WHERE DID WE GO WRONG?

A critical assessment of crime prevention

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The success of any policy is measured by how it is implemented and its effect. Given this, the implementation of crime prevention policy in South Africa has not had a promising start. This is hardly surprising, considering that the lead responsibility for crime prevention lies with the police, rather than with the government departments specifically focused on social issues. It is argued that the establishment of a national crime prevention centre that offers support to local communities be prioritised.

South Africa's overarching policy on crime prevention, the 1996 National Crime Prevention Strategy (NCPS), was from the outset compromised by differing political needs and competition among officials in the department of safety and security. Some years later it focuses largely on criminal justice and policing projects – not, as intended, on prevention projects aimed at impacting on the supposed causes of crime. The White Paper on Safety and Security, approved by Cabinet and launched with some fanfare in 1998, has not been implemented in any systematic way – in fact, many of its provisions have simply been ignored. At this stage the operational plans of the South African Police Service have a far greater impact on the development of government crime prevention programmes than either of the above.

This highlights a wide gap between policy and practice, one that can be attributed to a failure to take into account the actual requirements for policy implementation.

The problem of defining crime prevention
The first problem is one of definition – what does crime prevention mean and who is responsible for it? It has been described by criminologists as ‘probably the most over-worked and least understood concept in contemporary criminology’; and ‘a concept of almost unending elasticity’.

Prevention is a tricky word. To prevent something means that you have the ability to predict its occurrence, and then the ability to intervene, to stop it from happening. As Paul Ekblom, a British policy analyst, puts it: crime prevention is ‘action prior to the criminal event that interrupts a chain of cause and effect which would otherwise have led to the event’. Predicting criminal activity is complex, difficult and, ultimately, dependent on contested theories.

Also, even where a theory may to some degree make a correct prediction, there can be no guarantee that the right measures will be recommended to address the issue. Indeed, the recommended measures may not be acceptable to those expected to implement them.

The relationship between research, theory, policy and practice is seldom, if ever, straightforward. As Downes and Rock note:
justice cluster, budgets are still determined by individual departments and allocated to specific line functions within these departments. These line functions and their whole departments report individually on activities and expenditure. Thus, while crime prevention policy advocates an integrated approach, the way in which government operates inhibits the implementation of joint activities.

The challenge of ‘joined-up government’ is no doubt something that governments engaged in crime prevention strategies throughout the world must overcome. However, in South Africa the challenge is more acute: many of the departments concerned struggle to deliver on their most basic responsibilities, let alone co-ordinate priorities, budgets and activities involving other departments.

The lesson here may be that crime prevention strategies should focus initially on strengthening basic service delivery in the government departments that are central to crime prevention. These, importantly, include the departments responsible for social welfare, health and education, as well as the police, courts and prisons. Once a satisfactory level of service from these departments has been achieved, attention could shift towards the co-ordination of inter-departmental activities.

Another important difference between crime prevention practice in developed countries and in South Africa, is that in developed countries where national policy directs local crime prevention, national government has taken an active and consistent role in supporting local initiatives. This support has taken the form of policy guidance, technical assistance, and financial support.

Using a comparative study of successful community safety interventions, mostly in the developed world, the International Centre for the Prevention of Crime in Montreal recommends that achieving sustainable crime prevention requires a ‘responsibility centre’, to:
• provide leadership located at the highest level of government;
• develop an implementation strategy;
• ensure that the policies of other departments contribute to the strategy; and
• stimulate partnerships (often through providing seed funding) so that key actors work together.5

In South Africa, where skills and resources are in short supply, and crime prevention is relatively new, support of this kind is vital. This is especially true when service delivery in some areas of government is weak, and special government funds aimed at developing skills for job creation among the youth, do not reach their targets.

Therefore, a national crime prevention centre in South Africa could lobby for improved delivery and provide advice on the allocation of funds to crime prevention projects. Such a centre could also encourage and support delivery on the ground by providing financial incentives in the form of seed funding, technical assistance in submitting applications for funding, as well as training, advice on what works, and research and evaluation.

It is exactly this kind of support that was advocated in the White Paper in its provisions on the establishment of a National Crime Prevention Strategy Centre. This has not been done and responsibility for crime prevention has been spread so broadly that it is difficult to pin down. Indeed, it often appears that it is the small social crime prevention unit in the police that drives most government crime prevention initiatives. This has severely limited national support for crime prevention in the country.

The role of the police in crime prevention
Given that crime prevention policy does not adequately take into account the requirements for implementation, the general lack of meaningful political support for crime prevention is not surprising. This, no doubt, is why politicians are inclined to back tough law enforcement approaches over longer-term preventive ones. Hard and fast policing operations are able to show quick results, while preventative initiatives can take years.

However, the role of the police in crime prevention is not clear. The move internationally from reactive policing towards more community oriented methods, like community policing and sector policing, represents attempts by the police themselves to define and engage with their role in prevention – with mixed results. Research by the Institute for Security Studies has found that in South Africa, despite policy and legislation on community policing, practical crime prevention for the police still largely amounts to setting up roadblocks, and high-density search and seizure operations.6

Moreover, the emphasis on policing has allowed other departments, such as those responsible for social welfare, education and health, to disengage from their responsibilities. It has also meant that the concept of ‘safety and security’, which implies an active role for players other than the police, has been downplayed.

Perhaps the core issue is that, despite the provisions of the NCPS and the White Paper on Safety and Security, public safety is still commonly viewed as a security issue to be dealt with by the criminal justice system and particularly by the police.

Prevention as a social health, not a policing, issue
The concepts of safety and crime prevention therefore need to be thought of as ‘social health’ issues. This would allow the crime prevention burden to be shared across a range of role players in government and civil society. It would also create political space for the longer-term interventions that, ultimately, are most important in ensuring the prevention of criminal behaviour.

This is, of course, what the NCPS set out to do in 1996. However, the responsibility for co-ordinating the NCPS was then located in the department responsible for policing. This meant that implementation of the NCPS was subject to police priorities and the short-term political prerogative to show results in the ‘war against crime’. There can be little surprise, therefore, that implementation of the NCPS focused mainly on improvements to the criminal justice system, to the detriment of its other provisions.

So, to reduce the pressure for quick fixes, the lead responsibility for crime prevention should not lie
with the police. It would be far more appropriate for this responsibility to be the core focus of the departments of the social cluster, that is, the departments of social development, health, and education. The engagement of these departments as lead agencies for crime prevention would, no doubt, assist a wider understanding of crime as a "social health" issue rather than solely a security issue.

Most of this is already provided for in existing policy. What is needed is to refine the policy to take account of the South African context, and to breathe some life into it.

**Note:** This article is an extract from the recently published book *Crime Prevention Partnerships: Lessons from practice*, edited by Eric Pelser and published by the ISS. It is available in full text on the ISS website (www.iss.co.za) and in hard copy from the ISS in Pretoria.

**Endnotes**


3. Quoted in A Crawford, ibid.


The South African Police Service (SAPS) performance report for the financial year 2001/2002 indicates a decrease and stabilisation in a number of serious crimes recorded by the police. Of paramount importance is the stabilisation and decrease in some violent crimes recorded by the SAPS. This should be a relief for crime-fearing South Africans. It is important to note, however, that these crimes are stabilising at a high level. South African crime rates, and, more specifically, violent crime, remain unacceptably high. For example, the report shows that over 21,400 cases of murder, nearly 540,000 cases of rape and over 116,700 cases of serious robbery were recorded in 2000/01. It is this high level of violent crime that sets South Africa apart from other crime-ridden societies.

Impact of high levels of violence
 Victim surveys generally show that violent crimes are of major concern to the public. The physical and emotional impact of these crimes is devastating for victims, their families and communities. The occurrence of these crimes, coupled with the fact that this subject dominates news headlines, heightens public fear of crime. This creates misery for individuals and destabilises communities.

Police are constantly (and often unfairly) criticised by the public and the media for failing to deal effectively with crime in general, and violent crime in particular. One effect of this pressure can be seen in the police’s use of targeted, high-visibility search and seizure operations to ‘stabilise’ the situation. Hence the ongoing police strategy publicly known as ‘Operation Crackdown’ that was initiated in 2000. This strategy is largely based on high-density operations in selected high crime areas, focusing mainly on roadblocks, searches and raids.

There is nothing wrong with this strategy per se, but it is important to realise that such measures usually have short-term benefits and are difficult and costly to sustain in the long-term. Moreover, responses of this kind rarely have an impact on the factors behind violent crime. Key to the prevention of violent crimes is the understanding of various individual, social and environmental risk factors associated with these crimes. Only when various forms of violent crime and the risk factors are separated and carefully analysed, will meaningful long-term solutions be produced.

This article considers the trends of violent crime as recorded by the SAPS from March 1994 to March 2002, and some of the risk factors associated with these crimes. (Statistics for the financial years rather than the period January to December of each year are used because the latest SAPS figures are based on financial years.)
Trends in violent crime

Violent crime as categorised in the official SAPS statistics includes various offences that differ from each other in terms of type and seriousness. For the purposes of this article however, individual crime types have been divided into two categories.

- **Interpersonal violent crime**: murder, attempted murder, serious and common assaults, and rape;
- **Violent property crime**: these include all categories of robbery, i.e. robbery with aggravating circumstances (armed robbery, car hijacking etc.) and common robbery.

