

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Focus Meeting

Crime: Managing Public Order in Countries in Transition

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CRIME: CAUSES, PERCEPTIONS AND EFFECTS

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1. Our central question today is: Why are surges of criminality associated with shifts from authoritarian to democratic forms of governance? Let me, in the few minutes available to me, contribute, if I can, to this more general discussion by reflecting on South Africa.
2. The apartheid state was relatively good at guaranteeing the security of white people. While it maintained a presence in many black areas its objectives and concerns were primarily white security. Its principal strategies for promoting security were not the established strategies of criminal justice – that is, victim reports, police investigations, prosecution, sentencing and imprisonment. Rather, the apartheid state relied primarily on racially based profiling, exclusion and incapacitation strategies, such as the pass laws, that kept poor black people at a distance from rich white people. The reasoning was simple. Blacks, for both political and economic reasons, were viewed as likely to harm whites. If they could be kept at a distance from whites, harm to whites would be reduced.
3. The South African policing institutions were designed, organized and equipped over many decades to enact the profiling and segregation strategies this reasoning produced. The police became skilled at implementing these strategies, and by using them, were able to keep crime in white areas within reasonable bounds.
4. With the democratization of South Africa the new South African Government rejected this reasoning and its technologies. With a change of government the police were given a new task, namely to protect all South Africans. In addition, their profiling, exclusion and incapacitation strategies were dismantled. The impact on the police was dramatic. They were thrown into confusion. They did not know how to cope with their new mandate. The potential for rising crime rates in those areas that had benefited from profiling-segregation strategies was obvious.
5. What, the new government asked, was to be done about this confusion? The answer was seemingly simple. The police (and the other agencies of criminal justice) were to be transformed. They were to become like police organizations (and criminal justice agencies) elsewhere.

Conventional crime fighting tactics were to be adopted. To accomplish this policy teams were established who reviewed developments in policing and criminal justice around the world. These teams produced policy documents setting out objectives and approaches for crime control. To implement these policies criminal justice agents from other countries were assigned to South Africa to develop new training materials, to provide on the job coaching and so on.

6. This was, and still is, a mammoth undertaking even if we think only about the police. The South African police employ over 150,000 officers scattered across a huge country. Many of these officers are poorly educated. The ways of thinking and acting within the police are well entrenched. There are few incentives for adopting new ways. Police stations are not equipped to support the sort of policing that is now expected. Similar problems exist within other agencies within criminal justice.
7. Not surprisingly morale is poor across the criminal justice system, a new vision has not been fully understood or embraced, and those who have embraced change have been terribly frustrated by the resistance of their colleagues. Despite many excellent policy documents, and much good will, transformation has been very slow. The agents of criminal justice, while once well suited to their task and relatively effective at it, are no longer equipped to perform well. The old technologies for protecting whites have been dismantled and new ones for protecting both whites and blacks have not been established. This is a pretty good recipe for criminality.
8. In the face of the rising insecurity that this has produced, people within South Africa have sought to put in place their own mechanism for providing protection. In doing so they have relied on mechanisms with which they are familiar. For white South Africans this has meant an even increasing reliance on gated communities and private security. In adopting this approach they have sought to reintroduce, under a private sector umbrella, the profiling and segregation strategies that had served them so well under apartheid. Wealthy black individuals and businesses have followed suit. Without the overarching framework of apartheid these privately sponsored profiling-segregation strategies have secured fortified fragments while at the same time leaving huge tracks of the country under protected. The net result has been increased criminality, an increasing sense of siege and an oppressive sense of vulnerability among wealthy South Africans.
9. Within poor black communities people have also turned to self-help in various forms. One of the more important of these has been a renewed reliance on the street committee structures that were developed during the apartheid period to resist state institutions. While the development of gated communities and the use of private security have been condoned by the new government the continued use of mechanisms initially developed to challenge state authority have not been welcomed. Thus, while steps have been taken to develop regulatory frameworks for governing private security less has been done to develop regulatory frameworks for street-based alternatives. This neglect has encouraged the development of what are often very brutal mechanisms of dubious effectiveness.
10. The net result has been that the promises of liberation – greater well being, a society in which human rights are respected and in which self-direction is enhanced – have not been realized for most South Africans. This has given rise to an increasing nostalgia for what to many people, both black and white, look in retrospect like the “good old days”. Fear mixed with nostalgia is promoting a too easy acceptance of claims by the police and other criminal justice agents that their hands have been tied by an internationally imposed human rights culture. It is this culture it is argued that is the root cause of rising criminality.
11. Before I go on, I will make a brief aside on the issue of crime rates. I know that there is evidence that some crimes are being committed less frequently in South Africa. This issue of crime rates, as we all know, is tricky. This is particularly so in South Africa where the measurement problems

