

Nothing democratic about law societies' penchant for secrecy

LAWYERS love Latin axioms. Not only do these pithy phrases dating to Roman times encapsulate the law's basic tenets, but also remind we plebs of the lawyer's learning, for which even if we don't benefit as clients, we are likely to have to shell out dearly.

One popular maxim is *quis custodiet ipsos custodes?* It translates to "who will watch the watchmen?" and alludes to the corruptibility of control mechanisms.

That's particularly apposite to South Africa with its history of state authoritarianism, a strain of which lives in the Legal Practice Bill, a piece of legislation that our legal establishments do not gratefully oppose. But it's also a maxim ignored by the same establishment in its stubborn defence of secret, self-serving internal disciplinary



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Jaundiced Eye

procedures - procedures which make imperative the bill's external oversight and ombudsman clauses.

As this column has highlighted previously, SA lawyers uniquely conduct their disciplinary processes in secret (except for the complainant and the charged practitioner) and then won't disclose publicly the finding and sentence (unless the practitioner is struck from the roll. This

contradicts best practice in virtually every democracy. Many countries have an independent ombudsman to oversee the profession and protect the public; all provide detailed information about upheld serious complaints against lawyers.

This lack of transparency is probably unconstitutional. Paul Hoffman, director of the Institute for Accountability in Southern

Africa, says that "openness is a foundational constitutional value" that "applies to all governance, including that of errant attorneys". University of Cape Town law Professor Hugh Corder describes the secrecy as "horrifyingly" unconstitutional.

South Africa's four regional law societies and the overarching Law Society of SA are unmoved. They have steadfastly refused to release to this columnist details of successful complaints, except in broad statistical terms.

Nor do the law societies have much regard for the Public Access to Information Act. For starters, none explains on its website, as it is legally obliged to do, how it handles such requests. So one had to give notice to each of an intended application in terms of the act.

Gavin John, director of the

KwaZulu-Natal society, despite several reminders over four weeks, simply won't respond. Mzwakheya Mohobo, director of the Free State society, is stalling, first wanting to know "the reason and the purpose" of the request, then checking one's journalistic credentials.

Such foot-dragging is grounds for a professional misconduct complaint. Snag is, one has to complain to the very societies about which the complaint is.

William Mokoena, director of the Cape Law Society, was slow to stir, but after three weeks provided a Public Access to Information Act application form.

However, he did warn that the Cape Law Society council had resolved "to seek legal opinion in order to establish some clarity" regarding the Cape Law Society's

position in relation to the act.

Thus Grobler, director of the Law Society of the Northern Provinces, responded tentatively, stating that though the society "would prefer not to compel you to make use of a formal Public Access to Information Act application... it may be problematic to furnish the detailed information requested".

After consideration by the Law Society of the Northern Provinces council, Grobler provided a Public Access to Information Act application form and an explanation.

"The society often receives serious criticism from members that they are being unnecessarily victimised, harassed and persecuted by the society. To now expect the society to disclose the names of attorneys who were convicted of minor transgressions, may do their

professional reputations irreparable harm and subject the society to even more severe criticism from members and... may result in court applications to interdict the society (from disclosure)."

In other words, attorneys consider any conviction, short of being struck from the roll, to be a "minor transgression" of no public interest, and the so-called oversight bodies agree. Meanwhile, the Law Society of SA rejects anything in the Legal Practice Bill - which reaches parliamentary committee stage this month - that would dilute its "right" to be the sole and secret protector of the public from rapacious and incompetent lawyers.

There's another Latin precept applicable here. *Operaerunt custodem ovium lupum* - a great protector of sheep, the wolf.

Xenophobia still deeply entrenched

A concerted effort is needed to reduce the prejudice of most South Africans against foreigners, writes Jonathan Crush

ONE IN every two South Africans wants foreign migrants to carry their identity documents on them at all times and 63 percent of citizens want electrified fences on the country's borders.

Half of the population also feel that migrants without documentation should not receive police protection and 14 percent believe that migrants, regardless of their legal status, enter the country with the main purpose of committing crime.

These shocking findings come from the latest survey by the Southern African Migration Programme (Samp) on South African attitudes towards foreigners, done to assess levels of xenophobia and identify possible areas of concern. The xenophobia survey was conducted in November and December 2010.

The Samp Xenophobia Index we use in our surveys is calculated using answers to 15 questions for every participant and those with higher scores are assessed as being more xenophobic.

