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JUST AFRICA

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THE ALL AFRICA CRIMINAL JUSTICE ASSOCIATION

JUST AFRICA JOURNAL.

AIM AND SCOPE

The Journal for Just Africa is a bi-annual journal published by the All Africa Criminal Justice Association. It is an independent, impartial and neutral journal dealing with organized crimes. Its aims and missions are to promote reflection on issues such as organized crimes, police brutality, prostitution and drugs, maritime piracy, policing, syndicates and crimes, justice systems, ritual murder, rural and urban safety, penology, and victims of human trafficking in Africa. The journal specializes in organized crimes and its endeavours are to promote knowledge, reflection, critical analysis and the development of remedies and solutions relating to organized crime to prevent the unnecessary sufferings of victims of organized crimes for a better Africa. The association also serves as a forum for discussion about contemporary organized crimes so as to inform, strengthen and promote security - especially on the African continent.

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JUST AFRICA is a peer-reviewed academic journal that promotes academic and professional discourse and the publishing of research results on the subject of crime and criminal justice and other crime-related phenomena in the broad Criminological Sciences and applied field of criminal.

JUST AFRICA is a journal published regularly by the **ALL AFRICA CRIMINAL JUSTICE SOCIETY (ACJUS)** (first published in 2013). Annual paid-up members of AACJUS will automatically be subscribed to **JUST AFRICA** (e-journal). An article contribution to the editor/s will be considered provided it has been edited and is **ready for processing in terms of**: Language, stylistically polished, careful proofreading and provision has been made for the technical format and referencing guidelines as provided below. Manuscripts not following the journalistic style, referencing techniques, technical format and language edited will be returned to author/s for correction and re-submission before being sent out for refereeing. In submitting an article author/s acknowledge that it is their own original work and that all content sourced from other authors and/or publications have been fully recognised and referenced according to the guidelines for authors. The Editor/s will submit article contributions to referees (in a double blind review process) for evaluation and may alter or amend the manuscript in the interests of stylistic consistency, grammatical correctness and coherence. The refereeing process is always anonymous and the identity of referees will remain confidential. It remains the prerogative of the editors to accept or reject for publication any submission and their decisions are final. They will not enter into any debate or correspondence regarding

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ii. Accept with minor revisions as indicated;

iii. Resubmit with major revisions in accordance with critical and constructive feedback; or

iv. Reject (unlikely to be accepted even after revision). In this instance it would be senseless to provide feedback and the decision of the editors would be final.

Apart from scientific shortcomings or inconsistencies, the following evaluative criteria are considered:

- The theme is academically significant (timely, important, in need of being dealt with);
- The theme contributes to an existing (professional) body of knowledge (the knowledge component is useful);
- Author/s‟ goals and objectives are clearly stated;
- The article addresses (unpacks) themes logically, consistently and convincingly;
- The article demonstrates an adequate understanding of the literature in the field;
- The research design is built on adequate understanding, evidence, and informational input;
- The interpretative potential of the data has been realised;
- The article demonstrates a critical self-awareness of the author's own perspectives and interests;
- Holistically, the article is properly integrated and clearly expresses its case measured against the technical language of the field (theory, data and critical perspectives are well structured and the presentation is clear);
- Conclusions are clearly stated and adequately tie together the elements of the article;

- The standard of writing (including spelling and grammar) is satisfactory.
- JUST AFRICA adopted the APA reference technique and it must therefore be consistently applied throughout the article;
- Sources consulted are sufficiently acknowledged (included in a list of references) and consistently cited to:

    supply academically sound evidence on which the authors base their observations;
- Effective and detailed source referencing is of paramount importance. Articles will be scrutinised and checked for bibliographic references and any proven evidence of plagiarism will result in non-publication.

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1. A publication fee may be levied at the discretion of the editors for every article published in the Journal. NGOs, unaffiliated authors, international scholars, etc., who do not have access to research grants to fund expenses of this nature, may be exempted.

2. Where substantial changes are deemed necessary, contributions may be referred back to authors for finalisation. Alternatively, where articles which exceed the prescribed length are accepted for publication, an additional fee per page may be levied. In instances where submissions are not satisfactory (i.e. ready for processing) and require additional attention from the editors, an additional fee may also be levied, notwithstanding the authors' status as members.

3. Manuscripts for publication or enquiries pertaining to Just Africa should be directed to: The Editor-in-Chief: Prof. (Dr.) Rajendra Parsad Gunputh at email: rpgunput@uom.ac.mu

REFERENCING GUIDELINES

Notes: References and citations should be prepared in accordance with the Just Africa adapted APA[1] format (see examples of various reference listing types below). The „in-text" referencing format is followed by the Journal with full source referencing information listed under the heading: LIST OF REFERENCES (uppercase), which has to appear at the end of the article. All sources in the List of References must be listed alphabetically by authors' surnames, according to the following examples. Please note the indenting of the second and additional lines of a reference listing when longer than two lines.

The use of full stops in listing: In general each separate piece of information is standardly followed by a full stop.

LIST OF REFERENCES [EXAMPLES]

Books

Ratcliffe, J. (2008). *Intelligence-led policing*. Devon: Willan Publishing.

Chapters in books

Strydom, H. & Venter, L. (2002). Sampling and sampling methods (Pp. 56-67). In A.S. de Vos, H. Strydom, C.B. Fouche & C.S.L. Delport (eds.). *Research at grassroots: For the social sciences and human service professions*. Pretoria: Van Schaik.

Journals

Nakison, E.D. (2010). Teachers' disciplinary approaches to students' discipline problems in Nigerian secondary schools. International NGO Journal, 5(6): 144-151.

[1] Footnotes and endnotes are also acceptable for submissions with a predominantly legal context

Interviews

Riekertze, M.C. (2013). Director, Security. ABC Company. Pretoria. Personal interview. 21 May.

Newspapers

Khosa, F. (2010). Zuma must reign in our cowboy police. Sunday Times, 10 July.

Websites

Carter, B. (2012). Clever Politics. Available from: http://what-when-how.com/Theories of policing (police). Accessed on: 28 February 2013.

Legislation

Republic of South Africa. (2001). Financial Intelligence Centre Act 38. Pretoria: Government Printers.

Case Law

Mohunram v National Director of Public Prosecutions and Another (Law Review Project as Amicus Curiae). 2007 (4) SA 222 (CC).

Notes on examples:

Source references in the text are indicated by the surname/s of the author/s and the year of publication as well as the page number from where the reference is cited/sourced, for example (Foster, 2007:7) or Foster (2007:7). If you are generally referencing some information (ideas, concepts interpretations) drawn from a publication and paraphrased them, i.e. no specific page number, this can be referenced as: (cf Porter, 2012: 57-72). It would not be acceptable to merely list this reference as (Porter, 2012) without page numbers. A reader must be able to go to the Porter's publication and see where you obtained the general information being referred to from, even if from a number of pages.

Secondary referencing: For example: ….Mac (1999) (as cited in Minnaar, 2001:14)…. This is generally not acceptable in academic terms. Author/s should

preferably go to the primary source, i.e. Mac (1999), and reference the information used directly from the relevant page numbers in the Morrison publication. However, sometimes in a newspaper or journal article a specific person is quoted, i.e. such person does not have a primary publication from which the information is being quoted but was interviewed. In such circumstances the person so quoted can be referenced accordingly by name as, for example, National Police Commissioner Phiyega (as cited in Brown, 2012) said that the SAPS must not compromise on service delivery…..

If more than three authors are used then all authors' names are to be indicated in the reference the first time it is used in the text, thereafter only the first author name and the term "et. al." For example: Botha et. al., 2009: 17. "et. al." is not used in the List of References. If no author is identified the appellation: Anon., must be used. If newspaper articles are cited, and if there is no author listed for the particular article, then the news source should then be used as the author, e.g. SAPA, Reuters or Africa Eye News, etc. In the List of References a month date is always added after the newspaper title, e.g. 22 May (year date appears after author), followed by the newspaper page number (if available) where the cited article appeared.

All multiple initials are separated by full stops without any spaces in-between. The Date of Publication is placed in brackets followed by a full stop. Titles of articles, chapters or documents being referenced only have the first letter of the first word (unless a proper noun) as a capital. This rule also applies to the first word after a colon in the title. However, all words in the title of a journal (except pronouns) have the first letter as a capital. Place of publication is followed by a colon and then the publisher's name. Only book, journal and newspaper titles (not chapters or article titles) are italicised. The volume and/or edition numbers are not part of the Journal title, i.e. are therefore not italicised. Note that the volume number is followed by the issue/edition number in brackets followed by a colon and the journal page numbers of the specific article. No use is made of abbreviations: Vol. or No. Journal titles are not abbreviated or given acronyms when referenced in the text for the first time, e.g. IJCJ is written out as: International Journal of Criminal Justice, the first time it is used as a reference in the text (and in the List of References) with the acronym in brackets after the full title (when used in the text), and thereafter you can use the

acronym in the subsequent reference listings to this journal in the text. Please note the specific listing for a chapter in a publication, as well as the insertion after the chapter title of the page numbers in which it appears in the publication. If only one editor for the publication this is indicated in brackets as: (Ed.), while multiple editors will be the abbreviation: (eds). [small "e" and no full stop after the abbreviation, only after the bracket]. Note editor/s initials come before their surname in the listing of a chapter.

Referencing information from the internet: This is treated exactly the same as if it is a publication, i.e. look for an author, sometimes this is merely the organisation on whose website such information has been found; then a date for when the downloaded document was placed on the website or the report published – if none then use the appellation: (nd). You must indicate a title for the document – this can be the first heading of the document, then a publisher, usually the website organisation, e.g. Women against Drugs (WAD). No place of publication is needed unless indicated in the report/document downloaded. Then the use of the terms: „Available at:" followed by the URL web address for the downloaded document. This is followed (in brackets) with the terms: „accessed on:" or alternately the term „retrieved on:" followed by the date when such internet document was downloaded, e.g. 06/03/2012 – the date can also be written out as 6 March 2012 (required date format to be: ddmmyy). Wikipedia references are not a primary source for referencing and are not academically acceptable in this journal's articles.

If necessary, content references in the form of footnotes/endnotes may be used to provide referencing style.

TECHNICAL AND FORMATTING REQUIREMENTS

Articles that are submitted for consideration should adhere to the following minimum standards and technical and formatting requirements before submission:

1. An **electronic copy** (computer disk or document sent by e-mail (to the Editor-in-Chief) in MS Word (or Word compatible software programme). If not e-mailed, the file name of the manuscript must be specified on an accompanying computer disk.

2. **Length**: Contributions must be submitted in English and should preferably not exceed **20** typed A4 pages (electronically minimum word count should not be less than 7 **000** words (approx. **15** pages) or exceed **10 000** words (approx. **20** pages). (Extra page fees will be charged if the 20 page limit is exceeded).

3. The **title** of the article (in uppercase) and the **author's full first name and surname**, designation, institutional affiliation, address & contact email should appear on the first page.

4. A **summary/abstract** of approximately 150-300 words on the first page of the submitted article must also be included. The abstract to be **italicised.**

5. **Key words:** Directly below the abstract paragraph insert **Key Words** (maximum of **TEN** (10) – approximately **TWO** (2) lines.

6. If **funding** has been received from your University/Organisation or external funders for the research on which this article is based, such support funding can be acknowledged in the first footnote.

7. **Line spacing**: The document should be typed in A4 format using **SINGLE (1)** line spacing. No double spacing between words or after full stops and commas. Only single spacing throughout text.

8. Font: Arial 12

9. **Page numbers**: are also **TNR 12** font and centred in the **footer** section of each page.

10. **Spelling**: Please make use (choose this as your default option) of the UK spellcheck and NOT the USA one. For example replace the „z" in organization (US spelling) with an „s" = organisation (UK spelling).

11. **Paragraphs** are indicated by a single line space before and after each paragraph (exception first paragraph after a heading, see below) and not the automated „space after a paragraph" or „space before a paragraph" function in MSWord. No indentation of the first line of paragraphs (see below exception for long quotes format).

12. **Use of quotes and italics**: Long quotes are placed in a separate paragraph and must be indented from both sides, (see below for short quotes usage) like the following:

Quotes that are 45 words long or longer (three lines and more) should be indented from both sides (of the paragraph) as in this example. If the quote is shorter than it needs to be imbedded in the text of a paragraph and set in between double quotation marks, i.e. “inverted commas”. Quotes from published information are generally not italicised. However, actual words of interviewed respondents are recommended to be italicised.

13. **Single quotation marks**: Single inverted commas are only used when you want to emphasise a term or a common saying especially when it is not a direct use of words from another author. e.g. „Zero Tolerance‟ or … a „live-and-let-die‟ approach, etc. Single quotation marks are also used for a quote within a quote, for e.g. “It was patently obvious from the research that police officers use of force was not following the regulations. As indicated by one interviewee: „they shoot wildly in a crime situation‟. This indicated that they needed to be trained to follow the set rules (Mistry, 2003: 6).

14. **Text justification**: Text is always full justified (squared), except for article title (left justified) and author/s name (right justified) and the heading: ABSTRACT (centered) on first page.

15. **Headings and sub-headings**: All headings and sub-headings must be bold. There is no use of numbering or underlining of headings in this journal. Only three levels of headings‟ format to be used, namely: Main heading which is UPPERCASE (CAPS); 2nd level, i.e. sub-heading, only the first letter of the first word in the heading is a CAP unless it is a proper noun, e.g.: Crime in Cape Town’s informal settlements. 3rd level sub-sub-heading is indicated in bold and italicised with the same CAPS convention for 2nd level heading. E.g. Crime findings from the Crossroads informal settlement. All headings do not to have a full stop at the end. Note that there is no line spacing between a heading and the immediate following paragraph.

16. **Use of dates in text**: As follows – 11 September 2001 and not September 11, 2001. Also no use of abbreviations as in 1st, 2nd or 3rd just 1, 2, 3 etc. In the text do not use the date format of 11-09-2001 or 11/09/2011.

17. **Use of tables, figures, graphs and diagrams in text**: These render the layout difficult and should be used sparingly. All diagrams and tables must be numbered sequentially and referred to in the text, e.g. In Table 2 the falling statistics for the crime of murder can be discerned over the period 2000/01 to 2005/06. The use of such diagrams or tables must have a heading (also to be made bold) before the table or diagram and not after it.

18. **Use of bulleted lists**: when bullets (list of things or ideas not full sentences) are used, each bullet is closed with a semi-colon, except the second last one and the last one that have respectively a semi-colon followed by an „and", and a full stop at their end. Format wise with bulleted lists, if each bullet or bullet number is only one or possibly two lines, no spacing, but if all bullets in list are consistently longer than two-three lines put in a space in between each bullet. A line space is also inserted before the whole bulleted list and after at the end to create a space between the paragraphs and the list. In your bulleted list please use the symbol:

• and not symbols such as: »,√,*,#,Δ,◊, ■, etc. If your list is numbered please use the numbering format as follows: 1. and not 1).

19. **Use of footnote/endnote numbers in text**: Footnote/endnote reference numbers must be placed in the text after the full stop and not before it, with no space between the two. The same applies after a comma (in the middle of a sentence), i.e. not before but after the comma. Technically footnote/endnote text is TNR10 font, single spacing, square justified with no space after the footnote text paragraph.

20. **Use of numbers/figures in text**: At the start of a sentence any number is also always written out, e.g. Thirty-three. Also percentages at the beginning of a sentence as: Seventy-five per cent…. Note the use of per cent and not % when a percentage is written out. Double figure numbers when written out in the text always have a hyphen, e.g. twenty-five or thirty-six or one-hundred-and-six. No comma is used to indicate thousands – only a space e.g. 100 000 or 12 000 or USD$1 000 000 etc. and not 100,000 or 12,000 or USD$1,000,000. Commas or full stops are only used to indicate fractions (as in percentages) in numbers of a decimal, e.g. 76,25% or 76.25%. Spacing: no spacing after currency denominator, e.g. USD$ sign and the figure (amount), e.g. $5 000 or R1 250. In addition, there is no space between a

number and the percentage sign (e.g. 80% and not 80 %). Other use of spaces: No space before a colon but a space after it. For e.g.: The title of the chapter is: Analysis of research findings….and NOT….The title of the chapter is : Analysis of research findings….

21. **Titles of persons**: if part of a person's name should be abbreviated, e.g. Lt-Gen. Gerber, and not as Lieutenant- General. Note the hyphen and the full stop at the end of the abbreviation. For abbreviations a full stop is always used unless the abbreviation ends in the same letter as the long version. E.g. Dr for Doctor; Mr for Mister; etc. Other examples: Prof. = Professor; Dir = Director; Capt. = Captain; Maj. = Major.

23. **Use of abbreviations and acronyms**: When used in the text for the first time they are placed in brackets after the full term, e.g. The African Union (AU). Thereafter the abbreviation or acronym can be used. All abbreviations or acronyms are uppercase. Each letter in the abbreviation or acronym does not have a full stop in between or after each letter, e.g. Not A.U.

28. A **legislative Act** always has a capital letter „A" even when used on its own to refer to or describe a specific Act, e.g. The Act clearly states that it is illegal to trade in illegal drugs….. First letter of Acts title also has a capital letter, e.g. The Criminal Procedure Act.

29. **Use of „and" and ampersand (&)**: The ampersand symbol „&" is not used in the text at all. For example: According to Maason and Clerque (2011: 102) these types of crime were……; whereas & will be used when authors are placed in brackets as a text reference, e.g.: An analysis of incidents showed that these types of crime were becoming more prominent over the last two years (Maason & Clerque, 2011: 102). The ampersand is also used when listing multiple authors in your List of References.

SUBMISSION OF MANUSCRIPTS

The All-African Criminal Justice Association was born in the cold winter of Polokwane, South Africa, in 2012. Members to this association had a dream: To fight against organized crimes in all its many diversified forms for a just and a better Africa - not for us - but for our elders, women and children. Our aims and objectives were three-fold: To inform, to be informed, and to come to a better understanding of organized crimes in a very transparent way and to search for solutions for better security for us all. The dream came true with the publication of a journal to reflect the same.

To support these initiatives the Just Africa Journal therefore welcomes the submission of articles from scholars, academicians, researchers and law students from both within Africa and abroad. The submissions may be on any contemporary national or international criminological issue in the English language.

Submissions must not have been published, submitted or accepted elsewhere. The final decision is taken by the All-African Criminal Justice Association and members of its Editorial Board. The Editorial Board reserves the right to edit articles.

Electronic copies of the manuscripts must be e-mailed to rpgunput@uom.ac.mu

Submissions should be between 5,000 to 7,000 words in length but shorter contributions would also be considered for publication. We may accept articles UP to 10,000 words to the satisfaction of the Editorial Board.

For further information, please consult the Submission Guidelines and Editorial Policy, available on the website of the Journal for Just Africa:

www.cyberdefenseresearch.com/acjus/

Authorisation to reprint or republish any articles published in the Just Africa Journal must be obtained first from the All-African Criminal Justice Association and its Editorial Board.

CALL FOR CONTRIBUTIONS

Contributions to the Just Africa Journal is welcomed and can be sent to the Editor-in-Chief at rpgunput@uom.ac.mu in electronic format, using MS Word or a word-processing program compatible with MS Word. Respected authors are earnestly requested to adhere to the guidelines set out below. Contributions that fail to do so may be returned to authors for revision before being considered for publication.

1. Authors are required to provide their names, surnames and details of their current employment.
2. Articles should be between 5,000-7,000 words long.
3. Articles that are submitted must not have been published elsewhere.
4. All articles are submitted to referees who will determine the suitability of articles for publication and whether they fit the scope of the journal.
5. Authors are requested to submit their articles in the house style as it appears on the website.
6. Headings must be in bold and subheadings in italics but must not be numbered.
7. Footnotes must be used instead of endnotes.
8. All quotations should be put in double quotation marks and in italics.
9. The titles of statutes and legislations are not in italics.
10. References are in italics.
11. References appear at the end of the article in the Harvard style with all relevant details such as details of publications, publishers of books, page references and years of publication.
12. An abstract of 300 words must accompany the full article and the introduction must not exceed 15 lines.

CONTENTS

A PREFACE BY THE EDITOR-IN-CHIEF

This journal came to life after the All-African Conference on Organized Crime and Contemporary Criminal Justice Issues in June 2012, which took place at The Ranch, Polokwane in South Africa. A large number of academics, researchers and practitioners working and lecturing in the field of Criminal Justice and Law attended the conference and put shoulder together so that South Africa and the African continent could henceforth have a leading journal on pertinent issues; such as crime, murder, burglary, rape, kidnapping, child trafficking; not only for public awareness but so that every African citizen could feel safer and more secure. Therefore, it was urgent for any person who wished to make a contribution for a better Africa to stand on our side to fight against some most heinous crimes perpetrated on this continent. The contribution may be in the form of research work, personal knowledge on the subject-matter, articles and various other data in order to contribute to a Just Africa. The task is not easy as there are different legislations, customs and traditions differentiating one country from another. This journal aims to contribute and compile our knowledge and wisdom so that we may all enjoy peace, security and just and fair trials for all.

In this journal, a variety of issues pertaining to crime on the African continent are attended to. Professor C.J. Roelofse and Mr. Z. Makhada explain a very important issue in South Africa: Burglary in Limpopo where people are murdered in their sleep and where a number of questions arise: Why more and more people are committing burglary and theft in this part of South-Africa? Where they come from? and Who they are? Next, J.M.S. Berning describes the work of anti-corruption agencies in South Africa. This is followed by two papers on police corruption and the impact of labelling theory on the Gypsies in the United Kingdom. Leon Holtzhausen explains how a criminal justice social work practice framework may be useful for violent youth offenders. Vikas Gandhi writes on the plight of victims in the criminal justice system. Finally, an article is devoted to the death penalty and to reflect on its deterrent value from a Mauritian perspective.

It is imperative that our efforts to combat crimes and other offences should not be fruitless. We, as academics, must be able to make proposals for a better Africa, which may even include other continents as well. Indeed, in our response to crime we (humanity) are all in the same boat. None of us should tolerate those who commit crime and other violators of human rights. From ordinary citizens to politicians, crime in its various forms are affecting the society we live in. Social and political problems abound and it is important to know how to deal with issues promptly and effectively. An improved criminal justice system and legislations that is properly implemented with suitable penalties, together with conferences and meetings with all stakeholders can lead to a better world for us and the generations to come. So, there is an appeal for truth, wisdom and collaboration and, through this journal, we are trying to send a strong message and message to those who fight crime in all its forms.

Finally, I would like to thank all contributors for their patience as all articles have been peer-reviewed and all comments and suggestions have been implemented to improve the contents of articles. This is the first Just Africa. So, I want to encourage other prospective contributors to submit their articles for dissemination and implementation of ideas and knowledge. Overall, it is hoped that Just Africa will become a leading journal for all students, academics and researchers on the African continent with a view to better understand crimes that are sometime perpetrated right next to us.

R.P. Gunputh
2013

1. A CRIMINOLOGICAL STUDY OF BURGLARY IN THE MUSINA PRECINCT IN LIMPOPO, SOUTH AFRICA

Roelofse, C.J.[2]& Makhada, Z.[3]

ABSTRACT

Crime in South Africa is always a topical issue in politics and the media and remains an urgent concern of public discourse. This has put police performance, specifically, and the performance of the criminal justice system, in general, under the spotlight. This article presents a detailed analysis of reported burglaries within the Musina policing precinct. Data presentations on time and spatial distribution, distinctions between business and residential premises, methods used to enter premises and a number of other variables are analysed in an effort to learn more on the dynamics of burglary in Musina. In conclusion, the authors make certain inferences regarding some of the reasons for the very low conviction rate for burglary in this precinct.

INTRODUCTION

Burglary is a crime that affects both private homes and businesses and because it is an invasion of privacy, causing feelings of insecurity. Law and order maintenance are inherent needs of any society. The need for stability, individual freedom and collective, peaceful co-existence are some of the key tenets for a harmonious society. Relationships form the basis for either peace or instability; and the focus of the law is to regulate relationships. In a democratic society the people elect their leaders to represent them in parliament. These representatives (legislators) make laws to regulate behaviour and relationships. Violations of relationships normally lead to the activation of the Criminal Justice System (CJS) when the victim reports a crime to the police for investigation. The restoration of relationships through the CJS

[2] Professor: Department of Criminology and Criminal Justice. University of Limpopo, South Africa.
[3] Risk analyst: Airports Company of South Africa. Article is an excerpt from an MA dissertation at the University of Venda, South Africa.

normally ends with the judicature giving a verdict based on the evidence brought before the court (Roelofse 2007:1). The police play a prominent role in crime control but an equally important role in reaction to crime through the process of crime investigation and presenting evidence before the court. If police performance in one or more of these functions is flawed, relationships cannot be restored through the intervention of the CJS and, consequently, conviction rates will be low. The Police are obliged by the Constitution (Act 108 of 1996) and the Police Act (Act 68 of 1995) to protect South African citizens and to create a safe environment. The critical question arises whether the police are actually doing this?

STATEMENT OF THE RESEARCH PROBLEM

The performance of the criminal justice system in South Africa has been extensively debated in parliament. According to a Democratic Alliance Member of Parliament, Dianne Kohler Barnard (2008:1), the conviction rate for contact crimes is a mere 19%. She stated that, “It is difficult to know which is worse - the low conviction rates for serious crimes or the fact that 15 out of 20 crime categories have decreasing conviction rates since 2006.” The statistics revealed by the above statement indicate that the conviction rates for those crimes that scare people the most are astonishingly low, and have all been decreasing since 2006:

- Murder 12.60% (a decrease of 0.82%);
- Attempted murder 11.31% (decrease of 0.59%);
- Rape 8.93% (decrease of 0.07%);
- House robbery 7.67% (decrease of 1.72%); and
- Car-jacking 7.29% (decrease of 2.36%).

This general concern finds support in the conviction rate of burglars in Musina. One of the researchers was aware of the low conviction rates and the Police have consequently been approached to avail statistics on burglary in this area to the researchers.