Levels of violent crime in South Africa are high. About 839,639 violent crimes were recorded by the police between March 2001 and March 2002. Both categories of violent crime, that is, interpersonal violent crimes and violent property crimes have been increasing since 1994, although in 2001/02 the extent of the increase was less than in previous years (Figure 1).

Interpersonal violent crime

*Murder and attempted murder*: Reported and recorded cases of murder are a key indicator of trends in respect of violent crime more generally. What constitutes murder is rarely disputed, and it is generally well reported compared to other interpersonal crimes. Since 1994/95 the number of murders has slowly been declining, with a slight increase in 1998/99, after which levels dropped again to 2001/02 (Figure 2). This is the only violent crime type recorded by the SAPS that clearly shows a declining trend.
In contrast to the declining number of murders, attempted murder has slowly been rising over the period under discussion, with a big increase in 2001/02 (Figure 2). Considering that murder and attempted murder are similar types of crime, it is unusual that one is decreasing and the other is on the increase.

The drop in murders between 1994/95 and 1996/97 can possibly be attributed to the decrease in political violence, particularly in Gauteng and KwaZulu-Natal. This explanation is, however, limited, since it does not account for the continuous drop in murder rates after 1996, or for the increase in murders in the Western Cape (Figure 3). Given the seriousness of this offence, and the fact that trends for other violent crimes are not similar to that of murder, there is a need for a thorough investigation into these trends and the continuous monitoring of future developments.

Serious and common assault: The recorded number of serious assaults (also referred to as assault with intent to do grievous bodily harm) gradually increased from 1994/95 with a slightly larger increase in 1999/2000, followed by a small decline of four per cent in 2001/02. Common assaults, by comparison, stabilised between 1995/96 and 1998/99, and rapidly increased from 1999/2000 to 2001/02 (Figure 4).

Rape: Cases have been increasing since 1994/95, with a slight decline in 1998/99, but have steadily increased from 1999/2000 to the present (Figure 5). In a number of victim surveys conducted in South Africa since 1996, rape was described as one of the most widely feared crimes, second only to murder.4

It is widely acknowledged that crimes such as assault and rape are generally under-reported by the public, and sometimes under-recorded by the police. Various South African city victim surveys have shown that over 50% of these crime types go unreported.5 As odd as it may seem, the increase in reporting of these crimes to the police does not necessarily imply an increase in the occurrence of
Based on what has been recorded by the police, levels of aggravated robbery and common robbery are clearly on the increase. Aggravated robbery declined a little from 1994/95 to 1996/97, but increased from that year to 2001/02 (Figure 6). The rate of increase has however slowed down in the past year: between 2000/01 and 2001/02 robberies increased by only 3%, compared to an increase of 13% between 1999/2000 and 2000/01. ‘Other’ robberies have been increasing rapidly, with an average increase rate of about 15% per annum between 1994/95 and 2000/01. A sudden stabilisation was recorded in the past financial year (Figure 6).

The increase in violent property crime is one of the most worrying trends, impacting negatively on the country in various ways. Robbery tends to be indiscriminate and most of the time unpredictable, which makes any individual or institution with valuable and resaleable assets, a potential victim. These factors, and the element of violence in these crimes. The increase may be accounted for by changing public attitudes towards the police, a general improvement in the way police deal with victims of these crimes, and the impact of new laws like the Domestic Violence Act. The Act compels the police to record all reports of domestic violence, encouraging victims to come forward. This is important when taking into consideration the historic distrust between the police and public in this country.

The question whether the increases in attempted murder, assault, and rape are a reflection of real increases in the levels of these crimes, or the result of more victims reporting to the police, is important and needs to be answered. It has been suggested in the previous issue of the SA Crime Quarterly (see Leggett, No 1, 2002) that many of the increases reflected in the SAPS crime statistics are probably the result of higher reporting rates. This issue can only be resolved by conducting regular national victim surveys that reveal more accurate levels of victimisation, and track reporting tendencies.

### Figure 5: Trends in rape cases recorded by the police, March 1994 - March 2002

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<tbody>
<tr>
<td>Rape</td>
<td>43,962</td>
<td>49,187</td>
<td>50,833</td>
<td>51,452</td>
<td>49,207</td>
<td>52,344</td>
<td>52,335</td>
<td>53,920</td>
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### Figure 6: Trends for aggravated and ‘other’ robberies recorded by the police, March 1994 - March 2002

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</thead>
<tbody>
<tr>
<td>Robbery with aggravating circumstances</td>
<td>84,795</td>
<td>77,176</td>
<td>66,164</td>
<td>73,056</td>
<td>92,644</td>
<td>98,824</td>
<td>113,715</td>
<td>116,736</td>
</tr>
<tr>
<td>Other robberies</td>
<td>32,643</td>
<td>45,634</td>
<td>50,672</td>
<td>54,915</td>
<td>64,964</td>
<td>74,722</td>
<td>90,196</td>
<td>90,227</td>
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type of crime, contribute greatly to fear of crime in this country.

Taking into consideration the volume and the impact of these crimes, it is not surprising that government would attempt to convince the public that crime is stabilising. However, the trends from 1994/95 to 2001/02 discussed above question the ‘stabilisation’ analysis. With the exception of murder (which has decreased), other violent crimes are increasing rather than stabilising.

It is possible that law enforcement efforts in the past year have had a positive impact on crime levels. But debating the causes of trends that are based on recorded crime statistics — given their limited reflection of reality — is a rather pointless exercise. Attention should instead be focused on unravelling some of the mysteries behind the country’s murder trends, and on understanding and targeting those risk factors that contribute to high levels of violence in society.

Risk factors
Victimisation and offending patterns are influenced by individual, social and environmental characteristics, commonly known as risk factors. Some of these factors, namely age, gender, race, the environment, alcohol, and firearms, are discussed below.

Studies have shown that, as far as age is concerned, the likelihood of violent involvement in crime increases sharply around age 15 and remains high until the mid-30s. However, when gender is also factored in, males between the ages of 15 and 25 years are more likely to be victims and perpetrators of violent crimes than are females.

According to the Department of Correctional Services 2001 annual report, a total of 26,682 prisoners were between the ages of 14 and 20 years (16% of all prisoners). Considering that in the 1996 census 10% of the population was aged between 15 and 19 years, this suggests that this age group is over-represented in prison. Of all the juvenile prisoners, 26,204 were male (98%) and 484 were female (2%).

In 1995/96 the per capita conviction rate of young males between 18 and 20 years guilty of serious violent crimes, was higher than that of older men, and women of all ages (see Nedbank ISS Crime Index 3(5) 1999). According to the 1999 National Injury Mortality Surveillance System, homicide deaths of both males and females increase sharply among 15 to 19-year-olds, and peak among 25 to 29-year-olds. For males, homicide deaths begin to consistently decrease with age after the 30 to 34-year age bracket, whereas for females it remains high until age 40.

Police statistics and victim surveys conducted in South Africa also suggest a link between social deprivation, race, and risk of victimisation. Victim surveys conducted from 1997 to 2000 show that the poor, the majority of whom are black and coloured and living in townships, are more at risk of being victims of interpersonal violent crimes as well as violent property crimes like robbery. By comparison, wealthy people living in the suburbs are most at risk of property crimes, in particular vehicle theft and burglary. In the 1999 National Mortality Surveillance System data, homicides of black and coloured people accounted for 93% of the 6,800 homicides reported. (This is higher than the 86% that these race groups make up of the total population recorded in the 1996 census.)

The risk of victimisation and offending in the case of violent crime is not only determined by who you are, but also where you are, when, and with whom. An analysis of violent crime trends from cases reported to the police and victim surveys shows a clear seasonal and weekly pattern in the occurrence of these crimes. The reporting and occurrence of interpersonal violent crimes tend to be high in holiday seasons, that is, December and April of each year (Figures 7 and 8). Most incidents happen on weekends, from Friday to Sunday.

Many of these incidents happen in private homes or places of entertainment, and victims frequently know their perpetrators by name or by sight. The 1999 National Injury Mortality Surveillance System shows that 58% of the 3,095 homicide cases reported were murdered at home or in a residential institution such as a hostel. According to the
national Victims of Crime Survey conducted in 1998, more than two-thirds of sexual offence and assault victims knew the perpetrators - mostly by name (Figure 9).

At a community and neighbourhood level, violent crimes are influenced by factors such as overcrowding, poor housing design, and a lack of infrastructure and development. Most residential areas inhabited by the poor, particularly the informal settlements, tend to be overcrowded with little living space for individuals and families. In most of these areas families share stands, and are without the basic amenities such as water taps, toilets, and, in some instances, electricity. These conditions are likely to create ongoing tensions between individuals and families, and may eventually lead to serious violent victimisation and offending.

Poor areas also tend to lack facilities such as streetlights, open routes and well-maintained public spaces, which are essential for both the police and the public in helping to prevent crime. In a crime prevention study conducted by the ISS for the Govan Mbeki municipality in Mpumalanga, residents in townships and informal settlements prioritised street lighting and bush clearing as key to their personal safety, while those in wealthier suburbs opted for burglar alarms and armed response services.

The availability of firearms, alcohol and drugs increases the likelihood and severity of violent crimes. Studies conducted by the SAPS have revealed the linkages between alcohol abuse and the prevalence of certain types of violent crime such as assault. According to the National Injury Mortality Surveillance System, 56% of 2,469 homicide victims sampled for blood alcohol level tested positive.

