

Redaksioneel

Die bekamping van misdaad

Misdadigheid in haas al sy verskyningsvorms het in onlangse tye sodanig in Suid-Afrika toegeneem dat 'n mens dalk sal vind dat teen die tyd dat 'n nuwe regeeringsvorm finaal ingestel is, boewery so diep gevestig geraak het dat dit moeilik sal wees, indien nie onmoontlik nie, vir die nuwe regering om sy administrasie behoorlik op dreef te kry.

Die vraag is wat gedoen moet word om die misdaadgolf te stuit – want dit ly geen twyfel nie dat dit wel aan bande gelê moet word anders lyk die pad vorentoe inderdaad duister.

Daar word algemeen aanvaar dat die hoë misdaadsyfer in 'n mate te wyte is aan die politieke onstabiliteit, swak sosiale toestande en werkloosheid wat tans in Suid-Afrika heers. Sodra Suid-Afrika se konstitusionele vraagstukke opgelos is en die ekonomie weer op dreef is sodat werkloosheid en maatskaplike wantoestande uitgeskakel of minstens afgeskaal kan word, sal die misdaadsyfer waarskynlik afneem. Dit staan egter vas dat 'n ontstellende mate van wetteloosheid, wat nie net aan vermeldde toestande gewyt kan word nie maar wat intendeel geanker is in 'n gees van totale miskennis van ander se regte en minagting vir die land se howe, grootliks vir die skrikwekkende toename van veral gewelds- en ernstige ekonomiese misdade verantwoordelik is.

Indien die statuutboeke nagegaan word, vind mens dat vir sover dit die regspleging aangaan, die wetgewer feitlik geen noemenswaardige poging aangewend het om die misdaadmonster te tem nie. Trouens, 'n studie van die statute toon dat die wetgewer nie die erns van die situasie ten volle besef nie en versuim het om pro-aktief op te tree ten einde voornemende misdadigers

tot ander insigte te laat kom. Indien die lewens en eiendom van die burgers soos tans ernstig deur gewetenlose misdadigers bedreig word, is die wetgewer nie alleen daarop geregtig nie, dog ook verplig, om af te wyk van algemeen-geldende beleid of beginsels rakende wetgewing, en om buitengewone maatreëls te tref om misdadigers af te skrik.

In die soeke na oplossings vir die probleem van oorbevolking van gevangnisse is daar die laaste tyd allerlei nuwe soorte vonnisse bedink en is aansienlike druk op die howe uitgeoefen om 'n meer verligte beleid ten opsigte van straftoemeting te volg. Sonder om afbreuk te doen aan die goeie bedoelings wat dié inisiatiewe ten grondslag lê, mag dit wees dat hierdie nuwe idees te ver gevoer word en dat voornemende misdadigers die indruk begin kry het dat die howe uitermate toegeeflik geraak het, met die gevolg dat die strafregstelsel nie langer 'n voldoende mate van afskrikking vir diesulkes inhou nie. Daar word aanvaar dat sowel die howe as die owerheid hiermee rekening sal hou.

Die premature vrylating van gevangenes, veral dié wat ernstige misdade soos moord en ander geweldsmisdade gepleeg het en wat slegs 'n betreklike klein gedeelte van hul vonnisse uitgedien het, is heelwaarskynlik ook tot 'n mindere of meerdere mate verantwoordelik vir die toename van misdaad: omdat die vrygelatenes verdere misdade gepleeg het (selfs voordat hulle normaalweg vrygelaat sou gewees het) of omdat potensiële misdadigers die afleiding maak dat indien hulle self oortree hulle spoedig weer op vrye voet sal verkeer indien hulle wel betrap en veroordeel sou word. Ons het egter daarvan kennis geneem dat die vrylatingsproses intussen deur die owerhede op so 'n wyse aangepas word

Editorial

The combating of crime

Crime in almost all its manifestations has in recent times increased in such measure in South Africa that one might find that by the time a new form of government has been introduced, thug-gery has become so firmly established that it would be difficult, if not impossible, for the new government to launch its administration in an effective manner.

The question is what should be done to stop the crime wave – because there can be no doubt that it must be checked, otherwise we are indeed facing a bleak future.

It is generally accepted that the high incidence of crime is to some extent due to the political instability, poor social conditions and unemployment prevailing at present in South Africa. As soon as South Africa's constitutional problems have been resolved and the economy has been revitalised so that unemployment and social evils can be eliminated or at least reduced, the crime rate will in all probability decline. It cannot be gainsaid, however, that an alarming amount of lawlessness which cannot solely be ascribed to those conditions but is, on the contrary, rooted in a spirit of total disregard of the rights of others and contempt for the courts of the land, is largely responsible for the horrifying increase, especially in crimes involving violence and serious economic crimes.

If the statutes are examined one finds that, as far as the administration of justice is concerned, the legislature has made hardly any noteworthy attempt to subdue the crime monster. Indeed, a study of the statutes shows that the legislature does not fully appreciate the seriousness of the situation and has failed to act pro-actively in order to persuade prospective criminals to mend

their ways. If the lives and property of the citizenry are – as at present – seriously threatened by unscrupulous thugs, the legislature is not only entitled but is indeed duty-bound to deviate from generally accepted policy or principles concerning legislation and to introduce extraordinary measures to deter criminals.