are acute and where issues of the distribution of crime across spaces and populations complicated matters. My personal assessment – and it is a gut feel rather than empirically grounded assessment– is that for most South Africans their situation has not changed very much. They have always been very vulnerable and they continue to be vulnerable. What has happened is that areas that were relatively safe are now much less so, populations that were relatively safe have become much less safe, finally, some crimes, like carjackings, that were relatively unheard of now occur with alarming frequency. Perhaps in the discussion people, like Wilfried Scharf, who are far better equipped than I to comment on the issue of crime rates will do so.

12. The question that now arises, and it is the central question of the project we are here to discuss, is: What can be done about the correlation between democratization, criminality and the demand for policing methods that violate human rights? Or in the words of our briefing note: What should a “human rights approach to the problem of crime” in places like South Africa look like?
13. In South Africa, as I have already noted, the conventional answer has been, and continues to be, a strategy of criminal justice reform that works with from within to reshape existing institutions. This is not an answer that inspires me. Nor, I think, does it inspire confidence in most South Africans.
14. The reasons for pessimism have to do with the history of conventional reform strategies. Reforming criminal justice institutions is difficult anywhere. And even where it is successful it often simply contributes to another major problem that I have not mentioned yet, namely, increased rates of imprisonment. In South Africa, given the magnitude of the problems I canvassed earlier, conventional reform is particularly daunting.
15. How then should our question be answered? It is a question that I have, over the past several years, been exploring in three quite different contexts – Argentina, Northern Ireland and South Africa. In each of these contexts I have worked within the context of a team of colleagues. This exploration has led to the emergence of a framework for thinking about the question. While the framework is constantly being changed and developed it is beginning to take on a recognisable shape.
16. It is a framework that seeks to “deepen democracy” via a response to the hegemony of neo-liberal thinking that, in the words of Nicholas Rose, is more than a “simple dismissal”. It seeks to draw selectively on some of the underlying values of neo-liberal thinking as well as some of the elements of the frameworks for “good governance” that international agencies like the United Nations have been promoting recently. This selectivity is guided by a critique that argues that institutional arrangements and technologies that promote values, such as the importance of local capacity and self-direction, should be realized within deliberative forums that foreground the knowledge of poor people, and in particular poor women.
17. The framework we have been developing relocates the primary responsibility for much of the steering of governance to civil society institutions. In doing so it recognizes that this is already well developed within middle class and wealthy populations, as evidenced in the growth of private security, but is not as well developed within poorer constituencies.
18. In tackling this deficiency the framework promotes the injection of public monies directly into community-based, micro-governance forums. This was promoted in Northern Ireland by the Independent Commission on Policing for Northern Ireland when they proposed the creation of a Policing rather than a Police Board that would administer a policing rather than police budgets. In South Africa we have been exploring a reallocation of public monies through schemes that enable local communities to earn money for dispute resolution that is then spent on community projects and the support of micro-enterprises.

19. At the heart of this emerging strategy of bottom-up reform of governance is an emphasis on the creation of transparent structural arrangements that promote the self-direction and local capacity governance. Central to the analysis that underlies this framework is the argument that we now live within a network of governing nodes that extend beyond and around the state. Any attempt to transform governance, if it is to be successful, must, it is argued, be grounded in an acknowledgement of this reality.