Firearms are used in most violent crimes reported to the police. About 10,854 (49%) of murders recorded by the police in 2000 were committed with a firearm. The trend for attempted murder is quite different: 21,967 out of 29,418 attempted murders (75%) recorded by the police in 1998 involved the use of a firearm, as did 80% of 110,590 serious robberies recorded in 2000. South Africa has too many legal and illegal firearms in circulation. It is estimated that 3.76m licensed firearms are in private use and that about half a million illegal guns are in circulation. It is likely that many illegal firearms were once legally owned guns; estimations are that about 82 privately owned firearms are lost or stolen every day. According to the SAPS, the police destroyed about 30,000 firearms between July and November 2001. Given the above estimates of illegal firearms, this suggests that the police confiscation rate of illegal firearms is far too low.

Who should be involved in preventing violent crime?
Considering the nature and dynamics of violent crime, it is unfair and irresponsible to leave sole

![Figure 7: Number of recorded murders and rapes in South Africa, by month, 1994 - 1999](image)
control and management of these crimes to the criminal justice system; the police, courts and prisons. The activities of the criminal justice system are reactive rather than preventative, the police usually respond to crimes during or after they have been committed. Similarly, the courts and prisons can only deal with offenders who have been arrested after the offence has been committed.

It follows that the control and management of crime and violent crime in particular cannot be the responsibility of the criminal justice system alone. The strategies required to deal with these crimes should involve those responsible for welfare and social development, law enforcement and environmental modification. This implies a crucial role for other government departments, in particular, the departments of social development, education, and local government.

The successful reduction of these crimes will require the modification and implementation of existing policies. The Department of Social Development should prioritise the implementation of creative family and community development programmes. The Department of Education should ensure the effective early childhood and adolescent development of South African children. Local governments should make sure that essential basic services are delivered to communities. These efforts
should increase public support and participation – a crucial ingredient for preventing violent crime.

The key question remains; who should be responsible for driving the effort to prevent violent crime? Over the years there has been a general acceptance of the need to involve the departments mentioned above. Whether the Department of Safety and Security should be the leading crime prevention agency as outlined in policy and practice, is however debatable. This certainly does not mean the police should in any way be absolved of their role in policing violent crimes. On the contrary, laws such as the Domestic Violence Act oblige the police to perform a wide range of essential functions when victims report domestic violence. (And if studies of the quality of police service to survivors of abuse are anything to go by, there is plenty of work required in this regard.)

Rather, a debate is needed about whether the police, given that they can (and should) only play a secondary role in prevention, ought to have the **primary role in leading** crime prevention policy and strategy.

Endnotes

10. A Louw and M Shaw, op cit.
12. SAPS Crime Information Analysis Centre.
17. Ibid.
STOPPING COP KILLING

Lessons and limitations of South African research

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One issue that has been of particular concern in South Africa over the last few years has been the high number of violent incidents in which members of the SAPS have been killed. Research has been done to determine the risk profile of police, the circumstances of killings both on and off duty, and the motives of police killers. But there are unanswered questions and further research could contribute to a better understanding of the dangers facing police.

Table 1:
Killings of members of the SAPS: 1991 - 2001

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number killed</th>
<th>Number killed on duty</th>
<th>Number killed off duty</th>
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<tbody>
<tr>
<td>1991</td>
<td>164</td>
<td>65</td>
<td>99</td>
</tr>
<tr>
<td>1992</td>
<td>253</td>
<td>116</td>
<td>137</td>
</tr>
<tr>
<td>1993</td>
<td>280</td>
<td>104</td>
<td>176</td>
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<tr>
<td>1994</td>
<td>265</td>
<td>84</td>
<td>181</td>
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<tr>
<td>1995</td>
<td>240</td>
<td>84</td>
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<tr>
<td>1996</td>
<td>222</td>
<td>76</td>
<td>146</td>
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<td>1997</td>
<td>244</td>
<td>90</td>
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<td>1998</td>
<td>235</td>
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<tr>
<td>1999</td>
<td>204</td>
<td>81</td>
<td>123</td>
</tr>
<tr>
<td>2000</td>
<td>185</td>
<td>60</td>
<td>125</td>
</tr>
<tr>
<td>2001</td>
<td>163</td>
<td>67</td>
<td>96</td>
</tr>
<tr>
<td>Total</td>
<td>2,455</td>
<td>918</td>
<td>1,537</td>
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(100%) (37%) (63%)

Mirroring the broader escalation of violence in South Africa, killings of police escalated dramatically in the early 1990s, with the highest number, 280, killed in 1993. This continued at rates of over 200 a year until 2000. While according to official figures 2001 saw the lowest number of these killings since 1990, they remain at an unacceptably high level (Table 1).

In addition to these incidents there are also many incidents in which police members are injured, or are the target of violence, but escape uninjured. These incidents are frequently not documented. The killings of police have been the subject of a number of research studies over the last few years. These have mostly been linked to the work of a task team established in May 1999 to address the high number of these killings.

Trying to determine a risk profile

The picture that has emerged is that most police who have been killed have been black police members, killed by black male assailants in predominantly black areas. However, the information that has thus far emerged has not
clarified whether black members are more
vulnerable to killings than white members, or
whether these patterns of victimisation simply reflect
the broader realities of the racial composition of the
SAPS and of deployment of police personnel.

While the reports that have been produced generally
refer to attacks on and murders of police officials,
these terms have not been that clearly defined.
While the majority of police killings are deliberate
and unlawful, and may therefore be classified as
murders, the recorded killings appear to include
incidents where police officers have been the
antagonists, and were killed in disputes - in bars, or
in domestic or recreational disputes, or even while
committing crimes.

The phrase ‘attacks on police’, also widely used as
a general term in the research, is also potentially
misleading, as will emerge from the following
discussion on the general circumstances of, and
motives for, the killings.

General circumstances of the killings
The studies conducted so far indicate that the killings
of police mostly fall into one of the following three
types of circumstances:

Killings in response to police intervention
These would generally be situations where members
of the police are on duty, though it may also include
situations where they are off duty and place
themselves on duty, or exercise the powers of
ordinary civilians to act in private defence and effect
citizens’ arrests. What distinguishes these situations is
that police members mostly initiate their
involvement.

Robberies and other attacks
These include attacks on members who are on duty
and members off duty, both in and out of uniform.
The killing may be related to the fact that the victim
is a police officer, or it could be targeting a specific
individual, or it could simply be a random act of
crime.

Killings in domestic, recreational or occupational
circumstances, relating to a dispute or argument
involving a police officer
These include situations where police become
involved in arguments in bars, or with members of
their families, or with lovers, spouses, partners or
colleagues. While some of these killings may be
described as attacks, they also involve confrontations
where the person who kills them acts in self-
defence, or where both parties contribute to the
conflict. What distinguishes these situations is that
the police officer is killed as a result of being party
to an argument or dispute and the consequent
heated emotions, and not as a result of carrying out
police duties.

The studies that have been conducted thus far have
helped to illuminate the picture regarding the
different circumstances in which police have been
killed, but important questions remain. While the
studies are not unanimous on this point, analysis of
the data contained in some of them suggests that
killings in response to police intervention (category
1) constitute the largest of the three categories of
killings.

This would however appear to contradict the fact
that the bulk of killings that have occurred
(consistently over 60% of killings), have been of off-
duty police. If most of the killings occur off duty it
does not make sense that they are in response to
police intervention, unless police are doing more of
their work off duty than on duty. It therefore appears
possible that killings in attacks and arguments
categories 2 and 3) are underrepresented in the data
in some studies.

It is likely that there are significant differences in the
pattern of killings, with category 1 (police
intervention) probably constituting the bulk of
killings on duty, but category 2 and 3 constituting
the bulk of killings off duty. However, the research
has not as yet provided us with a clear picture of the
differences between off-duty and on-duty killings.

Motives for the killings
Some of the issues relating to the motives for the
killings that have emerged from research conducted
thus far, include:

Resisting arrest or preventing identification
Reporting on interviews with 26 convicted police
killers, Minnaar states that 42% (11 out of 26)
indicated that the killings of police were to “avoid being arrested”. Of this number, 19% (5 out of 26) occurred while police were responding to a crime and were trying to apprehend the suspects – for instance during or just immediately after a robbery or vehicle hijacking. These are mostly incidents that occur during normal police duties, but the report also includes a member who was executed by colleagues to prevent exposure of their corrupt activities, and a member who returned home during a house break-in to find that one of the perpetrators was known to him.

Robbery

One question that research has tried to answer is the extent to which robberies of firearms have motivated attacks and, related to this, whether it might be in the best interest of the police to disarm, even when on duty. One report, for instance, indicates that firearms were stolen from the deceased members in 114 (15%) of the 754 cases.

But while firearms are sometimes stolen when police are killed, it is often difficult to clarify whether this is the primary motive for the killing or whether firearms were simply taken opportunistically afterwards.

Of the 26 convicted police killers, for instance, two said that they attacked police to steal the service pistol, while another indicated that “the victim was robbed, his car hijacked and they also stole his firearm before killing him”.

Self-defence

Some of the statements by convicted police killers indicate that they acted in the belief that it was necessary to kill in order to protect their own lives. In one of the cases that Minnaar classifies as “resisting arrest”, the convicted killer implies that the killing would not have occurred if the police had followed formal procedure by identifying themselves. He states that “I thought they were robbers from the township”.

Another killer suggests that police may worsen the level of violence against them by the manner in which they enter into situations:

The police shoot too quickly as they arrive [at the scene of a crime]. They just begin shooting. The police die from their mistakes. If they shoot I will shoot back.

