Irreconcilable differences? Building a human rights culture and dealing with crime in post apartheid South Africa

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1 INTRODUCTION

The debate about crime and human rights must be set firmly within the broader context of rights protection and delivery in South Africa. Having emerged from a past characterised by violations rather than respect for fundamental rights, the adoption of the "interim" 1993 Constitution and the "final" 1996 Constitution for the first time provided a justiciable Bill of Rights to protect all its inhabitants. The inclusion of protections relating to, amongst others, equality, dignity, the treatment of children and incarcerated persons reflected the new order's commitment to avoid repeating the mistakes of the previous political order. Significantly, the inclusion of socio-economic rights guaranteed access to rights such as education and emergency medical treatment, and the progressive realisation of other rights such as access to housing, water and environmental protections. In addition, the state is given specific responsibility to respect, protect, promote and fulfil the rights in the Bill of Rights and is therefore the guardian and guarantor of those rights.

This rights package was designed to accommodate the specificities of particular situations, relationships, and competing interests and is therefore subject to interpretation and limitation. It is a living entity, and it must relate both to specific circumstances and to the core values enshrined in the founding provisions of the Constitution. In short, it is a versatile set of guidelines and instructions with which to manage our relations with one another and which governs the relationship between state and citizenry.

So, we have a blueprint, regarded by many as one of the finest in the world. In addition, volumes of legislation have been passed since 1994 and a multitude of strategies, policies and projects initiated to give life to the objective of developing a new society based on fundamental rights. Inevitably there is disagreement on priorities in a climate of competing interests and concerns. There is also some question regarding the extent to which human rights concerns have been addressed in government strategy, policy, planning and programme implementation. In general the picture is somewhat inconsistent and the mainstreaming and integration of human rights in development initiatives, for example, remains in its formative stages. The National Consultative Forum for Human Rights,

which was mandated to implement the National Action Plan for the Promotion and Protection of Human Rights unveiled by government in December 1998, has made little headway. The motor behind government's efforts to mainstream and integrate rights is a small secretariat based at the Department of Justice which meets irregularly and which has a tiny budget. Constitutional human rights protection mechanisms such as the South African Human Rights Commission,[1] the Commission on Gender Equality and the Public Protector have extensive mandates but limited resources with which to carry out their tasks. They are also the subject of considerable controversy and have had varying degrees of success and failure.

Even with our excellent blueprint, rights are meaningless if those they are designed to protect and assist remain unaware of their existence. The development of a culture of human rights in South Africa is largely dependent on what people know about their own rights, the rights of others, and importantly their attitude towards those rights. In addition, every right must be accompanied by a remedy where the right has been violated. The capacity of people to realise or protect their rights is therefore also dependent on the accessibility and effectiveness of remedial mechanisms and facilitation services.

Research findings in 1998 established that levels of human rights knowledge amongst the general population were generally low. Only 18 per cent of the survey sample, for example, had had some sort of explanation of the Bill of Rights and 40 per cent said they had not ever heard of it (Pigou *et al* 1998a:v). Although human rights affect a multiplicity of issues in our lives, most people have little or no formal knowledge or understanding of the specific provisions in the Constitution and, consequently, do not view their day-to-day experiences within the context of human rights. Many rights remain abstract, since people have had little or no experience of what these mean in practice. The situation is further exacerbated because the extent of many rights will only become defined through practice and relevant jurisprudence. The meaning of specific rights, their content and parameters is by no means always straightforward and is frequently contested. The challenge for the state and civil society is therefore to raise awareness and conduct human rights education through meaningful, persuasive language. Such initiatives are taking place, but appear to be unco-ordinated and their effectiveness needs to be evaluated.

The development of a society based on fundamental rights remains in its formative stages and it is within this context that we should try and understand the relationship between crime and human rights. The responsibility of the state and its agencies in this regard is to protect and promote rights through a well-functioning criminal justice system.

The interface between crime and human rights is wide and I wish to briefly cover a few areas with specific reference to public attitudes and actions, the state and the criminal justice system. Crime is undoubtedly a

1 SAHRC.

major impediment to the development of a human rights culture in South Africa. But of crucial import is whether the view is correct that human rights is an impediment to dealing with crime, and whether support for this opinion is itself undermining efforts to build a human rights culture.