AIM OF THE STUDY

The aim of the study is to analyse reported cases of burglary in the Musina area in order to establish the closure rate of burglary and to come up with reasons why there is such a low rate of success in closing these cases.

LIMITATIONS OF THE STUDY

The study concentrates on the police's functionality in dealing with reported burglary and not so much on the court a quo's performance in the actual trial. Furthermore, the police only gave permission to access information for the period of the study, spanning one year.

OBJECTIVES OF THE STUDY

The objectives of the research are to determine:

- The types of premises burgled;
- Spatial and time distributions of burglary;
- The modus operandi involved in gaining access to premises;
- The success rate in prosecutions of burglary cases; and
- Factors that could contribute to low success rates in investigations of burglary.

RESEARCH METHODOLOGY

The research design is based on a statistical approach of mass observation. All cases reported in the research period have been analysed.

Data collection

Case dockets opened within the period of June 2006 to May 2007 have been analysed in order to determine the success rates of the cases handled. The study started in 2009 and the researchers estimated that most cases would have been closed during 2007 and 2008, leaving few outstanding. It also gave insight into the perpetrators' biographical details and it was therefore possible to determine how many convicted burglars are South Africans and Zimbabweans respectively. As

mentioned, the South African Police would unfortunately not grant permission for data of other years to be included in the study and comparisons of statistics between different years were consequently impossible.

As the research entailed the analyses of all cases of reported burglary in Musina for the year June 2006 to May 2007, a quantitative approach had been adopted.

Case studies

Mouton (2001:149) states that "case studies are studies aimed at providing an in-depth description of a small number of cases." In this study all burglaries that were committed within the statistical year stretching from June 2006 to May 2007 have been analysed. These are burglary cases that were reported to the Musina SAPS. The SAPS gave permission for the study to be conducted on condition that access is granted to all cases except those still pending. Sixteen cases were still pending on the 15th of November 2009. These were not included in the study. The numerical data format used is important to evaluate the success rate in dealing with cases that are reported, as it shows the number of reported cases and conviction rate. From the numbering it is easy to assess factors that might be affecting the successful handling of burglary cases.

DATA: STRUCTURE, PRESENTATION AND ANALYSIS

Dockets were used to analyse all reported cases of burglary in the Musina precinct for the period of the study. As mentioned, the South African police were not prepared to allow analysis with years beyond this period. Comparative analysis on an annual basis was therefore not possible. The way in which nominal data was captured and used is as follows:

Data regimes

Numbering of arrested suspects and witnesses

If two or more people were involved in one burglary the numbers are counted in accordance with the number of cases reported and not the number of perpetrators. Witnesses have been counted in all cases including cases where people were not arrested but were questioned. This is a good indicator of the assistance the police

receive from the community. The data was analysed through a number of variables. All of these are presented and analysed hereunder.

Premises

For the purposes of this study, the premises that have been burgled are divided into 'business,' 'private' and 'others.' The term 'others' is used to describe premises that are neither residential nor business such as schools. The Musina policing area consists of an area stretching from the Baobab tollgate to the Limpopo River and from Maswiri (citrus farm) at Tshiphise to Weipi farm. A Musina area map was downloaded from the Musina website. The areas in this map were used to make comparisons of burglaries (See Table 4).

Docket analysis

The 237 reported cases were categorised into burglaries of business premises (68), residential (166) and others (3). The methods used to gain entry play a very important role in the investigation of burglaries as it makes it possible to utilise forensic analysis to collect evidence.

Burglary of business premises (68 cases)

The following are the cases of business burglaries as recorded by the SAPS, Musina. Data include the number of cases reported, witnesses, nationality of the suspect(s), and whether the case was successfully concluded or not (undetected, withdrawn or a verdict of guilty).

Table 1: Number of reported cases of business premises for the study period.

Month	No of cases	Witness		Suspect arrested			Undetected	Withdrawn	Guilty
		No	Yes	No	Yes				
					SA	Zim			
Jun	6	5	1	5	1	0	5	1	0
Jul	3	2	1	2	0	1	2	1	0
Aug	4	2	2	3	1	0	3	1	0
Sep	5	4	1	5	0	0	5	0	0
Oct	5	4	1	4	0	1	4	1	0

Nov	10	6	4	8	1#	2	8	3	0
Dec	3	1	2	2	1	0	2	1	0
Jan	3	2	1	3	0	0	3	0	0
Feb	5	3	2	4	0	1	3	1	0
Mar	5	4	1	5	0	0	5	0	0
Apr	11	10	1	11	0	0	11	0	0
May	8	7	1	6	1	1	6	2	0
Total	68	50	18 68	58	5	5 68	57	11 68	0

(# the arrested suspects were a South African and a Zimbabwean who committed burglary as co-accused)

Sixty eight (68) cases of burglary in businesses premises were reported during the period of study and in 18 of these there were witnesses. In total, of all reported cases, only 11 suspects were arrested, five of the arrested suspects were SA citizens and six were Zimbabwean citizens. In one case, two suspects, one a South African and the other a Zimbabwean, were arrested for the same crime as co-perpetrators. In 57 recorded cases of the burglary of businesses premises, no suspects were arrested and 57 were temporarily closed as undetected while 11 were withdrawn. Cases closed as 'undetected' means that the case may be reopened if new evidence is unearthed. As can be seen from Table 1 above, not a single case has been closed with a conviction.

Residential premises as targets (166 cases)

The following are the cases of residential burglaries as recorded by the SAPS, Musina:

Table 2: Number of reported cases of residential premises for the study period.

Month	No of cases	Witness		Suspect arrested			Undetected	Withdrawn	Guilty	Acquitted
		No	Yes	No	Yes					
					SA	Zim				
Jun	11	8	3	8	2	1	8	1	1	0
Jul	15	9	6	9	0	6	9	3	1	2

Aug	7	5	2	6	0	1	0	0	1	0
Sep	8	6	2	7	1	0	7	0	0	1
Oct	14	7	7	10	2	2	9	4	1	0
Nov	21	13	8	15	2	4	15	3	3	0
Dec	20	9	11	11	4	5	11	7	2	0
Jan	17	10	7	11	3	3	11	6	0	0
Feb	15	10	5	9	3	3	10	3	1	1
Mar	17	11	6	15	1	1	15	2	0	0
Apr	12	9	3	9	1	2	0	3	0	0
May	9	5	4	6	2	1	6	3	0	0
Total	166	102	64 166	116	21	29 166	116	35	10	5 166

There were 166 cases of burglary of residential premises. In 116 cases no arrests were made. A total of 101 cases were closed as undetected and 35 cases were withdrawn. In four of the cases the suspects were acquitted. In only ten cases were the suspects found guilty and punished. Of the ten cases where the suspects were found guilty, six were Zimbabweans and four South Africans. These figures show the following:

- A 6.02% conviction rate (of the total reported cases).
- In 30.12% of the reported cases arrests were made.
- 21.08% of the cases were withdrawn.
- 12.65% of suspected arrested (as percentage of total cases reported) are South Africans and 17.46 are Zimbabweans.
- Zimbabweans represent 58% (29 out of 50) of the arrested suspects and South Africans 42% (21 out of 50).

Burglary of other premises (three cases)

Other premises such as schools and municipal buildings are also targeted by burglars. In the period of the study two schools were targeted. The same pre-school, situated in town, was burgled twice (in November and March) and in June, one farm school was burgled. In all three cases, no suspects were arrested and the cases were closed as undetected. Having analysed the type of premises burgled, other variables were analysed, such as the time/spatial distribution and modus operandi to gain access to targets.

Reported times for residential burglaries

According to Table 3 below the times at which burglaries took place in residential premises are as follows:

- 59 took place between 08:01 and 15:59. This translates to 38.55% of reported cases taking place during the day.
- Most crimes (61.45%) were committed during the night. The highest number of incidences occurred between 02:00 and 03:00. This is the time that a sleeping person is in deep sleep and is unlikely to be easily awakened. It can be conjectured that burglars are aware of this phenomenon and therefore plan their crimes accordingly.

Residential crimes were reported as related to days and times:

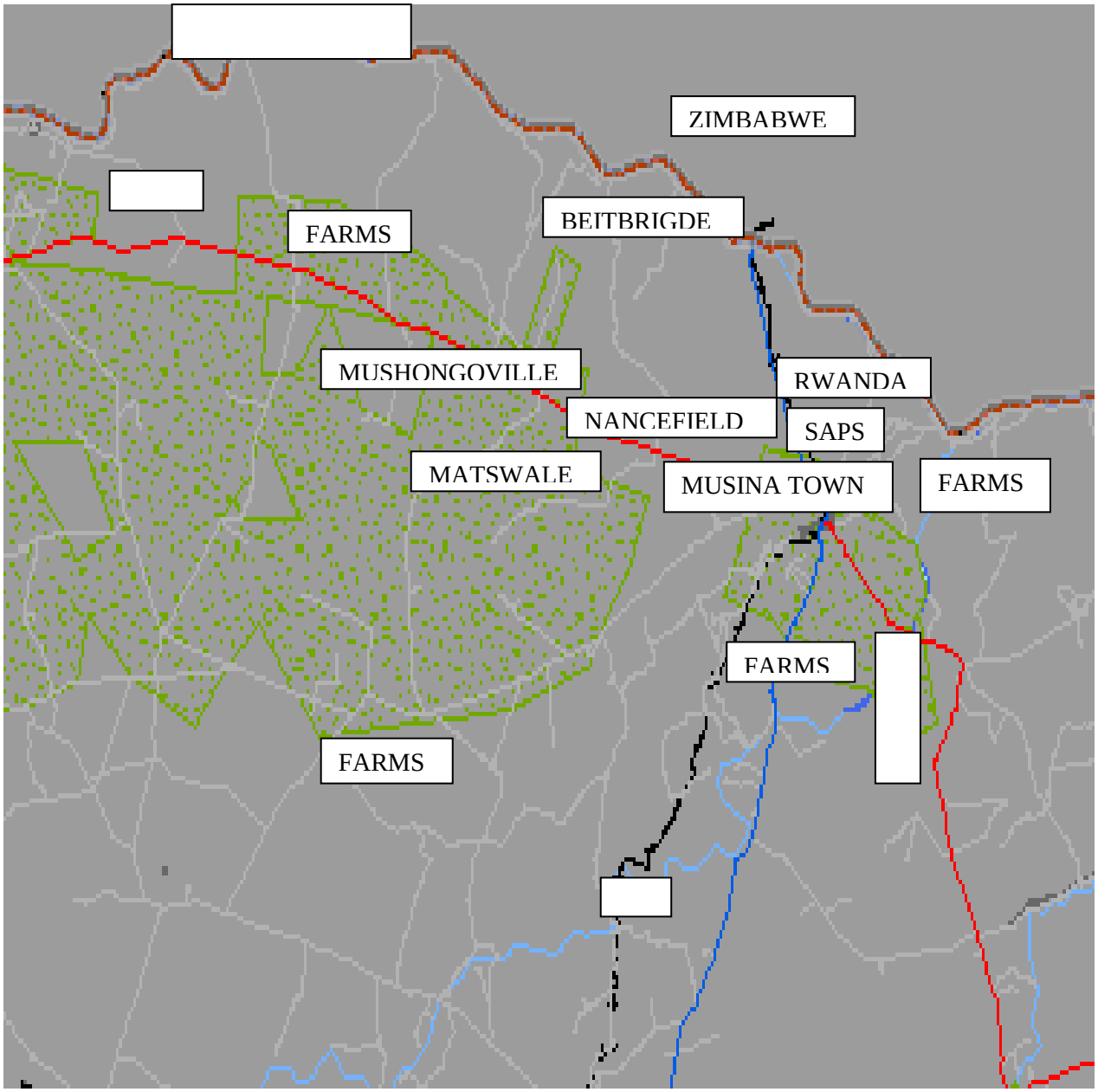
Table 3: Times at which burglaries were reported to have taken place

Time	Case(s)	Time	Case(s)	Time	Case(s)	Time	Case(s)	In-between	Case(s)
00:00	3	06:00	1	12:00	0	18:00	0	16:00 to 08:00	64
01:00	2	07:00	0	13:00	0	19:00	0		
02:00	6	08:00	1	09:00	1	20:00	0	08:01 to 15:59	59
03:00	4	09:00	1	15:00	0	21:00	0		
04:00	3	10:00	0	16:00	0	22:00	0	weekend	18
05:00	1	11:00	0	17:00	1	23:00	1		
Total	19		3		2		1 (25)		
Total	166								

Burglary committed per area

For the purpose of the study the Musina policing area was divided into zones (see Map 1).

Map 1: Musina


ZIMBABWE
FARMS
BEITBRIDGE
MUSHONGOVILLE
RWANDA
NANCEFIELD
SAPS
MATSWALE
MUSINA TOWN
FARMS
FARMS
FARMS

on the map above and hence provides a synoptic view of the problem areas.

Table 4: Number of burglaries committed per area by month.

PLACE	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
Rwanda	0	0	0	1	1	0	1	1	1	0	0	1	6
Beitbridge	0	0	1	1	0	0	0	0	0	0	0	0	2
Farms	5	2	2	0	3	7	3	3	3	4	10	8	50
Matswale	3	5	1	3	6	5	9	7	6	1	2	6	54
Musina Town	7	7	6	3	3	12	7	4	4	11	4	1	69
Mushongoville	1	2	1	1	0	3	2	3	2	1	2	0	18
Nancefield	2	2	0	2	6	5	1	2	6	6	5	1	38
Sub-Total	18	18	11	11	19	32	23	20	22	23	23	17	237

To calculate the standard deviation of the monthly reported cases the mean of 19.75 has been converted to 20. This translates to an appropriate standard deviation of 7.59 cases. November, with 32 cases, is the mode of the distribution, with a mean of 19.75 cases reported per month.

- One of them was committed at the other premise, 22 of the burglaries committed were on business and 27 were on residential premises. Farms have a higher number of burglaries than Nancefield.
- Nancefield had 38 burglaries; eleven of which were committed at businesses and 27 at residential premises. This means that Nancefield has a higher number of burglaries than Mushongoville. There were 18 burglaries committed in Mushongoville. Only two burglaries were committed at businesses and 16 at residential premises.
- Rwanda has a lower number of burglaries in that it had only six burglaries. Out of this four were committed at business premises and two at residences.

- Beitbridge reportedly experienced the lowest number of burglaries, with only two burglaries that were reported at businesses.

Methods used to gain entry

The methods that were reported as having been used to gain entry are tabled below:

Table 5: Methods used to gain entry

Method used in burglary	Number	Percentage
Broken windows	92	38.81%
Doors broken	78	32.91%
Padlocks broken	18	7.17%
Removing part of the roof	17	6.32%
Unknown methods	15	5.06%
Wood or metal of the shack removed	12	7.59%
Both doors and windows were broken	5	2.10%

N = 237

The most popular method used by the burglars to gain entry into the premises is by breaking windows (92 cases). In all premises the windows are the easiest to break whilst in other premises windows can be opened easily and even the burglar-proofing can be removed or partially opened with easily attainable and basic tools. In cases where both doors and windows are broken, it is often a result of the burglar entering one way and leaving by the other.

Doors were also broken to gain entrance in 92 cases which constitutes 32.91% of the reported cases. Steel doors are usually bent whilst wooden doors are broken in such a way that entry may be gained. In other cases, mainly those involving business premises, part of the roof is removed to gain entry. This was the case in 17 (or 6.32%) of the total cases. This method is obviously influenced by strong security on doors and windows and the perpetrators removed tiles or corrugated iron from the roof to gain entry.

In shacks, building material such as wood and corrugated iron is removed with relative ease to gain entry. There were twelve cases (7.59%) reported where wood

or metal had been removed from the shack to gain entrance. Padlocks were reported to have been broken in 18 cases (7.17%) of the total. In premises that were locked with padlocks, padlocks are simply broken to gain entry. Where the poor steal from the poor the left realism theory comes into practical operation. According to this theory, street criminals victimise the poor, who are also victimised by the government. Poor victims cannot even afford to implement security measures that would protect them from burglary. They therefore become the victims of the people who are as poor as themselves.

Nationality of perpetrators

In the 68 instances where burglary of business premises were reported only eleven suspects were arrested, five of the arrested suspects were SA citizens and six were Zimbabweans. In one case, two suspects, one a South African, and the other a Zimbabwean citizen, were arrested for the same crime.

In the 166 instances where burglary of private homes were reported

One of the aims of the study was to analyse the perception that the Zimbabwean political situation influences the crime rate in South Africa. It is therefore important to analyse the nationality of the arrested suspects. The arrested suspects from the reported burglary cases is 25.3%, of which 58.33% were Zimbabwean citizens and 41.66% South Africans. The Zimbabweans who were arrested were 16.67% more than the South African. All of the Zimbabwean citizens arrested were in the country illegally, in that they did not have valid entry/residence papers. I can therefore be argued that the political situation in Zimbabwe does affect the crime rate in South Africa. Many Zimbabwean citizens cross the border into South Africa illegally and pass through the Musina area to look for greener pastures.

Maharaj (2004:2) argues that, despite the numerous problems that the majority of South African citizens face, Africans from other parts of the continent see South Africa as the land of increased economic opportunities and hope, especially after the 1994 elections, and it is this perception that had been the driving mechanism behind most illegal migrations. However, South African citizens are also responsible for burglaries that are committed in the Musina area as 41.66% of the arrests involved

South African citizens. South Africans should therefore also take responsibility and not blame it all on foreigners.

Table 6: Overview of the outcomes of all cases.

Month	No of cases	Witness		Suspect arrested			Undetected	Withdrawn	Guilty	Acquitted
		No	Yes	No	SA	Zim				
Jun	18	14	4	14	3	1	15	2	1	0
Jul	18	11	7	11	0	7	11	4	1	2
Aug	11	7	4	9	1	1	9	1	1	0
Sep	13	12	1	12	1	0	12	0	0	1
Oct	19	11	8	14	2	3	13	5	1	0
Nov	32	20	12	23	3 (#)	6	23	6	3	0
Dec	23	10	13	14	4	5	13	8	2	0
Jan	20	12	8	14	3	3	14	6	0	0
Feb	20	13	7	13	3	4	17	1	1	1
Mar	23	16	7	21	1	1	21	2	0	0
Apr	23	19	4	20	1	2	20	3	0	0
May	17	12	5	12	3	2	12	5	0	0
Total	237	157	80	177	25	35	180	43	10	4
Percentage %	**100%**	**66.24%**	**33.75%**	**74.68%**	**10.54%**	**14.76%**	**75.94%**	**18.14%**	**4.21%**	**1.68%**

The use of forensic analysis

It is one of the requirements that, when a crime has been committed, forensic analysis should be utilised. Forensic analysis is used to analyse almost all types of crimes, with different techniques used for different crimes (Omar, 2008:3). They have to check for fingerprints, foot prints and tool marks where doors and windows have been forced open or burglar bars cut or sawn through. Forensic officers attended two hundred and four (204) of the reported cases. In those cases ninety-seven (97) fingerprints were located but could not be identified. In sixty-four (64) cases fingerprints could be identified. There were forty-three (43) cases where fingerprints

were not available at the scene of crime. In eighteen (18) of the cases forensic analysis was not used and in fifteen (15) cases forensic specialists were not summoned. Explanations for these decisions were not pursued.

The cases were analysed as they were extracted from the dockets then explained in more detail. The factors considered are the arrests made; the nationality of the arrested suspects; the success rate in prosecuting the offenders and all the factors that make a case successful such as the availability of witnesses and forensic evidence.

The numbering of cases assisted with determining the exact number of arrests, witnesses that were available, areas that were targeted, nationality of the arrested suspects, forensic analyses used, cases withdrawn, acquitted suspects and convicted suspects. The first step in analysing the data was to look at the whole study area within the time frame specified in the limitation of the study. Presentation of all cases of burglary committed from the 1st of June 2006 to the 31st of May 2007.

The availability of witnesses

A critical component in successful prosecution is the role of witnesses in the process. The availability of witnesses in prosecution ensures positive identification of suspects and the giving of sound evidence in court. If no one saw or heard anything it becomes difficult for the police to arrest offenders and explain to the court how and what had happened at the scene of crime except by obtaining concrete forensic evidence that would link the suspect to the crime. Good investigators are able to retrieve a lot of evidence from crime scenes such as fingerprints, tool marks, hair, blood sample and others that can be used as evidence. After a case docket has been opened the investigating officer must attend the scene of burglary and ask around to determine if the neighbours may have seen or heard anything.

According to the available records, in 33.75% of the reported cases there were witnesses who had information. Unfortunately, a number of witnesses were not prepared to testify in court while in other cases witnesses failed to turn up at court. Unfortunately, the case dockets did not indicate why the witness failed to testify. This has a negative effect on the outcome of cases and it can be inferred that, had these witnesses testified, the conviction rate for burglaries would have been better. As

seen in Table 6, in 74.68% of the reported cases no witnesses were available. This is mainly due to the fact that burglary occurs mostly at night when most people are asleep or too afraid to go out. Burglaries committed during the day are mostly not witnessed by anybody as the inhabitants and neighbours are either at work or out doing something.

Measuring arrest rate with the number of reported cases

Arrests were made in only 25.3% of the 237 cases and in 74.7% of these cases the perpetrators were unknown and could not be traced. Even where suspects were arrested, this does not imply that the facts of the case will be proven beyond reasonable doubt and that the arrested suspects are the actual culprit. In two of the cases property was damaged or destroyed due to domestic disputes and were incorrectly reported as burglary. A further reason why some suspects could not be traced is because they could not be positively identified even though forensic testing had been conducted. Forensic evidence was also destroyed because of the fact that cases were only reported long after the alleged perpetration and owners had already repaired the damage caused. Fingerprints could therefore not be lifted as the crime scene had been contaminated.

In the Musina area more than fifty illegal Zimbabweans may be arrested in a single day for being in the country without proper or valid papers. Such arrested persons may be deported to Zimbabwe without any necessary criminal checks such as the matching of the fingerprints of criminals against the forensic data base.

MEASURING THE OUTCOME OF THE CASES

The outcome of the cases may either encourage or discourage complainants from relying on the justice system. After the case had been reported it may only go to the court after the suspect has been arrested or the case is closed as undetected. After the suspected person is arrested he or she has to be brought before a court of law. In court the case may be withdrawn or the suspects acquitted or convicted.

Undetected cases

In all the reported burglary cases 75.94 % were closed as undetected. The reason for closing the cases as undetected is because the suspect is unknown and the available resources cannot trace the culprit in question. The high probability of not been arrested may encourage perpetrators to commit further acts of crime and may also discourage victims to report cases.

Withdrawn cases

According to Table 6, 18.14% of the reported cases of burglary were withdrawn. In these cases the withdrawal was mainly because the witness did not turn up to testify. Nine of the reported cases were withdrawn by the complainants when they found their stolen property and indicated that they did not wish to continue with the case. In six of the reported cases the suspects were Zimbabweans who were released on bail. They then disappeared and could not be traced, and the cases were withdrawn. Two cases were withdrawn because the witnesses died and in one case the suspect died. Another two cases were withdrawn because the suspects were minors and were taken to a place of safety by a social worker appointed by the court.

Acquitted suspects

In 1.68% of the reported cases of burglary the accused was acquitted. There were cases where the suspected person could not be linked to the crime though the suspect was seen on the crime scene and found in possession of the suspected property that was taken during the burglary. The court - on hearing the evidence of the witnesses and the circumstances of the case - may decide that the suspect cannot be linked to the case beyond reasonable doubt, and therefore acquits him. Investigators and the prosecutors need proper training that would assist them in evaluating the facts of each case so that they would know when and whether or not the case is strong enough to merit conviction. Witnesses presented by the prosecutor must also be interviewed properly.

Conviction rates

In the case study it was found that, in only 10 out of 237 cases reported, the evidence gathered and presented in court resulted in successful prosecution. This means that only 4.22% of the reported cases resulted in convictions. This is a very small percentage indeed. When cases are successfully dealt with it boosts public confidence in the government's ability to reduce crime and make people feel safer. An efficient and effective criminal justice system promotes the participation of the community in the processes of the criminal justice system.

The use of forensic analysis

Forensic teams/experts are responsible for collecting evidence from crime scenes, ranging from taking photographs to removing spent cartridges or samples of bodily fluids left at a scene, conducting DNA profiling, which takes advantage of the fact that - with the exception of identical twins - the genetic material of each person is unique and is an omnipresent residue that trails us wherever we go (Omar, 2008:2). Forensic analysis is useful for strengthening evidence in the court. However, evidence obtained through this means may be either positive or negative, in that the forensic evidence obtained may not be linked to anyone. This may be due to the fact that suspected persons' fingerprints are not on record or that no arrest have been made in order to compare the fingerprints of the suspect with those found on the scene.

Of the forensic evidence obtained in the reported cases 27% cases (64 cases) were positive. In these cases the evidence that was gathered could be identified with the suspects. Even though the suspects may not have been arrested, their fingerprints and other DNA tool marks were found at the scene of the crime and identified as positive. This assists with the possibility that, at a later stage, the forensic evidence gathered may positively identify the suspect. In a court of law the investigating officer may win the case with the assistance of forensic evidence gathered to identify the suspect. When the suspect tested positive to have been at the scene of crime either by fingerprints or any other DNA tests, it helps the court to convict the right offender. When there is no forensic evidence obtained at the scene of the crime it becomes

difficult to arrest and prosecute offenders. The offender's chances of getting away with criminality is very high.

In the study there were 7.59% cases in which the owners cleaned or fixed their property before the forensic officer arrived. Their reason for cleaning was that they were scared that the burglars would come back again. Others claim that they were not aware that they must not clean and fix their buildings. This could be attributed to the time interval between the initial report and the time at which forensics are able to collect the evidence. The time at which the crime was reported and forensic analysts arrived at the scene is not specified on the case dockets. In 6.32% of the cases the forensic analysts were not summoned. The police failed to summon the forensic experts to attend the scenes of burglaries. Police neglected to summon the specialist to the scenes where specialist analysis is crucial.

