintegration and/or after care services when the offender returns to the community of origin. At an internal level, the Department is guided by, among others, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The correctional services system in South Africa provides opportunities for offenders to change behaviours for their own development and growth; rehabilitates those that are offended and acknowledges the need for partnerships to ensure easy re-entry back into communities; and creates a conducive environment for acquisition of acceptable values and operates according to human rights principles to prevent crime.

3.9 Responses by Professor Lovell Fernandez¹⁶

The responses to the presentations highlighted a number of key issues, including among the following:

- The Constitution provides for a certain degree of predictability, for example where it requires that a victim of crime has a right to ensure that the offender is punished. In that respect, the Constitutional right of criminals to human dignity, among others, does not mean that criminals are not prosecutable.
- Socio-economic factors play a huge role in criminality and this fact is often underplayed.
- Although it may be difficult to show cause and effect, it is possible to show that crime is a function

¹⁶ Head of Department, Faculty of Law, University of the Western Cape

of poverty. Crime is a function of inequality where the gap between poor and rich is huge. This may imply that with the widening differences in wealth, crime might increase and unless these inequalities are tackled, it may be difficult to combat crime.

- Community participation is an important crime prevention strategy. For example, the Department of Correctional Services requires the community to play a part in rehabilitation, while SAPS relies on the community to report crimes.
- While the public has played its part by reporting crimes, the criminal justice system has not always responded in a predictable or expected manner, for example, by arresting, prosecuting, trying and sentencing offenders. Crimes are reported, but there is no assurance that much will be done by the agencies of the criminal justice system. This has increased mistrust and loss of confidence in the criminal justice system. In addition, there is little or no feedback about the status of cases and perhaps that is why there is an increase in the number of victims' organisations because victims feel left out of the criminal justice processes. This further promotes perceptions that criminals are treated better than victims of crime.

- Communication between various role-players, especially police and communities is vital for increasing confidence and trust in the criminal justice. For example, when crimes are reported, victims should not have to wait for three hours to receive case numbers as this does not provide immediate guarantee that something will be done.

3.10 Discussions

The following issues were raised during the discussions:

- The need to strengthen the criminal justice system in responding to crime in South Africa.
- The importance for various state organs in the criminal justice system to collaborate to ensure multi-sectoral strategies for crime prevention.
- Encouragement of community participation, especially partnerships with SAPS and other law enforcement agencies for integrated crime prevention.
- Proactive responses to dealing with crime, especially domestic violence and the development of systems where individuals are informed of the status of their reported cases.

- The necessity for the Police to continuously strive towards protecting people's rights.
- The need for the media to ensure positive reporting of crime in order to create the desired paradigm shift in communities.
- Educating the public about their responsibilities towards crime.
- The need to deal with the challenges in the criminal justice system such as the witness protection programme, which is available only during the duration of the trial.

Many trials are often withdrawn because witnesses are not willing to face reprisal when they go back into their communities.

CHAPTER FOUR

Other Approaches

INTEGRATED APPROACHES TO CRIME PREVENTION IN SOUTH AFRICA

This session explored and analysed some of the strategies and programmes implemented by various stakeholders to prevent and combat crime in South Africa. This was done with a view of informing the recommendations to be developed by the Conference on how to deal with crime in the country. Presentations were made by various sectors such as religious bodies, the media, business and statutory bodies.

4.1 Business Against Crime

Presentations from the business sector were given by Business Against Crime and AGRISA.

4.1.1 Business Against Crime

Business Against Crime was established in 1996 to support government in the fight against crime, and to serve as a primary mechanism through which business crime prevention efforts are co-ordinated. It supports

government by, among others, developing public/private partnerships; supporting mutually agreed vision; influencing strategy policy and priorities; transferring business skills to government without creating dependency; driving working solutions that deliver results; and showing that business is committed to the fight against crime.

In order to give effect to the partnership, a joint Leadership Forum by government and business was established. The Forum is comprised of senior business executives and ministers of the departments in the Justice, Crime Prevention and Security Cluster, such as, Departments of Justice and Constitutional Development, Safety and Security and Correctional Services. The Forum operates largely as a strategising structure and seeks to give clearer and greater definition of the implementation and performance to achieve the “Step Change Strategy” in the fight against crime.

Four working groups were created to give effect to the “Step Change strategy”. These include the following: “Violent Organised Crime” whose objective is to reduce the levels of violent organised crimes; “Review of the Criminal Justice System” to provide a foundation for the transformation of the criminal justice system into

an efficient, effective and appropriate system whose performance is capable of being measured, monitored and improved; “Baseline Effectiveness” to improve the baseline performance of the criminal justice system by identifying current operational shortcomings and then recommending and implementing improvements; and “Mobilising the Public, Communication and Innovations” whose objective is to identify opportunities for improvements in the fight against crime by harnessing and converting innovation and energy from both business and government into short and medium term impact, and to help enhance government’s communication on crime.

Whilst the fundamental responsibility to provide a safe and secure environment for its citizens lies with the government, partnerships between government, business and civil society are necessary and critical in the fight against crime. As an example of this participation, Business Against Crime has mobilised significantly against crime and has developed both business specific crime prevention initiatives as well as sectoral-specific initiatives aimed at harnessing the power of the collective and reducing duplication of effort. There are also cross-sectoral initiatives aimed at crime prevention and supporting the Criminal Justice system.

4.1.2 AGRISA ¹

AGRISA represents the agricultural and economical interests of farmers in South Africa. The organisation and its members are committed to a successful South Africa and subscribe to the Constitution and Bill of Rights. AGRISA encourages and equips its members to respect human rights and has on various occasions condemned human rights violation in rural areas, irrespective of whether the perpetrators were farmers or farm workers.