On the other hand one of the killers indicates that his actions were motivated by a perception that the police would not act in a lawful manner:

I was scared that he would shoot me because he asked me to come closer.

A recent newspaper story also suggested that some suspects fear that they will be summarily killed by the police. An alleged armed robber indicated that he was willing to surrender to the police but that he feared for his life if he did so.

Discussing this issue in the US, Geller and Scott have also stated that:

another possible explanation for long-term downward trends in shootings of police ... is the possibility that at least some potential police assailants have been made less afraid over the years that the police will administer ‘street justice’ with a nightstick or lethal weapons and hence are less likely to shoot an officer to protect themselves. Reasonable or not, there can be little doubt that some of those who assault police do so in the belief that the officers are looking for an excuse to harm them and will do so unless prevented.

Hatred and anger

Another factor that has been considered by some researchers is that the killings may be related to residual hostility on the part of community members towards members of the police, partly linked to the role played by the police in enforcing apartheid.

But while this may be a contributing factor, research has not shown that this is a prominent motive for police killings. Thus while two of the 26 police killers interviewed indicated that the killings were related to political motives (some were involved in killings prior to 1994), none of the respondents appear to have placed any major emphasis on hostility towards the police. In the one case where negative attitudes to police were mentioned, the
interviewee suggested that this might be motivated by the manner in which police handle suspects:

......when they arrest suspects they must not hit the suspects or cause them injury. And it can happen that when they arrest that suspect after a time and hit him and he is outside on the street again .... he sees the police as the enemy.11

Police who resort to violence unlawfully may be doing their colleagues a disservice, as they may at a later point in time encounter a suspect who believes that he will be ill-treated or killed if he surrenders.

Arguments and alcohol
As indicated, one of the three major categories of killings has been that of arguments or disputes in domestic or recreational circumstances.

In Nel and Conradie’s 1998 report, off duty killings included ‘arguments’ in 29% of cases, and ‘love triangles’ in 6% of cases. Of those killed 16% “had to some degree been intoxicated when the murders occurred”.12

One of the risk factors for police may be their own alcohol use, or their proximity to police who become unstable from alcohol. Nel and Conradie point out that in 9% of the 385 cases in their sample “perpetrators were indicated as being other SAPS members”. Minnaar indicates that out of 1,364 cases of police killings during 1994 to 1999, the perpetrator was a colleague in 81 of those cases (6% of the total).13

In these circumstances the factor of self-defence features once again as a possible motive for some killings. One of the police killers interviewed, a former policeman, said that he had acted in self-defence in an attack in his own house by an intoxicated police member.14

The killings of police and police safety
The evidence that has emerged is that the bulk of the killings of SAPS members have either been linked to attempts to evade arrest or in other ways resist police intervention, and to attacks, sometimes for the purpose of robbery. The primary explanation for these deaths may be found in the general societal factors currently contributing to high levels of crime and violence in South Africa. This means that the key components of the current police safety strategy, namely education, tactical training, improving the equipment provided to police, and building community relations, are appropriate.

Tactical training may also attempt to address what may be a problem of over-hasty actions by police, unnecessarily escalating the levels of violence in some confrontations.

Reckless and irresponsible behaviour by SAPS members off duty should also be examined in more detail as a factor contributing to the killings of police. In this regard it needs to be stated that the carrying of firearms by SAPS members also aggravates the problem of violence against the police. As was mentioned before, it may be that SAPS members are targeted by offenders intending to steal their firearms. The fact that the police are armed also increases the possibility of a violent response in confrontational situations.

Confrontations can occur in any circumstance, be it occupational, domestic, or recreational. While in the South African context there is not an argument for the general disarmament of the police, there is a need to pay greater attention to questions concerning the possession of firearms by SAPS members – particularly where they show signs of emotional instability and are prone to alcohol abuse.

Furthermore there may be value in providing greater clarity to SAPS members around the responsibility to place themselves on duty when they are officially off duty, and to what extent this necessitates that they carry firearms when off duty.15

While police-community relations have improved in the last decade, hostility towards the police is likely to persist among many of those who inhabit the criminal sub-stratum of South African society. In so far as members of the police service act brutally and unlawfully in dealing with suspects, they may feed into hostility towards the police in general, as well as contribute to beliefs that surrendering to the police is risky.
Finally, further research, using the insights of studies that have already been conducted, improved sampling techniques, and greater definitional clarity may contribute to a better understanding of the dangers facing police.

Endnotes
2 In addition to deaths which fall into the three categories identified, statistics provided by the SAPS in 1997 indicated that 88 SAPS members were killed in accidents involving firearms in the period January 1994 - June 1997. (Fax from SAPS CIMC, 11 August 1997). While examining accidental killings is also important to understanding police safety, it appears that the data on killings of police mostly exclude accidental killings. A fifth identifiable category is that of ‘killing of SAPS members arising from pre-mediated criminal activities to which they are party’ though existing studies suggest that these account for only a small percentage of killings.
3 As is usual with analytical definitions there is not a watertight distinction between these three categories. For example the distinction between ‘attacks’ and ‘police intervention’ is not watertight as in some police interventions (e.g. police search of an apparently empty house) the suspect/killer may retain the element of surprise.
4 It should be noted that the descriptive categories used in existing studies are not clearly defined or distinguished from each other and so it is often not possible to know whether killings are best categorised in categories 1, 2, or 3.
5 See A Minnaar, Opportunity Knocks in the Heat of the Moment: An analysis of perpetrators’ profile and their own perceptions of attacks on and killing of police officials, Institute for Human Rights and Criminal Justice Studies Occasional Paper, Technikon SA, undated. Cases from Minnaar’s study which are not discussed in this discussion of motive include attacks on police to release prisoners (these could arguably be included in the resisting arrest category), for political reasons (some cases dated to the period prior to 1994) and 2 cases involved attacks by police on colleagues. In at least three cases however the respondents motives are unspecified and they are simply indicated as having been involved in ‘direct attacks on police (unknown motives)’ (Minnaar, pp. 7 - 8).
6 A Minnaar, undated, op cit.
7 Ibid.
8 Ibid.
9 Robber tells all, Sowetan, 4 October, 2002.
11 A Minnaar, undated, op cit.
14 A Minnaar, undated, op cit.
15 Note the remark from Geller and Scott, op cit, that ‘police frequently are at a tactical disadvantage while off duty, being out of radio communication with other officers and usually not having the opportunity to plan a course of action as they travel to a suspected crime scene. Nor do off-duty officers have the same perceived legitimacy to intervene that on-duty officers have when they are summoned to a disturbance by a civilian complaint. ... Moreover, off-duty officers who happen to be socialising in a tavern when armed robbers enter may be in no condition to outdraw the holdup men, yet the presumed imperative to take police action may prompt an ill-advised confrontation’.

Other source documents


A DEN OF INIQUITY?

Inside Hillbrow’s residential hotels

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Hillbrow’s sleazy hotels are notorious crime hotspots. After a general victim survey of the Hillbrow police station area conducted by the ISS, a special follow-up was conducted in these hotels. This survey uncovered startling frankness about the prevalence of drugs, commercial sex work, and corruption in Johannesburg’s inner city.

As part of a much larger victim survey of the Johannesburg Central and Hillbrow policing areas, a focused (n = 200) household survey was conducted exclusively in the residential hotels. While this might sound like a tiny sample, there are a limited number of residential hotels in Hillbrow, an area with an official population estimate of just over 80,000. Respondents were polled at 10 sites.

Crime hot spots

These hotels are well known as centres for criminal activity, in particular the drug trade and prostitution, and contribute disproportionately to the total narcotics arrests in the country. According to the police, in one randomly selected five-month period in 2000, Hillbrow was responsible for over a quarter of all non-cannabis drug arrests in the Johannesburg policing area, an area with a population of nearly one million. Most of these arrests took place in one of a handful of residential hotels, several of which were included in this survey.

The state has taken action against several of these locations. The Mimosa International on Clarendon Street, allegedly a virtual drive-in drug market, has been seized under the assets forfeiture provisions of the 1996 Prevention of Organised Crime Act. The Sands Hotel, on O’Reilly Street, has been shut down by court order, as the hotel is in default to the city for payment of services and is in violation of building codes. The Sands, and other nearby hotels, have been the sites of countless drug arrests.

Many new migrants to central Johannesburg (including students at the nearby educational institutions) find their first accommodation in Hillbrow’s residential hotels, where medium-term rates can be negotiated without long-term commitments. For this reason, the hotels give special insight into the crime problems of areas of rapid residential turnover.

Because the residential hotels contain a large proportion of foreign migrants (36% of respondents were foreign), interview schedules were devised for them and an extra set of questions was generated for Nigerian nationals in particular (22% of respondents). These special questionnaires were based on qualitative research into the issues of particular concern to these groups, and are discussed below.1 Additionally, because many of the residential hotels are well known for prostitution, particular questions were asked of all female residents (35% of respondents, 27% of whom admitted engaging in prostitution). These are also discussed below.2

Snapshot of residential hotel life

When asked why they chose to reside in a residential hotel, most residents mentioned factors related to
Hillbrow as a neighbourhood, with 20% saying ‘location’ was the deciding factor, 21% citing their social connections to the hotel, and 8% reporting opportunities for prostitution as their main motivation. A large chunk complained of nowhere else to go (17%), but few cited price as a deciding factor.