VERIFYING OBJECTIVES

The purpose of the study was not to reflect on the bad aspects, but to address the need for improved service delivery in the criminal justice system. If safety at our homes and businesses were guaranteed and the threat of burglary was diminished, South Africans would feel much more secure. It is our duty as South Africans to focus on what is best to ensure our safety.

Objective 1: Type of premises burgled

A total of 237 burglaries were reported to the police during the time period studied. The researcher could separate private homes and business with a result of 68 and 166 respectively. The remaining three cases were schools. The ratio between private homes and business is 1:2,44. This objective had been met.

Objective 2: Spatial and time distribution of burglary

Most crimes (61.45%) were committed at night. The highest number of incidences occurred between 02:00 and 03:00 in the morning. Musina town has recorded the highest number of burglaries with 69 reported cases. Out of these burglaries 21 were committed on business premises, 46 were committed on residential premises whilst

two were committed on other premises. Matswale followed with 54 burglaries committed; 48 committed on residential premises and six on business premises. Matswale has a lower number of burglaries than Musina town. Fifty (50) burglaries were committed on farms.

To calculate the standard deviation of the monthly reported cases the mean of 19.75 has been converted to 20. This translates to an appropriate standard deviation of 7.59 cases. November, with 32 cases, is the node of the distribution, with a mean of 19.75 cases reported per month.

This objective has also been successfully concluded.

Objective 3 Modus operandi to gain access to premises

The table hereunder reflects that entry via windows and doors represents 170 cases or 71,72%. Table 4 above provides the exact details. This objective has been achieved.

Table 7: Methods of entry- summary

Broken windows	92	38.81%
Doors broken	78	32.91%

Objective 4: The success rate in prosecutions of burglary cases

This objective has been met. The table below, which presents an overview of the cases, clearly shows that the conviction rate is extremely low (4,08 % of cases were undetected or withdrawn while only 4,21% ended in a conviction.

Table 8: Success rate of reported burglaries - Summary

Undetected	Withdrawn	Guilty	Acquitted
180 **75.94%**	43 **18.14%**	10 **4.21%**	4 **1.68%**

Objective 5: Factors that may contribute to low success rates in the investigation of burglary

This objective has only been partially achieved as the study focused on docket analysis and did not involve court proceedings. Specific issues relating to policing such as the qualifications and experience of detectives, number of dockets per officer and other variables related to investigations were not included in the research.

The factors that were identified is that complainants withdraw cases when stolen goods have been returned. This obviously has an impact on the conviction rate. A further point was that Zimbabwean suspects that are given bail jump the border and lastly that police officers fail to make proper use of forensic support in all instances.

Objective: To make recommendations that would serve as guidelines for eliminating the commission of burglary.

See recommendations below.

RECOMMENDATIONS

The role of the police in eliminating burglaries is to create a partnership with the community and to regularly patrol the policing area. The level of community participation in partnership with the police cannot be specified since it has not been determined. The visibility of the police in Musina town - especially in the shopping area - is satisfactory. The data in this report should be used to consider how visible policing officers will be deployed in temporal/spatial context corresponding with crime rates.

Forensic support should be used in all instances where forceful entry to premises has occurred.

Community members should be encouraged to cooperate with the police. The Community Policing Forum and the local Business Chamber are ideal platforms to launch partnership programs. Members of the public should be encouraged not to withdraw cases.

Police should liaise with court officials to resolve the issue of bail for refugees. This objective has also been reached and recommendations were made.

CONCLUSIONS

The rate at which the police, the community and the justice system have handled reported cases of burglary is unacceptable. Witnesses fail to attend court proceedings without giving reasons, and warrants are not issued for such witnesses. The community has a role to play by providing information to courts of law. The research has uncovered many reasons why conviction rates are low. In instances where stolen property is retrieved complainants loose interest in the case and do not want to go to court. This impacts on individual deterrence as perpetrators may think they can get away with crime. On the other hand the police in certain cases fail to summon specialists to attend the crime scenes when specialist findings are crucial. The forensic expert gathers concrete evidence that is crucial to convict a suspect. Bail is given to Zimbabwean citizens who disappear and as a result cases are withdrawn. There is therefore a need to develop strategies that would ensure that suspects are arrested and prosecuted more effectively. The community, the police and the justice system need to work together to protect the community and its property from burglary.

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2. THE IMPACT OF LABELLING THEORY ON THE GYPSIES IN THE UNITED KINGDOM

Yesufu, S.[4]

ABSTRACT

The persecution of Gypsies and Travellers in the United Kingdom is not a new phenomenon. It goes back many centuries to when Gypsies first set foot on the European continent. It was estimated that over half a million Gypsies were exterminated by Adolf Hitler in Germany during the Holocaust. In today's France under former President Sarkozy, the Gypsies are still being persecuted. As an effect of labelling Gypsies are undoubtedly among the most hated groups in Europe today. They have endured societal rejection, hatred, discrimination, cruelty and inhumane treatment, and denial of the basic necessities of life, such as housing, education and healthcare. Their ability to endure hardship (stoicism) and of rejection (alienation) from the wider society over the years is inspiring to us in academia. This article is a clarion call to all men and women of good conscience all over the world to come together to consign the persecution of Gypsies to history.

Keywords: Labelling theory, travellers, Gypsies, stereotypes, discrimination.

INTRODUCTION

In this article, I discuss some issues of discrimination against Gypsies and Travellers in relation to land ownership. This article is divided into four sections. The first part deals with understanding the labelling theory and the historical background of Gypsies and Travellers. The second part deals with some of the United Kingdom legislation in relation to Gypsies and Travellers. In the third part of the article I present a case-study (the Dale Farm site) and highlight the level of racial and social injustice that the Gypsies and Travellers community has endured in Britain over the years. In the fourth part I look at what should be done to improve the social living conditions of Gypsies living in the United Kingdom.

[4] Department of Criminology. University of Kwa-Zulu Natal

LABELLING THEORY

Theory is a set of concepts linked together by a series of interconnected propositions in an organized way to explain a phenomenon. Labelling theory is sometimes referred to as “social reaction theory which is primarily concerned about how individuals or group identities are informed about the way in which society or authority tends to categorise them as offenders. With such categorization or labelling, an offender becomes a self-fulfilling prophecy…” (Tibbert, 2012:173). Previous labelling theorists have argued that there is a link between being labelled a deviant and this becoming a self-fulfilling prophecy. They have argued that, for a person or group to been labelled as deviant(s), they are likely to assume certain characteristics associated with such labelling (see Becker, 1963:43 and Erickson, 1962:311). It is important to mention here that the issue of power relations and class in our society contributes to how persons are labelled as deviants. The majority or the powerful are placed in an advantaged position in being able to affix deviant labels on members of minorities or groups found in that particular society. It has often been the case that, once a label is affixed as deviant, the person or group labelled as such may find it difficult to remove the negative labelling. The labelling of the Gypsies as miscreants and rejects of the British society is a good case in point. Early labelling theorists defined labelling as a ‘process of tagging, identifying, segregating, making conscious and self-conscious…a way of stimulating , suggesting, expressing and evolving only traits that are complained of’ (Tannenbaum 1938). Edwin Lemert (1972) introduces us to two types of deviance in relation to labelling theory. He argues that primary and secondary deviance is intrinsically linked. Primary deviance is when an individual gets caught committing a criminal act and becomes labelled as such. Secondary deviance is the reaction of society towards the individual who has been labelled or identified as a criminal.

In his contributions towards a better understanding of the labelling theory Howard Becker (1963) uses his research about student/teacher relationships to buttress his arguments. He argued that, if one student has been labelled as a deviant or problematic child by a teacher in a school, it generates an atmosphere of avoidance developed by other teachers and pupils in the same school who may not even have had contact with the labelled student. In the United Kingdom today, a similar culture

of avoidance adopted by the majority has put in place towards the Gypsies for over a generation. First, who are the “Gypsies”, “Travellers” and “Romas”? I shall argue that there are distinctive differences in the composition of the traveling communities living in Britain. Academics have made mistakes in the past by grouping all three together as “Gypsies”. “Gypsies” denotes groups formed by the dispersal of commercial, nomadic peoples from India from the tenth century onwards who mixed with Europeans and other groups.

It is complex and problematic to make attempts to define who a Gypsy is in English law. Under the Race Discrimination Act 1976, Gypsies are defined by reference to membership of a ‘racial group’ through birth, marriage or by ethnic criteria. Meanwhile, in planning law, the definition of Gypsy relates to property ownership. Gypsies and Travellers are defined as:

> “Persons with nomadic habits in life, whatever their race or origin”
>
> “Travellers” refers to a number of predominantly European groups whose culture is characterised by occupational fluidity and nomadism.
>
> “Romas” is a broader term used to refer to persons who speak some varieties of the Romani language and/or any person identified as “Tsigane” in Central and Eastern Europe, or is used loosely to refer to Romani/Gypsies in general. Romanies living in Britain are descendants of Egyptians who arrived in Britain around the 16th century.

Gypsies and Travellers groups in Britain are formally regarded as ethnic minorities*1 (CRE V Dutton [1998] English Gypsies), (Kiely & others v Allied Domecq P & others [2000] Irish Travellers). The persecution of Gypsies has a long history in the United Kingdom. In 1530, King Henry V111 said:

> “diverse many outlandish people calling themselves Egyptians have been going from place to place and used great and subtle means to deceive the people .. that they being palmistry can tell men’s and women’s fortune…deceived people of their money and have also committed many heinous felonies and robberies” One can deduce from this statement dating back to 1530 that the classification of Gypsies as the “other” belonging to a “dangerous class” is well documented.

The Gypsies' and Travellers' cultural values are nomadism, the dominant position of the family and extended family, early and close kin marriages, rituals during deaths and marriages, and the preservation of languages and dialects.

LAND OWNERSHIP AND REGISTRATION IN THE UNITED KINGDOM

The ownership of land in the United Kingdom is a complex and rigorous process. First, all landowners are required under the Land Registration Act 2002 to register their ownership. In doing so, landowners must register their land with a land registrar. Second, in most estates where there are no buildings, the owner must seek clearance or planning permission from a local council to build his/her house. Few Gypsies manage to raise capital to buy land; those that do find that, due to popular anti-Gypsy feelings, councils succumb to the pressures of the majority by refusing them planning permission to build homes. In the United Kingdom, all ownership of land is documented in the lands and property register. For a better understanding of the land registration process, let us look at the three distinct headings under which it is defined:

- Land: This includes the full description of the land, who registered it and when the registration was finalized. It also shows the boundaries and size of the land.
- Rights: This includes a description of the rights of the owners of the land. For example, rights to graze sheep (on the land) fall into this category.
- Ownership: This includes details of the owners of the land.

The Land Registration Act 2002 replaced the law for land registration in the United Kingdom. This Act governs the role and practice of land registration in the United Kingdom. I present here some of the radical changes that emanated from this Act:

- The Land Registration Act 2002 simplifies and modernizes the land registration law and provides a forum for the first major radical changes of their kind in 75 years.

- It presents a clearer picture of a title to land showing more fully the rights and interests affecting it.
- It provides a framework for the development of electronic conveyance.
- It created a criterion where all short leases must now be registered.
- The law in relation to adverse possession (squatters' rights) has been reformed.

Section 6 (1) of the Land Registration Act 2002 imposes a statutory duty on the owners of an estate to register their title with the registrar before the end of the two-month registration period allowed. The timeframe commences when the owners purchase or occupy the estate.

What are "squatters' rights?"

For the benefit of my readers outside the United Kingdom, this simply means that a person enters a property without the knowledge or authority of the owner, and resides in this property within a certain timeframe; if no-one lays claim to the property, the squatters assume full rights of ownership of the property after 10 years. The squatters' rights were meant to discourage property owners from leaving their buildings uninhabited and in a dilapidated state. Basically, a squatter occupying a registered piece of land or property can apply to be registered as the owner if they have been in adverse possession of it for 10 years; such property will automatically become theirs. Many would argue that the law on adverse possession rewards criminals (trespassers) by encouraging them to enter property in the hope that it will one day eventually become theirs. In this article, I shall argue that Gypsies are regarded as belonging to the underclass. They are victims of long-held stereotypes and societal prejudices directed against them for over a century. They suffer discrimination due to a lack of understanding of their culture. A majority of the public apparently view Gypsies as rejects from society, outcasts, members of the criminal fraternity and lazy. They are also described as being violent, dishonest, state benefit cheats, tax dodgers, drug dealers and receivers of stolen goods. With this level of negative characteristics defining what a Gypsy is, one can understand why the majority of the British public will do all they can to keep them at arm's length. The majority of United Kingdom citizens' mindset is already set in antagonistic mode

against Gypsies. This is a possible explanation for the high number of rejections by local councils when Gypsies make land applications and seek permission to build homes (see Kenrick and Bakewell, 1995).

Some of the United Kingdom's eviction laws

In the United Kingdom, every landowner has the right to remove trespassers from their land under common law and can do so within 24 hours. The removal of Gypsies occupying land has grown into a multimillion pound business, with some private firms displaying bravado in their adverts proclaiming their ability to employ ex-police officers to forcibly remove unwanted Gypsies from people's estates. (see http: //www.uniqwin.co.uk). I shall argue that there is nothing to brag about in such inhumane treatment meted out to one's fellow human beings. As I far as I am concerned, this is a callous act that teeters on the brink of inhumanity and should not be allowed to continue. Some commentators would argue that the Gypsies are very unhygienic people and it takes a lot of money to clear up illegal caravan sites after they have left. Had the British government met its welfare obligations of providing housing for its citizens, this ugly degradation of Gypsies would not have occurred and they would not have needed to establish illegal campsites in the first place.

In looking at some of the UK legislation as it affects or might affect Gypsies and Travellers' social wellbeing and property rights, it can be argued that the United Kingdom has a wide range of property law legislation and equality laws that were promulgated to protect minority groups. This legislation includes the Race Relations Act of 1976, as amended in 2000, and the Equality Act 2010. Notwithstanding this protective legislation, Gypsies and Travellers remain one of the most resented minority groups living in Britain and are treated less favourably than members of other races.

They are discriminated against in nearly all spheres of social activity including housing, healthcare, education, employment and the criminal justice system5.It is paradoxical that Britain's race discrimination and equality laws were enacted to

[5] (http://www.gypsy-traveller.org.uk,[*2] http://www.thegypsycouncil.org.uk,[*3] http://www.travellerslaw.org.uk.)[*4]

supposedly protect Gypsies and Travellers but unfortunately appear to be failing to do so. Let us look at some of this legislation in more detail:

The Race Relations Act 1976 section 1 (1)*5 makes it unlawful to discriminate on "racial grounds". Section 3 (1) of the Act defines "racial grounds" "as a group of persons defined by reference to colour, race, nationality, or ethnic or national origins." In the case of Mandla v Dowell Lee [1983] 2 AC 548 at 562*6, Lord Frazer provided guidance on the meaning of "ethnic origins". It contained two essentials and five characteristics. The essentials are: a long-shared, distinctive history, the memory of which keeps it alive; a cultural tradition of its own, including family and social customs and manners often, but not necessarily, associated with religious observance. The five characteristics are: a common geographical origin; language; common literature peculiar to the group; common religious groups; not being a minority or being oppressed or a dominant group within a larger community (see McCarthy v Basildon DC [2009] EWCA Civ 13).*7 This case highlights the fact that the British law does not guarantee protection for the Gypsies. Section 71 (1) RRA 1976 (as amended 2000)*8 provides for "everybody or other persons specified in Schedule 1A". This includes the following: public authorities, government departments, local government, health, educational bodies, libraries, museums, galleries, student loan companies. They all have a statutory duty to perform the following:

- To eliminate unlawful discrimination
- To promote equality and good race relations between persons of different racial groups.
- The Secretary of State is given power to impose "specific duties" including "impact assessments where public institutions are failing to implement their race and equality statutory duties".

The relevance of the Race Relations (amended) Act 2000 is that it places a race equality duty on public authorities to promote the principle of equality of opportunity. It has made it possible for individuals to bring cases against the police, who previously have not been subject to statutory race legislation as a public authority. One of the achievements of the Macpherson Report 19999 was to provide a

foundation to bring the police service under the remit of the Race Relations Act 1976.

Article 14 of the Race Equality Directive*10 provide protection for victims of discrimination on six prohibited grounds: race, sex, religion, disability, age and sexual orientation. It makes legal provision for victims to challenge UK laws that are not compatible with the principle of equal treatment and that discriminate against minorities, for example Gypsies and Travellers living in the UK. (www.cre.gov.uk/policing/Gypsies and travellers.html).* 11Another piece of legislation I present is the Caravan Sites Act 1968 section 10*12 which applies to all "persons of nomadic habit of life, whatever their race or origin". The purpose of this piece of legislation was to compel local authorities to provide sites for caravans in designated areas, and it became a criminal offence to park anywhere out of the designated area (see Forrester, 1985). Similarly, the Mobile Homes Act 1983 *13 and the Town Planning Act 1990*14 were both passed to meet some of the housing needs of the Gypsies and Travellers community. But all this legislation was abolished by the passing of the Criminal Justice and Public Order Act (CJPOA) 1994.*15

The CJPOA abolished the duty of local authorities to provide sites for Gypsies and Travellers; it gave powers to the police to evict travellers from illegally occupied sites; it made criminal the failure of a Traveller to leave when ordered to do so by the council and the police; it made any re-entry by Travellers in certain circumstances after eviction a crime. It is a draconian piece of legislation that conflicts with Article 8 of the European Convention on Human Rights and the United Kingdom Human Rights Act 1998 (the right to respect for private and family life) *16. Let us pause and critically analyse the level of protection this legislation was designed for. Article 8 states that: "Everyone has the right to respect for his private life, his home and his correspondence" This has not necessarily been the case, as we have observed in Britain a complete disregard for this Article and many breaches of it. How can we talk about "respect for home" when we have observed Gypsies' temporary homes being demolished by contractors supervised by bailiffs and the police? The process of evicting Gypsies is very inhumane and degrading. Millions of pounds that could have

been wisely spent on providing new homes for citizens have been diverted toward the process of evicting Gypsies.

The process by which landowners can evict trespassers occupying their property is as follows:

- Inform the trespassers that they must leave as they have no express or written permission to enter or stay on the property.
- Inform the trespassers that a court eviction order will be sought if they fail to voluntarily leave the property.
- Take out a court order and give the trespassers a court hearing date.
- Obtain an eviction order from the court.

It can be argued that there are some caveats to this law; these include situations where a person's right to his or her home may be interfered with due to issues of national security and if said right poses a threat to it. They also include circumstances involving the prevention of disorder or crime, the protection of health and morals or the protection of the rights and freedoms of others (see Gray & Gray, 2009:116).

The passing of the "Single Equality Act 2010"* 17 had the following objectives:

- To eliminate discrimination, harassment, victimization, and all prohibited grounds of discrimination.
- To advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share such characteristics.
- To foster good relations between persons who share relevant characteristics and persons who do not share such characteristics.
- To remove or minimize disadvantages suffered by persons of relevant protected characteristics.

This Act, like the previous ones, has failed to transform and protect the lives of Gypsies and Travellers.

The case of Dale Farm, Essex

I present here a case-study - Dale Farm, Essex - as a good example of how problematic the United Kingdom equality laws are when it comes to protecting Gypsies and Travellers. Our existing laws are designed in theory to protect Gypsies and Travellers but in practice have not only failed to do so but are also leaving Gypsies and Travellers more vulnerable to the three-pronged hostility they face from local councils and politicians, the criminal justice system (police and courts) and the wider community (see O'Cinneide, 2008).

According to one EHRC report (2007)*18 "the Travellers community at Dale Farm in Billericay, Essex, United Kingdom, brought a case of racial and disability discrimination against Basildon District Council in the High Court London in February 2008. Basildon District Council has decided to evict the community, which includes 150 children and a number of disabled people.

The Commission for Racial Equality intervened to advise the Court on how the law in relation to race and disability discrimination should be applied in cases where Councils decide to evict Gypsy and Traveller communities from unauthorized sites. The High Court ruled that the Council's decision to evict the community was unlawful as it was indirectly discriminatory; the Council had failed to take into account a number of issues including homelessness obligation and individual needs of the Travellers: they had a need for accommodation which the Council should have addressed".

Basildon District Council appealed against the decision in the Court of Appeal which ruled in their favour in December 2008. In March 2009, the Traveling community at Dale Farm was granted legal aid to take their case to the House of Lords. The traveling community was finally evicted from Dale Farm at a costly price of over £6 million (see Cemlyn et al. 2007, EHRC Report)*19. This report also provides us with the following findings that affect or might affect the Gypsy and Travellers community:

a. Economic inclusion and access to employment denied;
b. A denial of access to the medical healthcare system;
c. Exclusion from social care, education and other public services;

d. Constant prospect of discrimination and harassment from the police and the British criminal justice system.
e. Increased likelihood of becoming victims of domestic violence and high suicide rates.

On the 4th of July 2011, the occupants of Dale Farm in Essex were formally served with camp eviction notices by Basildon Council. The eviction notices were reported to have demanded that the Gypsies and Travellers vacate England's largest Travellers site or face the risk of being physically ejected. It is estimated that it will cost the British taxpayer another £9.5 m to carry out the eviction.

RECOMMENDATIONS

1. The British government should stop the persecution of Gypsies and Travellers by ensuring that the current protective legislation is enforced.
2. The Equality and Human Rights Commission should be more proactive in insisting that a human status in law be accorded the Gypsies and Travellers.
3. The history, culture and understanding of the Gypsies and Travellers' ways of life should be incorporated into the school and universities curriculum. This is imperative because some of the stereotypes and prejudices we share about Gypsies are undoubtedly inaccurate and misleading because they are not based on facts.
4. Gypsies and their families should be encouraged to seek access to education, healthcare and housing.
5. The British government should employ a housing minister to look into the issue of accommodation and how it affects Gypsies and the wider society.
6. The land registration and planning permission application process should be more transparent.
7. Members of the Gypsies and Travellers community should be appointed to sit on the councils' land registry and allocation panels. This will ensure transparency and equitable distribution of land and property. Local communities should establish consultative liaison forums with representatives from the Gypsy communities to address their priorities and most pressing needs.

8. Gypsies and Travellers should be invited back into communities, as ostracizing them is discriminatory and unlawful.
9. Stiffer sanctions should be applied to members of our community who contribute towards making the lives of Gypsies unbearable.
10. The British media should be fined and sanctioned and their operating licenses revoked if they publish any racist material about Gypsies. They should play an active role in debunking some of the myths and moral panics that they have created and sustained over the years.
11. Gypsies should be allowed to continuing practicing their ways of life and religion without fear of harassment or molestation.
12. Small business loan schemes should be facilitated by banks, encouraging Gypsies to become economically independent and enabling them to determine their own destinies.

My conscience does not allow me to draw my article to a close without mentioning the name of a social crusader named Mrs. Kit Sampson, aged 87 years. She hails from Lowestoft, a coastal town in Suffolk, United Kingdom. She has dedicated over 40 years of her life to fighting for equal treatment of Gypsies and Travellers communities in the United Kingdom. In recognition of her service to humanity, Her Majesty the Queen decided to honour her with a Member of the British Empire (MBE) award. She collected the award after some persuasion, hoping that the living social conditions of the Gypsies and Travellers would eventually improve; disappointingly, they have worsened. She decided to return her MBE award to the British government in 2004. In this regard, we must not forget the importance of the MBE awards event, a colourful ceremony celebrated with royal pomp and pageantry. Bearing this in mind I present here some of the reasons she gave for returning her Member of the British Empire medal back to the British government in protest of ill treatment of the Gypsies in the United Kingdom.

She stated the following:

> "I am ashamed of the honour because of the government's continuing reprisals and refusal by the councils to provide official sites for Gypsies. The government is allowing prejudice to take over…A councillor once said to me 'it is a pity we haven't still got ovens we could put them in and burn them'.

> These comments are not made in jest. They are what people feel deep inside. They have not got any room for Gypsies. They have always been regarded as outsiders from time immemorial, yet a lot them have been here longer than us… I cannot accept my MBE from a government that is discriminating against a group in a way which means their children don't have the means to education and men, women and children don't have access to healthcare" (see The Guardian newspaper, 10th August 2004).

I wish to draw the attention of my readers, especially those in the United States of America, to the word "councillor", referred to in Mrs Kit Sampson's statement above. A councillor is a democratically elected political representative, voted into office by community members to represent their welfare and interests. The office of councillor is a political office of responsibility. First, I am worried that such an outrageous comment could have been made by the anonymous councillor in Mrs Sampson's statement; such a comment is capable of inciting racial hatred against Gypsies. Second, the councillor's comment is not only callous but misguided with evil intent. Third, because this comment was made about 7 years ago, I am unable to investigate further what became of the councillor. One might hope that he tendered his immediate resignation from office. Fourth, people of this nature must not be allowed to participate in politics or to hold public office. Fifth, he should have been arrested by the police for intent to stir up racial hatred in his community.

CONCLUSION

In conclusion, many of my readers may be tempted to ask why I am interested in this topic? Let me first and foremost state that I have no blood or any other form of social or biological relationships with the Gypsies but I am concerned as academic to highlight the plight of the Gypsies as constituent members of my community who are permanently placed in position of disempowerment. Second, my determination in creating and living in a just, fair and equal society giving access to people trapped in the position of 'down below" has persuaded me to research on this topic. Third, I grew up in Britain to observe some of the ill treatment towards the Gypsies, at a very young age I observed the level of discrimination and antagonism that Gypsies living in the United Kingdom have to put up with. Fourth, I have always questioned of what

use is our academic laurels if we are unable translate it into the betterment of human race?

