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Crime: Managing Public Order in Countries in Transition

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**SOUTH AFRICA:
THE ROLE OF THE POLICE IN EXACERBATING OR CONTROLLING CRIME**

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INTRODUCTION

1. One of the important things to remember is that police do not cause crime. Crime is caused by various factors such as socio-economic conditions, number of young males in a population, drug abuse, availability of illegal firearms and breakdown of authority (family, school and churches). But police can limit crime by arresting perpetrators, getting repeat offenders convicted and through crime prevention. However, acts lawlessness, corruption and inefficiency of the police can contribute to the escalation of crime.
2. There is a general belief that countries that have transited from authoritarian rule to democracy tend to become crime havens. Crime and particularly criminal violence pose a challenge to the protection and promotion of human rights in these countries. Countries in former communist regimes of Eastern and Central Europe, Brazil in Southern America and Nigeria and Mozambique in Africa are often cited as examples of transition that was followed by increased crime levels. The rise in crime in periods of political, economic and social transition appears to be a result of structural changes. The police service under authoritarian rule tends to be intrusive, oppressive and brutal, with the result that the police service is seen as illegitimate. Under the new democratic order, the police are required to transform in order to be accepted by citizens as a legitimate service. The emphasis on the police service is no longer on control but rather on crime prevention. The shift from crime control to crime prevention, infused with human rights, proved to be a difficult task to many new regimes, particularly in the face of high crime levels. The difficulty for the police is that they want to be seen to be combating crime while at the same time protecting and promoting human rights. But a closer look at societies in transition indicates that crime-combating strategies increasingly become militarized and become less concerned with human rights. This can be evidenced in draconian legislation, establishment of specialized units with special powers and adherence to old oppressive policies.

3. Prior to the 1994 democratic elections, the criminal justice system in South Africa was a mechanism to implement draconian apartheid government policies. The police in particular were feared and loathed as thousands of South Africans died in custody or as direct result of their actions. The main function of the police during this period was to control dissent.
4. After 1994, the criminal justice system was confronted by a number of challenges, including:
 - Accommodating the new constitution.
 - Accommodating diverse cultures and practices in the administration of justice.
 - The need to regain public confidence.
 - Getting to grips with exceptionally high levels of, particularly violent crime.
5. It is undeniable that levels of crime in a transitional society like South Africa are high and impinge on the enjoyment of human rights guaranteed in the constitution. However, an important question is whether or not transition leads to the more visible appearance of older forms of crime in new manifestations or whether transitions themselves give rise to new forms of crime. For example, although high levels of domestic violence are due to under reporting resulting from a lack of awareness, one could have asked whether these high levels reflected a new or old phenomenon. The transformation and redistribution of resources also means that areas that were previously over-policed would be less policed. These areas become opportunities and targets for criminal elements and citizens will undoubtedly feel that crime has risen.
6. A number of myths about the causes of crime have permeated much of the societies in transition and have led to calls for changes in policy, legislation and the human rights culture. Some of the prevalent myths are:
 - Crime is a direct result of the new order or transition
 - The Constitution is crime friendly and thus responsible for the increase in crime
 - The death penalty is the ultimate solution.
 - Each of these myths will be discussed in turn.

CRIME AND DEMOCRACY

7. As explained above, the nature of crimes change for many transitional societies. Take South Africa for example, the nature of crimes has changed in the last 50 years. From the late 1980s until the 1994 elections, many crimes prosecuted would have been for offences against the apartheid state, including violations of the Immorality Act, treason, possession of banned material (including ANC publications and pornography) and pass laws. Most of these crimes were removed from the statute book after 1994.
8. Prior to 1994, the majority of South Africans were policed more for control and suppression purposes than for crime prevention. Between 1985 and 1993 much of the crimes committed were clouded by political violence and the police focussed on crowd control. The concept of “crime prevention” as expounded in the National Crime Prevention Strategy (NCPS) of 1996 was alien to the police and has been difficult to implement. During a recent study conducted at

the Johannesburg Central police station it became evident that the police did not know what constituted crime prevention.