2 HUMAN RIGHTS AND THE COMMISSION OF CRIME

The commission of crime is a violation of human rights. More precisely, as set out in the National Crime Prevention Strategy,[2] "crime results in the deprivation of the rights and dignity of citizens, and poses a threat to peaceful resolution of differences and rightful participation of all in the democratic process". In effect, this means "the rights and freedoms which the Constitution entrenches are threatened every time a citizen becomes a victim of crime" (RSA 1996).

Crime affects all South Africans. In a recent crime victim survey, 44 per cent of South African households[3] claimed to have experienced at least one crime within the 5-year period 1993 to 1997. Most of the crimes reported were related to property theft, with 1 in 5 households experiencing housebreaking (SSA 1998:15).

During 2000, Minister for Safety and Security Steve Tshwete announced a moratorium on the release of statistics from the South African Police Service[4] Crime Information Analysis Centre. No statistics have been published since April.[5] Whether crime statistics are really going up or down, the extent of crime is huge, and crime is often violent. Not surprisingly, crime remains a key concern among most South Africans, although research shows that it is the number one priority of white South Africans compared with black respondents who emphasise employment, housing and education (Pigou *et al* 1998a:xix).

Many South Africans appear to acknowledge that crime is a symptom of social and economic inequalities rather than a product of democracy's weakness. Despite this, a number of myths have arisen. These include the assertion that the Constitution is responsible for the increase in crime because it protects criminals. During recent interviews in the Northern Province with senior vigilante leaders and traditional leaders allied with them, blame for the current crime situation was placed squarely on the democratic dispensation and the constitutional provision of rights.[6]

Other myths include the assertion that the reintroduction of the death penalty will somehow lead to a decrease in violent crime, and that the granting of bail will lead to further crime. Such myths are by and large without any factual basis, yet they appear to have considerable public support.[7]

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2 NCPS.
3 From a survey of 4 000 people.
4 SAPS.
5 SAPS website - http://www.saps.org.za/8_crimeinfo/bulletin/index.htm.
6 Research conducted for the Centre for the Study of Violence and Reconciliation's 'Violence in Transition' project.
7 For example, Death penalty gets strong support in poll. *Cape Argus* 23 December 1999. See also Pigou *et al* 1998b http://case.org.za/htm/soceco3.htm#crime.

Despite several high profile cases linking crimes to people bailed out of prision, there is no available data to definitively prove a causal link between new constitutional rights and the apparent rise in crime. These connections are assumed on the basis that crime has risen in the period following the introduction of the 1996 Constitution. The rise in crime, however, predates the introduction of the new Constitution (Shaw 1995:10–11).

Negative statements and actions by public officials and representatives, who sometimes appear to have a selective interest, or perhaps understanding, of the inter-relationship between and indivisibility of human rights, further exacerbate the situation. The Minister for Safety and Security's knee-jerk criticism of human rights organisations for allegedly overemphasising the problem of policing abuses, and for teaching criminals about rights, is a good example of this.[8] The preposterous inference that human rights organisations were more interested in the rights of criminal suspects than in the rights of victims lent little weight to the minister's objection.

Cabinet's response earlier this year to the SAHRC's criticism about police treatment of suspected illegal immigrants is also informative. The government warned the commission that it risked damaging its credibility by criticising the police's tough methods. The government spokesman appeared to justify this position by pointing out that residents of Hillbrow, where the raids had taken place, had praised the police action, but were critical of the SAHRC.[9] Although thousands of illegal immigrants were arrested and deported, this does not negate the fact that numerous violations were reported,[10] resulting in the spread of considerable fear amongst the immigrant population, as a number of *bona fide* residents, asylum seekers and refugees were caught in the dragnet. Once again the official response failed to adequately address the substance of the concerns raised.

Hostility towards the human rights community when it raises concerns about abuses appears to be a calculated but misguided attempt to divert attention away from the substance of what is being said. In the context of competing priorities and political pressure to deal with crime (and the perceived causes of crime), the much-vaunted crime blitzes appear to be designed more to address increasing public concern about the police and low morale within the SAPS than effective crime fighting. These operations cannot be sustained for lengthy periods of time and it remains to be seen what impact they have on the overall crime situation. Hillbrow is known to have high concentrations of criminals and a number were caught in the process, but few serious crimes were dealt with. It seemed that the criminal elements were able to withdraw for the period of the operation and now, several weeks later, are back in business.