Gypsies and Travellers continue to suffer many forms of discrimination in Britain. They have remained unarguably one of the most unprotected classes or groups under UK legislative provisions. It must be remembered that Gypsies and Travellers have lived in Britain for hundreds of years. Public understanding and education about Britain's nomadic heritage are needed to enable the British public to overcome whatever prejudices, myths and stereotypes they may have developed over the years in relation to the traveling communities. The British government should be at the forefront of moves to stop the persecution of Gypsies in Europe because we have always prided ourselves as living in a democratic country. Gypsies should be treated as human beings, not aliens. An urgent government policy strategy is needed to be put in place to educate and enlighten United Kingdom citizens that the labelling of the Gypsies directly or indirectly is unlawful and unacceptable. More importantly, they should be included in the equitable distribution of land and property in the United Kingdom. I am still optimistic in the midst of despair when it comes to reflecting on how badly Gypsies have been treated over the centuries. A starting point would be to put an end to the ongoing persecution of Gypsies all over the world, as the Gypsies' plight is not peculiar to the United Kingdom but a global issue that demands a global solution.

ENDNOTES

1. CRE v Dutton [1998] English Gypsies, (Kiely & others v Allied Domecq P& Others [2000] Irish Travellers).
2. http://www.gypsy-traveller.org.uk
3. http://www.the gypsy council.org.uk
4. http://www.travellers law.org.uk
5. The Race Relations Act 1976, Section 1 (1)
6. Mandla v Dowell Lee [1983] 2 AC 548 at 562

7. McCarthy v Basildon DC [2009] EWCA Civ 13
8. Section 71 (1) RRA 1976 (as amended 2000)
9. The Macpherson Report 1999
10. Article 14 of the Race Equality Directive
11. http://www.cre.gov.uk/policy/Gypsies and travellers.html
12. The Caravan Sites Act 1983
13. The Mobiles Home Act 1983
14. The Town Planning Act 1990
15. Criminal Justice and Public Order Act 1994
16. The Human Rights Act 1998
17. The Single Equality Act 2010
18. Sarah Cemlyn, Margaret Greenfields, Sally Burnett, Zoe Mathews , and Chris Whitwell. 2007. Equality and Human Rights Report Publication United Kingdom.

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3. AN ANALYSIS OF SOUTH AFRICAN NATIONAL ANTI-CORRUPTION AGENCIES

Berning, J.M.S.[6]

ABSTRACT

To address problems of corruption in South Africa, the government launched South Africa's National Anti-Corruption Program in 1997. This was followed by the adoption of the Public Service National Anti- Corruption Strategy in 2002 and the promulgation of the Prevention and Combating of Corrupt Activities Act 12 of 2004 as well as the Prevention of Organized Crime Act 121 of 1998. As a result of this process a number of agencies were established with different mandates. This article seeks to unravel the roles and functions of agencies such as the police; Asset Forfeiture Unit; the Special Investigating Unit, the Auditor General, the Public Service Commission, the Directorate of Special Operations and the Directorate for Priority Crime Investigation.

Key words: corruption; organized crime; civilian oversight; organized crime; fraud

INTRODUCTION

Concerns about corruption have intensified globally in recent years. Corruption affects all sectors of society adversely. It corrodes national cultures and undermines development by distorting the rule of law, the ethos of democracy and good governance. It endangers stability and security and threatens social, economic and political development. Corruption also drains government of resources and hinders international investments. Whilst corruption is a universal problem, it is particularly harmful in developing countries. These countries are hardest hit by economic decline. They are also the most reliant on the provision of public services, and the least capable of absorbing additional costs associated with bribery, fraud, and the misappropriation of economic wealth. Therefore it is very important that countries should develop effective measures to deal with corruption. Since 1994, South Africa

[6]University of South Africa, School of Criminal Justice: Department of Police Practice.

has developed established strategies and agencies aimed at combating corruption. However, in 2012, corruption is still a problem in South Africa. The problems are multi-faced. Some noticeable problems include legislative deficiencies; institutional problems and enforcement. This article is aimed at outlining the problems with our current model and ends with an international benchmarking as well as recommendations.

METHODOLOGY

In this study, the researcher followed a qualitative approach. Literature study was used as a data collection technique. Document research and analysis focused largely on official documents, legislation and media reports on the subject. Unstructured interviews were conducted with members from the police, Public Service Commission and the National Prosecuting Authority.

THE AIMS OF THIS RESEARCH

The aims of this research are:

- To outline roles of various anti-corruption agencies in South Africa
- To outline the mandates of various anti-corruption agencies in South Africa
- To look at the effectives of various anticorruption agencies in South Africa
- To make a comparison with other countries
- Propose a way forward

RESEARCH DEMARCATION

South Africa has a substantial number of agencies whose function among others includes corruption combating. In this case, the selected institutions are: the Office of the Auditor General, Office of the Public Protector, the Public Service Commission, the Asset Forfeiture Unit, the Special Investigating Unit, the Directorate of Special Operations and the Directorate for Priority Crime Investigation.

DEFINITION OF CORRUPTION

Section 3 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 states that

> *"any person who directly or indirectly- accepts or agrees or offers to accept an!' gratification from any other person whether for the benefit of himself or her or self or for the benefit of another person: or gives or agrees or offers to give to any other person any gratification for the benefit of that other person or for the benefit of another person in order to act personally or by influencing another person so to act in a manner that amounts to the - illegal, dishonest, unauthorised, incomplete, or biased: or misuse or selling of information or material acquired in the course exercise, carrying out or performance of any powers, duties or function arising out of a constitutional or statutory contractual or any other legal obligation that amounts to- the abuse of a position of authority; a breach of trust; or the violation of a legal duty or a set of rules; designed to achieve an unjustified result; or that amounts to any other unauthorised or improper inducement to do or not to do anything of the, is guilty of the offence of corruption".*

In this instance, defining corruption is problematic. One of the most common definitions of corruption is "the use of public office for private gain." This definition needs to be broadened to include the following features; the abuse of power and breach of trust; the fact that corruption occurs in the public, private and nongovernmental sectors; and the fact that private gain is not the only motive for corrupt activity. Therefore, for the purpose of this article, corruption can be described as "any conduct or behaviour in relation to persons entrusted with responsibilities in public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others". This should not be viewed as a legal definition, but rather as a working definition for the purposes of simplifying the definition as stipulated in the Act.

THE EXTENT OF CORRUPTION IN SOUTH AFRICA

In terms of the Public Service Commission: Measuring the Effectiveness of the National Anti-Corruption Hotline (NACH) 19/2011 a total of 1125 cases of alleged corruption have been received in respect of national departments. These figures exclude cases reported directly to agencies such as the Directorate of Special Operations, Special Investigating Unit, the Auditor General, Office of the Public Protector just to mention a few.

Table 1: The extent of corruption in South Africa

Name of department	Number of cases	Feedback received
Education	7	**7**
Social Development	240	**1**
Health	8	**5**
Government Communication and Information Service (GCIS)	1	**1**
Department of Communication	4	**1**
South African Police Services (SAPS)	97	**21**
Department of Home Affairs	181	**126**
Department of Transport	5	**1**
Department of Justice and Constitutional Development	42	**23**
Department of Labour	30	**6**
Department of Correctional Services (DCS)	178	**41**
Department of Land Affairs	12	**7**
Department of Housing	10	**5**
South African National Defence Force (SANDF)	18	**2**
Department of Trade and Industry	54	**21**
Independent Complaints Directorate (ICD)	69	**47**
Department of Science and Technology	3	**2**

National Treasury	7	**5**
South African Revenue Services	28	**0**
National Prosecuting Authority	17	**15**
Department of Public Enterprises	1	**1**
National Intelligence Agency (NIA)	2	**0**
Office of the Public Protector	2	**1**
Department of Provincial and Local Government (DPLG)	68	**2**
Department of Water Affairs and Forestry	22	**5**
Department of Public Works	6	**3**
Safety and Security	5	**5**
Public Service Commission	3	**3**
Department of Public Service and Administration (DPSA)	3	**1**
Department of Environmental Affairs and Tourism	**2**	**1**

Note: This diagram exclude corruption reported in the private sector and public entities.

CORRUPTION PERCEPTIONS INDEX 2011

Every year, Transparency International publishes a Corruption Perceptions Index that ranks countries according to their perceived levels of public-sector corruption. The 2011 index draws on different assessments and business opinion surveys carried out by independent and reputable institutions. The surveys and assessments used to compile the index include questions relating to the bribery of public officials, kickbacks in public procurement, embezzlement of public funds, and questions that probe the strength and effectiveness of public-sector anti-corruption efforts (Public Service Commission Report, 2001, p.23). Perceptions are used because corruption – whether frequency or amount – is to a great extent a hidden activity that is difficult to measure. Over time, perceptions have proved to be a reliable estimate of corruption. Measuring scandals, investigations or prosecutions, while offering 'non-perception' data, reflect less on the prevalence of corruption in a country and more

on other factors, such as freedom of the press or the efficiency of the judicial system. The Corruption Perceptions Index complements Transparency International's many other tools that measure corruption and integrity in the public and private sectors at global, national and local levels. According to Transparency International (2011) the perceived levels of public-sector corruption in 183 countries/territories around the world revealed that South Africa was ranked 64. This is worrying, especially when you look at the stature and status of the country in Africa.

THE CAUSES OF CORRUPTION

Incidence of corruption varies among societies, and it can be rare, widespread or systemic. When it is rare, it is relatively easy to detect, isolate and punish and to prevent the disease from becoming widespread. When corruption becomes widespread, it is more difficult to control and to deal with. But the worst scenario is when it becomes systemic.

When systemic corruption takes hold of a country, the institutions, rules and peoples' behaviour and attitudes become adapted to the corrupt way of doing things, and corruption becomes a way of life. Systemic corruption is very difficult to overcome and it can have a devastating effect on the economy. According to Ngobeni (2008) the following aspects have a potential of opening gaps for corruption to take place:

Ambiguous legal framework

A lack of clear rules governing the public sector and its procedures creates loopholes for persons or firms to receive a government benefit to which they might not be entitled. In South Africa the Corruption Act 94 of 1992 was vaguely formulated hence it was replaced by the Prevention of corruption and Related Practices Act 12 of 2004.

Weak legislative system

A weak legislative system, including parliament and any other institution of the country's Criminal Justice System (Gbadamosi, 2006, p.63). This may include lack of

recognition of corruption as a morally and socially perverse phenomenon, and a very serious fetter to socio-economic development.

Greed

Naturally human beings are greedy. The desire to fulfil one's selfish motives and a lack of professional integrity can dispose individuals to potentially abuse their positions of authority for private gain. An inability to live within one's regular earnings can also compel an individual to seek irregular ways of meeting the demands of his or her lifestyle (Kyambalesa, 2006, p.109).

Weak judicial system

A weak judicial system fosters corruption by not being able to adjudicate fairly, impartiality, and professionally in matters relating to corrupt practices by government leaders and civil servants, due to inadequate financial resources and lack of independence of the judiciary from the executive branch of a country's government (Gbadamosi, 2006, p.263).

Poor governance

If political leaders and top bureaucrats set an example of self-enrichment or ambiguity over public ethics, lower level officials and members of the public might follow suit. If informal rules come to supersede formal ones, even the most stringent legal principles and procedures lose their authority (Kyambalesa, 2006, p.108). Hence, bribery and corruption may become the norm, even in the face of formal rules intended to support clean governance.

Political instability

An unstable political setting like Zimbabwe and other countries can create an atmosphere of job insecurity, uncertainty, and anarchy in government institutions. As such, this can tempt government leaders and civil servants to engage in unscrupulous schemes in order to amass wealth quickly in anticipation of a sudden change in their employment status (Kyambalesa, 2006, p.108).

DIMENSIONS OF CORRUPTION

According to Country Assessment Report (2003) the following is a list of examples of various manifestations of corruption in South Africa:

Nepotism

This involves a public servant ensuring that family members are appointed to public service positions or that family members receive contracts from state contracts from State resources. This manifestation is similar conflict of interests and favouritisms.

Favouritism

This involves the provision of services or resources according to personal affiliations of a particular servant. This practice is normally practiced along ethnic, religious and party political affiliation.

Insider trading

This involves the use of privileged information and knowledge that particular public servant possess as a result of his/her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit himself/herself.

Conflict of interests

Conflict of interests involves a public servant acting or failing to act on a matter where the public servant has an interest or another person or entity that stands in a relationship with the public servant has an interest.

Abuse of power

Abuse of power involves a public servant using his/her vested authority to improperly benefit another public servant, person or entity.

Extortion

This involves coercing a person or entity to provide a benefit to a public servant, another person or entity in exchange for acting in a particular manner.

Embezzlement

Embezzlement involves theft of resources by persons entrusted with the authority and control of such resources.

Bribery

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of a public servant. These acts are normally committed by law enforcement officers. This benefit may accrue to the public servant, another person or an entity.

A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government. In South Africa, the Corruption Act 94 of 1992 defined bribery as the offering of a benefit that improperly affects the decision of an official in a position of authority and the acceptance of such an offer thereof. However this Act has since been repealed by the Prevention and Combating of Corrupt Activities Act 12 of 2004 and it does not contain the definition of bribery anymore. Therefore bribery does not exist in the South African statutes. Apart from the above acts of corruption, the following are also forms corruption, namely, theft of government property, sexual harassment for employment or promotion favours, fraudulent qualifications and certificates, ghost workers normally committed by the employees of the department of education, white collar crime/fraud, kickbacks, private use of state vehicles by public officials, lack of transparency in business transactions, tender rigging and social grant fraud. These acts take place in both private and public sector.

INDICATORS OF FRAUD AND CORRUPTION

The behavioural aspects of individual assist in profiling a typical fraudster while that of organisations typifies the risks that make the organisation susceptible to fraud and corruption. According to the Country Corruption Assessment Report (2003) he following are regarded as indicators or red flags that could be an indication of the potential existence of corruption and fraud:

- Unusually high personal debts
- Living beyond one's means
- Excessive gambling habits
- Alcohol / drug problems
- Undue family or peer pressure to succeed
- Feeling of being underpaid
- Feeling of insufficient recognition for job performance
- Close association with suppliers
- Wheeler-dealer attitude
- Desire to "beat the system"
- Criminal record
- Not taking vacations
- Not allowing someone access to area of responsibility
- Undisclosed conflict of interest and
- Rationalisation for conflicting behavioural patterns.

EFFECTS OF CORRUPTION

Being rated or perceived as a country with a high level of corruption can adversely affect a nation's ability to develop sound bilateral and multilateral relations with other countries. Corruption can have negative consequences on diplomatic and economic relations that a country may seek to pursue with other sovereign states (Kyambalesa, 2006, p.112). Other effects of corruption may include economic and human rights violations. In South Africa, the case of Mr Jacob Zuma, the African National Congress (ANC) president may have impact on South Africa's relations with the international community (Ngobeni, 2008, p.4).

THE COSTS OF CORRUPTION

Whilst it is undisputed that corruption has become global in scope, it has particular damaging effects on the domestic environment of countries. It is difficult to quantify the cost of corruption because it comes in many forms, including monetary as well as human. According to Country Corruption Assessment Report (2003) there are generally four costs of corruption, namely, macro-fiscal, reduction in productive investment and growth, costs to public and the poor in particular and the loss of confidence in public institutions. Corruption deters investment because it is a distinctive to prospective investors, thereby inhibiting economic growth. The values and norms of the people are also distorted as a result of corruption, thus undermining moral standards and promoting charlatans to the detriment of honest endeavours (Kyambalesa, 2006, p.108)

INTERNATIONAL AND REGIONAL INITIATIVES TO CURB CORRUPTION

The United Nations

In December 1996, the United Nations General Assembly adopted two important instruments in the fight against corruption, namely; the Code of Conduct for International Public Officials was adopted to provide Member States with a tool to guide their efforts against corruption through a set of basic recommendations that national public officials should follow in the performance of their duties and the Declaration against Corruption and Bribery in International Commercial Transactions. Furthermore, these legal instrument states that each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. In addition, these legal instruments also suggest that each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption. South Africa is a signatory to these resolutions; hence the South

African Parliament promulgated the Prevention and Combating of Corrupt Activities Act 12 of 2004 to combat corruption.

On 15 November 2000, the General Assembly also adopted the United Nations Convention against Transnational Organized Crime (2000), which includes several provisions related to corruption. In particular, the Convention focused on:

- The establishment of corruption as a criminal offence for both offenders and accomplices in acts of corruption;
- The liability of legal persons corrupting public officials;
- The promotion of the integrity of public officials and the provision of sanctions.

As a result of these resolutions, member states including South Africa were required to tighten up the fight against corruption and organized crime. In response to these resolutions, agencies such as the Directorate of Special Operations, the Asset and Forfeiture Unit as well as the Special Investigating Unit were established in South Africa.

The African Union (AU) initiatives

At the first session of the Assembly of the African Union in Durban in July 2002, a Declaration relating to the New Partnership for Africa's Development (NEPAD) was adopted. This Declaration calls for the establishment of a coordinated mechanism to combat corruption effectively. In response to this (and in response to various other decisions and declarations, the African Union Convention on Preventing and Combating Corruption (2003) was adopted by member states as a guiding tool in the fight against corruption. In response to these initiatives, a number of anti-corruption agencies were established in South Africa with varying mandates.

Southern African Development Community Protocol Against Corruption

On 14 August 2001, Heads of State in the SADC region adopted the SADC Protocol against Corruption (2001) in Blantyre, Malawi. Three member states, including South Africa, ratified the Protocol. However, for the Protocol to be effective, it needs to be ratified by nine member states. The SADC Protocol followed in the wake of the Inter-American Convention Against Corruption of 1996 and the 1997 European

Convention on the Fight Against Corruption. The purpose of the SADC protocol is threefold:

- To promote the development of anti-corruption mechanisms at the national level;
- To promote co-operation in the fight against corruption by state parties;
- To harmonize national anti-corruption legislation in the region.

Article VI of the Protocol criminalizes the bribery of foreign officials. This is in line with the OECD Convention on Combating Bribery of Foreign Officials in International Business Transaction. The Protocol addresses the issue of the proceeds of crime by allowing for their seizure and confiscation, thereby making it more difficult to benefit from proceeds of corruption (South Africa: Country Report, 2008:29). It makes corruption or any of the offences under it an extraditable offence, thereby removing the "safe haven" for criminals in SADC countries. The Protocol can serve as a legal basis for extradition in the absence of a bilateral extradition treaty. The SADC Protocol also provides for judicial co-operation and legal assistance among state parties. This is important since corruption often involves more than one country.

Southern African Forum Against Corruption

Within the SADC region, the Southern African Forum Against Corruption (SAFAC) was established in June 2000. SAFAC aims to be the designated authority to implement the Protocol at regional level. The Forum seeks to enhance co-operation amongst the anti-corruption institutions within SADC countries. The Constitution still needs to be adopted, and its relationship with SADC defined (Country Corruption Assessment Report, 2008, p.45). SAFAC recognizes that a major short-coming of all anti-corruption campaigns throughout the SADC region is the absence of training facilities and structures focused on the unique range of skills and abilities required of personnel engaged in anti-corruption campaigns or employed by anti-corruption bodies. According to Country Assessment Report (2008) SAFAC's key objectives are to:

- Strengthen networking amongst member organizations, update members on appropriate legislation and relevant international instruments on corruption;
- Facilitate the upgrading of skills relevant to fighting corruption through training.

- Cooperate and facilitate trans-boundary investigations and prosecution of corruption cases;
- Implement the provisions of the SADC Protocol Against Corruption
- Identify and share experiences on best practices on combating corruption.
- Share relevant information on corruption and intelligence.

SOUTH AFRICAN GOVERNMENT'S ACTION AGAINST CORRUPTION

In March 1997 South African government Ministers responsible for the South African National Crime Prevention Strategy established a program committee to work on corruption. This program resulted in a development of a Public Service Anti-Corruption Strategy (2002) which contained nine considerations that are inter-related and mutually supportive. These are:

- Review and consolidation of the legislative framework
- Increased institutional capacity to prevent and combat corruption
- Improved access to report wrongdoing and protection of whistleblowers and witnesses
- Prohibition of corrupt individuals and businesses (blacklisting)
- Improved management policies and practices
- Managing professional ethics
- Partnerships with stakeholders
- Social analysis, research and policy advocacy
- Awareness, training and education.

This was done to satisfy the requirements of the Constitution, the Public Service Anti-corruption Strategy, and the recommendations of the National Anti-Corruption Summit. Furthermore, several of Government's policy decisions have also been translated into a number of anti-corruption measures, although with unstructured mandates.

Institutional capacity to curb corruption

The Auditor-General

The Auditor-General conducts audits of government departments and other public sector bodies in order to provide assurance to Parliament that these accountable entities have achieved their financial objectives and managed their financial affairs according to sound financial principles and in accordance with the legal framework created by Parliament. In terms of section 188 of the Constitution of the Republic of South Africa, Act 108 of 1996, the functions of Auditor-General are set out as follows: To audit and report on the accounts, financial statements and financial management of all national and provincial state departments and administrations; all municipalities; and any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or any institution that is authorised in terms of any law to receive money for a public purpose. The Auditor-General has been established as a Chapter 9 Institution in terms of Section 181 of the Constitution. The Auditor-General Act 12 of 1995, further sets out the powers and functions of the Auditor-General in terms of the Constitution and other legislation. Following the Constitution of 1996, the Office of the Auditor- General recognised a need to review the Auditor-General Act. A task team has been appointed to undertake the review process. The Auditor-General Act is currently being reviewed to align it with the Constitution and with any other relevant, newly promulgated legislation; improve specific operational provisions; and bring the provision of services into line with the latest trends in international public sector auditing.

The Public Service Commission

The Public Service Commission (PSC) is a constitutionally mandated body responsible for investigating, monitoring and evaluating the organisation and practices of the South African Public Service. The PSC derives its mandate from sections 195 and 196 of the Constitution, Act 108 of 1996. Section 195 sets out the values and principles governing public administration that must be promoted by the

Commission. In terms of section 196(4) of the Constitution, the main functions and powers of the Commission are:

- To promote the values and principles of public administration set out in section 195 of the Constitution, throughout the public service.
- To investigate, monitor and evaluate the organisation and administration and the personnel practices of the public service, and in particular the adherence to the values and principles set out in section.
- 195, as well as to public service procedures.
- To advise national and provincial organs of state regarding personnel practices.
- To report its finding and recommendations at least once a year to the National Assembly or provincial legislature.
- To report issues of immediate operational concern to the relevant executive authority
- To investigate grievances of employees and recommend appropriate remedies.
- Propose measures to ensure effective and efficient performance within the public service.

The work of the PSC is structured around 6 key performance areas (KPAs) and two additional focus areas. These are: professional ethics and risk management; anti-corruption investigations; management improvement and service delivery; labour relations monitoring; human resources management and; senior management conditions of service; monitoring and evaluation and institution building.

Asset Forfeiture Unit

The South African National Director of Public Prosecutions established the Asset Forfeiture Unit in May 1999 to focus on the implementation of Chapters 5 and 6 of the Prevention of Organised Crime Act 121 of 1998. Chapter 6 of the Act permits the state to forfeit the proceeds and instrumentalities of crime in a civil process that is not dependent on or related to any criminal prosecution or conviction. The Prevention of Organised Crime Act makes provision for property tainted by criminal activity to be forfeited to the state by way of a civil action. Commonly called civil

asset forfeiture, this allows the state to confiscate assets from suspected criminals purely through a civil action against the property without the need to obtain a criminal conviction against the owner of the property. The AFU does not have investigative functions but renders services to both the South African Police Service (SAPS) and the (now defunct) Scorpions. The Unit was set up in order to ensure that the powers in the Act to seize criminal assets would be used to their maximum effect in the fight against crime, and particularly, organised crime. The AFU has powers to do the following:

- Seizure of large amounts of cash associated with the drug trade
- Seizure of property used in the drug trade or other crime
- Corruption
- White collar crime
- Targeting serious criminals
- Violent crime

A further priority has been to deal with corrupt officials. However, this function overlaps with those of the Special Investigating Unit.

Special Investigating Unit

The SIU is an independent statutory body established by the South African President which conducts investigations at his request. It reports directly to the President and Parliament on the outcomes of such investigations. The SIU functions in a manner similar to a commission of inquiry in that the President refers cases to it by issuing a proclamation which sets out the scope and ambit of the investigation. Section 2(2) of the Special Investigating Units and Special Tribunals Act 74 of 1996 defines the allegations which the SIU may investigate and for which proclamations may be issued.

Essentially, the SIU investigates fraud, corruption and maladministration within government departments. It uses civil law to fight corruption which has important advantages. It is often difficult to prove the crime of corruption because it usually takes place between individuals who are equally guilty and do not want to give evidence. A civil case is easier to prove because the case only has to be proven on a balance of probabilities, and not beyond reasonable doubt, as in a criminal case.

The SIU may investigate any matter set out in section 2 of the Special Investigating Units and Special Tribunals Act 74 of 1996. These include the following:

- Serious maladministration in connection with the affairs of any state institution;
- improper or unlawful conduct by employees of any state institution;
- unlawful appropriation or expenditure of public money or property;
- any unlawful, irregular or unapproved acquisitive act, transaction, measure or practice that has a bearing on state property;
- intentional or negligent loss of public money or damage to public property;
- corruption in connection with the affairs of any state institution; and
- unlawful or improper conduct by any person who has caused or may cause serious harm to the interest of the public, or any category thereof.

The major function of the SIU is to investigate corruption and maladministration, and to take civil legal action to correct any wrongdoing. The focus of the SIU is the public sector, but it also deals with private sector accomplices. It can investigate private sector matters that cause substantial harm to the interests of the public. The SIU does not have powers of arrest, but in instances of criminal wrongdoing it adopts a multidisciplinary approach to law enforcement. The SIU focuses mainly on corruption in small and medium-sized entities where it is an endemic problem and impacts on service delivery, such as pensions, local government and housing. Some the functions of the SIU overlap with those of the Public Service Commission and the Office of the Public Protector.

The Directorate of Special Operations (The Scorpions)

The Directorate of Special Operations (DSO) nicknamed “The Scorpions” was launched in September 1999 in Gugulethu near Cape Town, South Africa. After experiencing some problems, the National Assembly amended the National Prosecuting Authority Act 32 of 1998 to establish the Directorate of Special Operations as an investigating directorate of the National Prosecuting Authority.