9. In addition to the challenge of dealing with a new philosophy of policing, about a quarter of members of the new South African Police Service are functionally illiterate. After 1994, the Service had to integrate with the homelands police, who had poor training. New training was required to upgrade officers' standards of policing and knowledge of human rights and new legislation. Implementing new legislation such as the recent Domestic Violence Act (1998) has been difficult due to lack of education and skills, and poor communication between junior officers and superiors.
10. Perhaps as a result of these difficulties, there is tendency for the police to disregard the bill of rights when effecting arrest. Torture still occurs in the police, accused are often not told of their rights, and police officers at times do not follow the new law with regard to the use of force. This is evidenced by the figures from the Independent Complaints Directorate, a civil police watchdog, cited below.
11. Between 1994 and 1997, an average of 13 954 complaints or charges per annum were laid against SAPS members. The greatest increases occurred between 1995 and 1996 (23%) and 1996 and 1997 (34%). In 2000, 14 600 criminal cases were opened against SAPS members. The Independent Complaints Directorate (ICD) received 4 380 complaints against the police between April 1999 and March 2000 (up from 2 874 in 1998/99 and 1 999 in 1997/98). Of these, 209 complaints related to the death of crime suspects in police custody. During May 2001, private videos were released to the media showing white police members of the dog unit training their dogs using live black suspects. This incident has raised questions about the extent of human rights culture in the police and race issues.
12. In 1996, some 2 733 363 crimes were recorded by the police. 291 842 resulted in prosecutions and 218 394 in convictions. What this means is that only 10.7% of the cases were prosecuted, but nearly 75% of these prosecuted cases resulted in convictions.
13. Low rates of prosecution, coupled with perceptions of an ineffective and corrupt police service can in part explain the reason why people hire private security companies or seek the assistance of vigilante groups. The growth of the private security industry in transitional countries has almost replaced the police service and vigilante activities by lynch mobs have become a daily occurrence in Southern America - vigilante groups in Accra, Ghana, have testified to this. In many instances the state turns a blind eye and in some instances the state has directly supported vigilantism through legitimising it or indirectly by arming or providing resources to vigilante groups.

IS THE CONSTITUTION "CRIME FRIENDLY"?

14. There is a strong urge by governments in new democracies to legitimize the old police services in order to boost public confidence. Until such time that agencies of law enforcement can prove legitimacy through effective service delivery, societies will not trust the police. It is not clear at all whether any of the countries with fledgling democracies have been able to build a legitimate police service. Government policies for example such as the National Crime Prevention Strategy, Legal Aid, Improved Service Delivery and Community Policing are an attempt to legitimize the police. However, on the other hand policies within the police are sometimes in conflict with those of government while others remain draconian, examples would include high density operations (Crackdown), reluctance to amend legislation that will limit the police's use of force. Tough statements against crime augment these.

15. In addition, the growth in crime has witnessed militarized responses to disorder. There is an increasing tendency by governments to establish specialized police units with unrestrained powers to strike or attack anybody or group of people that is perceived to be a menace to society and also to prove that government is uncompromising in its fight against crime. These units are meant to reinforce or compliment existing local police services. Examples would include the Special Anti-Robbery units in Nigeria, the Directorate of Special Operations in South Africa and the Special Operations Department in Brazil in Southern America. These units are often supported by draconian legislation, which presumes the accused guilty (e.g. organized crime, terrorism and assets forfeiture legislation).
16. In 1999, following a car bomb explosion at a famous tourist destination in Cape Town, the Victoria and Albert Waterfront, the acting premier of the Western Cape called for constitutional amendments. In particular, he called for the repeal of provisions that give suspects the right to remain silent and that require that they be released within 48 hours or be charged. The then acting premier of the Western Cape had this to say:

“The police could not be expected to build watertight cases against terrorists in such a short period, and you cannot tell me that a terrorist who has killed 100 people with a bomb deserves the right to silence after being arrested”.
17. This sentiment was echoed by the Minister of Safety and Security, Steve Tshwete, when he called on parliament to amend the constitution to extend the 48-hours rule, and to restrict suspected terrorists’ access to legal representation during this period. The danger here is that the accused is presumed guilty and knows about the crime committed. Under these circumstances the accused can easily be detained without trial and their right to be presumed innocent be violated.
18. As a result of this and other incidents, draft anti-terrorism legislation has been advanced. In this legislation, the definition of a terrorist act is broad and includes any act which does or may endanger the life, physical integrity or freedom of any person, or causes or may cause damage to property, and is calculated to:
 - intimidate, coerce or induce any government, persons or the general public;
 - disrupt any public service, the delivery of any essential service to the public or to create a public emergency ; or
 - create unrest or general insurrection in any state.
19. The definition includes lawbreakers who would clearly not be terrorists in the normal meaning of the word. For example, the definition includes “any act which may cause damage to property and is intended to disrupt any public service”.
20. The draft legislation has the potential to interfere with a number of rights guaranteed in the constitution such as freedom of association, the rights of the detained person and the right to bail. It proposes that any person who is a member of a “terrorist organization” and commits an offence through such membership would be liable, on conviction, to imprisonment for up to five years without the option of a fine. Such a provision could be used to criminalize the actions of a wide range of people. This could apply to all members of a taxi organization that organize a street blockade, whether such members are actually involved in the blockade or not.
21. The draft legislation also proposes that a person be detained without charge for interrogation for up to 14 days. The detention period may, however, not be longer than 14 days. A person detained in this manner does not have the right to apply for bail.