Important positive findings from the latest survey, published this week, include a noticeable reduction in extreme xenophobic sentiments among several groups, including coloured people, Afrikaans-speakers, South Africans who speak the same languages as migrants, and poorly educated citizens.

Attitudes to migrants from other southern African countries have improved. Also, some 41 percent want mandatory HIV testing of refugees as compared to 60 percent in 2006, and one in three think migrants contribute to skills development, an increase from 25 percent in 2006.

In 2010, close to one-third wanted refugees to live in border camps. Support for this discriminatory policy has dropped from nearly 50 percent in the previous survey.

Interestingly, in 2006, xenophobia was inversely tied to income: the higher the income, the lower the xenophobia scores. But in the latest survey, levels of xenophobia increased with increasing income. Those in the lowest income groups were the least xenophobic.

However, the proportion of South Africans willing to transform their anti-foreigner attitudes into forceful action against migrants has remained constant, suggesting that no lessons were learned from the mass xenophobic violence of May 2008.

The number of South Africans ready to remove migrants violently increased slightly from 2006 to 2010. South Africans unwilling to engage in such actions actually declined in 2010 and the proportion of those prepared to unite with others in collec-



ASSISTANCE: Police give homeless refugees a helping hand in a move to a temporary shelter.

PICTURE: REUTERS

tive action against migrants remains unchanged from 2006.

Researchers asked questions about citizen reactions to the violence of May 2008. Respondents were asked what they felt were the underlying reasons. Close to half felt personally guilty, 54 percent agreed that migrants did not deserve such treatment and a similar proportion did not endorse such actions. However, another third was unmoved by the violence and a minority showed their approval. These differences are erased when it comes to explaining the violence. Most accepted popular explanations or were apathetic. For instance, more than 60 percent thought the violence stemmed from migrants' involvement in crime or because they take jobs from South Africans or are culturally different. So, while South Africans

expressed their discomfort with the violence, they held migrants and refugees responsible, falling back on migrant stereotypes and false hopes to justify it.

The survey looked for dissimilarities on indices in hot spots of the May 2008 violence and other areas and did not find any big differences. It did find that residents in hot spots were less accepting of the violence compared to other South Africans, but fewer felt guilty about it or wanted to do something to repair it.

While violence directed at migrants and refugees has certainly not disappeared from South Africa since mid-2008, it is still explained away by government officials as the work of criminal and anti-social elements.

With the continuing attacks on people, their shops and other prop-

erty, there is an urgent need for a concerted effort by citizens and the state to counteract the hostility that exists, which flies in the face of the rights and entitlements that the constitution affords foreigners in South Africa.

Myths that underlie many xenophobic attitudes need to be dispelled. Although the census shows that less than 5 percent of South Africa's residents were born outside the country, more than half of South Africans believe foreigners constitute a great majority of the population. The same applies to jobs. While there is evidence that migrants often bring necessary skills into the country and create jobs for locals, South Africans want very few migrants even when jobs are available for them.

Globally, South Africa is the

country most opposed to immigration, with many favouring a complete prohibition on the entry of migrants. Thirty percent of South Africans probed in a recent international survey wanted a total ban on all migration to the country for work. This was higher than any other country surveyed. South Africa also had by far the lowest number of people who wanted a migration policy linked to the availability of jobs in the country.

The fact that the convictions of those willing to use violence to exclude or expel migrants from communities, and join with others to achieve this end, remain fixed is cause for great concern.

Disturbing signals from the survey include that one in four South Africans is ready to jointly prevent migrants from neighbouring coun-

tries from operating a business. This is a troubling indicator because of the rise in attacks on migrant-owned businesses in recent years.

Perhaps it is unsurprising that the Ministry of Trade and Industry has joined this xenophobic campaign in its proposed Licensing of Businesses Bill, which will give the police and citizens new powers to harass and destroy the operations of migrant-owned small business.

A quarter of South Africans are willing to prevent migrants from moving into their neighbourhood and some 20 percent would take action to prevent the enrolment of children from migrant families in the same schools as their own.

Despite a fall in support from 2006, one-quarter of South Africans continue to want all migrants to be deported, irrespective of their sta-

tus. Half of all South Africans feel irregular migrants should not receive police protection. And only 18 percent want to give them legal protection.

Refugees fared marginally better, with 36 percent of respondents wanting to give them protection through the police. The recognised vulnerability of such migrants to poor treatment, extortion by state officials, and to xenophobic violence makes this a disturbing fact.