8 *Pretoria News* 1999. Tshwete hits out at human rights bodies 5 November.
9 *Business Day* 2000. HRC under fire from government over the police 30 March.
10 For further details, see Human Rights Committee of South Africa 2000.

Since 1994, the government has demonstrated its commitment to addressing the crime situation and improving the efficiency and effectiveness of the criminal justice system. Measures introduced include stricter bail conditions, tougher sentences, the review of parole law, improving court management, restructuring the witness protection programme, the establishment of sexual offences courts, and the establishment of the National Directorate of Public Prosecutions.

The government, however, has come under consistent criticism from political opponents and others who claim that it is soft on crime. In response, the government has been at pains to demonstrate that this is not the case. The current Minister for Safety and Security is well known for his hard-hitting statements about how to deal with criminal suspects. In one of his more colourful speeches he said that the police "are going to deal with the criminals in the same way that a bulldog deals with a bone . . . when we are done, he or she will know that they have been dealt with" (Steinberg 1999). This tough stance on crime, however, is interpreted in some quarters as tantamount to encouraging illegal behaviour. Legal experts on police abuse, such as Peter Jordi at Wits University, have warned that tough measures will translate into a license to abuse and, if that goes unchecked, the police will also feel they have a licence to be corrupt (Steinberg 1999). However, US policing expert Carl Klockars (1999:5–9) points out that corruption and brutality are separate phenomena and that if corruption is out of control in a police agency, then it is not possible to control excessive force. He goes on to explain that a police agency that is in control of corruption does not necessarily mean that it has control over police brutality.

Criticising the police for human rights violations does not translate into a blanket questioning of all police action. Jumping to this conclusion, as some critics of the human rights position appear to, misses the point and is frankly disingenuous. Ask anyone involved in this kind of work – investigators, pathologists, and non-governmental organisations – and each will be able to provide examples of police force abuses that cannot and should not be hidden amongst the legitimate actions.

Criminality and misconduct within the criminal justice system and its consequent rights implications appears to be endemic. Hundred of officials in the Department of Justice are facing charges of misconduct, corruption or fraud, in some cases running into several million rands.[11] According to the Minister of Safety and Security there are at least 14 000 criminal cases against policemen and women either before the courts or under investigation.[12] The number of police members under investigation for corruption increased from 2 197 in 1996 to 4 374 during 1999 (Newham 2000a:22).

The capacity to investigate and the resources dedicated to this task are limited. Although the SAPS anti-corruption unit has been relatively successful

11 *The Star* 2000. Justice Department lines officials up on corruption charges 10 May.
12 *The Star* 2000. State is spending millions to probe the police 24 June.

with its investigations, the Independent Complaints Directorate,[13] the civilian oversight body tasked with investigating the most serious allegations is clearly unable to cope with its mandate. Specifically tasked to investigate deaths in custody or as a result of police action, its small team of investigators have been unable to deal with in excess of 2 000 of these matters since its inception in 1996.[14] More money is spent per annum on the salaries of awaiting-trial police officers than on the ICD,[15] and no commitment has been given by government to strengthening civilian oversight in this regard. An inconsistent suspension policy, as well as an inefficient and backlogged disciplinary process[16] further compounds this situation. This system has and does allow for anomalies, such as the refusal to suspend officers facing charges in serious matters such as murder and torture. It is also bedevilled by unacceptable delays in disciplinary matters that can drag on in many cases for years.

The public's knowledge of remedial mechanisms within the criminal justice system is also limited.

In 1998, survey respondents were asked where they would seek assistance in a case of assault by the police. Thirty per cent said they would send the victim to the police for help, 8 per cent to a lawyer, 6 per cent to a court of law, 5 per cent to the community, and 3 per cent to the Minister of Justice. Neither the ICD nor any other statutory human rights body was mentioned. Almost a third of respondents said they would not know where to find appropriate help (Pigou 1998a:xviii).