To contribute towards the prevention of crime, AGRISA has established the Agri-Securitas Trust Fund to supplement the financial resources allocated to farming community projects intended to prevent crime. Some of the projects already funded by the Trust Fund, include among others the funding of trauma counselling workshops for victims of farm attacks; an information gathering initiative in collaboration with SAPS in the Free State and the provision of radios and relay systems to improve communication capacity in emergency situations.

The following are recommendations suggested by AGRISA for effective crime prevention and management:

- Government and legislation: need for effective firearm control, influx control, control of crime syndicates; combating corruption, drug control and an ongoing

condemnation of crime at all levels of government.

- Criminal Justice System: better collaboration between SAPS, Departments of Justice and Constitutional Development, Correctional Services, Home Affairs, Social Development, Intelligence and the private security industry.
- Socio-economic aspects: need to reduce poverty and unemployment, the provision of basic services, economic growth and the creation of an investment-friendly environment.
- Values and Norms: promotion of human rights and democratic principles; education and training; condemnation of crime rejection of the culture of violence,
- Establishment of a Ministerial or Deputy Presidential post to fight crime. This would enhance better cooperation amongst various cabinet Ministers, Premiers, Municipalities and other private structures and ensure that the entire justice system operates as one arm rather than as different silos as this hampers effective productivity.

¹ The presentation was given by Mr Kiewit Ferreira, Chairperson of the Law and Order Committee, AgriSA

4.2 Religious Bodies and the Fight Against Crime²

Presentations from the religious bodies were given by the South African Council of Churches (SACC) and National Religious Leaders' Forum.

4.2.1 South African Council of Churches (SACC)

The SACC has declared 2001 – 2010 a Decade to Overcome Crime and Violence in South Africa. The vision of the programme is intended to contribute towards the creation of economic, political, social, cultural, educational and religious partnerships to build a sustainable culture of justice and peace. The project will also empower young people to develop and/or improve projects that are related to promoting peace and will avail necessary resources and information to assist them in this regard. The objectives of the projects include, the promotion of greater understanding of peace and the development of mechanisms for crime prevention; the building of alliances with existing structures like Community Policing Forums, social movements, and the government; the promotion of dialogue, tolerance and the development of non-violent alternatives to prevent conflicts, to fight drug trafficking,

spread of illicit fire arms and alcohol abuse as well as the reduction of Police killings.

Since 2001, the SACC has passed several resolutions to fight crime. The following are some of the strategies developed by the SACC to fight crime in South Africa:

- The SACC together with its faith-based members and partners developed a peace campaign whose objectives are to promote greater understanding of peace and the development of mechanisms for crime prevention where the rights of individuals will be protected and respected. The strategy includes networking, communications, campaigns and peace building initiatives. With regard to communications, the SACC has established Peace Desks that coordinate operations and link up with other participating organisations such as the SAPS. The Peace Desks create channels for resources and information sharing amongst stakeholders, thus enabling the building of networks. The SACC has also enlisted the assistance of organisations such as the Centre for the Study of Violence and Reconciliation (CSVR) to provide research and research strategies. A Peace Newsletter would be produced to document progress and other matters related to the peace campaigns.

² Paper presented by Reverend Gift Moerane, South African Council of Churches

- In addition, the SACC participates in marches and such like activities to demonstrate against crime and violence.
- SACC has recruited Community Peace Marshals who would be trained with skills to manage and resolve conflicts as well as mediate disputes that threaten to become violent. Young people, specifically have been targeted as a way of removing their focus away from engaging in criminal activities.
- Furthermore, the SACC established Community Dialogues for Sustainable Peace where youth leaders from various faith-based organisations engage in peace matters and reflect on the moral imperatives of our time.
- Finally, SACC launched the Beyers Naudé Peace Award to recognise successful peace and crime prevention projects. About ten (10) projects have been provided with funding until 2010, which is the end of the project on the Decade to Overcome Crime and Violence in South Africa.

4.2.2 *National Religious Leaders' Forum*³

Crime poses a direct threat to the very foundations of the new South Africa. It is a fundamental human rights concern as it impacts on the infrastructure to enable people

to live safely and secure. Because of its impact on the safety and security infrastructure, all other enterprises of our society are jeopardized. These include, among others, the provision of health care, education, upliftment and poverty alleviation. These are jeopardized because they presuppose a space of human civilisation functioning within the bounds of law, of morality, and of decency and civilisation.

Crime is a foundational threat to society. Therefore, it needs to be tackled in a more holistic manner, as it is becoming a threat to civilisation in South Africa. A starting point may be to draft and implement a Bill of Moral Responsibility, which will be applied along side the Bill of Rights.

4.3 **Media Reporting on Crime**⁴

The Media Monitoring Project is a human rights NGO that has been monitoring the media since 1993. It has conducted over a 100 media monitoring projects on race, gender, children, HIV/AIDS, etc and has monitored the reporting of crime in relation to those aspects.

³ Paper presented by Chief Rabbi Dr Warren Goldstein, The National Religious Leaders Forum

⁴ Presentation by Mr William Bird, Director, Media Monitoring Project

With regard to race and crime, for example, there is a significant shift in media coverage wherein racial identities were common and whites were classified as victims with blacks as perpetrators. Currently, the focus is on xenophobia. Regarding engendering crime, there is also a shift in media coverage of gender-based crimes since democracy. For example, it is rare to see reports where women are blamed for being raped. However some gender biases still continue where men's culpability is often reduced. There is also an increase in the coverage of gender-based violence. With regard to children and crime, child abuse, especially sexual crimes are extensively reported. At least one in ten stories reported on crime against children violates children's rights to privacy and dignity.