22. This provision is an ominous reminder of the General Laws Amendment Act which the previous government passed in 1966, in response to guerrilla activities on the northern borders of the then South West Africa, to provide for up to 14 days' detention of suspected 'terrorists' for interrogation purposes. The 14-day period was eventually increased to 90 days, then 180 days and finally to an indefinite period.
23. In addition to the new bail law and the proposed anti-terror legislation, new minimum sentencing legislation came into effect on 1 May 1998. The common law requires that the courts weigh the nature and the seriousness of the crime, the personal circumstances of the offender at the time of committing the crime and the interests of society. The minimum sentencing legislation permits the courts to consider the first factor only.

THE DEATH PENALTY DEBATE

24. Countries that transit from authoritarian regime to democracy often have very liberal constitutions that guarantee almost all the rights contained in the Universal Declaration of Human Rights without reservation. In many of these countries death penalty is abolished. However, as the levels of crime begin to threaten democracy and human rights, talks of harsher punishment and reintroduction of the death penalty become the central debate. These talks become reflected in policies that follow and the operationalization of these policies become evident in sentences passed by judges. In lieu of death penalty judges will pass a ridiculous sentences of 300 years imprisonment or where a person can be released on correctional supervision, judges prefer to keep such people in prison.
25. The death penalty was declared unconstitutional in one of the first decisions passed by the new Constitutional Court, but the issue of bringing back the death penalty remains controversial. The levels of violent crime in South Africa are a cause for serious concern and many South Africans believe that bringing back the rope will reduce violent crime. Despite tougher bail laws and the minimum sentencing legislation, however, crime levels have not decreased convincingly. As is clear from the low prosecution rates cited above, criminals in South Africa can bank on not being caught.

KEY ISSUES

26. Unrealistic and unfulfilled promises by high ranking police officers and politicians – including the Minister for Safety and Security – regarding the police's ability to track down and arrest terrorism suspects have dealt the security forces some detrimental psychological blows. In December 1999, three days after a bomb blast in a Camps Bay restaurant, the Minister of Justice and Constitutional Development, Penuell Maduna, promised that “the year will not come to an end before we have found [the Camps Bay bombers] and put them in jail”. Safety and Security Minister, Steve Tshwete, was even bolder and assured the public that the terrorists would be behind bars by Christmas. This did not happen, and on Christmas Eve another bomb exploded injuring seven police officers. The statements had the effect of lowering public morale and enhancing the status of the criminals, who could rightly claim that the state's senior representatives were powerless against them.
27. Once there are perceptions that service delivery is poor and that justice is inaccessible, many communities resort to vigilantism. The rise of People Against Gangsterism and Drugs as well as *Mapogo-a-Mathamaga*, was the result of failed promises to deal with crime. The growth and spread of ad hoc acts of vigilantism is further testimony to the perceptions that criminals are untouchable and that the state organs have failed to combat crime. The danger with both

vigilantism and private security companies is that there is little or no regulation. They also pose serious threats to human rights. With regard to security companies, we often find uncontrolled use of force, while with vigilantes, we find the presumption of guilt and the absence of the right to a fair trial.

28. Many new governments are currently faced with difficult decisions regarding how to handle the country's criminal justice crisis. High and growing levels of crime and violence, together with low levels of public confidence, mean that policy makers often feel compelled to adopt tough, uncompromising approaches to law enforcement. Many of these approaches are implemented in a piece-meal fashion with little concern for the impact they will have on other parts of the criminal justice system. There is already much evidence of this in South Africa. The danger is that these approaches undermine human rights and often fail to provide lasting safety and security that benefits all citizens.

CONCLUSION

29. The experience of many countries in transition suggests that given the magnitude and volume of crime, draconian responses will unfortunately dominate the public and government debates. The common belief being that militarization of the police is the only solution. In order to address the growing crime problem, governments need to invest in social crime prevention as opposed to control. They need to involve the local community, increase local accountability, put into place police services and policies that do not make in-roads into human rights and most importantly improved service delivery to the client. These factors will of course vary from country to country as determined by local dynamics (such as availability of resources, willingness by government to engage communities and vice-versa, country size and police population vis-à-vis levels of crime), crime impinges on enjoyments of rights to property, safety and security of a person and many other rights. Efforts to combat crime should not make further in-roads on human rights. The danger is always there that a military or right wing type government might take reigns and if a 'legal' opportunity exists to disregard human rights, it will be used effectively.