This was done in terms of the National Prosecuting Authority Amendment Act 61 of 2000. The DSO used the troika principles of intelligence, investigations and prosecutions to fight national priority crimes, including corruption. The focus of the DSO was corruption within the criminal justice system as well as high-level

corruption crimes of an organised nature and it was merger of the previous Investigating Directorates of Organised Crime and the Serious Economic Offences and Corruption. However as the Scorpions gained public favour, they also exceeded their area of jurisdiction by performing functions which fell outside their mandate, such as intelligence gathering.

The downfall of the Directorate of Special Operations

During the course of the investigation into the arms deal that started in 2001, the DSO uncovered irregularities in the award of tenders by the Department of Defence. Among those who benefited from these irregular deals were Schabir Shaik, then Deputy President Jacob Zuma's financial adviser and confidante for many years. The DSO investigation led to Shaik being charged on two counts of corruption and one of fraud relating to bribes involving Zuma. In S v Shaik & Others, the accused, Schabir Shaik, was found guilty of corruption and fraud and was sentenced to fifteen years in jail. The court found that he had contravened the Corruption Act 94 of 1992. The first charge related to 238 payments into the account of a politician holding high political office (i.e. fraud). The second charge related to incorrect journal entries in the financial statements of the accused's companies, and the third charge related to the soliciting of a bribe by the accused. Throughout the trial, this lasted from 21 January 2002 to 17 February 2005, Shaik's relationship with then Deputy President, Jacob Zuma, was in question, yet Zuma was never called to testify either for the state or the accused. This led to questions being raised in the media about why Zuma was not charged jointly with Shaik (Montesh & Berning, 2012, p.17).

In 2005, when Shaik was found guilty and convicted, President Thabo Mbeki dismissed Zuma as deputy president, a move that led to enormous political tension in the ANC and amongst its alliance partners, as Zuma was the preferred successor of Mbeki for COSATU, the ANC Youth League and others within the ruling party. The conviction of Shaik did not signal the end of the Scorpions' investigation and shortly thereafter, on 18 August 2005, the Scorpions raided Shaik's house, this time searching for evidence against Zuma (Ngobeni, 2008, p18). These raids were heavily criticised by the union federation COSATU, who accused the NPA and the judicial system of being manipulated and influenced to take biased political decisions and actions. This case and the DSO's handling of it was arguably the single most

important factor leading to its downfall, not least because during the course of the DSO's investigations several mistakes were made. One of these was to violate the principle of attorney/client privilege. Section 14 of the Constitution provides for the right of an individual to refuse to disclose admissible evidence. This means that any confidential communication made directly between a client and his/her legal advisor, or made by means of an agent, is privileged and a person cannot be compelled to disclose such communication. Neither is s/he compelled to disclose any communication that was obtained with a view to litigation. In 2006 the Directorate of Special Operations had also raided the offices of Zuma's lawyers and seized documents for the purpose of an investigation into the alleged corruption charges.

Zuma brought a case against the DSO for violating attorney client privilege that was upheld by the court (Montesh & Berning, 2012, p19). The court ruled that the actions of the Directorate of Special Operations were a direct violation of section 201 of the Criminal Procedure Act and section 35 (3) (h) of the Constitution. With the DSO having taken on such high profile political cases so early in its existence it was almost inevitable that it would attract strong criticism, at least from those who saw it as meddling in power broking in the ruling party. Criticism focused on the location and mandate of the Directorate, prompting President Thabo Mbeki in 2005 to establish an independent commission of inquiry to look into these matters, headed by Judge Sisi Khampepe. The Khampepe Commission (2006) found that while the Directorate of Special Operations as a structure was not unconstitutional, it did not have a legal basis to collect intelligence.

Furthermore, the Commission found that, although the DSO was mandated to gather, keep and analyse information in terms of section 7(1) (a) (ii) of the NPA Act, the evidence adduced before the Commission as well as the onsite visits to the DSO tended to show that the DSO had established intelligence gathering capabilities. As a result, the Commission found that this was in serious violation of sections 1, 2 and 3 of the National Strategic Intelligence Act 39 of 1994. The Khampepe Commission also found that the Directorate lacked oversight. Section 43 of the National Prosecuting Authority Act 32 of 1998 made provision for the establishment of a Ministerial Coordinating Committee to develop regulations and standard operating procedures (SOP) for the members of the DSO. However, the same section did not

make provision for the establishment of a structure or institution to oversee the DSO, which the Ministerial Committee was not expected to do. It is also noted that while the NPA Act made provision for the Minister to exercise oversight over the DSO, such provision was not extended to the Inspector General of Intelligence. Section 7(7) of the Intelligence Services Oversight Act 40 of 1994, makes provision for the establishment of an Inspector General for intelligence, whose primary role and functions are to inter alia monitor and review the intelligence and counter-intelligence activities of any service.

So far it has been shown that mistakes by the Scorpions themselves, the failure of the law and executive to determine appropriate oversight over the unit, as well as intense political pressure as a consequence of pursuing investigations that involved high level politicians, all contributed to the downfall of the DSO. As a result of these recommendations, during December 2007, the African National Congress held its 52nd National Policy Conference, where it was resolved that the Directorate of Special Operations should be incorporated into the South African Police Service. The resolution led to the tabling of the General Law Amendment Bill (2008) and the National Prosecuting Authority Amendment Bill (2008) before Parliament. During the second sitting of Parliament in 2008, the National Assembly approved the dissolution of the Directorate of Special Operations and its incorporation into the South African Police Service's Directorate of Priority Crime Investigation. The dissolution of the unit was decried by the media, organised business, and opposition parties, who argued that the state’s ability to investigate and counter corruption had been severely compromised by the closure of the unit.

The South African Police Service: Directorate for Priority Crime Investigation

The Directorate for Priority Crime Investigation (DPCI) also known as the Hawks was established on the 21st May 2009, after the South African Cabinet approved the appointment of Deputy National Commissioner Anwa Dramat to take charge of this new Directorate of the South African Police Service. This was done in terms of the National Prosecuting Authority Amendment Act 56 of 2008 as well as the South African Police Service Amendment Act 57 of 2008. The DPCI, dubbed “The Hawks”,

has been tasked to prevent, combat and investigate national priority offences as well as any other offence or category of offences referred to the Directorate by the National Commissioner (Parliamentary Monitor, 2011). The DPCI is a specialised division that has been established by an Act of Parliament. The Division is composed of a Commercial Crime Unit, Financial Investigation and Assets Forfeiture Unit, Organised Crime Unit, the Priority Crime Management Centre and Support Services.

Hugh Glenister v President of the Republic of South Africa & Others [CCT 48/10]

In the Hugh Glenister v President of the Republic of South Africa & Others [CCT 48/10], the key question in this case was whether the national legislation that created the Directorate for Priority Crime Investigation, known as the Hawks (DPCI), and disbanded the Directorate of Special Operations, known as the Scorpions (DSO), was constitutionally valid. The majority of the Court (in a joint judgment by Moseneke DCJ and Cameron J, in which Froneman J, Nkabinde J and Skweyiya J concurred) found that Chapter 6A of the South African Police Service Act 68 of 1995, as amended, was inconsistent with the Constitution and invalid to the extent that it failed to secure an adequate degree of independence for the DPCI. As a result, the Court made two key findings. First, it held that the Constitution imposed an obligation on the state to establish and maintain an independent body to combat corruption and organized crime. While the Constitution did not in express terms command that a corruption-fighting unit should be established, its scheme taken as a whole imposed a pressing duty on the state to set up a concrete, effective and independent mechanism to prevent and root out corruption. This obligation is sourced in the Constitution and the international law agreements which are binding on the state.

The Court pointed out that corruption undermines the rights in the Bill of Rights, and imperils our democracy. Section 7(2) of the Constitution imposes a duty on the state to “respect, protect, promote and fulfil” the rights in the Bill of Rights. Secondly, the Court found that the DPCI did not meet the constitutional requirement of adequate independence. Consequently the impugned legislation did not pass constitutional muster. The main reason for this conclusion was that the DPCI is insufficiently insulated from political influence in its structure and functioning. This is because the DPCI’s activities must be coordinated by Cabinet – the statute provides that a

Ministerial Committee may determine policy guidelines in respect of the functioning of the DPCI, as well as for the selection of national priority offences. This form of oversight makes the unit vulnerable to political interference. Further, the Court held that the safeguards that the provisions create were inadequate to save the DPCI from a significant risk of political influence and interference. Sadly, in February 2012, the South African Government published the South African Police Service Amendment Bill of 2012 for comments in response to the Glenister's case. After going through the Bill, the authors are convinced that South Africa is still from establishing a single anti – corruption agency. As it stands, the Bill will never pass through the Constitutional Court.

Office of the Public Protector

The Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice. National legislation regulating the office is found in the Public Protector Act 23 of 1994. The Public Protector Act embroiders on the Constitution by spelling out that maladministration, abuse of power, improper conduct, undue delay, and an act resulting from improper prejudice to a person, may be investigated. The Public Protector Act broadens the jurisdiction of the Public Protector to include any institution on which the state is the majority or controlling shareholder or any public entity as defined in the Public Finance Management Act 1 of 1999. Such institutions include, for example, the major providers of electricity, telecommunications and postal services. In 1998 the Public Protector Amendment Act 133 of 1998 came into operation to amend the Public Protector Act to bring it into line with the Constitution of the Republic of South Africa, 1996 and matters connected such as providing for the preliminary investigation stage. The Public Protector is neither an advocate for the complainant nor for the public authority concerned. He ascertains the facts of the case and reaches an impartial and independent conclusion on the merits of the complaint. The office has the following core functions:

- To undertake investigations within its sphere of jurisdiction
- To provide administrative support for such investigations

During an investigation, the Public Protector may, if he considers it appropriate or necessary:

- Direct any person to appear before him to give evidence or to produce any document in his/her possession or under his/her control which, in the opinion of the Public Protector, has bearing on the matter being investigated, and may examine such person for that purpose.
- Request any person at any level of government, or performing a public function, or otherwise subject to his jurisdiction, to assist him in the performance of his duties with regard to a specific investigation; and
- Make recommendations and take appropriate remedial action.

DISCUSSION

Bribery, fraud, nepotism and systemic corruption are some of the forms corruption takes in contemporary South Africa. A number of state agencies are in place to combat and prevent corruption. To some the mandates of some of these agencies overlap, thus creating unnecessary duplication of functions. It is also clear that the creation of the Directorate of Special Operations was a direct competition with the SAPS resulting in duplication of functions. According to the Public Service Commission (2001, p.34), in 2000, there were 890 cases that were investigated by both the SAPS and the DSO. This could have been avoided if the legislative mandate governing the two agencies was clear. Furthermore, it is worth noting that the core business of both the AFU and the SIU are similar in that both units aim to recover funds for the government. The idea of having an asset forfeiture unit is a very good one. However, the establishment of the AFU and SIU amounts to a duplication of functions. The SIU functions like a commission of an inquiry and virtually does what the AFU does. Both use civil action in order to recover and seize assets from criminals. To add to the confusion, both units are accountable to the NDPP. The AFU's job is to ensure that it takes the profit out of crime by seizing the proceeds of crime. This is also done by the SIU. The author is of the opinion that the AFU and the SIU should not exist as separate entities. It is therefore recommended that the two agencies merge and form one strong asset forfeiture unit under the NPA. Such integration could ease both functional and operational responsibilities.

For the Asset Forfeiture Unit, their function is to ensure that they take the profit out of crime by seizing the proceeds of crime. This is also done by the SIU. The author is of the opinion that the AFU and the SIU should not exist as separate entities. The author recommends that the two agencies should merge and form one strong asset forfeiture unit and then proceed with the establishment of a single independent anti – corruption agency.

SUCCESS STORIES

Botswana

In September 1994, the Botswana National Assembly enacted the Corruption and Economic Crime Act to establish the Directorate on Corruption and Economic Crimes (DCEC). This Act created new offences of corruption, including being in control of disproportionate assets or maintaining an unexplained high living. Changes in law were necessary to create clearly defined offences; to provide specific powers of investigation, and create effective deterrent punishments for those convicted. The investigation branch of the DCEC collects information on alleged corruption and other financial crimes and also effect arrests (Montesh, 2007, p.200). Intelligence branch analysts are responsible for the information gathering functions of the directorate and they also receive reports from the public.

Hong Kong

The Independent Commission Against Corruption was set up in 1974. Since its inception, the Commission adopts a three-pronged approach of investigation, prevention and education to fight corruption. With the support of the Government and the community, Hong Kong has now become one of the least corrupt places in the world (Chen, 2006). Since 1974, the Hong Kong Independent Commission Against corruption has enjoyed resounding success in fighting corruption. The ICAC was established after a botched investigation into corruption in the colonial police led to Police Superintendent Peter Godber's flight from prosecution. Shortly thereafter, governor Sir Murray MacLehose empanelled a commission under the chairmanship of Justice Alastair Blair-Kerr (Heilbrunn, 2004, p.19). The Blair-Kerr Commission concluded that corruption was systemic in Hong Kong; high level officials as well as

police officers on the street were accepting bribes. In response, the Blair-Kerr Commission recommended the establishment of a special agency to investigate allegations of corruption, prevent bribery in business and government, and educate citizens about corruption through outreach programs (Heilbrunn, 2004, p.9). To enact these changes, the Crown Colony established an independent commission to investigate allegations of corruption. In 1974, the ICAC commenced operations.

In October 1974, the Independent Commission Against Corruption Act set up an anti-corruption bureau independent of the Colonial Police. Political authorities recognized that “an essential part of the strategy was to ensure that the legal framework within which (the ICAC) was contained was as strong, clear and effective as it could be made” (Heilbrunn, 2004, p.9). Existing legislation was revised and new laws were passed to set up an anti-corruption agency with a mandate to investigate any allegations of corruption and forward evidence to colonial prosecutors. Nowadays, Hong Kong ranks one of the least corrupt jurisdictions in East Asia, and this reputation is despite its free-wheeling market economy. Corruption is a secretive crime that is extremely difficult to investigate and prove in court. The ICAC is therefore given specific legal powers to bring the corrupt to book under three specific laws.

Singapore

Singapore is reputed to be one of the few countries in the world where corruption is under control. This is due mainly to the strong political will to curb corruption, firm actions taken against the corrupt regardless of their status and background, and the general public who do not accept corruption as a way of life. The Corrupt Practices Investigation Bureau (CPIB) is an independent body which investigates and aims to prevent corruption in the public and private sectors in Singapore. Established in 1952, it derives its powers of investigation from the Prevention of Corruption Act (Chapter 241) (Quah, 2007, p.70). The bureau is headed by a director who is directly responsible to the Prime Minister. The bureau is responsible for safeguarding the integrity of the public service and encouraging corruption-free transactions in the private sector. It is also charged with the responsibility of checking on malpractices by public officers and reporting such cases to the appropriate government departments and public bodies for disciplinary action.

Although the primary function of the bureau is to investigate corruption under the Prevention of Corruption Act, it is empowered to investigate any other sizeable offence under any written law which is disclosed in the course of a corruption investigation. Besides bringing corruption offenders to book, the bureau carries out corruption prevention by reviewing the work methods and procedures of corruption-prone departments and public bodies to identify administrative weaknesses in the existing systems which could facilitate corruption and malpractices, and recommends remedial and prevention measures to the heads of departments concerned (Rose, 2005, p.35).

Also in this regard, officers of the bureau regularly conduct lectures and seminars to educate public officers, especially those who come into contact with the public, on the pitfalls of and the avoidance of corruption. The functions of the CPIB are:

- to receive and investigate complaints alleging corrupt practices;
- to investigate malpractices and misconduct by public officers with an undertone of corruption; and
- to prevent corruption by examining the practices and procedures in the public service to minimise opportunities for corrupt practices.

Malaysia

The Malaysian Anti-Corruption Commission (MACC) began its operation officially on January 1, 2009 replacing the Anti-Corruption Agency (ACA) Malaysia (Quah, 2007, p.76). It was established by legislation namely the Malaysian Anti-Corruption Commission Act 2008 (Act 694). Prior to that, efforts to combat corruption were formally carried out by a small unit under the Prime Minister's Department which handled corruption prevention activities mainly through lecturing. Concurrently criminal investigation involving corruption were being handled by the" Special Crimes" branch that was set up within the Police Department while the prosecution of corruption cases were conducted by the Prosecution Division of the Law Ministry (Rose, 2005, p.34). In view of the fact that anti-corruption activities were carried out independently by these different agencies, the Government decided to consolidate them under one roof known as the Anti-Corruption Agency (ACA). The functions of

the MACC are provided under Section 7 Malaysian Anti-Corruption Commission Act 2009 as follows:

- To receive and consider any report of the commission of an offence under this Act and investigate such of the reports as the Chief Commissioner or the officers consider practicable;
- To detect and investigate any suspected offence under this Act;
- (ii) Any suspected attempt to commit any offence under this Act and
- (iii) Any suspected conspiracy to commit any offence under this Act;
- To examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems or procedures as in the opinion of the Chief Commissioner may be conducive to corruption;
- To instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person;
- To advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption;
- To educate the public against corruption and
- To enlist and foster public support against corruption

Tanzania

The Prevention and Combating of Corruption Bureau (PCCB), is a law enforcement institution established and mandated by the Prevention and Combating of Corruption Act No. 11 of 2007 to prevent corruption, educate the society on the effects of this problem, and enforce the law against corruption. Section 5 of this law establishes the Bureau as an independent public body, and Section 7 sets out its functions. The mandate and operations of PCCB are limited to Tanzania Mainland. In the endeavour to combat corruption the Bureau adopts the three-prong approach, namely by prevention, public awareness, investigation and prosecution of offenders (Heilbrunn, 2004, p.19). There are four directorates in the PCCB namely, the Directorate of Investigation responsible for detecting, investigating and prosecuting

corruption offenders; the Directorate of Research, Control and Statistics responsible for prevention of corruption in public and private sectors through strengthening systems; the Directorate of Community Education responsible for involving the community in fighting corruption; and the Directorate of Administration and Human Resources which supports the other three directorates by providing them with the right human and other physical and material resources. As implied above, the PCCB's core functions are basically prevention, law enforcement and community education. In carrying out its functions much depends on the support and involvement of all stakeholders in the fight against corruption, and their decision to say "NO" to corruption.

THE WAY FORWARD: A NEED FOR A SINGLE ANTI-CORRUPTION AGENCY

ACAs are specialized agencies established by governments for the specific aim of minimizing corruption in their countries. Heilbrunn (2004) has identified four types of ACAs:

- 1. The universal model, with its investigative, preventive, and communicative functions, is typified by Hong Kong's ICAC.
- 2. The investigative model is characterized by a small and centralized investigative commission as operates in Singapore's CPIB.
- 3. The parliamentary model includes commissions that report to parliamentary committees and are independent from the executive and judicial branches of the state (for example, the New South Wales Independent Commission Against Corruption).
- 4. The multi-agency model includes a number of agencies that are autonomous, but which together weave a web of agencies to fight corruption. The United States Office of Government Ethics, with its preventive approach, complements the Justice Department's investigative and prosecutorial powers, and together these organizations make a concerted effort to reduce corruption.

Corruption is a major problem in many parts of the world. In order to combat corruption, a number of governments have created specific bodies tasked with

fighting corruption. These Anti-Corruption Agencies (ACAs) come in a variety of shapes and forms. One particular title for an ACA which has gained a high degree of global prominence is Independent Commission against Corruption (ICAC). With the first ICAC being started in Hong Kong in 1974 a number of other ICACs have, since that date, been created in a range of countries around the world. A key point to note is that not all countries have an ACA. Indeed, the general consensus is that not all countries require an ACA (Lee, 2005, p.45). However, the key rationale for establishing an ACA is that it will increase the effectiveness of anti-corruption efforts within a country. In general, an ACA will achieve this by:

- resolving coordination issues among integrity agencies involved in anti-corruption work;
- sending a signal by government that corruption is a serious issue;
- centralising information and intelligence about corrupt activity; and
- not being subject to control by vested interests within wider society.

A lack of coordination and centralisation of anti-corruption activities by a country's integrity institutions leading to low levels of success in combating corruption is thus a central reason for establishing an ACA. We need to note though that the creation of an ACA is not necessarily able to control all aspects of corruption within a country. A UNDP Report (2005) thus concluded that: "Several countries have opted for or are currently considering creating an independent commission or agency charged with the overall responsibility of combating corruption. However, the creation of such an institution is not a panacea to the scourge of corruption. There are actually very few examples of successful independent anti-corruption commissions/agencies". The key reasons for the lack of success of these organizations is not that an ACA itself is not an appropriate option for these countries but rather that they lack political will and proper resourcing in their implementation. Where these factors have been provided, such as in Hong Kong and Singapore, these jurisdictions of ACAs have been extraordinarily successful.

However, in cases where there has been a lack of political will, a shortfall of resources and/or non-cooperation by other institutions in the country's integrity network such as for Botswana's Directorate on Corruption and Economic Crime (DCEC) the results have been less than spectacular. As such it is my opinion that a

fully-fledged ICAC body such as the one found in Hong Kong or Botswana is a feasible proposition given current South African capacity. The lack of communication, coordination and cooperation currently found in the system means that a single-agency ACA would be most appropriate in South Africa.

This proposed single ACA must be committed to fighting corruption through a three-pronged strategy of effective law enforcement, education and prevention to maintain South Africa as a fair and just society. Further delay in attempting to address the issue of corruption will inevitably lead to a situation where the problem is so grave that public and international confidence will reach such a low level that any measures that could be introduced will have little or no prospect of succeeding. Over and above this, there is a need for an independent oversight capacity to enhance the integrity, accountability and transparency of the new agency. This can be done by extending the mandate of the current Independent Police Investigate Directorate.

Therefore, in order to establish a single anti-corruption agency, South Africa must take into account the following aspects:

(1)The ACA must be incorruptible: The ACA must be incorruptible for two reasons. First, if the ACA's personnel are corrupt, its legitimacy and public image will be undermined as its officers have broken the law by being corrupt themselves when they are required to enforce the law. Second, corruption among the ACA's staff not only discredits the agency but also prevents them from performing their duties impartially and effectively.

(2)The ACA must be independent from the police and from political control: The UN Convention against Corruption (Merida Convention) provides an obligation for the countries to establish an independent agency for prevention of corruption. Each country shall determine the status of anti-corruption agency (or agencies) and decide about the best manner for efficient prevention of corruption and what powers it will entrust to these agencies in order to be independent and autonomous in the performance of their function. As discussed above, the experiences of Singapore and Hong Kong in fighting corruption clearly show the importance of not allowing the police to be responsible for corruption control especially when the police was corrupt (Lai, 2001, p.16). In other words, the police was the biggest obstacle to curbing corruption in Singapore and Hong Kong before the establishment of the CPIB in

October 1952 and the ICAC in February 1974 because of the prevalence of police corruption in both city-states. Accordingly, the success of the CPIB and ICAC in combating corruption has confirmed that the first best practice in curbing corruption is: do not let the police handle the task of controlling corruption as this would be like giving candy to a child and expecting him or her not to eat it.

(3) There must be comprehensive anti-corruption legislation: Comprehensive anti-corruption legislation is an important prerequisite for combating corruption effectively. More specifically, the anti-corruption laws in a country must (1) define explicitly the meaning of corruption and its different forms; and (2) specify clearly the powers of the head and/or members of the ACA.

(4)The ACA must have adequate staff and funding: As fighting corruption is expensive in terms of skilled manpower, equipment, and financial resources, the incumbent government must demonstrate its political will and support by providing the required personnel and budget needs of the ACA (Quah, 2007, p.76).

(5) The ACA must enforce the anti-corruption laws impartially: The anti-corruption laws must be impartially enforced by the ACA. The ACA's credibility will be undermined if it devotes it efforts to petty corruption by convicting "small fish", and ignores grand corruption by the rich and powerful in the country (Rose, 2005, p.32). If the "big fish" are protected and not prosecuted, the ACA is ineffective and will probably be used by the political leaders against their political rivals as was the case with the Directorate of Special Operations in South Africa.

(6)Political will is crucial for minimising corruption: Political will is perhaps the most important precondition for the effectiveness of an ACA. The political leaders in a country must be sincerely committed to the eradication of corruption by showing exemplary conduct and adopting a modest lifestyle themselves. This means that those found guilty of corruption must be punished, regardless of their status or position in society (Quah, 2007, p.74). Political will is absent when the "big fish" or rich and famous are protected from prosecution for grand corruption, and only the "small fish" or ordinary people are caught and punished for petty corruption. Political will refers to the commitment of political leaders to eradicate corruption and exists when these three conditions are met: (1) comprehensive anti-corruption legislation

exists; (2) the independent ACA is provided with sufficient personnel and resources; and (3) the anti-corruption laws are fairly enforced by the independent ACA.

(7)System of Checks and Balances: The fourth factor is checks and balances to ensure that the operation of the powerful anti-graft agency is accountable. The ICAC is subject to a healthy and effective system of checks and balances. For example, the ICAC though vested with the power of investigation does not have the authority to prosecute as prosecution powers have always been vested with the Secretary for Justice. The Judiciary is also independent. Some of the legal powers mentioned earlier are subject to the scrutiny of the courts to ensure checks and balances (Quah, 2007, p.78). The ICAC is also subject to probing questions on its funding and performance raised by legislators who may review and amend ICAC's legal powers as circumstances require. In addition, ICAC's performance is monitored by four advisory committees with members drawn from all sectors of the community. A senior committee looks at the overall policy of the ICAC while each of the three departments is guided by its own advisory committee. These committees meet regularly and closely examined the work of the anti-graft agency. Collectively they have made the ICAC a more open and accountable organisation.

