

# **The Impact of Crime on Human Rights:**

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## **Introduction**

This paper discusses the impact that crime has on human rights within the South African context. It has been argued that democracy forms the basis of human rights procurement in that it allows for the advocacy of equality. (Aidoo 1993: 704-705) However, given the transitional nature of South Africa's political system, the road to a stable democracy still remains rocky and thus concerns are raised not only over the idea of democracy, but also over the protection of human rights. One of the primary obstacles facing political stability and human rights in South Africa is crime. Crime is an issue of grave concern to contemporary South African society. High incidents of violent crime and extensive media coverage of criminal activities, has resulted in most of civil society living in a state of perpetual fear and insecurity, despite the official reports indicating a decrease in overall crime. This has led to questions being asked of the competence of the policing service as well as the ability and commitment of government to deal with the burden. Furthermore, such fears and insecurities has resulted in concern over how measures taken to reduce or prevent crime, will effect the maintenance of human rights within society.

## **What are Human Rights?**

Before discussing the impact crime has on human rights, it is first important to understand and define the term human rights. James Nickel defines human rights as "...international norms that help to protect all people everywhere from severe political, legal, and social abuses..." (Nickel: 2003) Human rights exist within the realm of morality and law on both national and international levels. The acceptance of human rights implies an acknowledgment of both freedom and authority, insofar as both the individual freedom of others as well as the authority protecting those freedoms, need to be recognized. The primary source where the idea of human rights is conceived is in the United Nation's *Universal Declaration of Human Rights*. These rights form the basis of justice, freedom and peace within the world and are thus respected and adhered to on both nationally and internationally. Human rights can be divided into six categories, according to Nickel, namely:

1. *Security Rights*: protecting people against murder, torture etc...
2. *Due Process Rights*: protecting people against abuses of the legal system.
3. *Liberty Rights*: protecting freedoms such as religion, speech etc...
4. *Political Rights*: protecting political participation.
5. *Equality Rights*: protecting equally with regard to citizenship, the law and non-discrimination
6. *Social Rights*: protecting access to education, healthcare etc... (Nickel: 2003)

The above rights are equally applicable to all citizens of the human race and are, in general, protected and regulated by law. It is with regard to this idea of what *human rights* refer to, that one can examine the impact of crime.

### **The effects of crime**

Crime, above all, compromises the defense of human rights within society. Cavallaro highlights that crime poses a threat on public security and thus provides potential for political instability (Cavallaro: 2005). He continues to argue that criminal activities are exceptionally prominent in transitional societies, such as in South Africa, where social dislocations have resulted in greater opportunity and likelihood for criminal activity. Crime places an added burden on societies in transition, in that the measures taken as a response to criminal behavior need to be taken in the light of democratic values, this includes cognizance of human rights, which is often difficult given the levels of crime in such societies. In other words, crime creates an environment which is not conducive to the maintenance of human rights standards. The reasons for this, according to Cavallaro, are that states generally have two options when responding to crime. Firstly, they may enter into collaborative interaction with civil-society groupings and approach crime from a 'community-policing' point of view. This method, in general, corresponds to the values and principles of democratic society and thus lightens the burden with regard to the maintenance of human rights within society. This approach, however, often proves futile in transitional societies where crime rates are exceptionally high, as the nature of 'community-policing' is generally slow and is thus more conducive to established democratic societies where crime rates are low. Slow responses to criminal activity often

result in an increase in public pressure leading to governments resorting to the second type of response which is the ‘hard-line’ or authoritarian response (Cavallaro: 2005). Such a response implies an increase in severity of punishment for crimes, hastened court procedures and, frequently, other more brutal methods of prevention. This, although more effective than the collaborative approach, has seriously detrimental consequences with regard to the procurement of human right, as the following quote from Cavallaro suggests.

“Police forces in authoritarian states tend to suppress not only dissent but also criminality, or at a minimum, they are widely perceived as being effective at crime control. To the extent that it is not merely a misperception, such “control” is achieved at a high cost to individual rights and the rule of law.” (Cavallaro: 2005)

Where crime is not sufficiently dealt with by government, there is a potential for vigilantism. Vigilantism is particularly common in transitional states and is of particular concern with regard to human rights in that it is defended by the claim that it is societies only way of securing their human rights, yet at the same is achieved through the violation of another’s.

In short, transitional states are inherently unstable due, primarily, to entrenched social dislocations, which in turn tend to result in an increase in criminality. Such an increase requires government action which, given the extent of crime and public pressure, usually takes the form of an authoritarian approach which is at a high cost to individual rights and democratic principles. It can be argued, therefore, that crime stagnates democratic development and hinders the fundamental development of human rights within society and state alike.

