

Not a time to be lenient

To everything there is a season

A time to be lenient

And a time to appoint a hanging Judge

When the Inkatha Freedom Party launched its election manifesto last week, it called for the return of the death penalty. It sounds rather strident, in a land where a man who cynically murdered his wife was recently sentenced to 20 years. Not a life sentence, not the death penalty.

It is not my purpose here to debate the pros and cons of the death penalty. But the IFP's motivation for this policy platform is to "get tough on crime". Certainly, the ANC's track record on crime is no better than its inability to create more jobs. While the economy is still shedding jobs after 25 years, the population has climbed from 40 million to 55 million. Unemployment is rising in between these two factors – job losses and population explosion. It seems clear that a new way of thinking is needed, and the same applies to the problem of crime.

The Democratic Alliance blames the ANC for role-modeling criminality. This week it held a press conference – still early in its election campaign – to announce that it has asked the new NDPP Shamila Batohi to charge the ANC with racketeering. This arises from the new election rules in 2019 – parties must disclose where their campaign funding comes from. The DA has done a "wiring diagram" that shows how elected politicians influence decisions on tenders, ensuring that these land with companies, through patronage, that basically use institutions like the late VBS to channel donations out the back door to the ruling party. In street language these are called kick-backs. But they have become so commonplace, and organized, as in the case of Bosasa (if you can believe A Agrizzi's testimony?), that the DA claims that it amounts to racketeering. That is, organized crime. Except in this case the "casa nostra" is not the Hell's Angels but the ANC!

If you are looking for themes that could unite the opposition parties into a cohesive coalition, the issue of crime and corruption would be a good place to start. Although they may have different suggestions about how to go about it, they all want to improve on the ANC's track record.

The Police Minister Bheki Cele claims that the number of police officers is only half of the level needed to maintain law and order (using an international benchmark). That is even more of a concern when perhaps half of those already in this role are corrupt. New examples of police colluding with criminal activity emerge regularly in the media.

The ANC is caught between two forces. One reality is that it is hard to penalize people for mere allegations, until they are convicted in a court of law. Nevertheless, the ICASA got R Mohlaloga to stand aside pending due process; the NPA suspended J Lepinka pending due process; the Presidency got both P Mabe and Z Kodwa to stand down pending decisions, and even the Deputy Chair of the ANC in KZN - M Mabuyakhulu – is off line, awaiting due process.

But when the final lists were announced this week for “cadre deployment” by SG Ace Magashule, he explained that only those actually convicted of crimes had been culled. Those who are merely implicated remain. As usual, there seem to be two answers to the same question coming out of the ANC. To the point that it is hard to know what its election platform really is.

To many voters, the closure of the Scorpions was the beginning of the end in terms of effective law enforcement. Hugh Glenister’s case went all the way to the Constitutional Court – where he eventually won. Closing the Scorpions was declared unconstitutional. But it was too late. The Executive branch was way ahead of the Judiciary on that one.

The fundamental problem was that this left South Africa with no other entity that combined investigative and prosecutorial powers. All remaining entities did only one or the other. For example, the Hawks can investigate, but cannot prosecute. And the NPA can prosecute, but not investigate. Criminals learn how to slip between them like a child playing one parent against the other.

This is why two recent moves by President Ramaphosa are significant. First, he announced the opening of a new investigation unit inside the NPA – which reports to the new NDPP Smaila Batohi. This gives cause for optimism.

Then he announced another fix – prosecutorial powers for the SIU. On both counts, one can see that what was lost with the closure of the Scorpions is being found.

Meanwhile the Judiciary is reeling under all the extra work of trying to contain State Capture along with its usual work load of crime. Thuli Madonsela was the first to suggest in her *State of Capture* report that a judicial commission should be set up to explore State Capture in depth. This was delayed by the ANC, but finally implemented by the ANC, showing the identity crisis that it is suffering from. The Zondo Commission has really been an eye-opener, although how much of the testimony can be converted into hard evidence for prosecution remains to be seen.

Desmond Tutu and Thuli Madonsela have suggested in the media that a new Section 9 institution should be created by amending the Constitution – to deal with corruption and patronage. That is, with political crime. The point of this would be to reduce the overloading of the Judiciary, which always works slowly by nature, but has of late pressed the “Slow Play” button. It is sagging under the increasing volumes.

In one instance, a rape victim recently got a court order from the High Court ordering the NPA to prosecute her rape case within three months – after ten years of waiting. No wonder that the opposition parties want to see some improvements.

In the run-up to elections, voters are weighing up the different and diverse platforms being promoted by fifteen parties on the ballot. It can get quite confusing, but on the issue of crime, all opposition parties seem to agree that not enough is being done. There is rare coherence on this point.

In the 2019 SONA, the President famously repeated the phrase “Watch this space” whenever the topic of getting tough on crime and corruption came up. President Ramaphosa – the voters are watching closely. This issue could prove to be a game-changer in South African politics and history.