Notwithstanding, the impact that media has on how crime is portrayed requires a level of debate. There is a need to balance how the media portrays crime-related stories. In addition, a rights-based approach to reporting should be encouraged. This aspect of reporting is paramount in how the message of crime is brought across to the public. The media should be responsible agents in combating the fight against crime in a meaningful manner.

4.4 Rehabilitation of Offenders⁵

NICRO promotes offender reintegration and rehabilitation using restorative human rights based approaches as an effective component of a broader comprehensive crime prevention strategy. Successful rehabilitation and reintegration efforts are likely to benefit society by reducing offending and victimisation. It would also minimise the risk that returning offenders will re-offend.

Rehabilitation is a process that requires bringing about change into a person's devious behaviour, distorted thinking patterns and correct cognitive thinking, human development and the promotion of social responsibility and values. It is a complex issue, as it not only relies on self-determination, but also on professional intervention and social support from communities, family, etc. Reintegration on the other hand, looks at factors to assist offenders to reintegrate back into society with the hope of keeping them away from committing more crimes. For effective reintegration, several factors need to be taken into account. These include among others the socio-economic environment, individual skills and

⁵ Paper presented by Ms Venessa Padayachee, National Programme Specialist, National Institute for Crime Prevention and the Reintegration of Offenders (NICRO)

characteristics required to build human capital, relations with the community, stigma associated with offending behaviour, institutionalisation and how offenders are re-socialised back into society and the general physical environment. Rehabilitation cannot adequately take place in prison given some of the challenges, especially with regard to over-crowding.

Restorative justice looks at offender accountability and responsibility, repairing the harm and the participation of victims throughout the criminal justice process. It promotes community empowerment and partnerships and builds social capital through interactions with victims and communities. It looks at the productive citizen's role and how feeling useful and being a responsible and good citizen contributes to preventing crimes. The rights-based approaches to offender rehabilitation and reintegration require offenders to be treated humanely and with dignity.

With regard to strategies to deal with crime, it was noted that uncoordinated strategies and insufficient dialogue amongst partners and various stakeholders, hampers successful implementation of common strategies. There is a need for a paradigm shift in crime prevention. Crime needs to be understood as a threat to the community and not just a violation of law. It therefore requires the

rebuilding of lives and not just more prisons. That would demonstrate a commitment to reweave a broader social fabric of respect for life, civility, responsibility and reconciliation.

4.5 Youth in Conflict with the Law⁶

Young people under the age of 35 constitute the majority of the prison population in South African prisons. Many of them have been tried, sentenced and released, only to end up back in prison. The levels of recidivism and youth criminality in the country have prompted the National Youth Commission (NYC) to set up a number of initiatives to find ways of preventing young people, especially first time offenders from becoming professional criminals or joining gangs. Firstly, the NYC established an inter-departmental committee on "Youth in Conflict with the Law". The committee, among others, seeks to ensure a much more coordinated approach in dealing with youth issues. Secondly, as a way of curbing the cycle of crime amongst young people, the NYC encourages the establishment of skills development programmes where young people are helped to become employable.

⁶ Paper presented by Elrico van Rooyen, Acting Chief Executive Officer, National Youth Commission

The government and private sector organisations are invited to extend employment opportunities to young people including those with criminal records to ensure that they are not tempted into committing more crimes. Finally, the NYC has launched two interventions, namely “Youth in Democracy” that seeks to build understanding of rights and responsibilities of young people, as well as “Social Dialogue” which creates a platform for young people to listen to each other and dialogue on critical issues that affect them, such as poverty and unemployment.

4.6 Political Parties as Crime Watchdogs⁷

Political parties have a role to play in building bridges for crime prevention. At the moment, political parties are at most seen as ideological competitors because they trade in and on ideology. They are power-brokers on behalf of their constituencies. They are in a continuous race to dominate the political scene. Political parties are the maintainers of national polarities as they keep certain arguments at bay. They are the incubators of leadership. They are the linkage between the people and the political system where they interpret national issues and where they are silent, the

⁷ Paper presented by Professor Theo Venter, Special Advisor to the Chancellor of the University of the North West.

⁸ Adv Ilene Barrie, from Solidarity and Zakhele Cele, Programme Co-ordinator, Congress of South African Trade Union

interpretation is left to the people. They are the solution generators of society and the modern mechanisms of democratic systems.

With regard to crime, political parties have in some cases successfully exposed crime and corruption, especially to the detriment of their political opponents. In this way, crime has become a political weapon against political enemies. The result is that they have created conditions where there is no national consensus on crime. Political parties should shift from this approach and jointly declare crime as national crises. They could utilise party networks and leadership to implement national agreements on crime. Political parties should lead in crime prevention strategies by symbolic action even if it involves the most favourite status of individual leaders. The national consensus should be zero tolerance on crime.

4.7 Perspectives on Crime and Trade Unions⁸

Presentations from trade union movements were given by Solidarity and the Congress of South African Trade Unions (COSATU).

4.7.1 Solidarity

To contribute to crime prevention in the country, Solidarity established an AfriForum campaign, which

among others, encourages the constructive participation of communities in public debate and action. The active participation of communities contributes to the success of strategies geared at reducing and preventing crime. This participation is extended to the family level where families are encouraged to report crime as part of social responsibility because not reporting a crime is crime on its own. In addition, the AfriForum also campaigns for the protection and consolidation of civil rights and promotes cooperation between civil institutions to work together on matters of common concern like crime.