Public confidence in the SAPS is very low. A 1999 survey conducted in urban households across South Africa found that approximately two thirds of South African adults feel the police are *not* doing a good job.[17] Indeed a broader lack of faith in the criminal justice system have led some communities to take the law into their own hands, often in direct violation of the law and fundamental rights. About half the respondents in the same survey firmly supported the idea of local vigilante groups.[18] Other research, however, indicates that attitudes towards vigilantism are far more complex, and that support for illegal vigilante action is not necessarily widespread (Schonteich 2000:26–31).

The rise in certain communities of vigilante type actions is undoubtedly predicated on increasing levels of crime, whether perceived or real, coupled with a weak and inefficient criminal justice system. But vigilantism and its various manifestations cannot be understood in isolation from South Africa's political transition. Mistrust in the police force, a lack of

13 ICD.

14 *Sunday World* 2000. No end to police savagery. 14 April; *Sowetan* 2000. Heavy hand of the law 17 April.

15 According to Minister Tshwete, R2.7 million is paid each month in salaries to awaiting-trial police officers (*The Star* 15 March 2000). This amounts to an annual total of R32.4 million. The ICD's annual budget is less than R28 million.

16 For more details on the problems effecting the SAPS internal disciplinary system, see Newham 2000b.

17 *Eastern Province Herald* 1999. Police ineffective, say 66% of SA's adults 19 November.

18 *Eastern Province Herald* 1999. Police ineffective, say 66% of SA's adults 19 November.

legitimacy of the rule of law and acute socio-economic inequalities are all products of apartheid that the current government continues to grapple with. A history of informal justice mechanisms and a weak civil society provide a terrain that allows vigilante groups to claim moral high ground for the administration of so-called "justice". Located in a blend of different factors, vigilantism should therefore be seen as a symptom of the transition that fundamentally challenges core constitutional values.

The government and Minister Tshwete have taken a strong vocal stand against those that want to take the law into their own hands, both in terms of the police and vigilante type action. Some observers, however, have noted that criticism of vigilante action has been more muted and that statements have been targeted at only specific groups such as Pagad.[19] In the Northern Province, stern criticism of the Mapogo, a Mathamaga vigilante group, from the government appeared to develop only after the organisation's leader joined the opposition United Democratic Movement (CSVR 2000:24).

3 HUMAN RIGHTS AND THE VICTIMS OF CRIME

Rights discourse amongst key elements of the human rights community on the issue of crime has been dominated by debate on the rights of criminal suspects and violations committed by elements within the criminal justice system. Given the intensity of violations committed in and the lack of protections provided by the previous system, this is not surprising. Already in 1994, several human rights projects were focused exclusively on the violation of criminal suspects rights.

Increasingly, however, the issue of victims' rights has been used to counterbalance concerns about the violation of suspects' rights. According to the National Crime Prevention Strategy, recognition of the role and rights of victims are vital in addressing the effects of crime and creating crime-resistant communities. The strategy provides for a Victim Empowerment Programme (VEP), aimed at making the criminal justice process more victim-friendly in order to create a greater role for victims in the criminal justice system, as well as provide protection against repeat victimisation (RSA 1996). Since 1996 there have been a number of initiatives building on the VEP, including the establishment of a national victim empowerment management team and provincial victim empowerment forums.

However, institutionalising the way in which victims of crime are treated by the criminal justice system is a long way off. It remains to be seen if, or to what extent, international consensus about the rights of crime victims will be adopted. Whatever happens in this arena, improved service delivery on the ground is what is urgently needed to address the cynicism many South Africans feel towards a justice system that appears to disregard the needs and rights of victims. Both victims' and perpetrators' rights must be addressed, but the linkage requires careful consideration as they can be manipulated to obfuscate and conceal abuses and violations of due process.

19 People Against Gangsterism and Drugs, a Cape Town-based group.

Reaction to crime appears to vary between racial and socio-economic groups. Poorer people may suffer smaller nominal losses, but the effect can be more severe. The theft of a R570 monthly pension packet can have devastating consequences in poorer communities. Wealthier, predominantly white, communities have experienced a marked increase in violent crime since 1994, and have reacted by using available resources to invest in private security, underscoring their lack of faith in the government to protect them. In some areas whole suburbs have been cordoned off, contributing to a siege mentality amongst certain South Africans.

