

Should fighting organised crime be a priority as South Africa deals with crime and human rights, and does the need to combat crime justify extraordinary measures that may limit rights?

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Are extraordinary measures against organised crime justified? Is organised crime such a threat, and is its nature such that it cannot be addressed by ordinary measures that do not limit rights? Is it appropriate for South Africa to prioritise it, perhaps to the detriment of the policing of other crime?

Before we can begin to attempt to answer these questions, we have to have an idea of what is going on with crime, and how much of the 'blame', so to speak, for our unacceptable levels of crime can be apportioned to organised crime. Which brings us into the thorny realms of the issue of statistics, a hot topic at the moment, given the Commissioner of Police's current moratorium on providing crime statistics. But statistics are not everything, and you can look at statistics all day and still not get an accurate impression of what is going on in an area. The nuances which tell you everything are not in figures alone, no matter how accurate.

What I have been doing over the past few months is systematically visiting every South African Police Service¹ station in the Western Cape and talking to those people who have to deal with crime every day about crime in their area. There are more than 150 stations in this province, and I have talked to a lot of police officers, and seen a lot of charge offices. Although I have not finished my pilgrimage, and it has not yet been fully complemented by supplementary work such as docket analysis and detailed statistical analysis, I would like to share some of my observations with you.²

1 SAPS

2 Material in this paper is drawn from interviews with members of the South Africa Police Service (SAPS) between January and July 2000. No names and dates are recorded here, as some information is sensitive or may reflect on the officers concerned. Please also note that the research on which this paper is based is a 'work in progress' which will be subject to cross-referencing and checking at a later stage.

One visit confirmed for me that statistics alone do not tell the whole story. Khayelitsha, according to the statistics, generally has half as many recorded crimes as does Mitchell's Plain, an area of equivalent population. Khayelitsha's recorded crimes have doubled over the last five years to the current level of around 1 500 a month. Does this mean that Khayelitsha's crime rate has rocketed, but that it is still better off than Mitchell's Plain?

Anyone with a modicum of local knowledge will tell you otherwise. In fact, police in Khayelitsha are pleased by the crime rate increase. They will be happier still when their rate equals that of Mitchell's Plain. This will mean that reporting levels have normalised, and that the community has confidence in the service delivery of the police. The doubling of the crime rate over the last five years is partly due to the fact that the community is now much wealthier than it used to be, and reports crimes for insurance purposes. The Community Policing Forum is also helping in this regard.

Without doubt, gangs and organised crime are an important feature of crime in the Western Cape, especially in certain communities. To give just one example, the arrest of leading members of the sexually violent and murderous Sexy Boys gang of Ravensmead, has had a huge impact on crime in that area. Whereas gang murders and attempted murders used to number more than a dozen a month in this small jurisdiction, now there are only isolated killings not related to gangs.

Interestingly, the arrest of the Sexy Boys did not make use of new legislation or any special powers. All that was involved was painstaking and careful investigative work, including hauling out old unsolved dockets, and carefully piecing all the available evidence together and making arrests on ordinary charges such as murder and rape. Extraordinary problems do not always need extraordinary measures.

Similarly, in Gugulethu, the arrest of leaders of gangs like the 'Dog Pound' and 'KwaZulu-Natal' gangs, all of whom are juveniles, has led to a decrease in certain crimes in that area. There is concern there that should Patricia de Lille³ be successful in her bid to have juveniles released from prison, which would include some of these children, and they are not held in a place of safety, crime will increase in the area again. A large proportion of crimes in Gugulethu are committed by school-going youngsters. Indeed, a clear indication of this is that many crimes are committed after school hours and before 7pm.

The extent of juvenile involvement in crime in the Western Cape is striking. Over and again it appears that children are involved in much crime. In traditional gang areas like Bishop Lavis and Phillippi children are being used by gangs to commit crimes, while reports in areas like Parow and Bellville confirm it is often children who are arrested. In areas like Fishhoek pensioners are being attacked and robbed by street children, while children from Masiphumulele in Ocean View appear to be responsible for a number of housebreakings in the area. These are just a few examples of the trend; over and again the refrain can be heard, 'it's mostly kids'.

3 A member of Parliament for the Pan Africanist Congress of Azania (PAC).

But what do we do about juveniles, whether they are committing crimes through gangs or on their own? Clearly they cannot continue to be imprisoned in the conditions which have been publicised by Ms de Lille. On the other hand, they cannot simply be set free without being held answerable, and while they still have a propensity to commit more crimes. Many, of course, never go to prison, and are, for example, put on diversion programmes. But we have to look carefully at our juvenile justice system.