(8) International Co-Operation: Last but not the least, international co-operation from overseas anti-corruption agencies is also an important factor contributing to any success in the fight against corruption. As the corrupt is quick to exploit divergent laws and bureaucratic systems in various jurisdictions, the ICAC finds it extremely important to establish efficient and effective liaison channels with its counterparts in other parts of the world so as to enable multi-lateral exchanges of legal and investigative assistance.

CONCLUSION

It is clear that there is a lack of political leadership in South Africa. The fact that anti-corruption agencies and units have established and disbanded on various occasions is a clear indication that there is poor political leadership. Corruption and fraud pose a serious challenge in South Africa. It is clear that the SAPS is not coping in dealing with each crime that is reported in South Africa. This is the time where South Africa needs to assemble its best resources to fight the scourge of fraud, corruption,

commercial and economic crimes. Therefore, from a strategic and policy point of view, South Africa seems to be on the right track, but the application and implementation of those strategies seem to be problematic.

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4. POLICE CORRUPTION: A THREAT TO SOUTH AFRICA'S NEW DEMOCRACY

Yesufu, S.[7]

ABSTRACT

I shall argue that, in South Africa today, there is no single agreed definition of corruption. However, as researchers, we do know that some definitions of corruption are available, enabling us to put police corruption into context. We are also aware - through media reports - of the extent of reported police corruption. It constitutes a menace to our society and democracy. It is also disappointing to find out that police officers, who have been entrusted by the laws of the Republic of South Africa to protect and serve us, are the same people who are now being investigated for corruption. The image of the South African police has been severely damaged due to the reporting of rampant and reckless corruption amongst its rank and file. I shall argue that, if nothing is done to address the level of police institutionalised corruption, our new democracy may suffer as a consequence.

Keywords: Corruption, Accountability, Policing, Democratic

INTRODUCTION

Politicians in South Africa have taken advantage of our police service, partly because they recommend and appoint national police commissioners to the top positions in the police. Police officers are consequently put in a compromised position seeking favours from politicians. This inseparable relationship between the police and politicians is a worrying development in South Africa for two reasons: First, previous researchers have argued that, when there is a fusion between police and politicians, the police become less accountable to the citizens (Brogden 1986; Reiner 2000, 2010). Second, the collaboration between police and politicians negates the whole theory of the separation of powers propounded by Montesquieu (1748) in his ground-breaking essay entitled 'Spirit of the Laws'. In this work he

[7] Department of Criminology. University of Kwa-Zulu-Natal

argued that, within a democratic dispensation in any nation, the three arms of government - namely the legislature, executive and judiciary - should work independently of one another to avoid usurpation and abuse of powers by any one arm of government. I shall argue that this appears not to be the case in South Africa today.

This article is divided into four parts. In the first part I look at some definitions of corruption. I also look at police culture and institutionalised corruption. In the second part, I look at types of police corruption. In the third part, I evaluate the impact of police corruption on the new democratic South Africa. In doing so, I rely on the research guidance provided by Klockars et al. (2000:2). They argue that "Corruption is extremely difficult to study in a direct, quantitative and empirical manner. Because most incidents of corruption are never reported or recorded, official data on corruption are best regarded as measures of a police agency's anti-corruption activity, not actual level of corruption". In the fourth part of my article I seek to find a long-term solution to police corruption in South Africa. I shall argue that proper police accountability is one of the solutions to corruption. Were police officers to be made truly accountable, I am of the opinion that corruption would be reduced to a barest minimum. Police corruption is not peculiar to South Africa; it is a global phenomenon. It can happen in any country where citizens are judged by the amount of material possessions they enjoy in society. Sayed and Bruce (1998:8) define corruption as 'any illegal conduct or misconduct involving the use of occupational power for personal, group or organisational gain.' The gain referred to here may be special favours or monetary gains. The recipient of such gains must have some informed knowledge of what the gain is intended for. Basically, it is difficult to identify people who have received a gift or reward from persons known or unknown without knowing what the gift was intended for.

According to Sayed and Bruce (1998:1-19), corruption can be understood from the following three perspectives: (i) Why it was committed; (ii) how was it committed; (iii) the kind of improper conduct committed. Snyman (1999:392) defines corruption as 'the unlawful and intentional giving of an agent, or making an offer or closing a deal with such agent, giving the agent an advantage in return for certain conduct on the

part of the agent, either in future or for something in the past, in view of his/her official capacity.' Let us now look at some understandings of police corruption.

Carter (1997) argues that 'corruption of police officers is a problem which spans cultures, countries and generations because it is based on human weakness and motivations, because even the lowest-ranking officer can exercise wide power and, because there are people who want to take advantage of that power, the threat of corruption is inevitable'... There is evidence to suggest that, during the apartheid regime, police in South Africa were also very corrupt. A case in point is the Colonel Eugene de Kock trial which lasted 18 months. The Prevention and Combating of Corrupt Activities Act No.12 of 2004 defines corruption as follows:

> *''Any person who directly or indirectly accepts or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person: or gives or agrees or offers to give to another person any gratification for the benefit of another person in order in order to act personally or by influencing another person so to act to in a way that amounts to illegal , dishonest, unauthorised, incomplete or biased or misuse or selling of information or material acquired in the course or exercise , carrying out or performance of any powers , duties or functions arising out of a constitutional , statute or contractual or other legal obligation that amounts to the abuse of a position of authority, a breach of trust , or the violation of a legal duty or set of rules designed to achieve an unjustified result, or that amounts to any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of corruption''*

Looking at police corruption during the apartheid regime, Newman (2002) argues that 'De Kock presented a litany of evidence…a vast majority of the 121 charges were not brought about by the senior officers to whom he reported, but by independent state prosecutors following the revelations of the Goldstone Commission into public violence…Police members were involved in the smuggling and dealing of drugs, diamonds, illegal weapons from which they profited handsomely… there are indications that bribery, protection rackets and theft were also among "ordinary police members". These forms of corruption, closely linked to the policing of illicit markets such as gambling, prostitution and the illegal sale of

alcohol, were promoted throughout the apartheid police force'. This point was also emphasised by Lodge (1997).

According to Newman (2004:232), 'corruption is when a policeman works for himself rather than his country.' I shall take this as a euphemistic remark because, under the South African Police Services Act 1995, the Corruption Act 94 of 1992 and the Prevention and Combating of Corrupt Activities Act No.12 of 2004, there are no provisions in any of these Acts stipulating that the police should work for themselves. The state criminalises the unlawful receipt of benefits and the performance of any corrupt act. More importantly there is no section that encourages a police officer to work for himself rather than his country, as I understand it. The police officer is a state official entrusted with the duty to protect and serve all South African citizens. According to Newman (2002), talk of corruption has become taboo in South Africa. He argues that

> *''Talk of it can make police officers, particularly at senior levels, visibly uncomfortable. This is because it draws attention to the murkier areas of policing which are often out of the sight of the public. It brings to the fore a critical tension between the occupational requirements of police members to combat criminals and the organisational needs of the police agency to be accepted in the eyes of the public. Simply put, police corruption lurks in the arena where a police member's discretion starts and organisational control ends''.*

I found some of the points raised above by Newman (2002) persuasive as he invites us into the murkier world of policing. I shall argue that it is the secrecy associated with policing that has enabled institutional police corruption to thrive for decades in South Africa. One can also understand why the RSA government legislations have met with resistance and, to a greater degree, a failure to consign police corruption to history.

It is important, however, that I first take up some of the arguments presented to us by Manning and Redlinger (1991) and Punch (2009) who argued that police officers, by virtue of having dealings with criminals, are more likely to be susceptible to corruption. A police officer dealing with drug dealers may be tempted to become involved in crime if he/she believes that such involvement will go undetected.

Newman (2002) argues that 'collusion between police members and drug syndicates has been recorded in South Africa. In some cases police officials are asked by syndicates or drug dealers to use their policing powers to undermine competition from other syndicates'. But it is important that I stress here that not all police officers are corrupt; some deal regularly with criminals but are not corrupt as a result of doing so. I shall argue that police corruption is a matter of choice by the individual officer in deciding whether or not to be corrupt; they may also be socialised into a pervasive culture of corruption by their colleagues. It is difficult to measure how many police officers are corrupt within the South African police. Sekhonyane (2003:1) argues that the extent of police corruption in South Africa is no longer a debatable issue. I am persuaded by some of the arguments provided by Benson (2008) who states that 'South Africa has an arsenal of legislation and numerous structures to regulate police and to punish corrupt practices.' But too many corrupt officers are operating in an unchecked manner. The cases of national police commissioners Jackie Selebi and Bheki Cele come to mind. South African citizens were shown the extent of police corruption at the very top of the SAPS. The hypothesis proposed by the 'few bad apples' theory came under close scrutiny. The unanswered question in most of our minds was: Who was going to be next person accused of police corruption? I shall argue that the fight against police corruption should be sustained until the remaining corrupt officers are made to feel uncomfortable and resign for the benefit of our country and citizens. The fight against police corruption is a responsibility of all South Africans. But first let us examine some of the factors that may be held responsible for police corruption in South Africa.

CAUSES OF POLICE CORRUPTION

Societal Strain

South Africa is a capitalist country and in most capitalist countries of the world we are judged by our social status in society. Our status in society may be defined by the amount of our material possessions. The individuals who do not have economic power in their communities are sometimes pressurised to do all they can to be counted and respected as successful members of their communities. Some citizens may resort to unlawful acts to become successful due to societal strain (Agnew

1991). I shall argue that police officers are human beings who do not exist separately from the aspirations and expectations of the communities to which they belong. It is important that we recognise the fact that police officers are by and large a microcosm of the wider society they serve and protect. My argument is that societal strain as a result of living in a competitive capitalist society may be responsible for police corruption. The 'get rich quick' syndrome becomes the order of the day over and above the constitutional duty of the police. What we must not forget is that police officers like most of us are human beings with varied and numerous wants. The urge to satisfy some our needs may drive errant police officers into committing unlawful acts like corruption, bribery, or get paid for docket disappearance.

The use of police discretionary powers

Geoffrey Marshall (1965) referred to the case of Fisher v Oldham Corporation [1930] in explaining the concept of police accountability. He argued that

> *''the theory of constabulary independence has had a considerable impact on legislative accountability for police work. Local accountability has been hindered and its operations rendered uncertain both by the legal status of the constables and by the existence of the Home Secretary's statutory powers…For the doctrine that chief constables were not subject to control in law enforcement matters rested squarely upon the proposition that they were constables at Common Law, and the notion that constables at Common Law exercised independence rested in turn upon the doctrine that they were not in a master-and-servant relationship with anyone for the purpose of civil liability" (Marshall 1965 : 46;98).*

One can deduce from the above arguments by Marshall (1965) that the precise constitutional status of police constable remains ambiguous and not clearly defined enough for British citizens. The intriguing source of controversy stemming from the above argument is that if it is indeed assumed that the police are not in any master-and-servant relationship how can British citizens continue to respect the notion that the police are there to serve and protect the public? In reality, from the argument above provided to us by Marshall (1965), it can be argued they don't appear to serve and protect us, looking at the situation from a legal perspective.

The use of discretionary powers has been associated with the police over the years (Marshall 1965; Lurstgarsten 1986; Walker 2000; Reiner 2010). Police are not accountable to the people, contrary to what is widely believed. They are only accountable to the law. This is stated in the case of Fisher v Oldham 1956 where it was made clear by Lord Justice Denning that the police are accountable to no one but the law alone. Police use of discretionary powers may lead to unfair treatment of minorities and vulnerable groups in society. It can also lead to accepting bribes, favours and unlawful gratuities and gifts from criminal elements of society.

Miller (2003:1) argues that 'South African police are three times more likely to commit a crime than the average South African civilian.' This line of argument is supported by Benson (2008): 'this tendency can be explained by the extraordinary high levels of temptation in areas such as the investigation of organised crime and high-profile criminals who have interest in compromising and corrupting police and the fact police officials have very high levels of discretionary authority which they can exercise in circumstances where close supervision is not possible'.

In South Africa, police officers make choices about which suspects to arrest or when to arrest them. The decision to arrest may sometimes be influenced by police officers' use of discretionary powers. In some instances where money has been exchanged for protection by criminal gangs, errant police officers end up protecting criminals instead of protecting law-abiding citizens.

Lack of ethical standards

Ethical standards are rules set by organisations to ensure that their members fulfil their constitutional obligation to serve and protect. Ethical standards do not condone bribery and corruption. It is the failure of police officers to follow prescribed ethical standards that may lead to corruption in the first place. Rigorous enforcement of ethical standards is needed in the police service to consign corruption to history. Any police service where the observance of ethical standard is promoted will deliver effective more than the police service that is plagued with corrupt officials.

Political influence

I shall argue that the South African police service has become more politicised than ever. It is sometimes difficult to distinguish between politicians and the police in South Africa. One is able to reach these conclusions from the cases of disgraced SAPS National Commissioners Jackie Selebi and Bheki Cele who were both sacked for corruption.

Greed

Human greed may be responsible for police corruption in South Africa. It was widely reported that Jackie Selebi earned over R1 Million. One cannot understand why he was still taking bribes. Greed is a possible factor responsible for police corruption.

Citizens' willingness to offer bribes to the police.

A number of incidents have been brought to our attention in South Africa in which some citizens have encouraged police officers to work from a compromised position (Newman and Faull 2011). I shall argue that the unlawful act and willingness of members of the public to offer bribes to the police in South Africa has helped to create and sustain police corruption.

A failure of the police recruitment and selection processes

It can be argued that, prior to the World Cup in 2010, the South African Police Service embarked upon a large-scale recruitment process. The haste to recruit more officers in preparation for the World Cup led to a drop in standards among police officers in South Africa. From my experiences of some police officers at road blocks, I can confirm that we still do have a number of police officers who know the grounds for stopping motorists, or the legal aspects related to such stops. However, others do not know or cannot be bothered to grasp the legal aspects and rights that they are supposed to explain to the motorists they stop. When asked to do so, they sometimes respond with a level of aggression and intimidation. I have found the level of communication skills of some of the police officers I have encountered very disappointing. For these reasons I have argued that we need to look at the police and the recruitment processes again to ensure that quality officers are appointed solely on merit to the South Africa Police Service.

Police culture and solidarity.

I now present some of the definitions of police culture made available by previous researchers. Reiner (1992:109) defines police culture as 'the values, norms, perspectives and craft rules which inform police conduct'. Meanwhile, Chan (1997: 110) defines police culture as 'informal occupational norms and values operating under the apparently rigid hierarchical structure of police organizations'. According to Manning (1989:360), police culture is 'accepted practices, rules, and principles of conduct that are situationally applied, and generalized rationales and beliefs'. What we can deduce from the above definitions is that 'the police hold a distinctive set of norms, beliefs, and values which determines their behaviour, both amongst themselves and operationally out on the streets'(Loftus 2009:5).

Police culture is sustained because of the exigencies of the job in coping with things such as pressures, tensions and working under stressful conditions. It is through these informal arrangements that the police subculture endures (Reiner 1992; Waddington 1999; Chan 1997; Bayley 1996).

Solidarity

Unarguably, a police constable needs the full support of his/her colleagues whilst on duty. Police officers have a reputation for backing one another, especially when faced with violent confrontational situations. Without the solidarity and support of his/her colleagues, a police officer may find it difficult to function properly (see Holdaway 1983; Punch 2009; Loftus 2009).

Low pay

The police service is a very risky job. Many police officers put their lives on the line to protect and serve us. Not all police officers are corrupt. There should be an increase in pay at the time of joining. Police officers simply cannot manage on a salary of less than around R200,000 per annum for the type of job they do and the constitutional role they play in society. I have heard a number of people express the view that police officers are already paid enough. If they are paid enough, why are they still prone and susceptible to corruption? Better pay will enhance professionalism and integrity. This may eventually boost the morale for serving police officers. Police

salaries should be linked to performance. A reward for good performance in fighting crime successfully is imperative. If we are to attract good-calibre police officers to meet the crime challenges of the 21st century a revised salary structure is needed. If one looks at the disparity in pay between the Commissioner and the ordinary police constable in South Africa one will observe a very wide gap. Many would argue that the Commissioners of Police have more responsibilities and decisions to make. I shall argue that an unhappy workforce will never deliver efficiently and effectively when it comes to policing our communities.

SAPS initiatives to combat corruption

Newman (2002) argues that:

> *‘‘ the first explicit step the SAPS took against police corruption was establishing the national Anti- Corruption Unit (ACU) during 1995… In 1997, a SAPS Code of Conduct was developed and circulated throughout the police. All police officers were given a small plastic card with the code written on one side and the rights of the arrestee on the other. During this time a Service Delivery Improvement Programme (SDIP) was designed. This aimed at assisting police managers in identifying and solving specific problems related to the delivery of policing services at station level”.*

The ACU’s main objective was to effectively prevent and investigate police corruption within the South African Police Service. ACU made the following high-profile arrests: Assistant National Commissioner Albert Eksteen was arrested in June 2001 and charged with over 100 fraud offences, including R40,000 in false travel claims; KwaZulu-Natal Provincial Head of Organised Crime Piet Meyer was arrested in 2000 for bribery allegations. The establishment of the Directorate of Special Operations (the Scorpions) and now the new Directorate for Priority Crimes Investigations (Hawks) were part of the South African government initiatives to combat corruption.

Newham and Faull (2011:42) argued that ‘towards the end of 2010 the DPCI established a small anti-corruption unit to investigate complaints of corruption against SAPS members above the rank of Colonel.’

The SAPS also developed the ‘Service Integrity Framework’, a guide and set of initiatives to combat corruption at a national level.

Reckless corruption in South Africa today: Jackie Selebi and Bheki Cele

Jackie Selebi.

J. Selebi was appointed in 2000 as the first SAPS police chief. This was a political appointment by the ANC-led government. In 2010 Selebi was tried and convicted of corruption; he was found guilty and jailed for 15 years. It was alleged that J Selebi had received cash payments totalling about 1.2 Million Rand from convicted drug trafficker Glen Angliotti in exchange for turning a blind eye to his drug smuggling business in South Africa. During the court trial, Selebi persistently denied the charges and maintained his innocence despite the overwhelming evidence against him. Selebi was sentenced to 15 years in jail. However, Selebi has recently been released by the South African medical parole board on the grounds of ill-health. This decision has not gone down well with many South Africans for two reasons. Some have argued that Selebi was released due to his political connections and that there are so many other South Africans who have not been granted early release from prison on medical grounds. They have asked why Selebi did not serve his full sentence. Some would also doubt the wisdom of spending millions of Rand on prosecuting high-profile criminals who we know will simply not serve their full jail terms. It is a waste of time, energy and resources. One can argue that this is a mockery of our criminal justice system in South Africa where there now appears to be one rule for the powerful and connected and another rule for the poor and marginalised. The issue here is that our criminal justice system is being accused of bias and nepotism. More importantly, our criminal justice system, which is supposed to defend the rule of law, now appears to be rubber-stamping corruption and unlawful acts. This is a sad and worrying situation for our new democracy in South Africa.

National Commissioner Beheki Cele

In 2010, General Bheki Cele was summoned before parliament to explain why about 3.2 billion rands were allocated to the police for construction and renovation of police

buildings in South Africa. Cele was accused of signing unfair contracts for his colleagues and receiving kickbacks from some of the contractors. Bheki Cele was accused of signing a contract worth 500 million Rand with Mr Roux Shanbangu.

This deal was not a straightforward one and it eventually led to the suspension from office and sacking of Bheki Cele. Again, South Africa watched the media as the inquiry set up by the government and headed by Justice Moloi found Bheki Cele guilty of grand-scale corruption. The delay by President Jacob Zuma came under close debate and scrutiny. Why did it take so long to get rid of Bheki Cele? I shall argue that, during this delay, the morale of members of the South African Police Service was at an all-time low. It was becoming an embarrassment to work for an organisation that is seen by many South Africans as institutionally corrupt. Although Bheki Cele was eventually sacked, immeasurable damage has been caused to the SAPS by the South African government's indecision and failure to act swiftly to minimise the damage.

Many have asked me for my opinion on this whole issue. I think General Bheki Cele should have been sacked sooner rather than later. The delay in removing him from office not only damaged the image and reputation of the police service but also damaged the ANC-led government of President Jacob Zuma. South African citizens are becoming frustrated and less tolerant of corruption. Failure to do something about it, especially when public officials are accused of corruption, will exacerbate the anxiety caused by it. It is ironic that the people we have entrusted to serve and protect us, and to bring criminals who violate our rights to justice, are now the very people being brought to justice. I call this an ironic tragedy or a negative role and responsibilities reversal. Any society where police corruption is allowed to thrive will not be in a position to reap the desired results of democratic policing. Next, I look at the concept of democratic policing.

Democratic policing

Loveday (1995) argues that "true accountability cannot be said to exist without a fully democratic and locally-oriented structure for police accountability" (see Loveday 1995, 1999, 2003).

Democracy in this context as I understand it means giving people the opportunity to make choices about their policing needs and safety. It also means reinstating the ethos of community policing where all sections of society are allowed to participate in day-to-day matters of safety. Community policing is about crime prevention, stopping crimes before they occur in our communities. It means that local people are invited to participate in their respective communities and are given a voice to decide how they should be policed. It places the responsibility on citizens to make choices about what sort of policing they want, and to question the police about issues of safety and security that may affect them and their communities.

In South Africa today, I shall argue that we do not have democratic policing as described above. Although we have police community forums, members of our communities do not feel that police listen enough to them, neither do they have trust or confidence in the police especially in view of the extent of police corruption reported in the South Africa media.

I stumbled across a recent document published by the South Africa Police Service entitled 'Annual Report 2010/2011'. Surprisingly, corruption did not appear on the current list of crime challenges facing the South African Police Service. I take this either as an oversight or a deliberate attempt by the South African Police Service management team to avoid addressing endemic corruption within its rank and file. Police corruption in South Africa will not go away without all citizens first joining in the long-standing struggle to consign corruption to history. From my observation, it has become more or less a competition between the police and politicians in South Africa as to who will be more corrupt. Democracy is endangered by the collaboration between the police and the politicians in turning a blind to corruption in our society. Corruption permeates our institutions in South Africa.

South Africa is witnessing a rise in 'tenderpreneurs' - a process of applying for tenders to provide basic services for the citizens of South Africa - has become more of a lucrative venture characterised by grand scale corruption, as some municipalities are enmeshed in corruption scandals as a result of it. Police corruption and civic corruption in South Africa are inseparable because they serve one purpose collectively to impoverish the marginalised citizens of South Africa. The

ruling elite in South Africa benefit more from corruption than the ordinary citizens; we should be clear about this from the outset.

Newman (2002) argues that 'managers themselves may be beneficiaries of corruption. They may also believe the personal costs they face in tackling it are too high. For a police agency to effectively act against corruption, managers must have the willpower, authority and organisational support to do so...when a police agency is serious about tackling corruption, its managers must actively share this commitment'.

Benson (2008), entering the debate on police corruption, argues that 'corruption may not necessarily be the foremost national priority, but if not addressed in all spheres, by all citizens who call themselves 'proudly South African', it has the potential to undermine all the initiatives in our country aimed at uplifting and empowering its citizens.' This is a line of argument I am prepared to follow.

POSSIBLE SOLUTIONS TO POLICE CORRUPTION IN SOUTH AFRICA

- The SAPS selection and recruitment process needs to be reviewed as a matter of urgency. The World Cup has come and gone. It is high time that SAPS started to work on recruiting high-calibre officers of integrity who are willing to serve the citizens of South Africa
- It is vital to increase the detection of and punishment of corrupt acts in order to deter all officers in each department from engaging in corrupt acts (Sherman 1983:146).
- Early warning systems need to be put in place to carefully monitor suspect police officers who might be vulnerable to corruption.
- Police accountability is needed now in South Africa. When setting the parameters for the police disciplinary process, care should be taken to ensure it is efficient, reliable and transparent.
- The IPID needs to be given more constitutional powers to be able to investigate the police in South Africa.
- Professionalisation of SAPs: Officers should see the police service as a long-term career in which they are equipped with both academic skills and the

practical knowledge needed to do their jobs effectively. Police officers should be allowed and encouraged to study and gain qualifications. This would give them something to rely on whilst in service and even after their retirement. The United Kingdom has already commenced the professionalisation of the police service (see Neyroud Report 2010).

- Whistle-blowers who have the moral courage to break the unofficial code of silence and turn their colleagues in should be protected and rewarded.
- There should be tougher sentences for corrupt police officers and new legislation ensuring that all police officers convicted of corruption serve their full term in prison.
- Property should be confiscated if it is traced to corruption.
- Pensions should be frozen for corrupt police officers.
- Members of the public should be encouraged to report corrupt police officers.

CONCLUSION

South African citizens are running out of patience with the grand-scale corruption among police officers. We have become used to reports of corruption in South Africa. Police officers, by virtue of their role in society, are not supposed to be corrupt. We rely on them to serve and protect us diligently. There is nothing as disappointing as seeing police officers being sent to jail. This erodes public confidence in the police. Corruption has become a pervasive trend in South Africa. Sometimes, it is difficult to tell whether the politicians are more corrupt than the police. Whichever way we look at it, corrupt police officers lose their legitimacy to protect and serve us all. Corruption in the South Africa Police service is no longer a conceal phenomenon but an open one. The South Africa police Service is faced with one choice to win the hearts and minds of South African citizens or stands the risk of losing the legitimacy to protect and serve the people of South Africa. The last our new democracy wants is lack of police accountability. If we are unable to work very hard collectively to consign corruption to history and do nothing about this problem, it may be at the expense of our new democracy in South Africa.

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5. AN INVESTIGATION INTO THE DEATH PENALTY AS DETERRENT AGAINST CRIME

Gunputh, R.P.[8]

La peine irréparable
suppose un juge infaillible''-
Victor Hugo

ABSTRACT

Is the dispute surrounding the death penalty in Mauritius an undying problem? The debate on the abolition of the death penalty, and whether it should be reintroduced, has never been so controversial in so many countries as today. Despite the fact that the crime rate is increasing on the island and that its inhabitants have to deal with some of the most heinous crimes - like murder, rape and trafficking of dangerous drugs - there are pros and cons involved with regard to the possible reintroduction of the death penalty that have to be taken into consideration. This article, which contains primary data collected from the local population as well as secondary data obtained from the Central Statistics Office, reflects on the extent to which the death penalty might be a deterrent or not, especially if viewed against the background of crimes like murder and rape being committed in this country.