4.7.2 Congress of South African Trade Union

Crime is a manifestation of the legacy of various political processes of the past, namely colonialism and apartheid. For example, it was the apartheid order that neglected crime in communities as the police and courts were deployed to suppress people's political and social aspirations. Because of this legacy, South Africa has been left with issues such as poverty, unemployment where some four million adults are without jobs and other social ills, all of which contribute to the increase in crime. In addition, unemployment is racialised, gendered and unevenly distributed by regions.

According to the 2006 World Bank report on Equity and Development, improving crime and personal security requires breaking crime related inequality traps. Implicit in this report is that, for as long as people do not have equal access to opportunities to pursue a life of their choice and be spared from extreme deprivation, crime will continue to manifest in various forms in their lives. Therefore, there is a need for an industrial strategy to deal with some of the inequalities. It was also suggested that a more broad-based Black Economic Empowerment programme should be implemented to benefit the majority of the population.

4.8 International Perspectives on Crime and Human Rights: United Nations Office of the High Commissioner for Human Rights (UNOHCHR)⁹

International perspectives on crime and human rights offered two useful observations about the nature of crime. The first observation is that whenever there is a major political change from authoritarian regime to a democratic one, there is almost always a corresponding breakdown in law and order. One of the reasons for this is that law

⁹ Paper presented by David Johnson, Senior Human Rights Officer, United Nations Office of the High Commissioner for Human Rights

enforcement agencies have to be completely rebuilt to perform their normal functions in a democratic society. Individual criminals and syndicates recognise this gap and move quickly to exploit the void. New institutions are set up as part of any democratic transition, however, it can take a generation or more to effect real change. South Africa is still in a transition period of building democratic institutions and therefore, the challenge of overcoming the legacy of decades of apartheid has not as yet been fully met. What has endured is a culture of violence that dehumanises others. Previously, that dehumanisation ran according to colour lines, however, presently, the dehumanisation practiced by criminals who kill with impunity applies equally to all South Africans, regardless of background.

The second observation is that the breakdown in law and order in a democratic transition is always accompanied by popular perception that the respect for human rights is an obstacle to effective law enforcement. This perception may lead people to mistakenly believe that human rights are there to help criminals.

A number of suggestions were provided in finding solutions to the current challenges in the country. These include:

- Better understanding of the content of human rights and

corresponding responsibilities by youth. This would include the popularisation of section 29 of the Universal Declaration of Human Rights, which places duties and responsibilities to community and individuals to promote and protect human rights, including taking responsibility to prevent and eradicate crime;

- Better balance between the rights of the accused with the rights of the victims. This may include mechanisms to protect victims from reprisals in reporting crimes and facilitating testimony in courts;
- Long-term generational change through school curricula and special programmes that impart to the youth the much needed life skills, positive social values and healthy recreational opportunities; and
- Government and law enforcement agencies together with human rights organisations and practitioners must affirm that “too many human rights” are not the problem. Knowledge of, and respect for human rights is a tool for law enforcement and an essential element in building an effective and professional approach to fighting crime. Police and communities must work together in an environment of mutual trust to ensure that the mechanisms of the law work and are not abandoned.

4.9 Discussions

The open discussions that followed the presentations unequivocally agreed that crime represents one of the worst human rights violations. It not only harms individual rights to freedom and security, it also hampers the ability of the entire community to enjoy human rights and to develop as a community. It was also highlighted that human rights are important in reducing the levels of crime as they can be used to enhance the effectiveness of crime prevention measures. To that effect, there is a need to educate the public about their rights and responsibilities.

The discussions also called for a more balanced reporting on crime, such as that (i.e., crime) taking place in rural areas and where people are poor and disadvantaged. Furthermore, the discussions highlighted a need to acknowledge that there are crimes perpetuated by farm owners against farm workers and by other people in positions of power against helpless people or employees. A need for more police training and management was also acknowledged as the police are under immense pressure and are highly demoralised. The Commission was encouraged to present the recommendations of the Conference to the President and other people in the security sector so that the challenges facing the police could be adequately addressed.

The Conference was encouraged to look at other causes of crime such as the second hand market wherein stolen goods are sold at cheap prices. Government is in the process of drafting policy that would regulate the second hand market, which is currently providing fertile ground for second hand stolen goods.

In addition, the Conference reflected on the impact of globalisation, which has made it possible for international crime syndicates to operate within South Africa. It was, however noted that business and government have partnered to fight crime and deal with these international crime syndicates are becoming more complex and organised. The challenge that was highlighted in this regard was on improving communications amongst various partners and stakeholders.

The Conference also highlighted the challenges in the criminal justice system where some participants felt that it was not delivering on its mandate. It was agreed that the criminal justice system is under sever strain as it seeks to respond to the myriad challenges brought about by crime. The debates and discussions also highlighted the importance of greater community participation in tackling crime in South Africa.

DEVELOPING INTEGRATED RECOMMENDATIONS FOR CRIME PREVENTION IN SOUTH AFRICA

The second part of the Conference identified and developed effective, efficient and sustainable strategies and recommendations to address the root causes of crime. To set the tone for the discussions, presentations were made on developing strategies and on the experiences of the Commission's provincial dialogues. The North West and the Free State provincial dialogues were used as examples.

5.1 Developing Strategies and Recommendations: Perspectives from the South African Broadcasting Corporation¹

The presentation acknowledged that in developing effective and efficient strategies and recommendations, the approach of identifying the root causes of crime, as

well as looking at crime from a human rights perspective is valuable. To that effect, a variety of approaches were suggested. For example, it is important to acknowledge that crime is an emotive issue and therefore the responses are often very emotional. However, this approach may not be effective as there are also historical imperatives that may need to be taken into account. In addition, it may be important to contextualise the strategies and recommendations and to avoid generalisation as certain things may not necessarily work in some circumstances or context. In that regard, it may not be possible to have a police officer in every household or bedroom to prevent rape and family murders, whereas in other circumstances, a greater presence or deployment of police may work in preventing or reducing crimes. Therefore, different strategies for different kinds of crimes may need to be devised.