No such alternative exists for the poor. Indeed, many of the black majority have been living with high rates of violent crime (as well as politically related violence and repression) for decades. Although there is clearly great concern about the issue, it is not the top priority for many poorer people. This does not translate into a greater sympathy for criminals, and research shows that support for harsher punishment is widespread. Over 70 per cent of people polled in different surveys support the death penalty.[20]

Such attitudes towards dealing with perpetrators of crime also indicate a widespread alienation from the criminal justice system, and reflect negative perceptions and experiences. The checks and balances required in a properly functioning criminal justice system have simply never existed, particularly for the country's black and indigent people. Consequently, in the new dispensation the situation is an evolving one because the rights exist, but the system has limited capacity to make these rights and protections tangible. This raises the difficult issue of secondary victimisation, as victims/survivors of crime must interact with the insensitivity and inefficiencies of a system in the throes of transition.

The difficulties of developing a rights culture with a core component of respect and support for the criminal justice system must also be understood within the context of recent indemnity and amnesty processes associated with so-called political human rights violations. The constitutionality of the amnesty provisions of the Truth and Reconciliation Commission[21] process were unsuccessfully challenged in 1996, with the Constitutional Court ruling that the removal of civil and criminal options necessitated a particular focus on reparation.[22] This remains a highly contested, emotive, unresolved issue.

There are also ongoing secret discussions about special amnesties for KwaZulu-Natal and the military. This means the possibility for further immunity from justice is very real. The issue was publicly aired by the then Deputy President, Thabo Mbeki, during the parliamentary debate on the TRC.[23] As with the controversial prison indemnities applied to common

20 73 per cent, according to Pigou 1998a:vii, and 75 per cent, according to *Cape Argus* 1999. Death penalty gets strong support in poll.

21 TRC.

22 *Azanian Peoples Organisation (Azapo) and Others v The President of the Republic of South Africa* CCT 17/96 25 July 1996.

23 Hansard 25 February 1999 col 57.

criminals from time to time, political indemnities and amnesty processes can only create an impression of double standards in the system and undermine efforts to inculcate respect for law and order. This political expediency (or what some might call political reality) also continues to drive an artificial division between human rights violations that are considered to be political and those deemed to be straightforward criminal.

4 HUMAN RIGHTS AND CRIMINAL SUSPECTS

The rights of criminals and criminal suspects is an unpopular and controversial matter. Although section 35 of the Bill of Rights provides for a series of rights in this regard, the attitude of the general population is clear. One in seven survey respondents in two surveys conducted by CASE in 1998 felt that criminals have too many rights (Pigou *et al* 1998b).[24] Strong opinions on this subject, however, do not appear to be based on knowledge or understanding of the specific protections contained in section 35. In fact the reasons for this attitude is more likely to be based on negative perceptions of the criminal justice system and the broader misperceptions that the Constitution is crime-friendly.

Although human rights violations by members of security forces remain very much in the public eye, the focus has been selective. The TRC has highlighted abuses committed against political opponents, but very little attention has been paid towards the violation of criminal suspects' rights. Such violations, however, are not a recent phenomenon, with physical abuse, for example, characterising investigative methods and policing practices for many years.[25] Whilst there appears to be a generally widespread sense of horror about abuses committed against political opponents, this is not necessarily the case for abuses committed against criminal suspects. Horrified responses to the recently released video footage of members of the SAPS East Rand Dog Unit using three illegal immigrants as live bait for training their dogs is unusual – police brutality has continued without much public response since then. This appears to be the case firstly, because the visuals of the video footage were so dramatic and, secondly, because of the extreme racist nature of the attack (Pigou 2000). Indeed brutality and racism appear to be two criminal issues within the SAPS that have not received adequate attention. Whilst brutality is frequently racist, it is important to remember that this is not always the case, and that brutality is a world-wide policing phenomenon.