In the search for solutions to the problem of overcrowding of prisons a variety of new forms of punishment has lately been devised and much pressure exerted on the courts to adopt a more enlightened policy in relation to sentencing. Although one does not wish to detract from the good intentions underlying such initiatives, it may be that these new ideas are being carried too far and that prospective criminals have begun to gain the impression that the courts have become exceedingly lenient, with the result that the criminal justice system no longer has a sufficient measure of deterrence for such persons. It is assumed that both the courts and the authorities will be mindful of such a danger.

The premature release of prisoners, especially those who have committed serious crimes such as murder and other crimes involving violence, and who have served only a comparatively small part of their sentences, has also in all probability given rise to a greater or lesser extent to the increase in the crime rate: because those released have committed further crimes (even before they would normally have been released) or because potential criminals have been drawing the inference that should they themselves commit a crime they would soon be set free in the event of being caught and convicted. Cognisance has, however, been taken of the fact that the release process is being adapted in such a way by

dat voortydige vrylatings nie langer sal plaasvind nie. Hierdie aangeleentheid verg sorgvuldige monitering.

'n Owerheidsbesluit wat waarskynlik ook bygedra het tot die toename van moord, gewapende roof en ander ernstige misdade was die opskorting van die uitvoering van die doodstraf. Die tydelike moratorium wat op 2 Februarie 1990 in dié verband aangekondig is omdat sekere wetgewing rakende die doodstraf in die vooruitsig gestel was, was verstaanbaar, dog die moratorium wat daarna vir 'n onbepaalde tydperk ingestel is, was 'n fout veral vir sover dit volgens alle aanduidings aanleiding gegee het tot moorde en ander misdade wat andersins nie gepleeg sou gewees het nie. Dit het ook gelei tot 'n algemene gevoel van minagting vir die howe vanweë die feit dat uitvoering nie gegee word aan doodvonnisse wat deur hulle opgelê is nie.

Argumente tot die effek dat die doodstraf geen afskrikwaarde het nie, kom merendeels van diegene wat min of geen praktiese ervaring van die strafregspiegeling en die regsadministrasie in Suid-Afrika het nie. Verreweg die meeste persone wat wel oor deeglike ervaring op daardie terreine beskik, het geen twyfel nie dat die doodstraf 'n betekenisvolle afskrikwaarde vir voornemende moordenaars en ander geweldenaars het. Dat die meerderheid van die bevolking dieselfde mening huldig, blyk daaruit dat hulle volgens beskikbare getuienis ten gunste van die behoud van die doodstraf is.

Die meeste mense het seker begrip vir die regering se dilemma (wat hy terloops vir homself geskep het) voorspruitende uit die feit dat etlike honderde terdoodveroordeeldes in die dodeselle aangehou word. Seer sekerlik sal dit nie nou gerade wees om hulle almal tereg te ste nie. Dit is seker ook so dat party van hulle die betrokke misdade gepleeg het in die veronderstelling dat indien hulle gevang sou word en die doodvonnis sou ontvang, dit nie uitgevoer sou word nie.

'n Oplossing vir vermelde dilemma sou wees om al diesulkes se vonnisse te versag en te vervang deur termyne van gevangenisstraf en om 'n amptelike aankondiging te doen tot die effek dat alle persone wat die doodvonnis in die toekoms ontvang ten opsigte van misdade gepleeg na 'n bepaalde datum voortaan tereggestel sal word tensy begenadiging in die gewone gang van sake verleen word. Op hierdie wyse kan die bestaande moratorium ten opsigte van die doodstraf op 'n geordende wyse opgehef word. So 'n aankondiging sal hopelik tot gevolg hê dat

die voorkoms van moorde en ander misdade dadelik afneem.

Die doodstraf het ongelukkig gepolitiseer geraak. Dit lê egter nie op ons weg om op die politieke implikasies van so 'n opheffing in te gaan nie. Wat wel duidelik is, is dat daar oorlegplegning tussen die politieke partye of groepe wat by die grondwetlike gesprekke betrokke is, sal moet plaasvind voordat 'n besluit in dié verband geneem word (om onder andere te verseker dat 'n nuwe regering nie binne afsienbare tyd weer so 'n moratorium instel of die doodstraf dalk heeltemal afskaf nie).

Daar word besef dat bovermelde oplossing nie allesins bevredigend sal wees nie. Soos dit ons voorkom, sou dit egter die beste metode wees om die moeras wat op owerheidsvlak rondom die doodstraf geskep is, uit te skakel en finaliteit te bring ten aansien van 'n aangeleentheid wat nie langer in 'n lugleegte gelaat behoort te word nie. Die enigste alternatief sou wees om die doodstraf af te skaf (wat onder andere ook sal meebring dat alle terdoodveroordeeldes begenadig word). Daarvoor - soos reeds aangetoon - is die Suid-Afrikaanse bevolking blykbaar nie te vinde nie.

