



By our special correspondent
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TRIAL AND LOTS OF ERROR!

Judicial system failing South Africans

There's a lot wrong with the criminal justice system in South Africa. Judicial institutions are perceived by society as not part of the solution to the high crime levels but part of the problem; the police are seen as violators of the law themselves; chronic reoffending by out-on-bail or released prisoners; delays haunting the administration of justice; and so on. It is no wonder therefore that confidence in the system is at a low ebb and this includes some of the country's most senior and highly respected judges.

Three in particular used a Helen Suzman Foundation symposium to voice their concerns and frustrations. Advocate Menzi Simelane, the National Director of Public Prosecutions; Judge Azhar Cachalia, Judge of Appeal Supreme Court of Appeal; and Judge Thami Makhanya, Judge of the High Court; along with Professor Stephen Tuson, Adjunct Professor of Law at Wits University, were outspoken and succinct, each presenting salient facts that highlight areas of major concern.

It has been suggested that crime is far more common and widespread than official statistics would have us believe and in the face of this the criminal justice system seemingly has very little impact. This is not just a result of ineffective policing, in fact as Simelane points out, judges need to take control of their courtrooms.

'I have seen cases,' he said, 'that have been postponed 52 times for a variety of reasons. How come we have people who have committed serious crimes, multiple murders and robberies, getting bail over and over? There are serious consequences to this because when they are released, we have to worry about them reoffending.'

But the real concern appears to be the delays in the administration of justice. The courtrooms are constantly hindered by the un-readiness of the prosecutors, the defence and the police. Insufficiently prepared dockets crowd the court rolls, witnesses and charging police officials fail or ignore court appearance dates, and worse, Judges are unable to decipher crucial police statements because of illiterate or poor handwriting skills.

Higher standards of professionalism are needed which Simelane believes can only be addressed by training and education. 'It is true the police have a lot of power because they are the ones with the handcuffs and the pepper spray, but the ones that make the decisions are the prosecutors, they are the decision-makers. If you have a bad prosecutor, people are let off the hook just like that, and we'll never know about it. It is a very enabling provision that

we have, but it can be dangerous in the wrong hands.'

Being mindful that there are many actors at play with different roles and responsibilities, Simelane says that we shouldn't just be seeking answers from the judiciary because it doesn't have all the solutions. 'It can only do its best if the environment is sufficiently conducive... that has a lot to do with the integrity of the individuals within the system.'

It hasn't helped that the police sometimes abuse their powers for intimidation and extortion, the result of which has created a public perception of distrust and uselessness. Cachalia is extremely concerned that introducing the remilitarisation of the police is a regressive step.

'It is premised on the presumption that this will inspire the police to be more disciplined and allow them to regain the confidence of the community. This is just nonsense! These assumptions are not only wrong but dangerous and they go against the trend of modern policing all over the world.'

'Giving the police a military rank is only likely to compound the problem. It is very clear from what we and I see in the court, that many cases are poorly investigated. Statements are taken from suspects and witnesses by police officers who are functionally illiterate. And you solve this problem by giving them military titles?'

'The number of deaths resulting from police action in cases that point to the police frequently resorting to violence, and even I might add torture, will increase, not decrease with a militarised police establishment.'

The dishing out of disproportionately harsh sentences is yet another concern of Cachalia. The warehousing of more and more criminals within often appallingly overcrowded prisons offers little chance of rehabilitation. 'You can't lock up increasing numbers of people,' he says. 'It's just not cost-effective but more importantly you are simply delaying solving the problem.'

There are of course, no easy solutions but Makhanya makes the point that crime prevention starts with public co-operation. If society develops an attitude of revulsion, the duties and responsibilities that the entire judicial system shoulder become less onerous. 'We need to develop a culture where people can respect the laws of the country. There is no doubt that a better educated, equipped and co-ordinated police force is more effective in controlling crime but crime prevention and reduction is just a starting point.'



From left: Professor Stephen Tuson, Adjunct Professor of Law at Wits University, Advocate Menzi Simelane, the National Director of Public Prosecutions, Francis Antonie, Director of the Helen Suzman Foundation (chairman of the symposium), Judge Thami Makhanya, Judge of the High Court, Judge Azhar Cachalia, Judge of Appeal Supreme Court of Appeal. Picture credit, Erik Foster.

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'Crime prevention requires a programme of para-social reforms in all areas, particularly within the previously disadvantaged communities. This is where business and the private sector can play a role in educating and persuading citizens to take greater precautions against crime.'

At the real heart of the failure of the judicial system, as Tuson sees it, is the lack of accountability throughout the entire justice system. 'People are paid to do a job and deliver, and when they don't they are not held to account. We have many damaging actions against the police and what happens? The taxpayer is made to pay for wrongful arrests and detentions because the system has failed. And the individuals concerned, are they disciplined?' he asks. 'Are the police who torture put before a disciplinary panel, are they asked to account for their behaviour?'

His solution is to adopt an inquisitorial system whereby authorities take control and responsibility for their actions, including, among other things, judges not accepting the lack of court documents, and police station commanders probing why investigating officers do not appear in court.

With all these problems, it is somewhat vexing that during the World Cup it appeared that a more effective judiciary system existed. Simelane says that there was

nothing magical about it. 'Yes there was an element of planning between the different players, but the important thing we observed was that everybody in the country had a unity of purpose. Even criminals wanted to see a successful World Cup.'

'All incompetent people during that month were competent. Individuals make choices to commit crime or not to, to contribute positively or not. We need to find that which makes us all behave in unison, and that is why the World Cup worked. It's always about attitude.'

'No matter how many resources we put into the system, if people continue to commit crimes, we'll never win so it's not just about how much money we can throw at this, it's got to be about changing the mindset of people so that crime can be stopped.'

It may seem pessimistic but no one seems to know for sure how to reduce crime. One can only hope that continual discourse will help to foster a climate that will encourage the implementation of new ideas that work effectively. The scepticism and lack of faith in our judicial system continues to fester under a cloud of talk, talk, talk. In the meantime, let us not forget that justice delayed is justice denied.