### **Public perception**

When considering the development of human rights within any given society, it is imperative to acknowledge public opinion as a primary contributing factor. The perceptions of the public and the nature of the interaction between the public and government are crucial to how human rights are acknowledged within society. Ultimately, it is public opinion which stimulates drives and impacts on democratic

politics, thus the emphasis on its importance. One of the primary influences of public opinion, especially in this era of globalization, is the media. With regard to crime, media agents tend to exaggerate and sensationalize crime to the extent that criminals do not deserve even their basic human rights. Furthermore, the media also tends to focus on the more heinous crimes such as murder and rape, thus invoking a negative public sentiment towards criminals (Cavallaro: 2005). As a result, such journalism often leads to the belief among civic society that those who are involved in human rights activism, are merely apologists for crime and futile in the struggle for peace. Such beliefs further hinder the acknowledgement of human rights and thus challenge the system of democracy. An example of this is illustrated in the possibility that the British may quit the *European Convention on Human Rights*, following public outrage over the perception that the rights of terror suspects are given higher priority than the prevention of future terror attacks, and thus the rights of the general public (Slack: 2007).

Havidan Rodriguez highlights, however, that the media is an ironic agent, with regard to human rights and freedoms. He claims that within democratic societies, the media and the use of modern day telecommunication has increased levels of human rights awareness and made it a global responsibility (Rodriguez 2004: 403). In other words, whilst the media can be detrimental to human rights procurement, it can also be one of the primary agents which highlight human rights violations. This is important with respect to crime in that, it is argued, that without the media, crime would have even a larger, more detrimental impact on human rights. To summarize, crime impacts on human rights in three fundamental ways. The first, most obvious way, is the fact that any crime directly violates the rights of the victim. This is to suggest that an act of crime compromises the liberties of the victim where the criminal has no such right to do so. Secondly, crime creates an environment of civil insecurity and builds negative public sentiment. This makes the maintenance of human rights standards exceptionally difficult to maintain in that the line between the rights of the victim and the rights of the offender becomes permanently blurred. Lastly, crime creates policing problems and this is particularly the case in transitional states in that, in order to maintain public support, government often

needs to resort to measures which are authoritarian in nature and thus undermines democratic transition.

### **Crime, violence and human rights in South Africa**

South Africa, it seems, has an especial problem with respect to crime, violence and human rights offences. According to Kollapen & Sekhonyane (2002:5), in 2000 alone, 2, 575,617 crimes were recorded by the police in South Africa. However, approximately 1.9 million cases were either withdrawn or undetected. From the rest just over a half-a-million cases were referred to the court, of which 271,057 resulted in prosecutions. From these, 211,762 ended up in convictions. Thus, when cases are prosecuted the possibility of a conviction is high. However, it also demonstrates that the proportion of cases prosecuted (in relation to recorded crime) is quite low – approximately 10%.

Given our turbulent past this should not be surprising. Centuries of colonisation followed by the brutal oppression of apartheid and a bloody struggle for freedom, has generated a strong culture of violence in South Africa. South Africans have learned from centuries of experience that the most effective means to an end is coercion. Our ability to manage and resolve conflict peacefully is weak, and given that these are relatively new terms in South Africa's official political discourse, our understanding of democracy, constitutionality and human rights is only very superficial (Kollapen & Sekhonyane, 2002:5).

Prior to SA's first democratic election in 1994, most violence and crime experienced in South Africa was political in nature, either by conservative groups in support of the apartheid regime or by reactionary groups opposed to it. Hence, it was widely held that after 1994, the legitimacy of the new dispensation would generate greater respect for law and order, and resultantly reduce crime. Unfortunately, SA's culture of violence has proved far more enduring and has not easily been replaced by one of tolerance, non-violence and human rights. Whilst, in theory South Africa is a fine example of transformation, with possibly the most comprehensive and progressive constitution in the world, including a full bill of human rights, the reality is that most South Africans do not

understand nor share the democratic values of human rights and non-violence. Thus, post-1994 crime in South Africa has continued to soar.

### **Crime in periods of transition**

The International Council on Human Rights Policy argues that societies in transition usually tend to be more violent than those experiencing a relative period of stability, simply because societies in transition have a more turbulent, violent history and experience difficulty coming to terms with new circumstances. One common consequence, according to Cavallaro (2003:13), is that 'existing institutional arrangements either break down or are dismantled more quickly than it is possible to institutionalise new arrangements'.

In South Africa, when the apartheid regime collapsed, so too did its institutions, and as institutions are built up and established over time, there were no new institutions ready to replace them. The South African justice and policing institutions were designed, organised and equipped over many decades to protect a small White minority at the expense of the rest of the population. The police became skilled at implementing violent, unjust, racist strategies to this end. The new government however, has had to balance security with constitutionality, respect for human rights and the fair treatment of all, and this has proven a much more difficult task.