The focus on the security forces should not detract our attention from the past and inherited problems of other agencies within the criminal justice system that impact on the effective realisation of the provisions of section 35. The judiciary, magistracy and prosecuting services were conspicuous by their lack of interaction with the TRC process. Although recent research into the role of magistrates has confirmed that the system was complicit by commission and omission in human rights violations,

24 http://case.org.za/htm/soceco3.htm#crime.
25 See Independent Board of Inquiry *et al* 1995.

admissions, explanations and apologies have not been forthcoming.[26] These are not good foundations on which to transform and build a credible and accountable criminal justice system.

Human rights training courses for magistrates and prosecutors are limited, and although the Justice Training College has introduced a human rights module into certain training courses, this tends to reflect a broader tendency of dealing with human rights as an adjunct, as opposed to an integral part of the training package. Human rights and their relationship with the vast array of functions and duties therefore remain largely absent in the programme. As with efforts to introduce human rights training within the police, we have yet to determine what impact this has had on the attitudes and behaviour of court functionaries.

Another area where rights concerns have been raised relate to the appropriateness of sentences. In some cases this has led to the successful appeal of sentences, such as a recent case in the Eastern Cape in which four Afrikaner Weerstandsbeweging[27] members were given very light sentences for a brutal and fatal racist attack. Convictions of some SAPS members for electric shock torture for example have resulted in relatively small fines and some convicted officers have simply returned to work, without any disciplinary action being taken. Other concerns relate to the accuracy of judgments and the limited options available for appealing decisions.

In 1995 and 1996, for example, the Vaal Legal Aid Centre focused its attention on appealing a number of decisions by particular magistrates in the Vaal Triangle. About 46 of the 50 appeals brought forward were successful, before the Legal Aid Board stopped the supervising attorney from taking on further cases, effectively vetoing the experiment. Some of the original judgments defied belief, including a five-year sentence handed down to a man for possession of a vial with the word "cocaine" written on it. When the contents of the vial were subsequently analysed it was found to be cement dust.[28] By and large, however, there is no monitoring of South Africa's district and regional courts and one can only speculate about the quality of prosecutions, legal defence and judgments by magistrates.

Those that work within the court system are faced with enormous logistical problems and the current case backlog is reportedly critical,[29] contributing to lengthy delays in the finalisation of matters. The current crisis in legal aid has also undermined efforts to ensure legal representation at state expense where substantial injustice would otherwise arise. Assistance with civil litigation has been stopped and the number of people receiving assistance with criminal matters has also declined as the attempt to shift reliance from the judicare system to state-funded justice centres has resulted in a vacuum of services in some areas.

26 See Gready & Kgalema 2000.

27 AWB.

28 Interview in July 2000 with AJ Richard, supervising attorney, Vaal Legal Aid Centre, 1994–1997.

29 Matters arising from the statement made in Parliament on 9 September 1999 by the Minister of Justice and Constitutional Development on the efficiency of courts.

The situation in the country's prisons is also extremely problematic. Although total prison capacity is about 100 000, the prison population is now over 170 000. Since 1995 the awaiting trial prison population has more than tripled to over 70 000, as a result of harsher bail laws and the increasing number of people who are unable to pay bail. Current estimates predict the prison population will be well over 200 000 by the end of 2001 unless drastic measures are introduced to relieve existing congestion.[30] However, mass releases, even of people accused of petty crimes, are likely to further exacerbate perceptions that the government is soft on crime.

Overcrowding has compromised the Department of Correctional Services' ability to provide acceptable conditions in many facilities and has undermined efforts to rectify disparities between prisons in different parts of the country. Despite the introduction of the judicial prisons' inspectorate and a complimentary lay visiting system, NGOs such as the South African Prisoners Organisation for Human Rights continue to receive numerous reports about abuses by fellow prisoners and warders. They also receive complaints that efforts to redress abuses such as the systemic gang problem, corruption and other human rights violations are patently inadequate. Although the prison services have also introduced some semblance of human rights training, the department remains in crisis with high profile investigations underway into mismanagement, nepotism and corruption amongst the senior echelons of management. Other areas of specific rights concerns include the realisation of specific constitutional and legislative protections for child and juvenile prisoners, and the appropriateness of maximum-security facilities such as C-Max, as well as the use of remote control electric shock equipment to control prisoners.