There is also a need for research material to guide the intervention strategies to be developed and implemented. The research material could assist in determining who are the majority of the victims, the majority of perpetrators, their gender, age, geographic location, etc.

¹ Adv Dali Mpofu, Group Chief Executive, South African Broadcasting Corporation.

The discussion also acknowledged that to combat crime requires the participation of various stakeholders such as government, Chapter 9 Institutions, trade unions, NGOs and ordinary members of the public. The different stakeholders need to develop and communicate amongst one another their crime prevention strategies to ensure better co-ordination and effective implementation. The strategies developed need to be capable of being operationalised, measured and aligned.

A recommendation was made for the development of communication channels, either a television or radio programme, where crime prevention strategies can be exposed and debated in a public forum. A partnership between the public broadcaster, government, statutory bodies and Chapter 9 institutions was encouraged to come up with a possible framework for the programme.²

5.2 South African Human Rights Provincial Dialogues: Perspectives of the Provincial Communities

The Commission's Provincial Community Dialogues on "Crime and Human Rights: Ten Years of the Bill of Rights" were held to commemorate Human Rights Day on 21 March and also to engage the whole country in a nation-wide dialogue on crime and human rights. An important objective of the dialogues was to ensure that the

discussions and debates at the Conference included views from other parts of the country and that the strategies and recommendations developed would be applicable and relevant to different provinces. Two provinces, North West and Free State shared with the Conference reports of their community dialogues.

5.2.1 North West Provincial Community Dialogue³

The North West Community Dialogues took place in the villages of Ga-KgomoKgomo, Makapanstad, Ratjjepane and Mathibestad, which fall under the Moretele Municipality. According to police, property crimes related to the theft of copper cables and stock are the most prevalent in the area and the most common contact crime is domestic violence, which is perpetuated by unemployment and alcohol abuse. In addition, police are of the opinion that crime increase during the rain season, as there is less police visibility due to bumpy and difficult gravel roads as well as lack of night lighting. In addition, police indicated that they are understaffed and lacked resources – there are only 49 vehicles to service communities with about a hundred thousand people.

² The SABC specifically suggested a partnership with the SAHRC, NPA and the Department of Justice and Constitutional Development to take forward some of the recommendations of the conference through the development of public communication channels either in radio or television to publicise crime prevention strategies.

³ Presentation given by Rea Simigiannis, Head of Community Outreach and Advocacy Project, SAHRC

The Dialogues identified the following as the possible causes of crime in the communities visited:

- Unemployment – majority of people in the areas are jobless and have a lot of time in their hands to plan and commit crimes;
- Household income – most people in the area earn a salary of about R800 a month, with a few earning around R3 200 (mainly teachers, or nurses or members of the police). People may get involved in crime to augment their meagre salaries;
- Environmental design – due to lack of infrastructure such as lights and roads, Police are unable to act promptly to prevent certain crimes;
- Municipal Integrated Development Plan – the Police in this area are not part of the Municipality’s Integrated Development Plan;
- Correctional Supervision – the Correctional Supervision system is not efficient in this area as people are released on parole, and the very next day, they are back in prison;
- Community Policing Forum (CPF) – even though the CPFs are active in the area, their work is hampered by lack of resources;
- Traditional system – there was an opinion expressed by one magistrate that domestic violence happens because men feel that women challenge the African traditional systems;

- Lack of access to information or confidence in the criminal justice system – people in the communities do not seem to understand the bail system as they complain that criminals are arrested and the very next day they are out on bail. This may reflect a lack of understanding of how bail operates or it could also mean loss of confidence in the criminal justice system;
- Loss of confidence in democracy – people in the community felt that they were not part of the democratic plan and did not even know why they had to celebrate Human Rights Day, as it did not benefit them at all. There was a sense that people were disillusioned and despondent. There did not seem to be active community structures or civil society movements in the area to drive the democratic and human rights agenda.
- Poverty – overall, the communities seemed quite impoverished, due to, among others, the lack of basic services such as roads, running water and the high levels of unemployment.
- Drugs – young people are exposed to drugs;

The following are some of the recommendations made by the communities in the Moretele Municipality on how to turn around crime in the area:

- Human Rights education – raise awareness about people’s rights and responsibilities. For example, people were not aware that their children are entitled to free education up to the age of 15;
- Infrastructure and Local Economic Development – build roads, taps for clean water etc;
- Youth participation– engagement of young people in activities to move their focus away from crime;
- Partnership with Traditional Councils – Municipality and Traditional Councils need to partner and develop joint strategies to deal with crime;
- Department of Home Affairs – The Department should increase its efforts to provide people with identity books to enable them to find employment.
- Street Committees – local people should organise themselves into various street committees to uproot criminal elements within the society.

5.2.2 Free State Provincial Community Dialogue ⁴

One of the Community Dialogues held by the Free State office was in a farming community of Vrede where evictions are prevalent. During the dialogue a new concept of ‘constructive eviction’ emerged which entails a situation where a farmer frustrates the people that he/she intends to evict by cutting their water and electricity supply, killing their animals (such as geese,

chicken, dogs, sheep, etc) until the people are forced to leave the property. The Vrede Community Dialogue recommended that before a magistrate approves evictions, a multi-departmental checklist must be drawn indicating responsibilities by various government departments. For example, the Department of Education should show how it has provided for alternative schools for school- going children while the Department of Housing should indicate how it plans to assist in the provision of alternative accommodation for people to be evicted, etc. This holistic approach to dealing with evictions would ensure that the process does not disadvantage people.