Despite the option of paying daily, most residents reported paying for their accommodation by the month, with 57% saying the monthly rental was less than R1,000, and 17% between R1,000 and R2,000. None of the respondents mentioned prices of over R2,000 a month. Less than a third were compelled to pay the full amount, with 55% paying between 10% and 50%. Just over a quarter of hotel residents lacked cooking facilities in their rooms, although nearly all had their own bathrooms.

A quarter of all residents polled claimed that drugs were sold in their building, and every hotel in which surveys were done contained some respondents who said they were available. Of these 50 people:
- 12 respondents claimed any drug could be bought in their building;
- 28 specified that dagga was available;
- 30 specified Mandrax;
- 27 specified crack cocaine; and
- one specified ecstasy.

Ninety-one percent of the respondents said they thought that the legalisation of drugs would not improve the situation in Hillbrow.

With regard to prostitution, 75% said that women sold sex in their building. As was revealed in later questions, few of these women were responsible for small children. Less than a fifth of respondents (17%) said that children under 12 years old were left unsupervised in the hotel.

**Views on policing**

The majority of people in every building had been present during at least one police raid. A third of these people felt the raid had achieved its objectives, but 15% said it had limited success, citing various forms of corruption as a reason. Eighty percent said there had been a ‘Crackdown’ operation (the informal name for the high density search and seizure operations carried out by the South African Police Service in recent years) in their area, and 36% felt this had been successful.

Sixteen percent of respondents admitted to having being arrested at some point, and 21% claimed that the police had in the past asked them for money.

It appears that most residents feel that police efforts to reduce criminal activity have had limited success, and a number have had direct experience of the corruption some blame for this failure.

**Foreign hotel dwellers**

A wide range of foreigners were found in the hotels, although young Nigerian men made up by far the single largest grouping (62%), and 92% of these Nigerians described themselves as belonging to the Ibo ethnic group, a group that past qualitative research has identified as being involved in a range of grey and black market activities. Ninety percent of all foreign nationals were male, including all of the Nigerians.

Two thirds of the foreign nationals polled arrived in this country some time within the last two years, with over a third having been here less than a year. This illustrates why official population estimates for the area are unlikely to be accurate. Only 10% had been to South Africa prior to moving to Hillbrow, but 70% knew someone who was residing here at the time.

The foreign residents interviewed were drawn to South Africa by a variety of factors, but most were related to business or job opportunities. While 14 of the 72 foreign residential hotel residents polled said they would be arrested or killed if they returned to their country of origin, this response may have been motivated by a desire to remain consistent with claims to political asylum. Ten of 45 Nigerians, two of four DRC nationals, and one of two Sierra Leone expatriates made this claim.

Life in Hillbrow is not easy for new immigrants. A remarkable 62% said that they had been assaulted by local residents merely for being foreign. As was revealed in the representative, general victim survey
of Hillbrow and the Johannesburg central area, foreign nationals were more likely to have been victims of crime than were locals in every category polled (Figure 1). For Nigerian nationals, the situation was even more extreme, with more than three-quarters reporting having been robbed in central Johannesburg in the past year (Figure 2).

Despite these problems, most of these foreigners were quite happy with what they had found in South Africa. In fact, 43% said their opinion of their prospects here had improved since they had arrived, compared to 33% who said it had stayed the same and only 22% who said it had got worse. A surprising 73% would recommend South Africa to their countrymen as a good place to stay, and a quarter said they intend bringing members of their family over.

While 11% wanted to leave the country as soon as possible, the majority (58%) wanted to stay in South Africa for as long as they could, but were not sure how they would achieve this goal. Only 5% said they had the intention of applying for citizenship or permanent residency, but 75% said they were, or intended to become, married to a South African.

But remaining in South Africa has its costs. In addition to the police bribes paid by hotel residents generally, a remarkable 43% of the foreign nationals said they had been asked for bribes by South African authorities. Only two people admitted to having been deported in the past.

Few foreign nationals felt they were operating at their full potential in this country. Two thirds claimed they possessed a tertiary qualification, and nearly three-quarters felt they had job skills that were not being utilised in South Africa.

This picture of foreign migrants supports previous research findings in many ways, while challenging them in others. The group is indeed largely young and male, motivated primarily by an interest in economic gain. But, contrary to past surveys that suggested most immigrants are here for short-term income generation, most of the Hillbrow respondents wanted to forge long-term ties with South Africa. And while they are subject to a wide range of abuses, the bulk of the immigrants were positive about their experience in this country.

Women in the residential hotels
Hillbrow is a dangerous place, and, given that most people are recent arrivals to the area, it seems strange that women in particular would choose to migrate here. Twenty percent of the female hotel residents polled cited business or job opportunities
as their reason for being in Hillbrow, but another 27% candidly admitted to engaging in prostitution.

These sex workers appear to have been motivated primarily by prospects for economic gain, as 47% said being unemployed and staying at home prompted them to take up streetwalking. An additional 21% said they had been abandoned by a man and left with small children. None said they had been addicted to drugs prior to starting. Despite this element of choice, 79% said they would give up sex work if offered a job in a fast food restaurant.

A surprising 87% of the female hotel residents said they had a home elsewhere that they could return to at will. Twenty-one women said they kept their children in a household they maintained outside Hillbrow, while only four said they kept their children with them in the hotel. The majority of the women (61%) had someone else pay their rent, with nine women citing a Nigerian as their keeper. Past qualitative work has revealed that this is a common method of linking prostitution and drug markets.4

The vast majority (86%) said they had boyfriends or husbands, of whom about a quarter were foreign nationals. Nearly all claimed to love this person, although over a third admitted at least occasional beatings, and nearly a fifth claimed that this abuse was regular.

Thirty percent said they would return home if their present building were to be shut down, with just under 25% saying they would seek another form of accommodation in Hillbrow, and 14% saying they would simply go to another residential hotel nearby.

While the sample size is small, the trends are striking. In contrast to its reputation for turning runaways into sex slaves, this survey suggests that many of the women living in Hillbrow are, in fact, here by choice. They have homes and families to return to, but have chosen to brave the dangers of inner Johannesburg as an alternative to idle unemployment.

Implications for policy
This survey suggests several points of relevance for law enforcement and social crime prevention. Drug sales and prostitution are widely acknowledged by the residents, so identifying the names and locations of dealers in this area should be easy if the police command any public confidence at all. Corruption, especially with regard to foreign nationals, is clearly a major impediment to enforcement in this area.

Among foreigners, Ibo Nigerians make up the single largest group, and efforts to work with this community to solve the local crime problem should be advanced. This is in the best interest of the local immigrant community, as they are disproportionately the victims of crime.

Despite harassment and xenophobic attacks, these foreign nationals still view Hillbrow as an attractive alternative to their home countries, and most are interested in forging long-term ties here. Since immigration control measures have plainly failed, and criminalising these foreigners seems to result in still more criminal activity, some sort of official recognition of their status should be considered.

The sex workers polled were not the desperate runaways many may have expected. They are women with homes elsewhere, migrant labourers involved in sex work as the only form of employment available. This suggests that the provision of targeted alternative employment opportunities would decimate the local sex work market, and reduce the general air of lawlessness that hangs over this troubled area.

Endnotes
2 Ibid.
3 Ibid.
4 Ibid.
PRISON HEALTH IS PUBLIC HEALTH

HIV/AIDS and the case for prison reform

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A South African sentenced to prison is at high risk of contracting HIV before he even arrives at prison for the first time. Prisoners are primarily young, black men from impoverished communities already hardest hit by HIV/AIDS. Much of their behaviour prior to incarceration is high risk for contracting HIV, and is likely to continue upon their release. Conditions in South African prisons also contribute to increased HIV prevalence due to gang violence, poor nutrition, and inadequate health care. If these issues are not addressed, the consequences will be dire, not only for the prison population, but for the broader society into which prisoners are released upon completion of their sentences. The overcrowding of prisons is one of the most important factors affecting prisoner health; reducing the size of the prison population is essential to prison reform.

When discussing HIV/AIDS in prison, most people will conjure up the horrific scenario of a young man arrested for a minor infraction. Because he is unable to pay bail, or perhaps due to some unfortunate bureaucratic delay, he spends a night in jail and is raped by another prisoner. He thus contracts HIV and, in effect, has received a death sentence for his alleged crime. This could be construed not just as cruel and unusual punishment, but even extra-judicial execution, as the accused person has suffered his fate before being convicted, or even charged.

This situation is horrifying and makes for exciting and inciting media fodder. The drama lies in the possibility that a person from the general community - someone who is not a hardened criminal but was perhaps simply in the wrong place at the wrong time - will be exposed to the dark underworld of prison and all its terrifying evils. As a result he is inadvertently condemned to an early death. However, while such an incident can, and probably does, take place, it still does not fully illustrate the grave consequences of failing to appropriately address HIV/AIDS in South African prisons. The larger crisis relates to the high proportion of prisoners who will arrive at the prison already infected with HIV. It is highly likely that their health will deteriorate as a result of prison conditions, they will eventually leave the prison sicker, and perhaps with additional illnesses that will then be transmitted through the same high-risk behaviour practiced prior to and during incarceration.

Spreading the risk beyond the prison walls
Approximately 175,000 people are currently incarcerated in South African prisons. However, this does not mean that 175,000 criminals are locked away, isolated from the public, and unable to impact on the lives of those in the general community. Over 40% of prisoners are incarcerated for less than one year; only two per cent are serving life sentences. On average, 25,000 people are...
released from South Africa’s prisons and jails each month. This translates into 300,000 former prisoners returning to the community each year, bringing their illnesses, infections, and diseases with them. Concern should therefore not only be directed at the risk of HIV transmission in prisons, but also at the potential impact of prisoners on HIV transmission outside of prison.