Ernstige oorweging behoort ook geskenk te word aan voorstelle van dr Willem en mev Evanthe Shurink in die Maart 1992-uitgawe van *South Africa in the Nineties*, kwartaalblad van die RGN. Hulle bepleit onder meer die skepping van 'n nasionale raad vir misdaadvoorkoming, wat samewerking tussen staatsdepartemente, plaaslike regeringsinstellings, die polisie, vrywilligersorganisasies en die private sektor sal verseker. Ons stem ook met genoemde skrywers saam dat nie net die regering nie, maar ook die leiers van die verskillende politieke groeperinge, aandag aan die misdaadprobleem moet gee. Politici moet daarteen waak dat terwyl hulle beraadslaag oor politieke mag die werklike mag in die land deur boewe oorgeneem word.

Notas:

- 1 Sien ook die artikel "Misdaad: Oorsake, gevolge en remedies" asook die statistieke vevat in die Bylaes daarvan, wat elders in hierdie uitgawe verskyn.
- 2 By ons ter perse gaan, het VSA President Clinton sy ondersteuning aangekondig vir 'n belangrike wetsontwerp oor misdaad gebaseer op die uitgangspunt dat dit die plig van enige regering is om sy mense veilig te probeer hou. Die wetsontwerp beoog onder andere om terdoodveroordeeldes se vermoë te beperk om oneindiglik "habeas corpus"-appêlle deur die federale howe te voer en om tegelykertyd die aantal misdade wat aan die doodstraf onderhewig is uit te brei. (*Time Magazine*, 23 Augustus 1993). ■

the authorities that premature releases will no longer take place. This matter calls for careful monitoring.

A decision by the authorities that probably also contributed to the increase in murder, armed robbery and other serious crimes was the suspension of the execution of the death penalty. The temporary moratorium announced in this connection on 2 February 1990 for the reason that certain legislation concerning the death penalty was contemplated, was understandable. But the moratorium introduced thereafter for an indefinite period was a mistake, particularly in so far as it has, according to all indications, led to murders and other crimes that would otherwise not have been committed. It also triggered a general feeling of contempt for the courts by reason of the fact that effect is not given to death sentences imposed by them.

Arguments to the effect that the death penalty has no deterrence mostly emanate from those having little or no practical experience of criminal justice and its administration in South Africa. By far the majority of persons having wide experience in those areas have no doubt that the death penalty has a significant deterrent effect on prospective murderers and other perpetrators of violence. That the majority of the population holds the same view can be inferred from the fact that, according to available evidence, they are in favour of the retention of the death penalty.

Most people presumably have appreciation for the government's dilemma (which, by the way, was created by itself) arising from the fact that a few hundred persons who have been condemned to death are being detained on death row. It would certainly not be advisable to execute all these persons at this stage. It is also presumed that some of them committed the crimes in respect of which they were sentenced on the assumption that should they be caught and sentenced to death, the sentence would not be carried out.

A solution to that dilemma would be to commute all those death sentences and to replace them by terms of imprisonment; and to make an official announcement to the effect that all persons who henceforth receive the death sentence in respect of crimes committed after a specified date would in future be executed unless a reprieve is granted in the normal course of events. In this way the existing moratorium on the death

penalty could be revoked in an orderly fashion. Such an announcement would hopefully result in an immediate decrease in the incidence of murders and other crimes.

The death penalty has unfortunately become politicised. It is not, however, incumbent on us to examine the political implications of such a revocation. What is nonetheless clear is that consultation between the political parties or groups involved in the constitutional negotiations will have to take place before a decision in this regard is taken (amongst other things, to ensure that a new government will not within the foreseeable future re-introduce such a moratorium or abolish the death penalty altogether).

It is realised that the abovementioned solution will not be entirely satisfactory. It would appear to us, however, that it would be the best method of removing the quagmire created at executive level around the death penalty and bringing to finality a matter that should no longer be allowed to drift along in a vacuum. The only alternative would be to abolish the death penalty (which would *inter alia* also entail a reprieve for all death row prisoners). As already indicated, the South African population does not seem to be in favour of such a course.

Serious consideration should also be given to proposals put forward by Dr Willem and Mrs Evanthe Shurink in the March 1992 edition of *South Africa in the Nineties*, a quarterly journal of the HSRC. They advocate *inter alia* the creation of a national council for crime prevention to ensure co-operation between government departments, local government institutions, the police, voluntary organisations and the private sector. We agree with these writers that not only the government but also the leaders of the various political groupings should give attention to the crime problem. Politicians should take care that, whilst they negotiate for political power, the real power in the country is not taken over by thugs.

Notes:

- 1 See also the article "Misdaad: Oorsake, gevolge en remedies" and the statistics reflected in the Schedules thereto, which appear elsewhere in this edition.
- 2 At the time of going to press, USA President Clinton announced his support for a major crime bill based on the premise that "the first duty of any government is to try to keep its citizens safe". The bill *inter alia* seeks to limit the ability of those convicted of capital crimes to file "habeas corpus" appeals endlessly through the federal courts and will at the same time expand the number of crimes subject to the death penalty. (*Time Magazine*, 23 August 1993). ■