On Human Rights Day March 21, the provincial office hosted a provincial seminar on crime and human rights. A resolution was passed which notes, among others, that ‘crime erodes the enjoyment of human rights, negates the creation and sustenance of a free and open society and the gains of democracy’. The provincial office will share the Conference recommendations and resolutions with the Premier of the Free State Province for consideration and possible implementation.

⁴ Presentation by Adv Mothusi Lepheane, Provincial Manager of the Free State Office of the SAHRC

5.2.3 Discussions

The discussions commended the Commission for hosting Provincial Dialogues to ensure that the voices and opinions of as many people as possible are heard. In addition, it was suggested that the media should be used more constructively as an educational tool to reach young people. For example, some educational messages can be built into sports programmes as well as in popular sopies such as Generations and Isidingo.

Furthermore, the discussions highlighted a Constitutional provision that allows for investigation of complaints against police inefficiency and the breakdown of relations between the police and communities. Section 206 (5) of the Constitution requires the establishment of a Commission of enquiry at a provincial level if a complaint of this nature is made to a provincial administration. It was suggested that the public broadcaster should consider collaborating with various structures in collecting complaints of this nature from the public and referring them to the relevant structures.

CHAPTER SIX

Recommendations & Conclusions

6.1 Findings and Recommendations

The following are some of the key recommendations from the various discussion groups and are captured according to areas of consensus or themes that have emerged out of each group discussion:

6.1.1 *Value of the Conference*

The first theme that emanated from the discussions was that this Conference has been a valuable exercise. The Commission should consider hosting a follow up Conference or meeting to ensure continuity and to check progress on implementation of the recommendations made during this Conference.

6.1.2 *National Crime Prevention Strategy and coordination of crime prevention efforts*

Conference recommended that there is a need to review the National Crime Prevention Strategy. In addition, policies and legislations should be revisited to improve integration, co-ordination and cooperation across the criminal justice system in order to ensure a more holistic approach to

crime prevention. The discussions further highlighted the importance of the participation of the Secretariat for Safety and Security in the Integrated Development Programmes, especially at the role and empowerment of Community Police Forums.

In addition, Conference suggested that government should take the primary leadership responsibility to create an enabling environment to review the criminal justice system and explore how integration and coordination across the system could be strengthened. It was further suggested that the coordination should be placed at the Office of the Deputy President of the country.

6.1.3 *Security*

Conference recommended that immediate steps should be taken to improve Police effectiveness and efficiency; improve effectiveness of the courts; access to the courts; as well as systems to monitor and hold institutions accountable. This would include exploring mechanisms to create partnerships between communities and government for purposes of providing security to people.

6.1.4 *Statistics*

While crime statistics are important and appreciated, it was also acknowledged that they are also challenging, as they do

not always reflect the accurate state of affairs. For example, some statistics are only based on reported cases, whereas there could be many unreported cases, which may bring different perspectives and understanding of what is going on in the country. To that effect, Conference suggested that in order to give a more balanced view, statistics should also consider, for example, cases that failed to make prosecution to assess the level of effectiveness of the Police.

6.1.5 *Substance Abuse*

Alcohol and drug abuse were highlighted as some of the challenges that heightens the potential for crime within families and in communities. It was reported that in the Northern Cape, every sixth child in a classroom is born with Foetal Alcohol Syndrome, which may lead the child to become alcohol dependent and eventually commit crime. Advertisement of alcohol was also discussed and it was mentioned that perhaps the adverts should be more educational about the side effects of alcohol.

6.1.6 *Batho Pele White Paper and corruption*

Conference recommended that the Batho Pele White Paper should be revisited to review the extent to which there are service level agreements between different departments and how the performance indicators for different Departments are aligned with each other. In addition, it was suggested

that corruption should be dealt with by putting in place some measures such as appointing appropriate people to relevant positions and looking at the salaries, especially of members of SAPS.

6.1.7 Review of economic policies

In order to address socio-economic concerns in the country, there is a need to move from macro-economic strategies to micro-economic policies. This would strengthen small and medium enterprises so that communities can benefit from economic growth.

6.1.8 Communication strategy and improving stakeholder relations

Conference further recommended for the development of a communication strategy that would see the involvement of various stakeholders in efforts to prevent and eradicate crime. This would invariably strengthen relations amongst stakeholders and assist in improving community participation. The communication strategy could also be used to reach inmates in prisons where awareness about citizenship responsibility would be raised. A monitoring and evaluation strategy could be developed to assess the impact of the communication strategy and all other interventions.

6.1.9 Victims' empowerment

Conference recommended for the improvement of victims' empowerment programmes. At the moment, victims of crime feel left out, as there is a perception that the law favours the rights of perpetrators at their expense. This perception and other concerns that have led to the loss of confidence in the criminal justice system need to be dealt with. In addition, the development of a Bill of Moral Ethics should be considered as one of the priority areas.

6.1.10 Education System

The recent escalation of violence in schools was highlighted as another area needing attention. For example, there are dysfunctionalities in the education system, which provide fertile breeding ground for crime and violent activities. Youth Committees should be resuscitating which were previously effective in bringing education and instilling a culture of responsibility amongst young people.

6.1.11 Reviewing Community Police Forums

Conference recommended that strategies developed should take into account the diversity in the country. For example, the model of Community Police Forums may need to be reviewed to accommodate the various community peculiarities. In addition, it was recommended that the government should create a conducive environment for

people to report crime, especially in rural areas where there are no telephones and accessible Police stations.