The tragedy is that often all it takes is for a child to turn his⁴ back on crime is to be given a chance to grow up. This is apparently what has happened in Langa with former gang members. They simply grew up, got married and stopped committing crimes.

I have also had some pleasant surprises during my visits, and some of these involve some police successes in crime prevention. What better way to deal with crime and respect human rights than to prevent crime in the first place? These are also the kinds of things not always reflected by statistics, and which do not make it into the newspapers.

In Parow, for example, possible violence between rival taxi organisations at the opening of a new taxi rank was nipped in the bud when the police established a management forum. Routes disputes were thereby avoided.

In Goodwood, an awareness campaign was run by police to publicise the fact that some prostitutes were involved with gangs who tended to rob and assault clients after the prostitutes lured them away. Reports of these incidents dropped significantly after the awareness campaign. I must however add that there is still a problem in Goodwood with clients unwittingly picking up transvestites and then refusing to pay on discovering their error, leading to confrontations.

After extensive negotiations with the community and the police, the Mongrels, the dominant gang in Steenberg, have been persuaded to opt for peace and keeping the peace. As a result, there has been little gang violence in the Lavender Hill area where there were regular violent deaths, including those of innocent bystanders.

This last example is not all rosy, however. Lavender Hill has become its own isolated community. Criminal charges now hardly ever find their way to the police station. The Mongrels themselves now police most crimes – an unintended consequence of the peace process. Can one balance saving lives with abdicating power to gangs?

Some police campaigns have been unsuccessful. So far, all the persons responsible for the violent attacks on buses in the bus/taxi conflict have not been apprehended, despite an extensive campaign involving leaflet drops and radio ads offering a reward for information.⁵ In the words of a township officer “until people in the community care about all crime and not just crime that affects them personally, the police can get nowhere”.

⁴ It is usually a ‘him’.

⁵ Since this paper was written, the responsible person has been apprehended and convicted and the attacks have stopped.

Let me just pause to add here that you may have noticed that I have so far failed to mention rape. It is common knowledge that South Africa's reported rape statistics are among the highest in the world, and the Western Cape has the second worst rate in the country. It is also widely believed there is significant under-reporting of this crime, with estimates ranging from 1 in 2, to 1 in 35.

Yet not a single area I have visited thus far regards rape as a priority. Indeed, an officer who otherwise appeared reasonable and very competent described rape victims older than 18 as "old meat". While discussing the figures for those younger than 18, his comment was that these figures "are not a joke as the old meat can handle it but the young meat can't".

Another impression I have gained is the impact of development on policing crime. In Kirstenhof, the destruction of the Westlake squatter camp and the resettlement of the residents in government housing has eased policing. Now, it is possible to follow suspects by road, identify houses by street numbers, and assign names to addresses. These are more permanent too, as people are loath to leave these smart new homes. The destruction of the Marconi Beam squatter camp in Milnerton and the rehousing of those people has had a similar effect.

On the other hand, Capricorn and Pelican Park developments in Muizenberg, and the Century City development in Milnerton, have increased the developed area which must be policed, yet staff and resources remain the same and one officer must sometimes do the job of three. The opening of the Casino at the Goodwood show grounds may also have crime implications.

The developed metropolitan area of the Peninsula seems to increase almost monthly, but there has been little adjustment to police jurisdictions or levels of staffing. So development is a double-edged sword for police. Every station mentions either lack of manpower and vehicles, or areas too large to police properly. On the West Coast, for example, there is a drug dealer who can see anyone coming for many kilometres over the empty landscape along a dust road, and can arrange his affairs before police get to him.

Manpower and resources are crucial to human rights: an officer who does not have the proper means to solve his crimes, especially where he is under intense pressure to make arrests, will be sorely tempted to go the quick and easy route and trample on his suspects' rights: by carrying out searches and seizures on the spot; by detaining, questioning and even physically harassing suspects; by threatening and bribing witnesses for information; or even shooting or killing suspects evading arrest.

Now that the courts throw out such cases where this is exposed, rights, however incorrectly, are indeed seen as an impediment to policing. How do you answer an officer who says to you, as happened to me this month, "if you look in the Constitution, there are more rights for arrested people than for innocent people"?

It is easy to criticise, but we are not in the line of fire. Most of us here do not have a plaque for colleagues killed on duty hanging in our offices.

as there is in Kuilsriver. We do not have to make do with one police vehicle, as does Ocean View. We do not have bloodstains on the steps to our place of work, as is the case in Steenberg. If we do not appreciate these kinds of realities, we cannot talk about rights in a sensible way.