This has of necessity meant that the police force has had to change both its *modus vivendi* and *modus operandi*. It has had to quickly abandon decade old strategies of brutalisation and oppression and adopt a framework of equality and respect for human rights. This has been no easy task and transformation has been painfully slow. Morale is low across the criminal justice system, and the new mandate has not been easily adopted, whilst those who have embraced change have been terribly frustrated by the resistance of their colleagues. Needless to say, the police force, confused and ill-adept at maintaining security within a democratic framework, has often reacted ineffectively to crime within the country as shocking crime statistics affirm (Kollapen & Sekhonyane, 2003).

It is also possible that a more democratic environment increases the visibility of certain crimes, or creates conditions in which new forms of crime appear. In SA it is likely that prior to 1994, crimes committed outside of designated White areas were not reported, due to fear and suspicion of the police, or if reported they were simply not acknowledged or dealt with by a system whose primary aim was to protect White citizens only. Post-1994 these crimes have been given more attention and this may contribute to rising crime statistics. In addition, areas kept relatively secure prior to democracy, have likely experienced a real surge in crime as the resources of the police force are no longer concentrated on them alone but are instead stretched more evenly across the country.

Since 1994, the ANC government has had to recreate the state's legitimacy, and rising crime has exposed the limits of the new state's capacity to secure the rights of its citizens, and the limited reach of the new values of human rights and non-violence (Buur & Jensen, 2004).

The realisation of high standards of human rights protection is impossible in an environment of fear and insecurity, bred by high levels of crime. Not only does crime violate the human rights of its victims, create bitterness over the rights of criminals and generate an atmosphere of fear in which human rights become meaningless, but in South Africa it has also threatened the preservation of human rights standards in two other, somewhat unique ways- through vigilantism and xenophobia.

### **Vigilantism: Desperate measures from a desperate people?**

Whilst maintaining an approach to law-enforcement that is just and respectful of human rights, the South African justice system also needs to effectively deal with the scourge of crime within the country. Frustrations around rising crime levels have often resulted in vigilante activity or mob justice in many communities. Vigilantism varies greatly from community to community and incident to incident, nonetheless, whatever its form; it is a major threat to the maintenance of acceptable standards of human rights.

Proponents of vigilantism argue that it is an only alternative for vulnerable communities in the face of rising crime, an ineffectual police service and a law that values the rights of criminals over those of their victims. Such individuals view basic human rights as enshrined in the constitution as a hindrance to achieving swift and true justice (Sekhonyane. & Louw, 2002:4).

However, realistically vigilante activity contributes to a cycle of violence as mob justice is characterized by violence, and hence contributes to crime and lawlessness itself. Thus, it exacerbates the very problem of violence and crime it claims to be reacting to. Vigilante activity is by its very nature extralegal, in that it pursues justice through means outside of the formal justice system. However, most often these means are also profoundly illegal. Punishment is meted out without sound proof, and these punishments are usually violent or humiliating (Valji & Harris, 2003:1).

Obviously, such activity is in direct violation of the rights of the suspect and need itself to be dealt with by the criminal justice system. As a result, the limited resources of the justice system are stretched even further by having to deal with vigilante activity in addition to the crime that initiated it.

### **Xenophobia and crime**

Despite government's best efforts and our extremely progressive constitution, discrimination remains commonplace in South Africa. However, the racial antagonisms of old are quickly being replaced by a new kind of racism, one based not only on skin colour but also on nationality hence xenophobia.

Xenophobia in South Africa is unique in that xenophobic South Africans generally do not demonstrate a hatred of all foreigners, but rather foreigner from other African countries, that is Black foreigners. In addition, xenophobia in South Africa has manifested it self in a decidedly violent way. It is not just a hateful attitude, but also a hateful activity. "It is a violent practice that results in bodily harm" (Harris, 2001:2).

The relationship between crime and xenophobia is an intimate one, for two reasons. In the first place, often foreigners, especially Black foreigners, are portrayed as criminals, even as the main source of crime in South Africa. Secondly, these black foreigners in South Africa are frequently the victims of crime and brutal human rights abuses themselves.

There is a widespread misperception that South Africa is being flooded by immigrants and refugees who do not contribute to South African society in any way and instead are the cause of the spread of disease, violence and drugs. These views are likely the result of the general atmosphere and insecurity that prevails in SA due to high crime levels. In such a situation, it is not unusual for individuals to be suspicious of those they see as strange or foreign and to misplace their anxieties on them. African immigrants make an easy “frustration scapegoat” for South Africans, who blame their misfortunes, in this case crime, on those they view as outsiders (Harris, 2002:3). These misperceptions are generated and perpetuated by government, who views African migrants through a security framework, seeing them as a threat and disruption to South African life (Valji, 2003: 4).