**Prison: conducive to high-risk behaviour**
This is not to say that HIV transmission inside prison does not exist, or that it is not important. The most common forms of high-risk behaviour in the prison environment include high-risk sex, usually in the form of unprotected anal intercourse, as well as rape and other forms of assault which draw blood, and the use of contaminated needles or other cutting instruments, usually for purposes of tattooing.

In other countries, the sharing of needles for intravenous drug use is the leading cause of transmission of HIV in prisons. In South Africa, gang-related violence, including sexual violence, is the most common form of high-risk behaviour for the transmission of HIV. Among sexual means of transmission, receptive anal intercourse carries the highest probability of HIV infection. And because sex in prison often takes place in situations of intimidation and violence, there is a greater likelihood of tearing and bleeding, which also increases the likelihood of transmission.

The two most powerful gangs in South African prisons are the 26s and 28s. The 26s are known for their hierarchy based on phakama, or attacking a targeted inmate or guard with a knife or other weapon intended to draw blood. The 28s base their power structure on homosexual partnerships and prostitution of designated male inmates. Both gangs can wield control over all aspects of prison life, including access to food and cell assignments, usually with the assistance of corrupt prison guards or officials.

Members of either gang are likely to be tattooed with gang-related symbols. They usually have their tattoos done at the same time as other gang members, sharing the same crude unsterilised implements.

Prevention of high-risk behaviour inside prison can best be achieved through reducing overcrowding, engaging gang leaders and other peer educators in HIV/AIDS programmes, and making condoms, lubricant and bleach discreetly and readily available inside prisons. Currently, condoms are only available upon request from the health staff, but lubricant and bleach are not available at all. Peer education programmes exist in some prisons but are extremely limited, and often lack the resources to continue, let alone expand. Partnering with NGOs alleviate this situation; however, policies to address HIV in prison cannot be effective without addressing prison reform in general - reducing corruption, curbing the power of gangs, and alleviating overcrowding.

**A high rate of transmission**
HIV transmission is affected not just by the incidence of high-risk behaviour, but also by the probability of transmission per exposure. Both the incidence of high-risk behaviour and the probability of transmission per exposure are significantly increased by the prevailing conditions in South African prisons.

The probability of transmission per exposure is affected by viral load, and the presence of other sexual transmitted infections (STIs). The viral load, or the amount of HIV present in the body’s fluids, increases as the infection progresses. Thus, the more advanced the HIV infection in a prisoner, the more likely that prisoner is to transmit the virus. The progression of HIV can be reduced by Highly Active Anti-Retroviral Therapy (HAART), which is currently not available either in state health care facilities or in prisons. The progression of HIV is increased by poor nutrition, other opportunistic infections, and by stress and/or poor mental health. These factors are realities of life in impoverished communities, and of life in prison.

Prisoners tend to have a background of poverty and poor health, and the majority of prisoners are young men between the ages of 18 and 35. Prisoners therefore represent a segment of the population that is at high risk of HIV infection even prior to entering prison. Furthermore, the HIV infection of a person in prison is likely to advance more quickly than that of someone who has been living with HIV, but with access to good nutrition, private health care, and a supportive environment.
The probability of transmission per exposure is very high in the prison environment because of the likelihood that at least one of the persons involved in the high-risk behaviour is already HIV-positive. High-risk sex is more risky when the HIV infection rate among available partners is high. It is the equivalent of adding a few more bullets to a game of Russian roulette.

**STIs and opportunistic infections**

Prisoners are a high-risk population, not just for HIV but also for other STIs, and the two work together in deadly combination. The presence of ulcerous STIs, which can result in sores or other breaks in the skin of the genital area, greatly increases the risk of transmission. Also, STIs increase the concentration of HIV in genital excretions such as semen, as well as advancing the progression of HIV infection in general.

In addition to STIs the presence of opportunistic infections will also speed the progression of HIV and therefore impact on the probability of transmission. The most common opportunistic infection in South Africa is tuberculosis (TB). Pulmonary TB is particularly common in prisons, because it results in coughing and can be transmitted by inhaling infected droplets of the sputum brought up by coughing. When a large number of people are confined in a small space with little or no ventilation, the risk for airborne transmission of pulmonary TB is extremely high. Furthermore, a carrier of latent TB who becomes HIV positive will develop active TB and thus begin to exhibit symptoms and become contagious. Just as the presence of HIV exacerbates TB, the presence of TB speeds up the progression of HIV infection. In South Africa, about half of all new cases of TB are attributable to HIV. In sub-Saharan Africa, it is estimated that one out of every four deaths from TB, among people who are not also infected with HIV, would not have taken place in the absence of the HIV pandemic.

**Overcrowding, overcrowding, overcrowding**

Addressing HIV transmission in the prison environment entails addressing the needs of inmates who are already HIV positive, including the conditions that lead to increased illness as well as increased prevalence. High-risk behaviour, the prevalence of gang activity, and the impact of prison conditions on general prisoner health are all affected by severe overcrowding. Similarly, the effective implementation of any policy to address high-risk behaviour, including gang activity, will be significantly curtailed by overcrowding. The Department of Correctional Services is struggling to accommodate twice the number of prisoners than prisons currently have the capacity for.

This overcrowding, seeing up to 60 men confined in a cell intended for 18, leads to decreased security and increased violence, as well as making any efforts at rehabilitation all but impossible. The overcrowding problem is primarily the result of the high number of prisoners awaiting trial, currently estimated at one third of the prisoner population. The number of prisoners awaiting trial is affected by the increasing length of time it takes for a case to go to trial, and bail practices that leave many imprisoned for no other crime than being poor.

As more and more people are sent to prison, more and more of them are dying before serving out their sentence. Research into the death records at various prisons throughout South Africa has found that approximately 90% of deaths in prison are the result of HIV/AIDS. In a prison hospital in KwaZulu-Natal, 95% of the deaths during the year 2000 were from TB and/or HIV. The number of natural deaths in South African prisons has increased more than five-fold since 1995, while the number of prisoners has increased 38% over the same period.

The bulk of the increase in the prisoner population is made up of prisoners awaiting trial, which means that an increasing number of unsentenced prisoners are also dying before their release. Whether sentenced or not, reintegration is not likely for anyone who has endured the brutalisation and violence which is endemic in South African prisons. Recidivism rates, or the likelihood that a prisoner will re-offend upon release, are estimated to be as high as 94% in South Africa. Rehabilitation cannot take place without first providing prisoners with conditions of detention that are consistent with human dignity - a constitutional right. This includes addressing concerns about health, which both
worsen, and are worsened by, the impact of HIV/AIDS.

Conclusion
The current policies to address HIV in prison include a deeply flawed condom distribution policy, a weakly implemented HIV testing policy, and inconsistent, if not entirely inadequate, treatment and health care. Education opportunities in general, as well as those related to HIV/AIDS, are limited for most sentenced prisoners and are all but non-existent for prisoners still awaiting trial. Efforts by NGOs have proven successful in some locations, usually with the assistance and co-operation of DCS officials. However, this kind of leadership and compassion is not common in the culture of antagonism and neglect that pervades the Department of Correctional Services at all levels.

The challenge presented by HIV in prison has as much to do with improving prison conditions as with specifically addressing HIV and its attendant health concerns. In order to improve prison conditions, overcrowding must be reduced. This cannot be achieved by building more prisons, but only by reducing the size of the prison population. Sentencing and bail practices must be reviewed, and the practical use of prisons in the development context must be critically evaluated. Prison rape, assault and violence is horrific even without the added trauma of the risk of HIV infection. A just and humane society must either reject the premise that prisons are necessarily dangerous and brutal environments, or reject the modern prison institution altogether. In either instance, the appropriate response must include systemic prison reform.
SHOWING ITS TEETH

The Jali Commission on prison corruption

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Some regard the Jali Commission as another expensive exercise aimed at making recommendations that have little effect. To many South Africans, the Grootvlei video on prison corruption televised nationally this year, was the beginning of a revelation. But would this video have seen the light of day if the Jali Commission did not exist? And would there have been a specialised unit to investigate corruption, had the commission not been there? It is likely that the Jali Commission has indeed changed the way in which commissions of this kind are perceived.

The militaristic and secretive nature of the prison environment prior to 1994 meant that little was known of the institution except that it kept criminals away from law-abiding citizens. A commonly held view was that people who landed in prison deserved to be kept in custody; some even advocated that criminals should be permanently locked away. Even the South African government showed little interest in correctional services. However, what happens in prisons and to prisoners is in fact everyone’s affair. When prisoners have served their sentences they return to society, and are more often than not left to their own devices. It is likely that they will struggle to re-integrate into society.

With the new Correctional Services Act, management has sought to move away from the old militaristic and secretive way of running prisons. Human rights forms part of the new discourse, alongside the concepts of reintegration and rehabilitation. There is now a realisation that at some stage society will come face to face with former prisoners, and that both parties need to be prepared for this encounter.

However, changing the way prisons are run is proving to be a challenge for the new management. Among the many challenges facing the Department of Correctional Services (DCS), is to rid the department of rampant corruption. Although the former commissioner of correctional services, Khulekani Sithole, is to blame for much of the prevailing corruption, his actions highlighted a deep-seated problem. Since his tenure came to an end, more rot has been exposed. What is also evident is that much of the effort to combat and prevent corruption was either ineffective or non-existent. It took almost two years for the department to initiate any action against Sithole, and when that finally happened, Sithole resigned.1 It was after Sithole left that DCS embarked on concerted efforts to establish effective anti-corruption measures.