To return to the title of my paper, South Africa has already prioritised organised crime. The government has created, under the National Directorate of Public Prosecutions, so-called 'investigating directorates' in terms of special legislation to deal with organised crime and terrorism. These bodies will be absorbed into the Directorate of Special Operations, otherwise known as Scorpions, once the legislation creating the Scorpions is finalised, which again in all likelihood will focus on organised crime. The Scorpions are already receiving a large share of the crime-fighting budget.

A focus on organised crime is part of the SAPS "Operation Crackdown" and current crime-combating strategy. Indeed, over 230 gang members have been arrested from February to June this year in the Western Cape, according to Provincial Commissioner Lennit Max.⁶

Parliament has also passed legislation specifically aimed at organised crime. The Prevention of Organised Crime Act⁷ which, in creating new offences and new punishments, does limit rights such as freedom of association, in its criminal gang provisions in particular, and the right to property, with its asset forfeiture provisions.

I do not think it is appropriate to go into detail on this legislation now. However, I would like to add that South Africa is not alone in passing such legislation. I have recently completed a paper⁸ that compares the organised crime legislation of a number of countries to that of South Africa, and it seems that on the rights-limiting legislation continuum, South Africa falls somewhere in the middle.

But to return to my original questions, are extraordinary measures against organised crime justified? Is organised crime such a threat, and is its nature such that it cannot be addressed by ordinary measures that do not limit rights? Is it appropriate for South Africa to prioritise it, perhaps to the detriment of the policing of other crime?

Yes, gang conflict can sometimes be so bad in Grassy Park that Parkwood is a no-go zone for police, and an open field there is known as "the battleground". Similarly, an area of Elsies River is known as "Klein Bosnia" for the same reason. Yes, it's true that the status of Mitchell's Plain as the murder capital of the country is to a large extent due to gang and syndicate murders. Yes, a lot of economic crime is caused by drug habits, fuelled by drug dealers, in turn run by syndicates. But should we pursue organised crime to the exclusion or detriment of the policing of certain other crimes?

6 *Business Day* 27 July 2000.

7 Act 121 of 1998.

8 Draft 1: Redpath J 2000. *Legislating against organised crime: Recent South African and international trends*. Institute for Human Rights and Criminal Justice Studies.

The statistics show⁹ that economic crimes, and by that I mean smash and grab thefts, usually opportunistic crime, like theft out of motor vehicles and housebreaking, to be runaway top scorers in the Western Cape at the moment. As defeatist as it may sound, for these crimes, a large proportion of which are not linked to gangs and syndicates, we may just simply have to grin and bear it, at least until the socio-economic condition of the country improves.

Violent crime, however, requires an altogether different approach. Violent crime is important to South Africans. After all, if given the choice to protect their lives or their property, most South Africans (and this takes no great insight) care more about personal safety than whether their car radio has disappeared. But is all violent crime equal? And how do differences in types of violent crime impact on attitudes to rights?

My research seems to show that there appear to be five general types of violent crime, at least in the Western Cape. Firstly, the type of violent crime, which accounts for many incidents in the Western Cape, is shebeen-related crime: basically murders, attempted murders and assaults arising from bar brawls: the kind that fills the charge office in Nyanga on weekends. Nyanga has a shebeen in almost every second shack, but only one licenced premises.

Secondly, there is domestic violence, also ranging from assault to murder. Recent increases in reports of these should be seen as a positive sign, as it means victims are coming forward for help. Both of these are often related to alcohol abuse.

Thirdly, there is inter- and intra-gang and organised crime-related violence, the scenario where selling the wrong person's drugs, or trying to leave a gang, can get you thrown out of a moving vehicle on the M5, or ending up in bits in a suitcase, as has happened in Wynberg.

But what scares the ordinary South African most is the violence associated with two other types of violent crime. Violence for the sake of violence, sometimes associated with economic crime. Crime often associated with rape, is the fourth type. In this category are armed robberies where the perpetrators are not content with just taking what they please, but they must hurt or kill the victim too, despite there being no need to do so. Serial killers, that have terrorised prostitutes in Goodwood in the past, also fall into this category. "Jack-rollers" who engage in group rape and assault, are also included. Statistically, these crimes do not take up as much of the crime stage as is generally assumed, but they shine much more starkly than the rest.

Lastly, there is violent crime which strikes at the democratic and economic life of the ordinary citizen. This has been called a number of things, ranging from "civil intolerance" to "inter-group violence" to "urban terrorism" to plain old "political violence", a phrase from the old days.

⁹ *Monthly Bulletin on Reported Crime in South Africa* May 2000. Crime Information Analysis Centre South African Police Service.