In the context of high levels of crime and low conviction rates, the rights of people who are caught, prosecuted and incarcerated is not an issue that matters much to the general population. Indeed if public sentiment dictated government policy, criminals would be stripped of certain rights and the death penalty whisked back onto the statute books. Although many people believe that criminals have too many rights, most South Africans appear to recognise that incarceration means limiting specific rights, it is not a forfeiture of all rights. Almost a fifth of the 1998 survey respondents, however, believe that prisoners do not have any rights (Pigou *et al* 1998a:98), which reflects the belief that prison is a place where people should be punished beyond the fact that they are imprisoned. There is also widespread sympathy for police officers who use illegal methods of extracting information. In the CASE survey, we asked respondents whether they agreed or disagreed that the police should be allowed to use force to extract information. Forty-six per cent either agreed that such treatment was acceptable, or were indifferent towards such abuse (Pigou *et al* 1998a:xiii).[31]

30 Interview with GM Bhudu, South African Prisoner's Organisation for Human Rights, March 2000.

31 31 per cent of respondents actively supported the police's 'right' to use force to extract information.

5 CONCLUSION

Building a human rights culture in South Africa cannot be achieved without the effective combating and prevention of crime. The promotion and protection of human rights, however, should not be regarded as an impediment to dealing with crime, even if strict adherence to the regulatory and rights framework make these endeavours cumbersome and laborious. These are designed with the specific purpose of providing protection from abuse and not to make the policing authorities' tasks more difficult. These are an integral part of the professionalism process, imbuing standards, responsibility and accountability.

If South Africa's human rights record is judged on its treatment of criminal suspects and convicted felons, (let alone victims of crime), it is evident that an enormous amount still has to be done. Rights-friendly institutions and effective remedial mechanisms such as the Independent Complaints Directorate and the Judicial Inspectorate for Prisons must be complemented by processes which clearly explain how the various facets of the criminal justice system should work and how members of the public can effectively assist in making this a reality. Convincing people of the reasoning behind the need for due process and a criminal justice system that actively protects the rights of those in its custody presents the government and human rights community with one of its greatest challenges. Having a system that actively protects the innocent and vulnerable means that there will be times when the guilty exploit this for their own advantage. Such acts appear to devalue the system's credibility, are cited as evidence of the Constitution's "crime-friendly" approach, and thus feed the pressure on government to introduce harsher penalties and tougher processes. To accommodate this viewpoint would be to admit the state's failure to properly implement laws and systems, rather than being a concession to any inherent weaknesses resulting from the adoption of the Constitution. In 2001 Parliament will consider proposed anti-terrorism legislation that will see the return of detention without trial, albeit in a somewhat diluted form. Introduced in response to the urban terror threat in the Western Cape, there is a very real danger that the adoption of this law will violate South Africa's international human rights obligations (Amnesty International 2000).

This paper has deliberately focused on some of the more extreme violations and related concerns within the criminal justice system. It is obvious that if these issues cannot be effectively addressed or are systematically ignored, this will have severe implications for the development of a human rights culture, and will further undermine confidence that the government is willing or able to promote and protect human rights.

The ongoing difficulties faced in the struggle to get to grips with criminality, let alone competence, within the criminal justice system raises concerns about the nature of the state's commitment and the overall strategy adopted to dealing with crime. The state, and government departments working within the criminal justice system in particular, must work within the parameters of the law and therefore the Bill of Rights and the Constitution. At the cutting edge of human rights issues, the criminal

justice system has the additional role of setting the example of protecting and realising constitutional rights. Violations within the criminal justice system cannot and should not be tolerated, and special attention should be given to addressing these problems and preventing their occurrence. It is imperative that the Constitution is not diluted for political expediency and short-term gains in the fight against crime. The best protection that South Africans can have against crime and violence is the enforcement of rights, not their erosion.

Building a criminal justice system that is effective, and that actively protects human rights, requires a commitment to reform. Recent recommendations by the International Council on Human Rights argue that the transformation and development of the criminal justice system would be more effective if the relationship between human rights and development was more clearly understood and integrated into policy and practice. The logical extension of this argument is that the same process must now take place around the subject of crime and human rights, with a view to making the way we deal with crime part and parcel of developing a human rights culture in the post-apartheid dispensation.

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