The prelude: three years of investigations
In 1998, when Ben Skosana took over as minister of the department of correctional services, several employees approached him raising allegations of rampant corruption and financial mismanagement. The minister then initiated investigations into these
allegations through the Auditor-General (A-G), an independent Chapter Nine institution which reports directly to parliament.

The A-G’s report revealed that corruption was a serious problem in prisons. The report was then presented to the parliamentary standing committee on public accounts (SCOPA). Following the A-G’s presentation, the department was summoned to appear before SCOPA. During the same period the public service commission reported to parliament that government had effectively lost control of the department.

These events necessitated further investigation into prison corruption. In 1999 the minister of correctional services approached the department of public service and administration (DPSA) to conduct a further inquiry. A management audit of DCS was then ordered. Ben Skosana and the minister of the DPSA presented the final report of the audit to the president on 18 February 2000.

The audit revealed more allegations of corruption and mismanagement, prompting further investigation. The DPSA and the public service commission (PSC) jointly conducted the second phase of the investigation. The PSC focused on malpractice in the human resource department, while the DPSA focused on allegations of impropriety. On 16 March 2001 the DPSA and PSC presented their reports to a joint sitting of the parliamentary portfolio committees for public service and administration, and correctional services.

As a result of these investigations 51 people have been dismissed, 118 reprimanded and 33 criminally convicted to date. However, the informal nature of the investigations meant that many questions remain unanswered. This necessitated the establishment of a formal judicial commission of inquiry. In July 2001, some three years and many investigations later, the minister of correctional services approached President Thabo Mbeki and requested him to appoint a commission of inquiry to investigate allegations of corruption, crime, mismanagement, violence and intimidation in DCS.

### The Jali Commission’s task

The Jali commission of inquiry was appointed on 8 August 2001, headed by Judge Thabani Jali. The commission was set to run for 12 months at a cost of R12 million. However, as the commission began its hearings it became apparent that it would require more money as well as an extension of the deadline. The terms of reference of the commission required it to prioritise the following prisons: Pietermaritzburg management area, Durban Westville management area, Ncome management area, Johannesburg management area, Pollsmoor management area, Pretoria management area, St Albans management area and Leeuwkop management area.

This did not preclude investigations into other prisons should the need arise. For example, the hearing at Grootvlei prison in the Free State did not form part of the nine prioritised management areas and was not budgeted for. However, the nature of complaints from Grootvlei necessitated a special sitting by the commission, a time-consuming exercise and one that stretched the limited resources.

The appeal to the president by the minister of DCS to appoint a commission stems largely from complaints that emanated from KwaZulu-Natal (KZN). It was alleged that a number of warders were accepting bribes from prisoners and in exchange organised escapes. At the time KwaZulu-Natal had the greatest number of pending disciplinary cases in the country. Furthermore, there were allegations that DCS vehicles were used to carry out attacks in the Midlands, and witnesses to these crimes were either intimidated or killed. The Jali Commission’s main task is to investigate allegations of corruption, mismanagement, violence and intimidation. The terms of reference of the commission include:

i) inquiring into reports of alleged incidents of corruption;

ii) making recommendations regarding steps that can be taken in order to prevent the future occurrence of such incidents;

iii) making recommendations regarding steps that can be taken against an employee who in terms of the findings of the commission is implicated in impropriety against an employer;

iv) inquiring into and reporting on any other matter which in the commission’s opinion is relevant to its terms of reference.
Achievements thus far
The Jali Commission's hearings in KwaZulu-Natal, Free State and the Eastern Cape revealed further rot in South African prisons. In KwaZulu-Natal six officials were suspended; two serving sentences for the murder of a whistle-blower. The commission has furthermore recommended that 80% of the prison employees in Westville prison be axed. Since they started operations in September 2001 the Jali Commission has revealed some shocking incidents of corruption, including:

- sales of drugs, firearms and alcohol;
- the unfair dismissal of a prison psychologist;
- prison warders sodomising juveniles;
- sale of juveniles to older hardened criminals for sex;
- murder of a whistle-blower;
- a prisoner and families in KwaZulu-Natal using DCS vehicles;
- nepotism, unfair recruitment and promotions.

It is evident from these hearings in selected prisons that corruption in South African prisons is rampant. South Africa has about 240 prisons, and the revelation of corruption in three of the four prisons investigated so far appears to be the tip of the iceberg.

Thabani Jali - the man for the job
Thabani Jali is a judge at the competitions appeal court in Durban. Prior to being appointed as a judge he worked as an attorney for 15 years, and was also a member of the legal resources fellowship in Durban. He is no stranger to commissions. Between 1996 and 1997 he was a member of a two-member commission of inquiry into problems at the Pietermaritzburg, Johannesburg, Pollsmoor and Victor Verster prisons. Victor Verster is the only prison of the four that is not under inquiry by the Jali Commission. No more were Jali's strength and independence tested than during the Grootvlei saga. DCS tried to prevent the broadcast of the video, and afterwards the department wanted to subject the head of Grootvlei to disciplinary action. However, the presence of the commission prevented the department from taking actions that would have further embarrassed them. Jali also revealed more corruption within Grootvlei, unperturbed by attempts to silence the commission.

The Grootvlei saga
Grootvlei prison in the Free State shot into the spotlight after four inmates sneaked a video camera into prison to capture corruption. The video, aired by the SABC's Special Assignment programme, showed shocking scenes of warders drinking with prisoners, juveniles being sold for sex to older prisoners, warders smuggling a gun, drugs and alcohol into prison, and food being sold to warders from the prison kitchen. The footage shocked the public and angered DCS. However, the video highlighted serious problems of corruption in prisons and highlighted the need for effective anti-corruption measures.

Investigation units with clout
Subsequent to the initial hearings of the Jali Commission in KwaZulu-Natal, the Free State and the Eastern Cape, the minister of justice and constitutional development declared that corruption and mismanagement are to be probed by a special investigating unit (SIU). The SIU will have powers to prosecute those targeted by the Jali Commission – powers that the commission does not have. The SIU will in effect complement the work of the commission. It is estimated that the SIU probe will cost R20m, the bulk of which will be provided by DCS. However, where necessary, the justice department will contribute, and, in the event of a shortfall, the treasury will be approached.

The SIU's main task will be to provide forensic investigations in support of the Jali Commission. Experienced investigators will be seconded from the unit and may later be incorporated into a permanent DCS anti-corruption unit. In addition to the SIU, DCS has considered requesting the Directorate of Special Operations (DSO) or the Scorpions to investigate prison corruption.

This represents a significant shift in the DCS, given that it is financing a probe into its own affairs – a remarkable example of transparency and commitment to combating corruption. One of the key problems in the battle against corruption relates to the perceived ineffectiveness of the correctional services system. Corrupt individuals have always been fairly confident that they would not be caught, and even if they were caught they could assume that there would be no
sanction. This created an environment of impunity.
The presence of the specialised unit will at least ensure the prosecution and conviction of corrupt employers and employees.

Management and internal disciplinary systems
The challenge for DCS is to seize the opportunity that currently presents itself. While these investigations are being conducted, it is important that the department examines its management and disciplinary systems and their efficiency.

What is evident from the Grootvlei and Pietermaritzburg hearings is that the supervision of wardens and prisoners is weak. However, the management of the entire prison system has been rather weak. In the case of Pietermaritzburg, a certain individual was appointed to a senior position although he did not possess the relevant qualifications. Subsequent to this appointment he employed family and friends who were equally unqualified. It would certainly appear that at least a few of the Natal Midlands prisons were in the hands of incompetent managers.

In the Grootvlei case, management and internal disciplinary systems are also relevant to the matter. It has to be asked why the head of prisons would have allowed the recording of the video. There are a number of possible answers, but it is possible that he did not have faith in the disciplinary systems available for dealing with corruption within DCS.

The Pietermaritzburg and Grootvlei examples are an indication that the problem does not simply lie with corrupt individuals but that it goes back to the system itself. Some of the recommendations from the DPSA management audit refer to the following deficiencies in the system:
• insufficient training of DCS personnel;
• a lack of appropriate qualifications;
• a lack of appropriate appraisal systems; and
• the design, structure and physical environment of DCS facilities.

Building employees' morale
Often overlooked, but very crucial, is the matter of building morale among DCS staff. Overcrowding, gang violence, corruption, long hours and an increase in natural deaths take a heavy toll on prison employees. It has been said of DCS that staff morale is crumbling alongside the walls within which they are working.

It is disheartening when combating corruption becomes the priority of an institution. When this is the case, the institution is effectively unable to deliver much else.

An effective system requires sound management practices that embrace good values and principles. Employees know what their job descriptions are and are committed to delivering good service. It is not a system that constantly reacts to crises. The starting point is the appointment of suitable people to positions where they can perform optimally. Recruitment policies need to be refined, transparent, and adhered to. The lesson is ‘do not let the rot enter your environment and thrive in it’.

Signs of real change
With the appointment of the Jali Commission an immediate concern was raised: what would it ultimately deliver? Would it simply produce another report, or would it lead to effective action? The announcement of the appointment of the special investigation unit to investigate corruption in prisons came as good news. It signalled that the commission will not be toothless, unlike some of its predecessors. Moreover, its findings prompted DCS and the Department of Justice and Constitutional Development to act decisively.