The media has also played a significant role in influencing South African’s ill perceptions of foreigners and has hence contributed to the rise of xenophobia in South Africa. Migrants are continually associated with job-stealing, crime and violence in the media, even when they are not the perpetrators. The South African press also tends to perpetuate stereotypes such as the stereotype that all Nigerians are drug-dealers (Valji, 2003:6). Thus, whether true or not, in the minds of most South Africans, African immigrants are at the heart of South Africa’s crime epidemic and hence are the primary violators of human rights within the country.

This view however, is largely unfounded. Most immigrants enter SA legally, and those that do not, due to their vulnerable position with respect to the law are unlikely to engage in criminal activity. In fact, not only do immigrants contribute very little to crime in the country but they actually fear crime as much, if not more, than South Africans. A study

by the Southern African Migration Project (SAMP) found that most migrants considered crime to be worse in SA than in their home countries. About 42% of the sample reported having been robbed, 24% harassed and 23% assaulted (Crush and Peberdy, 2002:2). Thus, Crush and Peberdy (2002:2) rightfully ask, "Why, if immigrants are uniquely responsible for crime, should they be so worried about the criminal"?

Even more alarming is the fact that much of the abuse and human rights violations suffered by immigrants are at the hands of South African civil servants. Members of the South African Police Services have are regularly accused of physically abusing foreign Africans, detaining them unlawfully and extorting money from them. This may be because the police share the views of the authorities, the media and the public and see these foreigners as the key cause of crime and are frustrated at their inability to apprehend them lawfully, but it may also be that vulnerable immigrants provide an easy target for corrupt officials.

Thus, crime in South Africa has contributed to an atmosphere where xenophobia is rife, and thus, the human rights of immigrants are often violated as they themselves fall victim to South Africa's notorious crime epidemic.

### **Immigrant's use of human rights**

Bouillon (2002) notes that African foreign migrants assert that individuals and institutions alike, examples of which include policemen, civil servants, businessmen, corporation officials, estate agents, banks and your run of the mill individual that one meets on the street either fails to acknowledge migrants basic rights or in effect threatens their basic human rights (Bouillon, 2002:18). It has become apparent that there is a great deal of antagonism present amongst local citizens and migrant population which is clearly evident as a result a manner in which foreign migrants and refugees draw on the notion of universal human rights as means with which to react and respond to what they feel is local xenophobia (Bouillon, 2002:18). In the absence of formal citizenship migrants who are faced with oppressive policies, formal and informal prohibitive mechanisms, for example in the form of limited access and availability of informal

trading license and permits which thus deny migrants on the basis of national origin the right to trade, migrants embrace human rights discourse in an attempt to plead their case (Bouillon, 2002:19). According to Bouillon with regards to human rights, South Africa's immigration and refugee policies defy a minimum of three universal freedoms. Firstly, the freedom of movement; secondly, the freedom to seek an honest, stable means of survival and thirdly, the freedom to live an ordinary individual and family existence (Bouillon, 2002:19). Migrants, who come to South Africa to earn a living and to make a new life for themselves, recognize that citizenship is the key to this new life however they are excluded, on the basis of their nationality, from accessing the rights that accompany citizenship. In an attempt to contest their exclusion and overcome this obstacle they therefore appeal to the government, who supposedly stands as a guarantor of human rights, by arguing that their basic human rights are also being violated. In this first instance, questions over whether city authorities and its residents are attempting to exclude these migrants by restricting their access to informal trading permits have been raised. Moreover questions also emerged as to whether South Africa is in effect violating migrants human rights.

## **Conclusion**

Crime has a serious and detrimental impact on human rights. Societies in political transition, such as South Africa, are more susceptible to criminal activity and are thus the most poignant cases with regard to human rights violations. It can be argued that there are three primary effects which crime has on society and which have been highlighted throughout this paper. Firstly is the violation of the human rights of victims of criminal activity. Any criminal activity has a victim and thus there is always a violation of, at least, one party's rights when a crime occurs. Secondly, crime creates civil instability through the negative public sentiment that it perpetuates. This leads to problems for governments who have to try to balance the rights of the victim and those of the offender. Whilst the victim's rights need to be protected, it is also imperative, especially in a democratic society, for the rights of the offender to be acknowledged too. Victims need to be protected from acts of vigilantism, for example, which is particularly common in transitional states. This leads to the third and concluding point that policing services in

transitional states are negatively affected by crime. By following democratic measures of dealing with crime, police are unable to cope with the high levels of criminality experienced in transitional states. This, generally, leads to a build up of public frustration which has one of two effects. Either it is crucible of vigilantism, or it forces governments to adopt amore authoritative approach to policing, which in turn often leads to concerns over the maintenance of human rights within society. The maintenance of human rights is critical to the sustenance of democratic politics. A disregard for human rights will ultimately lead to a degeneration of democracy and result in political instability. Crime, in conclusion, has the potential to undermine the maintenance of human rights within society and thus has the ultimate potential of being a destabilizing factor in the democratic process.

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