INTRODUCTION

The miscarriage of justice, strong violations of human rights, corruption, political instability, unemployment, discrimination and poverty - to name but a few examples - explain to some extent why the death penalty cannot be reintroduced in Mauritius. In this research paper, the author deliberates, with the help of facts and figures, on whether the reintroduction of death penalty will act as a deterrent to crime and stop the increasing rates of criminality in Mauritius or whether, like cases in the USA where some States have retained the capital punishment, the death penalty will have little or no impact on crime rates. Our domestic law provides that people must not kill

[8] Associate Professor in Law. University of Mauritius

or commit murder but criminal codes affirm that murderers must be killed. It does reflect ancient capital punishment or Mosaic Law. Consequently, capital punishment is the most premeditated of murders. Worst, historical penalties such as crucifixion, stoning to death, decapitation are as barbarous as hanging, lethal injection and poisoning in a gas chamber of our modern civilisation. The electric chair, introduced in 1890, remains the most common form of execution until the 1980s. The capital punishment as a form of punishment was earlier a current one in Great Britain and being a colony of the British Empire, Mauritius equally inherited this practice and the last execution took place in 1987. However, though Mauritian law is inspired by Common and Roman Law, each country nevertheless has its own specificities,

customs, traditions and usages. In the absence of any Islamic or Sharia law there is

no death penalty in Mauritius. It does not prevent government, laic or not, to impose Sharia law (Egypt, Libya, Sudan, Equatorial Guinea, Bahrain, Syria, Yemen, Somalia, Bangladesh, Malaysia, Pakistan, Iran, Saudi Arabia) and together with China and the USA to be responsible for 93% of the world's executions. Many countries have condemned China for its 7000 death sentences in 2008 and around 1718 in 2009. On the African continent Mauritius is notorious as a country of human rights and is a model for its fair and free elections. Prior to its independence on the 12th March 1968, Mauritius inherited a written Constitution, drafted by Professor De Smith from the University of Cambridge, which is the supreme law of the land. Chapter II of the Constitution 1968, entitled fundamental rights of the Citizen, reproduces international human rights instruments such as the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950) and the International Covenant on Civil and Political Rights (1966). Democratic and a member of the Commonwealth, Mauritius has signed and ratified a large number of treaties and conventions which favour human rights, and the abolition of the death penalty was in line with the essence of human rights and other international institutions like the United Nations, the International Committee of the Red Cross and Amnesty International. However, this is not the main reason why there shall be a

legal blow against the death penalty.

Perceived as lawful murder and coupled with miscarriages of justice, the government of Mauritius passed The Abolition of the Death Penalty Act, 1995 which

was merely suspended in 1995, and which can be reintroduced by a simple majority vote.

However, an increase of carnal and abominable crimes against its nationals and tourists has urged the government and the legislature to think anew about the re-introduction of the death penalty. The question to ask about death penalty is whether murderers have the right to life or do they forfeit this right by killing someone? Irrespective to what they have done or committed, torturing criminals by lethal weapons or by an electric chair or beheading is deemed to be an insult to human dignity. Even if there is death penalty, people do not think about it when they commit a violent or capital crime. In its local context, through facts and figures (1980-2010) this article will clarify whether the death penalty is justifiable in Mauritius or not based on a field research (information gathered from the Central Statistics Office, local newspapers and surveys) carried out by the author.

Table 1 Trend of murder rate in death penalty States and in non-death penalty States

Murder Rate in Death Penalty States*	9.5	9.94	9.51	9.69	9.23	8.59	7.72	7.09	6.51	5.86	5.70	5.82	5.82	5.91	5.71	5.87	5.90	5.83	5.72	5.26
Murder Rate in Non-death Penalty States	9.16	9.27	8.63	8.81	7.88	6.78	5.37	5.00	4.61	4.59	4.25	4.25	4.27	4.10	4.02	4.03	4.22	4.10	4.05	3.90
Percent Difference	**4%**	**7%**	**10%**	**10%**	**17%**	**27%**	**44%**	**42%**	**41%**	**28%**	**35%**	**37%**	**36%**	**44%**	**42%**	**46%**	**40%**	**42%**	**41%**	**35%**

(Source: figures compiled by the author)

WHY THE DEATH PENALTY?

From 1715 to 1810, the then Isle de France, now the Republic of Mauritius, was under French colonisation and inherited the French Penal Code which still prevails. Crimes such as rape, murder, sodomy and drug trafficking are very often in a small island like Mauritius with only 1.3 million inhabitants. Death penalty in Mauritius is a hot debate and parliaments are divided on the subject-matter (Figure 1, Figure 2 and Table 1). In Mauritius, though there is life sentence and imprisonment for penal servitude there is a consensus that penalties are often too lenient. According to Figure 1 and Figure 2 report that crimes are on the rise especially for drug trafficking and various road accidents and contraventions (there are traffic jams and cameras may account for this).

Figure 1: Reported offences: Republic of Mauritius: 1996-2006

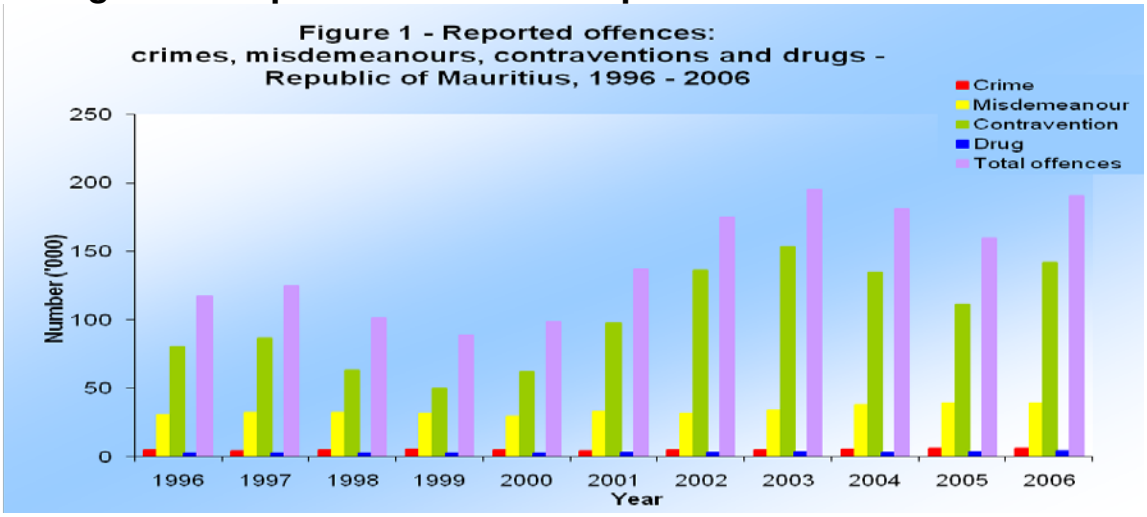
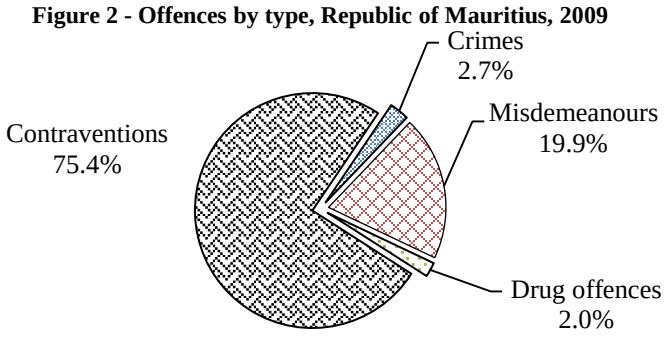


Figure 2 shows the main offences in Mauritius. Under the Dangerous Drugs Act, offenders were punished by capital punishment (capital punishment has now been abolished in Mauritius). Table 2 reflects to what extent crimes such as misdemeanours are in the rise on the island and poverty and high rate of unemployment in some sensitive areas in the country may also account for this.

Figure 2: Offences by Type: Republic of Mauritius: 2009



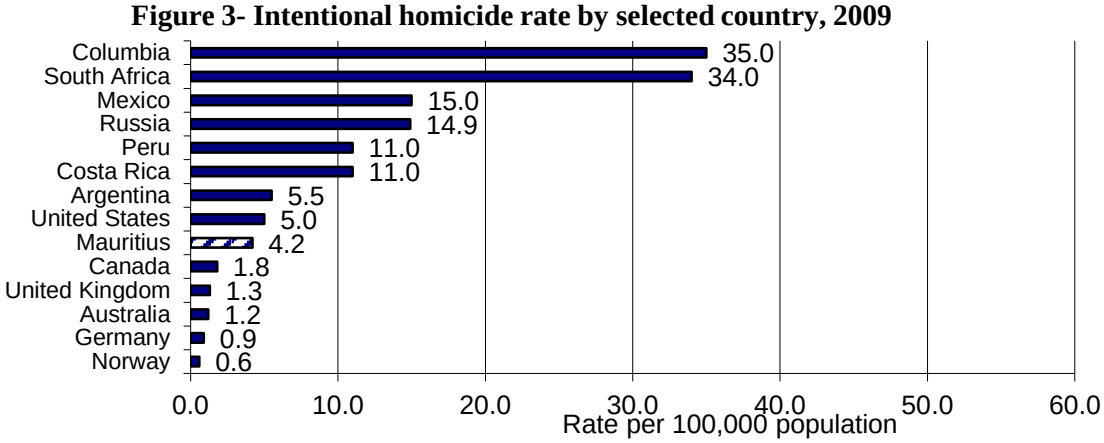
It is true that the crime rate in Mauritius is increasing but it is relatively less than in most other countries. Figure 3 reveals that intentional homicide rate by selected country; in 2009 was 4.2 only whereas Columbia has an impressive 35. In countries like Columbia, South Africa or the USA crime rate is high but they are different explanations: in Columbia corruption and exportation of drugs among local dealers are high whereas in South Africa some areas suffer from unemployment and in the USA crime rate is high as the local mafia including people from the streets have access to weapons, guns and rifles easily.

Table 2 - Offences reported by type, Republic of Mauritius, 2008 & 2009

Offences	2008		2009		2008 to 2009
	Number	%	Number	%	% change
Crimes	6,458	3.6	5,437	2.7	-15.8
Misdemeanours	43,738	24.6	40,670	19.9	-7.0
Drug offences	4,217	2.4	4,144	2.0	-1.7
Contraventions[1]	123,690	69.4	153,683	75.4	24.2
of which road traffic contraventions	*108,939*	*61.2*	*142,535*	*69.9*	*30.8*
All offences	**178,103**	**100.0**	**203,934**	**100.0**	**14.5**

[1]Figure for 2009 includes 29,569 road traffic contraventions established by camera.

Figure 3: Intentional Homicide Rate: Various Countries: 2009



The tourism industry

For the first time; apart for its beaches, food and sun; it is important to reveal the other side of the picture: crime rates are increasing exponentially, unemployment is also high in some areas of Mauritius, and corruption is corroding the country just to name a few. Therefore, it is prudent to find out whether the death penalty or capital punishment is a solution to bloodshed in tourist destination countries like Mauritius?

It is not denied that Mauritius, like most paradise-islands in the Indian Ocean, is a tourist destination country but facts and figures reveal that there is bloodshed in paradise as well. Would unemployment rates account for this? Would the reintroduction of the death penalty have a serious impact on the tourism sector and how would tourists react to this brutal change from abolition to reintroduction of the capital punishment? The Mauritius case study is a very sensitive one. It is not denied that in addition to major developments in the film industry and other 'bollywoodian' films the tourism sector is also contributing to the socio-economic development of the country but in return some of them have even been raped and even murdered (the famous Michaela Harte case where she was murdered by strangulation during her honeymoon in Mauritius) for their contribution to the welfare of the nation. Tourists are not always victims. Very often they are arrested at the airport and after search and seizure they are found in possession of dangerous drugs (opium, subutex and heroine) which are strictly forbidden under the Dangerous Drugs Act 2000.

Mauritius is internationally known as a famous tourist destination. Since the price of sugar has recently been falling by 36% on the Common Market, the government's current policy is to make Mauritius a tourist industry with a target of two million tourists per year in forthcoming years. It is hoped that this would contribute to the growth of the Mauritian economy and shall promote sectors such as small and medium enterprises and the film industry. However, as unemployment and poverty are on the increase, there seems to be a lack of political stability, the Mauritian rupee is unstable, and household goods are getting more and more expensive. All of these factors may lead to a rise in crime rates that will pose a threat to the well-being of tourists in particular and Mauritians in general.

Table 3 - Reported number1 of victims by type of selected offences2, Island of Mauritius, 2009

Number

Offences	Port Louis	Pample-mousses	Riviere du Rempart	Flacq	Grand Port	Savanne	Plaines Wilhelms	Moka	Black River	Total	Rate[3]
Homicides	**8**	**16**	**8**	**8**	**10**	**3**	**27**	**2**	**11**	**93**	**7.5**
of which											
Murder	5	5	2	5	5	1	11	1	3	38	3.1
Involuntary homicide (fatal road accidents)	3	10	4	0	3	1	12	1	8	42	3.4
Assault	**2,116**	**1,451**	**1,633**	**1,580**	**1,586**	**1,307**	**3,168**	**721**	**689**	**14,251**	**1,151.8**
of which											
Simple Assault	2,071	1,427	1,620	1,562	1,569	1,300	3,100	713	675	14,037	1,134.5
Sexual offences	**82**	**32**	**39**	**39**	**30**	**21**	**97**	**17**	**30**	**387**	**31.3**
of which											
Rape	12	5	6	3	6	2	10	3	8	55	4.4
Sodomy	17	2	3	8	5	5	12	6	3	61	4.9
Other offences	**104**	**35**	**27**	**85**	**26**	**40**	**170**	**42**	**31**	**560**	**45.3**
of which											
Administering noxious substance	13	1	1	0	0	0	3	0	1	19	1.5
Involuntary wounds and blows	55	29	18	80	19	38	143	36	25	443	35.8

[1] Includes selected offences against persons and morality only (see list in Glossary)

[2] A person may be victim of one or more than one offence and/or an offence may involve one or more victims.

[3] Rate of victimisation per 100,000 population

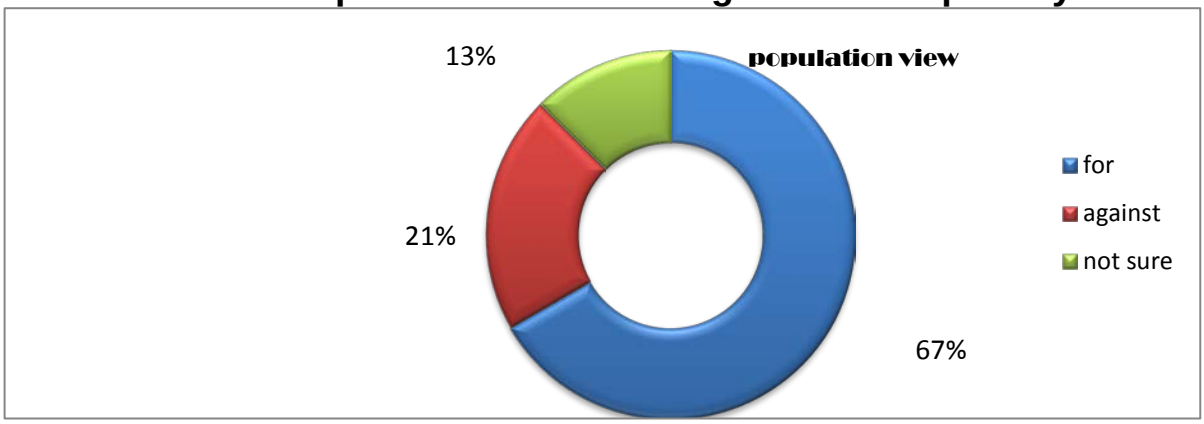
Table 3 gives an overview of crime rates in the different towns and villages of the country. Since Port Louis is the capital of the country it contains more than one third of the population (around 350,000 people) during week days as the country is centralised in the capital only. Crime rates are also high in some villages - especially against tourists where crime range from larceny to rape and even murder. The dream of making Mauritius a new economic ‘tiger’ (like Singapore) in the Indian

Ocean became more than a disillusion. One major obstacle to the tourism industry is that crime rates (and particularly crimes against tourists) are on the increase. Crimes which affect tourists, in particular, are rape, murder, and larceny. Actually, there is too much bloodshed in 'Paradise Island''. The question is whether the reintroduction of death penalty as a sentencing tool would decrease crime in Mauritius or whether this outcome is but a myth?

Is death penalty justifiable in Mauritius?

There are many controversies (Chart 1 and Table 4) regarding the death penalty in Mauritius. The legislature intends to reintroduce the death penalty but a survey indicated that there is still strong support from partisans for its abolition. Since the abolition of the death penalty was suspended in 1995, ratification of the Second Optional Protocol to the International Covenant on Cultural and Political Rights, an instrument that would effectively abolish the death penalty in Mauritius. However, some people prefer to say that there shall be capital punishment for the most heinous crime (murder and rape) only.

Chart 1: Population view for or against death penalty

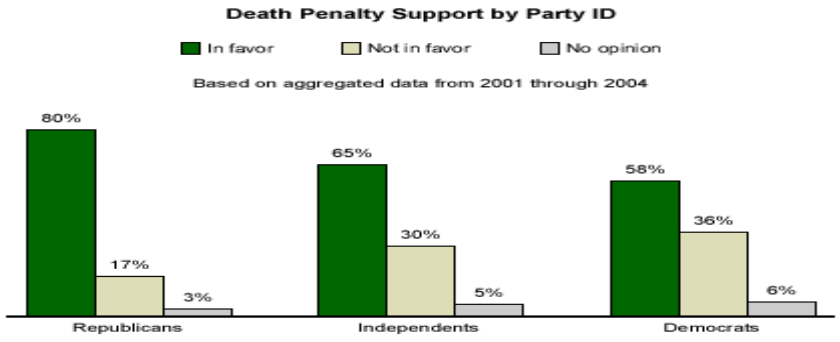


A survey across the population demonstrated that if 67% of the population is for the death penalty nevertheless 21% are still against and 13% of the population interviewed are still without opinion or were not sure about their decisions.

Does capital punishment act as a deterrent against drugs trafficking and murder in the absence of any chance to rehabilitation? As a result of miscarriages of justice

and especially in Mauritius, there is also a very strong risk that innocent people may face the death penalty. Some people may be would be alive in Mauritius had there been no death penalty and approximately 50% of the Supreme Court rulings have been overruled on appeal before the Judicial Committee of the Privy Council. However, according to statistics all sorts of crimes are on the increase. Research has been carried out to assess whether The Abolition of Death Penalty 1995 has a direct bearing on crimes and whether the reintroduction of death penalty, a very controversial issue actually in Mauritius, would eventually decrease the actual rising number of crimes in Mauritius? Though there is a high criminality rate in the country there are, however, some good reasons why there cannot be death penalty in Mauritius while a very few countries in the Indian Ocean have maintained death penalty (Comoros). Reasons for the abolition of death penalty in Mauritius are continually fuelled by political, legal, moral and sociological motives. Elsewhere, in some American states such as Florida, Louisiana, Georgia and in Mississippi, death penalty is now a way of life. Indeed there is no consensus for the abolition of the death penalty in the USA. If the USA abolished the death penalty can they reintroduced it? As Table 4 clearly explains, it is more of a political nature and second some federal States where the Republicans predominate are in favour of the death penalty.

Table 4: Death Penalty Support by Party ID



(Table 4)

While the death penalty was still in force people were put to death for crimes they did not commit and many death row prisoners were then acquitted after miscarriages of justice have been proved by independent investigators or after DNA testing. Unable to reduce neither crime nor does it reduce public fear of crime, the death penalty by

itself is arbitrary in its administration (Furman v. Georgia 1972, 408 U.S. 238) and the execution of innocent defendants is inevitable in case of miscarriages of justice, improper evidence or ill-gotten evidence, revenge and corruption which prevail everywhere especially in totalitarian or apartheid regime (Chart 2).

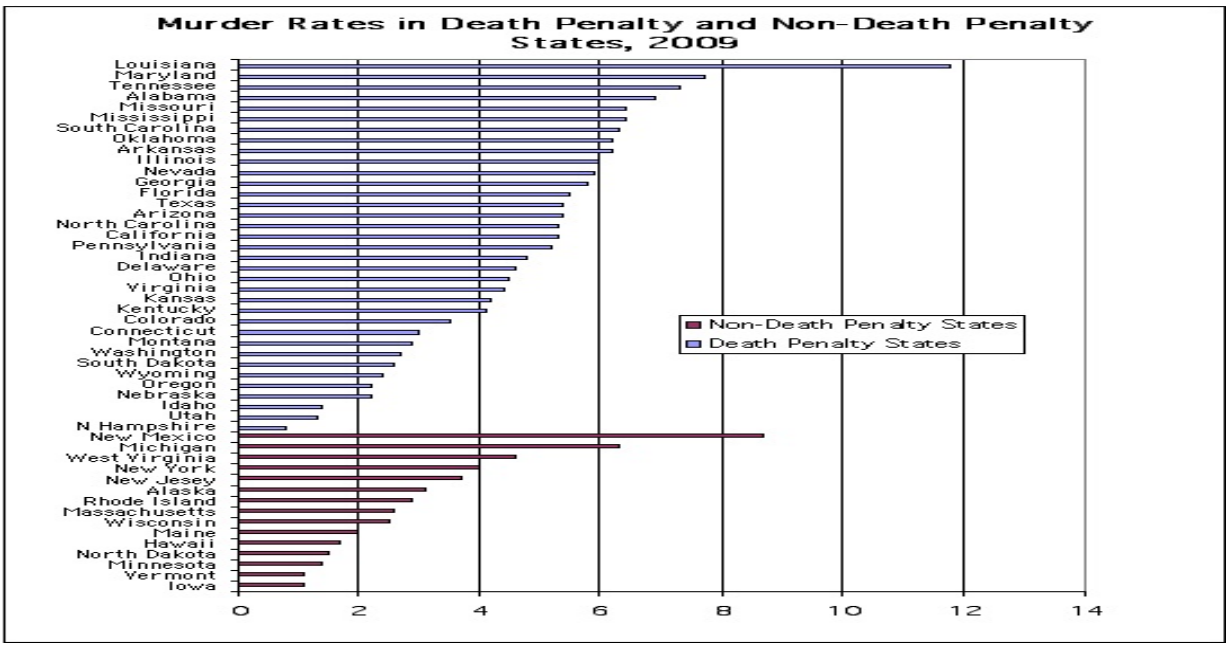


Chart 2.Murder rates in death penalty and non-death penalty States

Though some developed countries have an arsenal of forensic materials these facilities are still deplored by most forensic science officers in Mauritius and consequently some heinous crimes like that of Nandine Dantier and Michaella Harte, among many, remain still unsolved. Had there been death penalty in Mauritius would heinous crimes committed be on the decrease? Paradoxically, according to Table 4 in American states where death penalty still prevails murder rates are higher than non-death penalty States. This explains to some extent why partisans of the abolition of death penalty claimed that capital punishment is not a deterrent to crimes and that death penalty is not a solution.

Chart 3 Death penalty States have higher murder rates than non-death penalty States

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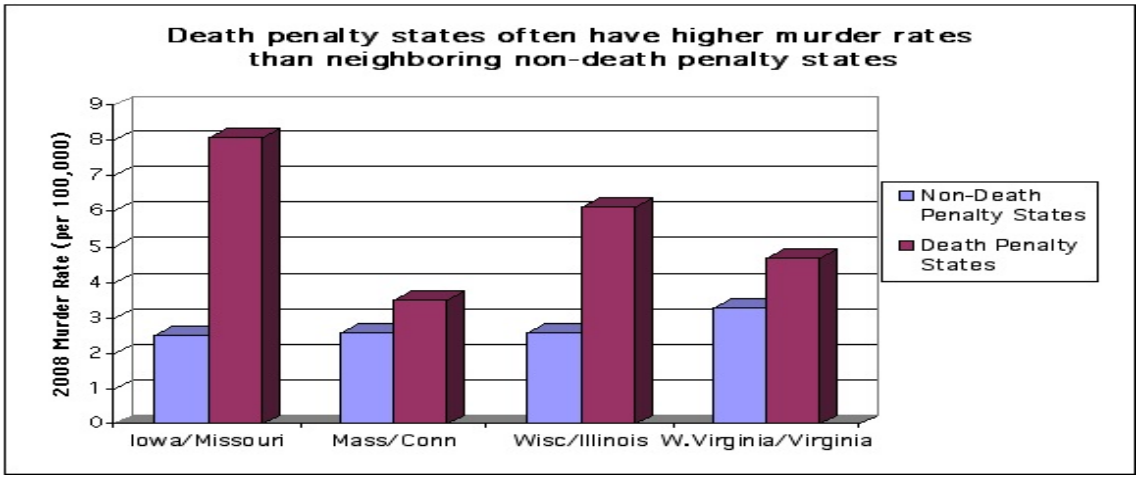
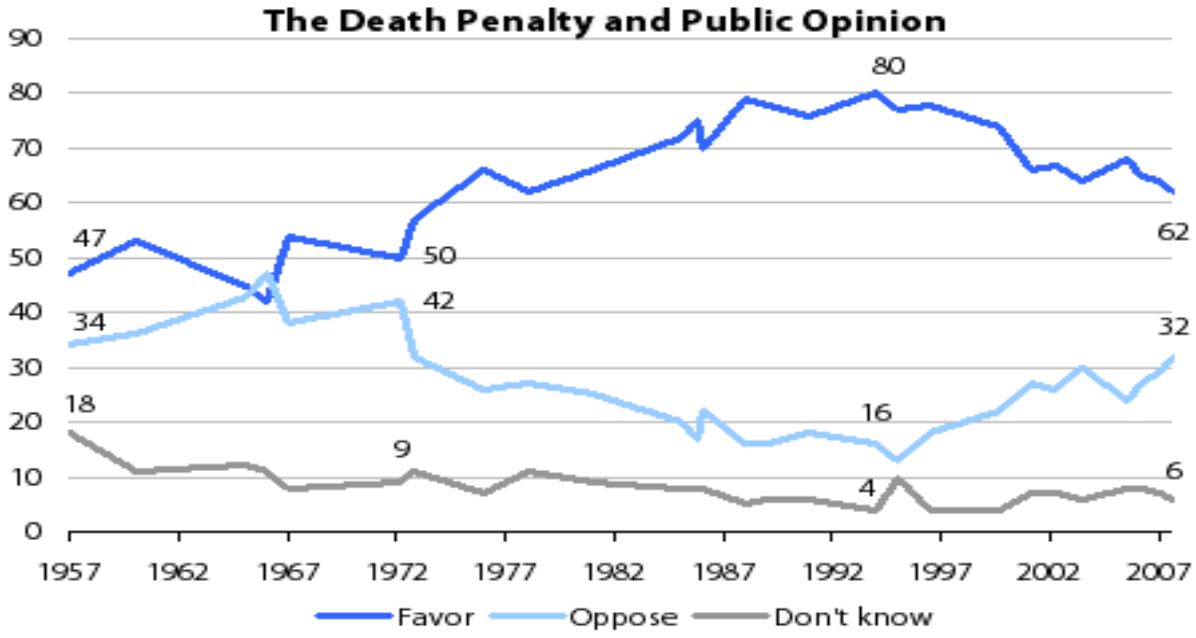


Though the rate of incidence of crime is relatively low in Mauritius compared to other countries cases for crimes reported to the police are increasing exponentially and account for a higher percentage of the local population who advocates for the death penalty (see figures below). With time more and more Mauritians are in favour of the death penalty because crime rate is on the increase (Figure 4).