6.2 Way Forward

The CEO of the Commission, Adv Tseliso Thipanyane presented a way forward. Participants were reminded of the Commission's limited mandate and its inability to take over the competencies of other structures. For example, the Commission would not be able to provide witness protection, however, it may be able to hold accountable those responsible for providing such protection as failure to do so may lead to violations of human rights.

With regard to the way forward, the CEO highlighted that a Conference report would be produced and circulated to all delegates via email. The executive summary of the report will be made available in all eleven official languages and in Braille. The recommendations of the Conference would be captured in the report and submitted to the President and to the Speaker of the National Assembly as well as other key stakeholders. In terms of the implementation of the recommendations of the Conference, the Commission will look at its own role and also establish two posts, namely, Co-ordinator for Crime and Human Rights as well as Co-ordinator of Business and Human Rights as the Commission is also concerned about financial crimes and corruption.¹

The CEO highlighted that the Commission would collaborate with various bodies to take forward some of the recommendations made at the Conference. The Commission would also take up the offer by the Group Chief Executive of the SABC with regard to using the media as an awareness-raising tool. The Commission would also work with relevant stakeholders with regard to the rights of victims and taking forward some of the recommendations made during a workshop on the Victims' Charter hosted in 2006.

The Commission is also considering establishing a Forum to focus on issues of crime and its impact on human rights. The Forum would consist of representatives from key institutions and constituencies from the public and private sector. The first meeting of the Forum would be facilitated by the Commission.

The Commission is committed to keeping the issues raised in the Conference alive and ensuring that crime is dealt with in a holistic and sustainable manner.

¹ At the time of publication of this report, the SAHRC had already implemented this decision and has recruited the two Coordinators for Crime and Human Rights and for Business and Human Rights

6.3 Conclusion

In closing, the Chairperson of the Commission, Jody Kollapen remarked that the Commission contemplated quite seriously the need to have this Conference, as there was a concern that perhaps the Commission is taking on something that was enormously huge, complex and which stretched way beyond its mandate, capacity and legal competence. However, it was felt that as a state institution responsible for promoting and protecting the rights of people, the Commission has a role to play as a catalyst in convening this Conference. In addition, the Conference achievements prove that the whole process was useful and productive. For example, one of the major achievements is that the Commission now has a better and more holistic understanding of the complexity of crime, both its drivers and its effects.

Mr Kollapen recognised that many people came from different constituencies and hoped that they were able to make their inputs heard or at least heard someone else's contributions which are similar or connected to their reality. In that sense, the Conference was also about shared realities and that is encouraging. It is also reassuring because it is an indication and proof that South

Africans are able to seek solutions within the walls of the Constitution. In addition, the Conference has managed to find the space to strike an important balance between law enforcement perspectives of dealing with crime, and the social crime prevention imperatives.

Mr Kollapen further noted that the Conference was not a complaint session, neither was it meant to attack government. Deliberations have been constructive in trying to move forward and find solutions.

The Conference concluded with a special vote of thanks by Commissioner Tom Manthata who remarked that the Conference was a call to make everyone aware of their rights and shared responsibilities against crime. Commissioner Manthata thanked the participants for their attendance. He also thanked all presenters for their invaluable inputs as well as facilitators and rapporteurs for their willingness to assist in directing discussions as well as reporting. He also thanked the media for covering the Conference and keeping the public informed. Finally, Commissioner Manthata expressed gratitude to the Commission staff members who contributed to the successful Conference.

APPENDIX 1

CRIME AND ITS IMPACT ON HUMAN RIGHTS

AGENDA OF THE CONFERENCE

The Conference was organised by the South African Human Rights Commission and was held from 22 to 23 March 2007, at Southern Sun Inter-Continental Hotel - Grayson, Sandton, Johannesburg.

DAY ONE

Session one: Introduction - Adv Tseliso Thipanyane, CEO - South African Human Rights Commission

Keynote Address - Justice Albie Sachs, Judge of the Constitutional Court

Opening Remarks - Commissioner Jody Kollapen, Chairperson - South African Human Rights Commission

Session two Theme: Understanding Root Causes Of Crime And Violence In South Africa

- Understanding the Root Causes of Crime in South Africa: Links between Poverty and Crime
- Causes of Violence in South Africa
- Discussions

Session three: Role of the Criminal Justice System in Preventing and Combating Crime in South Africa

- Views on the Crime and Its Impact on Human Rights
- Magisterial Experiences from a Magistrate's Court
- 'Safety' Views From The Department of Safety and Security
- 'Enforcement': Experiences from the South African Police Services
- 'Oversight': Perspectives from the Independent Complaint Directorate
- 'Prosecutions': Challenges: National Prosecuting Authority
- 'Private Security Industry': Views from the Private Security Industry Regulator
- 'Corrections': Reflections from the Department of Correctional Services
- Responses and Discussions

Session four: Role of Other Stakeholders: Integrated Approaches to Crime Prevention in South Africa

- Business Against Crime
 - Business Against Crime & AGRISA

- Religious Bodies and the Fight Against Crime
 - South African Council of Churches
 - National Religious Leaders' Forum
- Media Reporting on Crime
- Rehabilitation of Offenders
- Youth in Conflict with the Law
- Discussions

Session five: Role of Other Stakeholders: Integrated Approaches to Crime Prevention in South Africa continued...