Endnotes
2 Presentation at the GCIS Parliamentary briefing by the Minister of Correctional Services, Ben Skosana, Cape Town, 21 August 2002.
4 Presentation by the Department of Correctional Services to Select Committee on Security and Constitutional Affairs, 20 February 2002, Cape Town.
6 Ibid.
8 GCIS Parliamentary briefing, op cit.
A MODEL FOR JUSTICE DELIVERY?

The Specialised Commercial Crime Court

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The Specialised Commercial Crime Court was established to hear cases of commercial criminality, brought to trial by the Specialised Commercial Crime Unit. The integration of the three main functions of the criminal justice system — investigation, prosecution and adjudication — is highly regarded as one of the best examples of successful criminal justice reform in South Africa. But before this particular model is replicated elsewhere, its undoubted success must be interrogated. However, it is difficult to be sure just what it is that has generated the service delivery improvements.

The Specialised Commercial Crime Court opened its doors in November 1999, a few months after the establishment of the similarly named Specialised Commercial Crime Unit (SCCU). The unit consists of a team of prosecutors led by a deputy director of public prosecutions, and is tasked with bringing cases of commercial criminality to trial. The court consists of a pair of regional courts, presided over by two severe and distinguished magistrates. The SCCU and, therefore, the court, handles all the cases dealt with by the Pretoria-based Commercial Branch of the SAPS Detective Service. Thus the investigators, prosecutors and magistrates form a virtually seamless criminal justice process, entirely dedicated to dealing with cases falling within the mandate of the Commercial Branch in the jurisdiction of the Pretoria Regional Court.

The existence of this court, and, more importantly, the integration of the three main functions of the criminal justice system — investigation, prosecution and adjudication — is regarded by many as one of the best examples of successful criminal justice reform implemented in the past few years. Recent research into the functioning of the court has confirmed that this belief is fully warranted. However, the research suggests that its success can partly be explained by factors that may not be replicable elsewhere. In addition, the research suggests that it is impossible to quantify the extent to which this court is more effective and more efficient than other courts, given the inadequacy of the available data and the fact that its case profile differs dramatically from those of other courts.

But before looking at the reasons for the success of the court, it is worth looking at the logic of court specialisation and what it might be expected to achieve.

Does the specialisation of criminal justice institutions enhance service delivery?
The basic rationale for the existence of the Specialised Commercial Crime Court is the perceived need to harness scarce criminal justice expertise in the field of commercial crime, and to integrate investigative and prosecutorial functions. In the case of other specialised courts, the motivation for their creation has hinged more on
the implementation of transformative social policies. Both the Land Claims Court and the Labour Court, for instance, were created by legislation and enjoy equal status with other high courts. However, the establishment of these two courts was primarily driven by the need to ensure that the legal system would have the institutional capacity to implement the policy objectives underpinning the passage of those particular pieces of legislation.

In these cases, which one might call ‘court specialisation’ proper, a court is established to hear a predetermined and narrow set of cases arising from the very legislation that created the court in the first place. The specialised courts are therefore part of the machinery of policy implementation. Various arguments are made to validate their existence, most of which boil down to the need to recognise that the existing institutions of the law are, for whatever reason, either unwilling or unable to give effect to the relevant policy with sufficient consistency, determination or speed.

The primary rationale for creating these institutions is, therefore, to ensure that a particular area of the law is able to develop rapidly and consistently, and to ensure that redress for matters brought to trial in terms of these pieces of legislation is achieved as quickly as possible. In these particular cases the laws relate to important components of the transformation of South Africa’s economy and society, and parliament places a portion of the law under the exclusive jurisdiction of these courts. The Specialised Commercial Crime Court, on the other hand, was established in order to harness scarce investigative and prosecutorial resources in pursuing commercial criminals, and to manage them in ways that enhance the quality of the cases brought to court. The court has to ensure that justice is done more speedily than might be the case in courts with more open rolls.

There are, therefore, aspects of the motivation for the establishment of a Specialised Commercial Crime Court that resemble the arguments for the creation of the other statutory specialised courts. There are, however, also important differences; namely, where this court is located in the South African court structure, the way in which the jurisdiction of the court is defined, and how its decisions relate to the development of the law elsewhere in the legal system.

Thus, although the Specialised Commercial Crime Court hears only cases of commercial crime, it does so as an ordinary regional court, bound by the same rules of precedence binding other courts. Moreover, if cases are heard elsewhere, no laws are violated and no person’s rights or interests are harmed. In addition, personnel in this court are treated identically to all other personnel in the normal court structure – unlike the personnel in the statutory specialised courts.

Given these differences in structure, it seems that the specialisation of courts could take two distinct routes. The one option is court specialisation proper, where legislation provides for the creation of courts outside of the normal structure, and sets the jurisdiction of those courts. The second is what might be called ‘court dedication’, where an ordinary court is reserved for the hearing of a limited range of cases. Given the legal and organisational difficulties with the former approach, it would seem sensible to suggest that in most cases, the latter would be a more practical alternative.

Before endorsing the creation of a wide range of specialised and dedicated courts, however, it should be noted that there are some associated dangers. Chief among these is the risk that, precisely because of the dedicated character of these courts, the people involved in cases before the court will become overly familiar with one another. This has the potential to subvert the cause of justice by undermining the appropriate objectivity and indifference of the officials of court. Indeed, in the worst case scenario, it is possible that corrupt relationships will develop in these environments. These are dangers that need to be guarded against and weighed up against the potential benefits of specialisation or dedication.

The Specialised Commercial Crime Court
As described above, the Specialised Commercial Crime Court consists of two regional courts dedicated to the hearing of cases brought to it by
the Commercial Branch and the SCCU of the
National Prosecution Authority in Pretoria. As the
names of the institutions suggest, these cases are all
of ‘commercial criminality’. This is a somewhat
vague classification that includes a range of different
types of fraud, some categories of theft, and a variety
of statutory offences arising from around 60 pieces of
legislation governing the conduct of business in
South Africa. Despite the range of these offences, the
core work of these dedicated criminal justice
institutions revolves around fraud and theft cases
which are too serious to be heard in district courts,
but not serious enough to be heard in the high
courts. The investigation and prosecution of cases
that are believed to involve organised criminality
are, however, the responsibility of the Directorate of
Special Operations.

According to the staff in these institutions there are a
number of advantages in this model:
• investigations, being the joint responsibility of
  investigators and prosecutors, are generally better
  managed and more speedily completed;
• prosecutors are better prepared when their cases
  eventually come to trial;
• all role-players, magistrates included,
  understand and appreciate the legal and factual
  issues at stake in these cases because of their
  heightened expertise and experience.

The statistics that are available suggest that, much
like other regional courts, the Specialised
Commercial Crime Court will close about nine or
ten cases per magistrate per month. While this raw
number does not suggest any dramatic increase in
efficiency and effectiveness, the fact that nearly 90% of
all cases result in convictions suggests that, in fact,
the prosecution and police handle these cases with a
high level of competence. Bearing in mind that
commercial crimes are on average a good deal more
complicated than other forms of criminal offence,
this is a noteworthy statistic. However, the lack of
appropriate data from courts with similar case
portfolios makes it impossible to say just how much
more effective and efficient this court actually is.

Success factors

Even though there are inadequate data on this
particular model, we do know that there are certain
external factors that contribute to its success. Chief
among these is, undoubtedly, the fact that,
compared to many other regional courts, this court
has more resources. It has, for instance, more
prosecutors per court than the national average,
and, of equal importance, the SCCU has managed to
attract and retain high calibre personnel. This, of
course, reflects positively on the management of the
SCCU. It also highlights an unintended positive
effect of specialisation itself: by creating an
environment in which staff can specialise in cases
in which they have an interest, the SCCU has found
that that the turnover of staff has fallen dramatically.

A second factor reflecting the success of the model
has been the extraordinary commitment of
management staff in both the commercial branch
and the SCCU to co-operate with each other. This,
sadly, is not always the case in multi-agency
initiatives in the criminal justice system. There is no
question in the minds of staff that this could have
been different, and that a lack of co-operation
would have doomed the initiative to failure.
However, this does not mean that there has been no
tension between staff in the different agencies, as
that would have been truly miraculous. What has
happened, however, is that the management staff,
assisted by Business Against Crime (BAC), have set
up structures and systems to manage those tensions,
and have committed themselves to resolving them
when they arise.

This involvement of BAC is yet another factor
explaining the success of the model. Although most
of BAC’s role may be described as facilitating or
catalytic, it has also assisted in the provision of
administrative and operational resources. It has
played a particularly important role in securing the
services of skilled personnel, many of whom have
come out of retirement to assist in the development
of staff competencies in the SCCU and Commercial
Branch.

Because of these additional factors it is difficult to
assess how important the court model is in
explaining the success of the initiative and,
therefore, the extent to which such successes might
be replicated elsewhere. But there is no doubt that
it has accomplished a great deal.
Conclusion
Given the uncertainties involved in assessing the reasons for the success of the Specialised Commercial Crime Court, it is not possible to offer recommendations for or against the rollout of this model to other jurisdictions or other forms of criminality. However, if the response to the Immigration Bill is anything to go by, it would appear that the department of justice and constitutional development, together with the responsible portfolio committee in parliament, have developed a view that so-called court specialisation is, in general, undesirable. (This being the creation of separate courts with legally defined mandates.) It is submitted that this approach is correct. Whether and when courts should be dedicated to specific matters, remains something of an open question.