We see an increase in apparently unmotivated murders taking place in places like Nyanga ahead of municipal elections. We see it in killings of bus drivers in the bus/taxi dispute. We see it in violent clashes between different taxi groups, between different housing associations, between different civic groups all over the Peninsula. We see it in vigilante action, whether by groups such as Pagad,¹⁰ or by taxi owners, or by the community. We see it in pipe bombs exploding all over the Cape Peninsula.

At the simplest level, this is just one group violently asserting itself over others. This type of violent crime has implications far beyond being tough on crime. If people cannot participate freely in economic and political life without fear for their lives simply because they are exerting their rights to have a job such as driving a bus, or to participate in a political party of their choice, where are we headed? Should this type of violent crime not be a priority for our new democracy?

Of course this is a huge problem that is inordinately difficult to address, but it is not good enough to say we do not know where to begin. The MEC¹¹ for Safety and Security in the Western Cape has just resigned in the face of it. This problem must be addressed, and certainly not by the police alone.

What do these two types of crime which I have suggested should be prioritised have to do with rights? The answer is fear. If we can police these types of crime properly while remaining within a human rights framework, which should be possible despite limited resources if they are prioritised, the climate of fear will thereby be reduced, and the public clamour for draconian measures to deal with crime will stop.

Simply put, people are scared. The impression among citizens has been created that the rights of others are endangering their lives. If we can take away that fear while respecting rights, there will be a better and more rational appreciation of the role of rights in our society.

It is nevertheless understandable why pure organised crime is attractive as a policing priority. There is a sense that if we can just get rid of groups and their leaders, the crimes they are committing will vanish. This can happen, as has happened in Ravensmead with the Sexy Boys. But I hasten to add that the Sexy Boys were never a true organised crime syndicate, and their violence was not intra- or inter-gang: their main activity was violence against innocents, rather than business: they had victims rather than clients.

This could start me on entering the arena of trying to define organised crime, which the drafters of the United Nations Transnational Convention on Organised Crime will tell you, can take months. Let me just say that gangs who inflict violence on those outside the gang or outside rival gangs arena may more properly fall into the category of senseless violence, rather than the category of organised crime violence, and should therefore also be prioritised.

¹⁰ People Against Gangsterism and Drugs.

¹¹ Member of the Executive Council.

Organised crime in its pure form, which is the kind of syndicate envisaged by most legislation, is basically a business operating for profit, its product being in the black market. It is the kind of thing that conjures up the word "empire". Simply eliminating such syndicates or their leaders does not help: fighting this kind of organised crime is a never-ending story. The murder of Gavin Carolus is not expected to have any effect on his large drug operation based in Milnerton. In Athlone, Pagad murders of drug lords simply spawned a whole new crop of smaller drug dealers who are now struggling for power, paradoxically creating more violence.

My impression is that there is a market for drugs everywhere in the Western Cape, even in the smallest, quietest town in the Boland, in the poorest, most depressed urban squatter camps, and in the most affluent suburbs. Where there is a market, someone or some group will serve it. Shutting down groups that supply the drug market simply pushes prices up, raising the stakes, spawning new groups, and raising the violence: the hydra phenomenon.

Policing organised crime, especially drug-based organised crime, may create big headlines and good publicity, and generate money when married with asset forfeiture, but one has to ask: what happens after the policing? The argument against drug law enforcement is not a new argument; but this is neither the time nor the place to go into it. My point is only that in the current legal framework, policing especially drug-based pure organised crime syndicates may in fact increase violent crime levels.

Of course we cannot ignore any kind of crime. But in a society stretched for resources, we have to have priorities. Rather than talking about organised crime, we should talk about violent crime, and the kind of violent crime that is ruling us with fear, and putting respect for rights in jeopardy. If we have half a million rand to spend, do we want to spend it on bringing to justice an abalone smuggling syndicate, or just one violent psychopath? Do we want to close down 100 drug dealers, or apprehend a single sniper in the bus/taxi conflict?

The numbers are against me on this, for if we really wanted to play the statistics game and get the violent crime rate down, we should, say, put all shebeen frequenters in rehabilitation and put all wife-beaters on Robben Island. The statistics would look much better, but we would still live in fear, and the public would still be looking for justice and blaming what they perceive to be an overly rights-based system.

To talk briefly about extraordinary measures for organised crime, especially those that limit rights, we have to ask whether they are ever justified before we have put our heads down and tried good old fashioned, well-resourced, police work. Maybe we do need clever legislation to tackle sophisticated syndicates. But the kind of violent crime which should concern us most is not generally being committed by sophisticated syndicates. And before we talk of limiting rights in any way, we have to ask how and whether we can do that without running the risk of the state becoming a tool of injustice rather than justice.