To change the myopic siege mentality the survey shows still exists, we need a state-owned and promoted comprehensive education programme that reaches into schools, workplaces, communities and the corridors of the public service.

The programme should breed tolerance and spell out what rights foreigners are entitled to when in South Africa, as well as the benefits of interaction with peoples from other countries.

Interestingly, citizens who have no contact or interaction with migrants are the most opposed to them, suggesting that increased contact between migrants and citizens has a beneficial effect on tolerance and xenophobic views. There is reason for hope in the decline in intensity of xenophobic sentiment and the fact that growing contact between South Africans and migrants has helped soften attitudes. However, this is a slow process.

South Africans continue to feel threatened by the presence of migrants and want to handle these anxieties by limiting numbers of migrants and refugees, strongly deterring their entry into South Africa and making conditions difficult for their existence here by restricting the rights and entitlements they can enjoy. The presence of an unyielding cohort that is ready to deploy violence to manage such anxieties is our most disturbing finding.

Until we make the necessary effort to change this, migrants and refugees will continue to be "soft targets" of discrimination and violence.

Xenophobic attitudes that are entrenched, pervasive and negative need to be attacked with the same commitment that the government and civil society show towards the scourge of racism in post-apartheid South Africa.

● Crush is the director of Samp and an honorary professor at the University of Cape Town. Samp's latest policy paper, "Soft Targets: Xenophobia, Public Violence and Changing Attitudes to Migrants in South Africa after May 2008" can be downloaded from www.queensu.ca/samp/

Child protection units 'help turn victims into survivors'

KASHIEFA AJAM

IN OCTOBER 2011, Bheki Cele, the police commissioner at the time, poignantly - and to much applause - reinstated the specialised family violence, child protection and sexual offences units.

By then, nearly 2 000 officers had been trained to deal sensitively with cases and to hunt down perpetrators, whom he described as being "worse than animals".

together to protect children", the government hopes its message - that protecting children should be a national priority - is heard loud and clear. But when a child is raped, assaulted, abandoned, it is the reinstated family violence, child protection and sexual offences units that provide the young victims and their families with a small measure of comfort when they assist them.

Organisations working in the field, however, agree that there are

also asked them what the challenges were. This is what they said:

Molo Sogololo - Patric Solomons, director:

"The reinstatement of the units has made a huge difference. The units specialise in child abuse and crimes against children - cases which need a particular response and to be guided by the child care and protection legislation: the Children's Act, the Sexual Offences

Act and/or by children. They must act in the best interests of children at all times, and they have obligations of duty towards children - persons under 18 years of age.

"To improve their service, they could increase roll-out, training and resources, increase the capacity of the units, and have more specialised groups within the unit."

Child Welfare South Africa - Saras Desai, regional director

turn victims into survivors.

"These are one-stop service centres where there are police officers to take down statements, doctors to complete the J08 and do the examinations, nurses who assist and social workers.

"The attitude of staff at the units is good. However, when cases have to be reported through the police station, it can be problematic because of the changes in staff and the lack of education in terms of child abuse.

focused. Police officers are trained to work and communicate with children. They are sensitised to children's developmental phases.

"However, there are some challenges as there is a lack of consistency in the training of police officers. When staff resign or are on stress or sick leave, other officers are substituted who are not always trained or equipped to interview or take statements from children, often resulting in secondary victimisation.

result in the postponement of the case. If this happens a few times, the case is struck off the roll.

"It seems that there is no follow-through or accountability by the officers and that infrastructure is not always available. There should be stringent screening of officers to ensure that they enjoy and want to work with children."

Johannesburg Institute of Social Services - Letitia Nelson:

It is one of the things for which Cele has been hailed.
And as the curtain falls on National Child Protection Week, this year taking as its theme "Working

together problems and many of the units' functions can be improved.
We asked four child organisations how the units had made a difference in the way they worked. We

asked the units about the work they do, and the challenges they face.
"But officers must be properly trained to report, take statements and investigate child abuse cases and offences committed against chil-

dren," says the director of the units.
"The reinstatement of the units was definitely a positive step, especially the establishment of the Thuthuzela care centres, which help

Teddy Bear Clinic - Shaheda Omar, director:
"The units have definitely made a change in that they are child-

friendly."
"In numerous situations, the officers fail to bring clients for interventions and then an assessment is not conducted or is delayed, which could

lead to a child being in danger."
The new units have made a difference in the way police deal with child victims, because the protection of children should be a priority for the SAPS.

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