

**Crime and Punishment: Criminal Justice
Reform for a #SaferSouthAfrica**

A Manifesto of the Section 12 Initiative

SECTION12

FMF MANIFESTO

24 April 2024

**CRIME AND PUNISHMENT:
CRIMINAL JUSTICE REFORM FOR A
#SAFERSouthAFRICA**

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THE SECTION 12 INITIATIVE

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The 2024 general election is the most consequential election of a generation.

Despite violent crime being South Africa's most pressing crisis, criminal justice reform to address it has not featured as a significant item on the election and post-election agenda.

The Free Market Foundation's Section 12 Initiative has sought to bring the national focus onto this issue.

WE THUS NOTE THAT, WHEREAS:

Violence is an exceptional form of criminality that directly and unequivocally does harm to the vital interests – their lives, liberty, or property – of innocents;

Non-violent crime is usually, but not always, a phenomenon for which victims are politically defined rather than obviously evident;

The common law has long recognised the distinction between obvious (usually violent) criminality in the form of *malum in se*¹ and politically determined criminality in the form of *malum prohibitum*²;

¹ *Mala in se* (singular *malum in se*) refers to conduct that is self-evidently criminal from the nature of the conduct itself. As a matter of consensus, society would regard this conduct as criminal, regardless of whether there exists a statute or regulation that deems it as such. *Mala in se* include murder, rape, robbery, assault, fraud, trespass, and malicious damage to property.

² *Mala prohibita* (singular *malum prohibitum*) refers to conduct that is criminal only by virtue of being deemed as such in the form of a statute or regulation. Once such a statute or regulation is repealed, the criminalised conduct necessarily ceases to be criminal. *Mala prohibita* include doing business without a permit or licence, failing to pay maintenance, unlawful border crossings, and smoking or consuming alcohol in a public place.

Violence in South Africa has reached proportions that dwarf the rest of the African continent and is more readily comparable to active warzones or the gangland drug-wars of South and Central America;

On average, 86 people are reportedly murdered every day;

On average, five people are reportedly raped every hour;

The problem of violence does not only negate the right to dignity and physical safety, but also produces deleterious socio-economic consequences that make sustainable and inclusive economic growth impossible;

The fundamental reason for the existence of any government is to guarantee public safety and order – primarily the elimination, or at least minimisation, of violence;

The law enforcement apparatus of South Africa's central government has failed to give effect to this basic reason for its existence;

The South African Police Service is riddled with corruption and criminality itself, while also experiencing significant ineptitudes and incapacities;

The National Prosecuting Authority, similarly having experienced unacceptable levels of corruption, is unable to prosecute the majority of violent offences;

The collapse of the central law enforcement apparatus has yielded a successful conviction rate of only 11% for reported murder, 1.6% for reported trio-crimes (residential and business robberies and hijackings), and 8% for reported rape;

Correctional Services, known for going out of its way to give preferential treatment to politicians convicted of offences and sentenced to imprisonment, also lacks the significant corrections capacity necessary to comfortably accommodate violent criminals – in 2022, there were only 108,804 beds for 143,244 inmates (nearly 32% overcapacity);

The central government has nonetheless engaged in widespread criminalisation of peaceful and voluntary conduct, which has further stretched policing, prosecutions, and corrections resources;

The criminalisation of peaceful and voluntary conduct has also created the necessity of more interactions between peaceful people

and often corrupt and rent-seeking law enforcers;

The criminalisation of peaceful and voluntary conduct has also created a situation where those convicted of non-violent crimes – and those not yet convicted but awaiting trial – are often imprisoned alongside violent criminals;

The lack of a central directory of criminal conduct, in light of the overcriminalisation of South African society, has produced a state of uncertainty among peaceful people about whether they are in fact committing offences;

The central government has refused repeated calls for the devolution of law enforcement functions to more capacitated spheres of government, including provinces and municipalities; and

The central government has made it difficult for communities and commercial undertakings to respond to violence appropriately, dynamically, and systematically.

WE DEMAND, THEREFORE:

All bills before Parliament, provincial legislatures, or municipal councils, that create new, non-violent offences, are to be withdrawn forthwith;

All regulations under consideration by an executive organ of state that create new, non-violent offences, are to be withdrawn forthwith;

The sanction of imprisonment be retroactively repealed from all existing *mala prohibita* offences in South African law that do not involve tangible and quantifiable harm to a legal subject's life, liberty, or property;

A general moratorium be adopted on the creation of new, non-violent offences, whether in the municipal, provincial, or central sphere, for at least 10 years;

A general review of legislative and regulatory criminal law be undertaken with a view to repealing offences that do not involve tangible and quantifiable harm to a legal subject's life, liberty, or property;

Policing, prosecutions, and corrections take priority in the central government's

budgeting process, above and beyond all other items of public expenditure;

The Cabinet members responsible for policing, prosecutions, and corrections, devolve the policing, prosecuting, and corrections power to provinces and municipalities to share concurrently with the central government;

Provincial and municipal governments take concrete steps to establish provincial and municipal policing structures, complete with detective, forensics, and ballistics capacity, with or without the cooperation of the central government;

Parliament adopt a Criminal Code that enumerates every recordable, finable, and imprisonable offence applicable within South Africa, whether in the municipal, provincial, or central sphere of government;

Such a Criminal Code be easily accessible and understandable to the general public;

No offence that is not found in the Criminal Code should be enforced or enforceable;

A zero-tolerance policy for corruption within the policing, prosecutions, and corrections apparatus be adopted and enforced;

All prosecution performance targets for convictions in general be withdrawn and replaced with targets for convictions of violent crimes in particular;

South Africa's corrections capacity be substantially and speedily expanded at scale;

Armed police officers cease being deployed to enforce offences of a non-violent nature;

Legislation and regulation relating to the private ownership and use of firearms be simplified and shortened with a view to expanding, not reducing, the responsible private ownership of firearms;

Responsible individuals, and organised community and commercial formations, take immediate, concrete steps within what is legally allowed, to secure themselves and their fellows against the predations of violent crime;

Organised community and commercial formations be empowered, via qualified legal practitioners, to observe and, where appropriate, participate in, the investigation

and prosecution of offences against their members or the public at large;

The institution of private prosecution be reformed to encourage greater utilisation and more widespread adoption by capacitated private persons and formations; and

In general, criminal justice must become the top priority of all spheres of government and organised community and commercial formations until South Africa's rates of violent crime decrease to levels comparable to other open and democratic societies.

*Northwards House, Johannesburg
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