- Political Parties as Crime Watchdogs
- Crime and Trade Unions
 - COSATU & Solidarity
- International Perspectives on Crime and Human Rights
- Discussions

DAY TWO

Session one: Theme: Towards a Crime-Free Society: Developing Integrated Recommendations for Crime Prevention in South Africa

- Overview of Key Issues from Day 1
- Developing Strategies and Recommendations
- SAHRC Provincial Dialogues
- Questions/ Clarity

Session two: Group Discussions

- TOPIC: Sustainable, integrated, efficient and effective strategies and recommendations for crime prevention; State Actors (government and its institutions), Non-State Actors (Civil Society Organisations, Business, Communities, etc)

Session three

- Report to Plenary
- Findings and recommendations
- Conclusion/ Vote of Thanks

APPENDIX II: LIST OF PRESENTERS, RAPORTEURS AND FACILITATORS

1. Adv Tseliso Thipanyane: CEO – South African Human Rights Commission (Introduction)
2. Justice Albie Sachs: Judge of the Constitutional Court (Keynote Address)
3. Mr Jody Kollapen: Chairperson - South African Human Rights Commission (SAHRC) (Opening Remarks)

Understanding Crime in South Africa: Causes and Impact

4. Dr Leon Wessels: Commissioner - South African Human Rights Commission (SAHRC) (Facilitator; Understanding Crime in South Africa: Causes and Impact)
5. Mr Sean Tait: Director, Criminal Justice Initiative Programme, Open Society Foundation (Rapporteur)
6. Ms Antoinette Louw: Senior Research Fellow, Crime and Justice Programme: Institute for Security Studies (Speaker)
7. Ms Amanda Dissel: Programme Manager, Centre for the Study of Violence and Reconciliation
8. Ms Winnie Kubayi: Director, Centre for Criminal Justice, University of KwaZulu-Natal (Facilitator: Role of the Criminal Justice System in Preventing and Combating Crime in SA)
9. Ms Louise Ehlers: Senior Project Officer, Criminal Justice Initiative: Open Society Foundation (Rapporteur: Role of the Criminal Justice System in Preventing and Combating Crime in SA)

Crime And Human Rights

10. Mr Phaphama Mfenyana: Chief of Staff, , Office of the Premier, Eastern Cape Crime and its impacts on human rights
11. Mr Amichand Soman: Director: Legal Services, Secretariat of Safety and Security ‘Safety’ Views from the Department of Safety and Security
12. Ms Sinah Moruane: Director, Social Services: Department of Correctional Services ‘Corrections’: Reflections from the Department of Correctional Services
13. Mr Jerry Thibedi: MEC, North-West Provincial Government, Department of Transport, Road and Community Safety ‘Enforcement’ Experiences from the South African Police Services
14. Adv Sheriza Ramouthar: Deputy Director of Prosecutions: National Prosecuting Authority (‘Prosecutions’ Challenges: National Prosecuting Authority)
15. Mr Thomas Tshabalala: Chief Director, Independent Complaint Directorate (‘Oversight’ Perspectives from the Independent Complaint Directorate)
16. Mr Stefan Badenhorst: National Manager, Private Security Industry Regulator (‘Private Security Industry’: Views from the Private Security Industry Regulator)
17. Prof Lovell Fernandez: Department Head, Faculty of Law: University of the Western Cape (Respondent Crime and human rights)

Role of Other Stakeholders: Integrated Approaches to Crime Prevention in South Africa

18. Ms Fayruz Davids: Regional Manager: Western Cape (NICRO) (Facilitator: Role of Other Stakeholders: Integrated Approaches to Crime Prevention in SA)
 19. Ms Amanda Dissel: Programme Manager, Centre for the Study of Violence and Reconciliation (Rapporteur: Role of other Stakeholders: Integrated Approaches to Crime Prevention in SA)
 20. Dr Graham Wright: CEO, Business Against Crime (Business Against Crime)
 21. Mr Kiewit Ferera: Chairperson, Law and Order Committee of AgriSA (Business Against Crime)
 22. Rev Gift Moerane: South African Council of Churches (Religious Bodies and the Fight Against Crime)
 23. Dr Warren Goldstein: Chief Rabbi, National Religious Leaders Forum
 24. Mr William Bird: Director, Media Monitoring (Media Reporting on Crime)
 25. Ms Venessa Padayachee: National Programme Specialist, Institute for Crime Prevention and the Reintegration Of Offenders (NICRO) (Rehabilitation of Offenders)
 26. Mr Elrico van Rooyen: Acting CEO: National Youth Commission Youth in Conflict with the Law
 27. Mr Pat Cunningham: Executive Director: South African Fraud Prevention Service (Facilitator)
 28. Ms Antoinette Louw: Senior Research Fellow, Crime and Justice Programme: Institute for Security Studies (Rapporteur)
 29. Professor Theo Venter: Special Advisor to the Vice Chancellor of the North-West University (Political Parties as Crime Watchdogs)
 30. Honourable Magistrate Dario Doso: Magistrate, Soweto Regional District ‘Magisterial’ Experiences from a Magistrate’s Court
 31. Adv Ilene Barrie: Solidarity (Crime and Trade Unions)
 32. Mr Zakhele Cele: Programme Co-ordinator, Congress of South African Trade Unions (COSATU) (Crime and Trade Unions)
 34. Mr David Johnson: Senior Human Rights Officer, United Nations Office of the High Commissioner for Human Rights International Perspectives on Crime and Human Rights
- Towards a Crime-Free Society: Developing Integrated Recommendations for Crime Prevention in South Africa*
35. Professor Anthony Minnaar: Faculty of Law, University of South Africa (Facilitator Overview of Key Issues from Day 1)
 36. Advocate Dali Mpofu: Group Chief Executive, South African Broadcasting Corporation Developing Strategies and Recommendations
 37. Ms Rea Simigiannis: South African Human Rights Commission (SAHRC Provincial Dialogues)
 38. Adv Mothusi Lepheane: South African Human Rights Commission (SAHRC Provincial Dialogues)

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