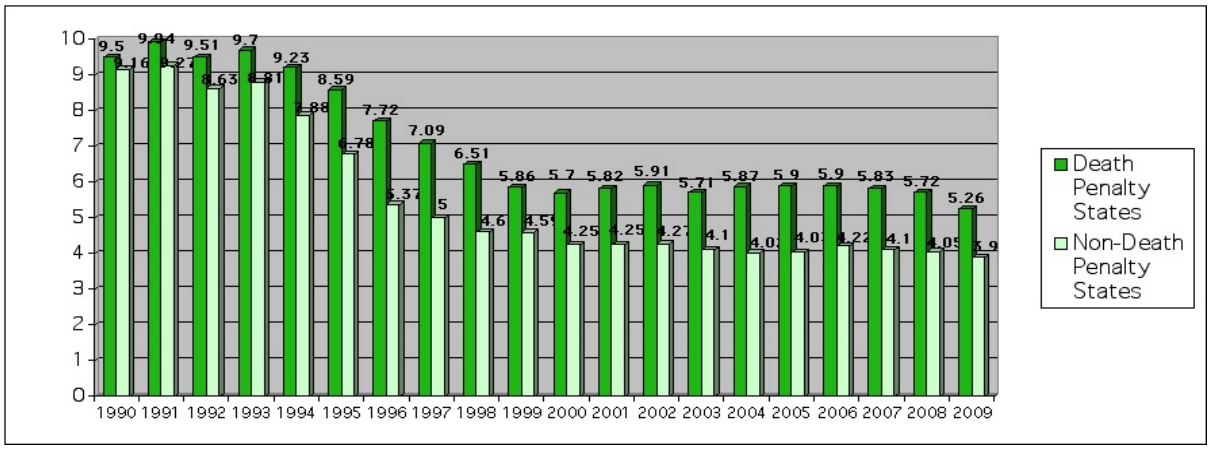
Figure 4. Public opinion about death penalty in Mauritius

Heading



Despite the fact that all individuals in Mauritius enjoy fundamental rights such as freedom of expression and movement, protection against discrimination, right to a fair trial before an independent and impartial court had not there been any conditional leave (section 81 of the Constitution) or special leave to the Judicial Committee of the Privy Council (JCPC) in England, the accused or suspect would have been sentenced, convicted and hanged had there been the death penalty in Mauritius. Indeed, a number of cases (Hurnam v. Paratian9, Tengur v. BEC[10], Panray v. The State[11] or Dilchand v. DPP[12] just to name a few) have shown that whenever appeal was allowed by the judges of the Supreme Court to the JCPC or on special leave eventually it was held by the Lords of the JCPC that, inter alia, the decisions reached by the Supreme Court were very often bad in law.

Table 5. Cases reported by type, Island of Mauritius, Island of Rodrigues & Republic of Mauritius, 2008 & 2009

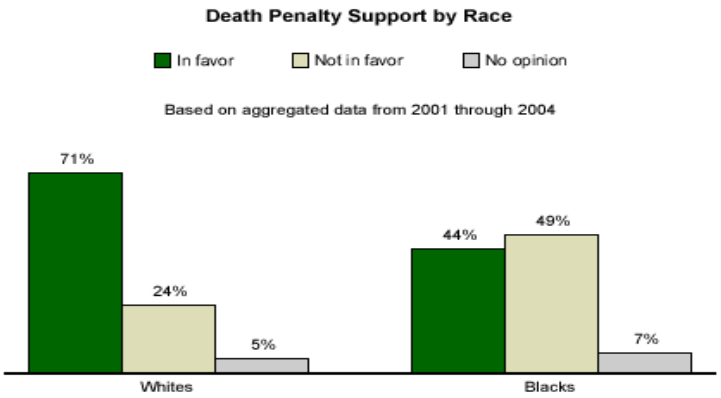


To what extent are decisions of the Supreme Court reliable? It is implied therefore that not all decisions reached by the Supreme Court are the proper one. In the famous case of Roger de Boucherville the JCPC, on the 09th July 2008, found that la condamnation à perpétuité or life sentence was unconstitutional and he was released on Friday 18th February 2011, after 25 years imprisonment. It is a matter of common sense that had there been capital punishment in Mauritius Roger de Boucherville would have been sentenced to death. Unfortunately, there is still in

[9] *Hurnam v. Paratian*
[10] *Tengur v. BEC*
[11] *Panray v. The State*
[12] *Dilchand v. DPP*

Mauritius a significant degree of unfairness and arbitrariness in the administration of justice before and after The Death Penalty Act 1995 came into force. It has never been denied that the accused may not have enjoyed a fair trial before our local courts (Ng v. The Queen13, an important JCPC's case where the Lords deplored the fact that not all evidence have been heard in court). In a multiracial country like ours discrimination, despotism and nepotism and bribery are very common among the population and politicians are corrupted. Though the Prevention of Corruption Act was passed, but apart from some few public officers and civil servants, there is still no politician behind bars. Whatsoever, there is a fear that to eliminate race prejudice we often discriminate by race as well. Racial (McClesky v. Kemp, 481 U.S. 279, 1987 where it was held that defendants who killed white persons were significantly more likely to be sentenced to death than those who killed blacks) and sexual discrimination, though latent and virtually inexistent for some people, are still a major problem in some sensitive areas of the country (Roche Bois and Sainte Croix have been identified as marginalised areas) where unemployment is still relatively low and those who are found at the bottom of the economic ladder. Race, religion and cast are ambiguous variances that may influence sentencing decision in capital punishment cases (see chart below).

Chart 4: Death Penalty Support by Race



Just like other countries Mauritius too has its marginalised people who are *laissé pour compte*, suffering from insanity, retarded (by birth for example) or who are considered odd or unusual in our society may commit murder, rape and other

[13] Ng v. The Queen

atrocities. Unless they are sent to an asylum once more they may be sentenced to death had there been capital punishment in Mauritius.

Consequences of reintroducing death penalty in Mauritius.

True is it that nobody is born a murderer but crimes are acts which may be provoked by anger, stress, alcoholism, loss of temper, provocation, insanity, self-defence and jealousy. In addition, there are psychological and biological explanations as well (Table 6).

Table 6. Cases reported by type, Island of Mauritius, Island of Rodrigues & Republic of Mauritius, 2008 & 2009

Number

Cases	2008			2009		
	Island of Mauritius	**Island of Rodrigues**	**Republic of Mauritius**	**Island of Mauritius**	**Island of Rodrigues**	**Republic of Mauritius**
Crimes	6,340	118	6,458	5,286	151	5,437
Misdemeanours	42,771	967	43,738	39,628	1,042	40,670
Drug offences	4,156	61	4,217	4,081	63	4,144
Contraventions	120,215	3,475	123,690	150,305	3,378	153,683
of which road traffic contraventions[1]	*105,823*	*3,116*	*108,939*	*139,636*	*2,899*	*142,535*
All offences	**173,482**	**4,621**	**178,103**	**199,300**	**4,634**	**203,934**
Other occurrences	69,175	1,254	70,429	66,783	1,283	68,066
Total cases	**242,657**	**5,875**	**248,532**	**266,083**	**5,917**	**272,000**

(1 Figure for 2009 for Island of Mauritius includes 29,569 road traffic contraventions established by camera.)

There are other circumstances that make a man a murderer as well. In Mauritius, however, inadequate socialization is one of the main reasons why the trends in crime are high. For instance, the social environment (poor parenting skills, peer influence, drugs and alcohols, poor education) and political climate (corruption, political

influence, poverty) that prevail actually in Mauritius may also play a key factor in pushing juveniles to join gangs, racketeers and other delinquents to commit theft, rape and murder. The young generations (Table 7) are also easy preys to terrorists who incite them to perpetrate political crime (assassination of political leaders, bombing and kamikaze, airplane hijackings) in the name of god.

Table 7 - Juvenile offenders according to United Nations classification of offences, Republic of Mauritius, 2008 & 2009

Offences	2008	2009	2008 to 2009
	Number		% change
Intentional homicide	9	3	-66.7
Assault and related offences	275	283	2.9
of which simple assault	*268*	*281*	*4.9*
Sexual Offences	68	47	-30.9
of which rape	*9*	*5*	-44.4
Fraud and dishonesty	0	1	-
Embezzlement	2	0	-
Theft	196	199	1.5
Drug offences	32	42	31.3
Contraventions	388	649	67.3
of which road traffic contraventions	*301*	*591*	*96.3*
Other offences	97	190	95.9
Total	**1,067**	**1,414**	**32.5**

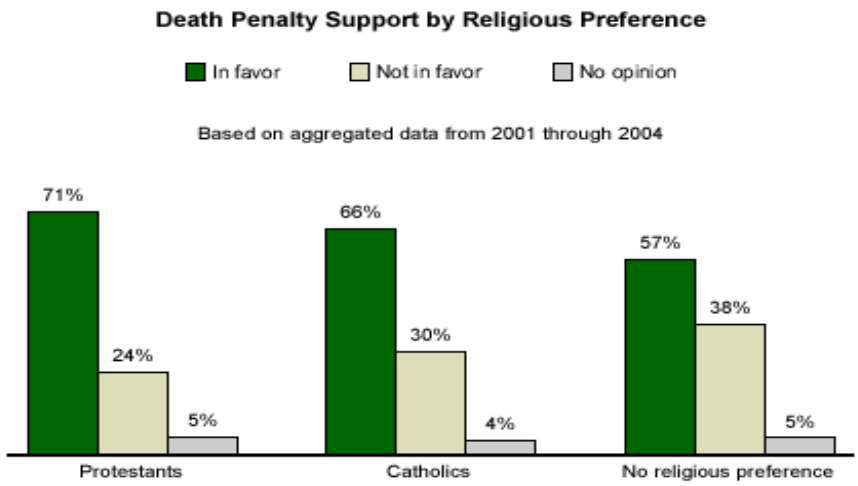
Now with internet facilities and cyber cities which are mushrooming on the island, individuals are more and more influenced by erotic and pornographic materials and may link on several websites with paedophiles coupled with the mass media which promotes gun crime and violence by the film industry. Some of them may also be encouraged by easy money, or unless they are under duress, to bring dangerous drugs in Mauritius, to be arrested at the airport and convicted to face the death penalty before its abolition on the 14th December 1995 (Table 8).

Table 8 - Offence rate by type, 2008 & 2009

Offences	Rate per 1,000 mid-year population					
	2008			2009		
	Island of Mauritius	Island of Rodrigues	Republic of Mauritius	Island of Mauritius	Island of Rodrigues	Republic of Mauritius
Crimes	5.2	3.1	5.1	4.3	4.0	4.3
Misdemeanours	34.7	25.7	34.5	32.0	27.6	31.9
Drug offences	3.4	1.6	3.3	3.3	1.7	3.3
Contraventions	97.7	92.5	97.5	121.5	89.5	120.5
All offences	**140.9**	**123.0**	**140.4**	**161.1**	**122.8**	**159.9**
Offences (excl. contraventions)	**43.3**	**30.5**	**42.9**	**39.6**	**33.3**	**39.4**

Indeed, though Mauritius is a laic country it also profoundly dominated on ethical grounds and religious beliefs with a population which is comprised of a mixture of Asian (80%), African (19%) and European (1%) origins and each religion has preserved its customs and traditions. In the overall most religions, and to the exception of a very few, in this country considered that life is God gifted and death penalty is a form of barbarous action against the law of nature (see Chart below).

Chart 4: Death Penalty Support by Religious Preference



True is it that murders bring sorrows to the family of the victims but death penalty is even more illegitimate when the individual is convicted for his wrong doing. He is punished twice for the same offence, especially in poor countries where employment is low and there are no strategic measures for poverty eradication, because in case he is the bread winner (as it is in most cases), his family is also penalised especially when unemployment is high in certain areas where there is prostitution, drug addicts and barons who live on drug trade.

Table 9 - Reported offences according to United Nations classification of offences, Republic of Mauritius, 2008 & 2009

Offences	2008	2009	2008 to 2009 % change
	Number		
Homicide and related offences	**107**	**105**	**-1.9**
Intentional homicide (committed)	48	54	12.5
of which murder (incl. infanticide)	*36*	*40*	*11.1*
Intentional homicide	11	8	-27.3

(attempted)			
Non intentional homicide	48	43	-10.4
Assault and related offences	**14,307**	**14,509**	**1.4**
of which simple assaults	*14,159*	*14,235*	*0.5*
Sexual offences	**413**	**442**	**7.0**
of which rape	*69*	*57*	*-17.4*
sodomy	*63*	*64*	*1.6*
Fraud and dishonesty	**1,083**	**1,074**	**-0.8**
Embezzlement	**736**	**625**	**-15.1**
Theft	**20,090**	**16,836**	**-16.2**
Automobile theft	974	840	-13.8
Theft (excl. automobile theft)	15,390	12,540	-18.5
of which simple larceny	*10,567*	*8,589*	*-18.7*
Robbery	1,260	1,410	11.9
Burglary	2,466	2,046	-17.0
Drug offences	**4,217**	**4,144**	**-1.7**
Contraventions	**123,690**	**153,683**	**24.2**
of which road traffic contraventions	*108,939*	*142,535*	*30.8*
Other	**13,460**	**12,516**	**-7.0**
of which offences under			
Computer misuse and Cybercrime Act	*	*130*	-
Information and Communication Technology Act	*	*991*	-
Total	**178,103**	**203,934**	**14.5**

* Figures on these specific offences were not collected separately in 2008.

CONCLUSION

Crimes are a poison in our society but death penalty is not the antidote we can expect for. Problem of crimes must be dealt at root level and this can be achieved by providing an effective educational system where morality, ethics and values go in pair with academic excellence. Mauritius needs reformative punishment but it is too costly effective. From now onwards supporters of the death penalty shall think twice because if innocent person is executed then they can longer justify capital punishment and they cannot encourage death penalty as a response to evil. Can we combattre le mal par le mal that is the famous ‘an eye for an eye and a tooth for a tooth’ (Mosaic Law) or shall we have a desire to civilise? For the moment one thing is clear: those who have supported the death penalty became outspoken critics of capital punishment. There is enough food for thought: shall more and more Mauritians approve of the death penalty, may politicians favour the death penalty just to win the election as it is usually the case? Whatsoever, for the time being one thing is sure: death penalty remains an undying problem in Mauritius.

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6. CRIMINAL JUSTICE SOCIAL WORK PRACTICE FRAMEWORK FOR WORKING WITH VIOLENT YOUTH OFFENDERS

Holtzhausen, L.[14]

ABSTRACT:

Criminal Justice Social Work Practice Framework for Working with Violent Youth Offenders [15] focuses on the practice of social work in a criminal justice setting. It examines areas of critical importance for those who work with a unique and complex client system; the violent youth offender. The challenge in this particular 'landscape' is to effectively address the offender's social well-being needs in a humane and professional manner whilst working in a system that is predominantly punitive in nature. What makes the criminal justice setting so complex is that those who offend often have a multitude of risks that may emerge as difficult sometimes violent behaviours during intervention. This situation is compounded by the fact that social workers are often called upon to function in an environment (like a police cell, courtroom, prison or secure care facility), that may be under-resourced, frustrating, uncertain, potentially dangerous and very stressful. This article describes and explains a uniquely South African criminal justice framework for identifying and addressing offending behaviour, reducing the risk of reoffending and restoring the harm of crime[16].

Case Illustration: Pre-sentence assessment of a young offender

The following Case Study is about a young adolescent, Joseph Hlongwane[17] who was charged for aggravated assault in January 2005. Although this is a fictional case, it is based on typical pre-sentence assessment reports compiled by forensic social workers at the local Magistrate Courts.

[14] University of Cape Town
[15] Leon Holtzhausen (ed) Thulane Gxubane, Anni Hesselink, Emmerentie Oliphant, Cathy Pavlic, Wim Roestenburg, Marelize Schoeman, *Criminal Justice Social Work - A South African Practice Framework*. JUTA Academic Publishers, 2012 , 47.
[16] Holtzhausen, *Criminal Justice Social Work – A South African Practice Framework,* 7.
[17] Names have been changed to protect confidentiality of minor

During the pre-sentence interview, Joseph Hlongwane[18] told the Forensic Social Worker that he had a very difficult childhood. His biological father used physical force to discipline, intimidate, control and hurt both Joseph and his mother. This ranged from psychological intimidation to physical attacks to force obedience and respect. For the 5 year old Joseph, this situation was both frightening and humiliating, and he quickly learned that submission brought relief. When asked to describe his most prominent feelings during this time, Joseph said that he felt "I am worthless, I hate them!" The violence only stopped when Ann Hlongwane divorced Joseph's dad and they moved elsewhere. When Joseph Hlongwane was 10, he transferred to a local junior school. He quickly got a reputation for being a "bad kid" and many of his schoolmates remembered him for hitting a school teacher during an argument when Joseph refused to do as he was told. Due to this incident, Joseph became the subject of a School Disciplinary Hearing and he was suspended from school for three months after which he returned to school. He began to carry a knife to school which he used to victimize other children and extort money and goods from. He used the money to buy drugs and alcohol. Meanwhile his grades were going down and he started skipping school to hang out with a group of older anti-social boys from his neighbourhood. Under the pressure of his friends, Joseph started to break into cars to steal radios and other items. He quickly graduated to vehicle theft. Although he was never caught, everybody knew he was involved in illegal activities. He became known as a "gangster" by others in his neighbourhood and enjoyed the feeling and sense of power that came from being associated with a gang of thugs. He was also becoming increasingly aggressive towards his mother, Ann and stepfather, Sam Radebe, which led to various arguments and family conflict. Sam felt that it was a mistake to ever have Joseph at home. Ann, on the other hand kept on pleading on Joseph's behalf saying that it was puberty, a phase he would eventually get over. One night, Joseph came home under the influence of alcohol. Sam had enough and threw Joseph out of the house and told him to never come

[18] Names have been changed to protect confidentiality of family members

home again. Joseph took out his knife and threatened to stab Sam. The two got into a physical struggle and in the ensuing scuffle; Joseph stabbed his stepfather in the shoulder. The police was called by a neighbour and Joseph was taken into custody. A case was opened and the 14 year old Joseph was charged with aggravated assault. He is currently awaiting trial at a Juvenile Correctional Centre in Bloemfontein.

INTRODUCTION

Crime, particularly violent crime, is a deeply complex problem, with multiple causes and 'solutions'[19]. The above case of a troubled young adolescent vividly illustrates the complexity of interpersonal violence in South Africa. What do we know about violent young offenders and, more importantly, how do we address their behavior? From the case study we note significantly that crime is disproportionally committed by young males. This is supported by the work Ratele and others which shows that homicide victimisation is largely a sex/gender-, race- and age-related phenomenon[20]. It is estimated that approximately half of the 59 935 violence- and transport-related deaths in South Africa are the result of interpersonal violence. A central characteristic of this violence is the disproportionate representation of males, both as victims and perpetrators, with the highest homicide levels observed among older teenagers and young adult males[21]. The fact that females make up only 4% of prison population's worldwide show that males are convicted more often than woman, and more often than not for serious offences[22]. Secondly, crime is a youthful activity, or as Smith et al, attests, "an important fact about crime is that it is

[19] Chandre Gould, Foreword, Conference Report National and International Perspectives on Crime and Policing – Towards a Coherent Strategy for Crime Reduction in South Africa beyond 2010. Institute for Security Studies, 1 December 2010, http://www.issafrica.org/pgcontent.php?UID=31050 (accessed 18 July 2012).

[20] Kopano Ratele, Mariëtte Smith, Ashley van Niekerk and Mohamed Seedat, *Is it race, age or sex? Masculinity in male homicide victimisation in South African cities.* Conference Report National and International Perspectives on Crime and Policing – Towards a Coherent Strategy for Crime Reduction in South Africa beyond 2010. Institute for Security Studies, 1 December 2010, http://www.issafrica.org/pgcontent.php?UID=31050 (accessed 18 July 2012).

[21] Kopano Ratele and S Suffla, Men, masculinity and cultures of violence and peace in South Africa, in C Blazina and D Shen-Miller (eds), *An international psychology of men: theoretical advances, case studies, and clinical innovations*, New York: Routledge, 2010; Seedat et al, Violence and injuries in South Africa.

[22] Anni Hesselink, *Aetiology of crime and assessment indicators of female offenders*, in Holtzhausen (ed), *Criminal Justice Social Work*, 2012, 182.

committed mainly by teenagers and young adults"[23]. The case study reflects the tendency of 15 - 25 year olds committing more crime than any other comparable age group. This curve, which for individuals typically peaks in the late teen years, highlights the tendency for crime to be committed during the offender's younger years and to decline as age advances" (Blumstein, 1995: 3). In the literature this phenomena is known as 'criminal trajectories'. Criminal trajectory research makes a distinction between Life Course Persistent (LCP) offenders and Adolescence Limited (AL) offenders[24]. AL offenders will engage in criminal behaviour for the duration of adolescence and will then cease such activities. The criminal behaviour of LCP offenders is, according to Moffitt (cited in Blokland et al.), rooted in early childhood factors: neurological difficulties and failing parent-child relationships that set a small number of individuals on a life path of anti-social behaviour[25]. Violent offenders tend to be versatile rather than specialised and thus commit a wide range of offences. They also exhibit other problems, e.g. heavy drinking, drug use, unstable employment record, and sexual promiscuity[26]. For violent offenders, the likelihood of committing a violent offence increases steadily with the total number of offences already committed[27]. In other words, over time more of their total number of offences will be violent offences, suggesting that intervention at an early stage (when it becomes clear that a pattern is developing) may break the pattern and prevent victimisation[28].

EXPERTS IN THE LANGUAGE OF REHABILITATION – AMATEURS IN THE PRACTICE OF REHABILITATION

Criminal justice practitioners and therapists are faced with a unique and complex client system. To effectively address the offender population's needs, therapists and staff should be adequately equipped to intervene with clients who exhibit personal

[23]Smith, D. J. *Youth crime and conduct disorders*. In *Psychological Disorders in Young People: Time Trends and their Correlates.* Rutter, M and Smith, DJ, 1995, Chichester: Willey.

[24] A A J Blokland, D Nagin and P Nieuwbeerta, *Life span offending trajectories of a Dutch conviction cohort*, *Criminology* 43(4) (2005), 919–954. In Lukas Muntingh and Chandré Gould, *Towards an Understanding of Repeat Violent Offending*, Institute for Security Studies, Paper 231, July 2012, available at http://www.issafrica.org/pgcontent.php?UID=31050 (viewed on 18 July 2012).

[25] Lukas Muntingh and Chandré Gould, *Towards an Understanding of Repeat Violent Offending*, 3.

[26] D Farrington, Origins of violent behaviour over the life span, in Flannery, Vazsonyi and Waldman, *Th e Cambridgehandbook of violent behavior and aggression*, 19.

[27] Ibid, 24.

[28] Lukas Muntingh and Chandré Gould, *Towards an Understanding of Repeat Violent Offending*, 3.

problems, are difficult to manage, and who are perceived to be dangerous[29]. If custodial institutions fail to adequately correct their client's antisocial and deviant behaviour, then they might in the words of Ogilvie, "… become the experts in the language of rehabilitation, while they remain amateurs in the practice of rehabilitation"[30]. It is imperative to base rehabilitation processes on appropriate professional activities such as, multi-dimensional assessment, risk profiling and sentence planning. These professional and vital activities should generate outcomes that will assist offenders to enhance their social functioning in order to eventually become productive members of society, In addition, rehabilitation programmes rendered in the criminal justice and criminal justice environments, should be aimed at identifying and treating the various contributing factors of crime and offending behaviour, that interfere with the offender's ability to function acceptably in society[31].This highlights the void in corrections regarding offender assessment, risk/need assessment, effective treatment (including multi-disciplinary treatment), and individualised sentence planning for offenders. In South Africa, criminal justice practitioners and therapists should focus on the many and unique causes of criminal behaviour. Therefore, good offender assessment must attend to a variety of offensive factors or domains. Comprehensive, multi-domain sampling of the factors, and cross disciplinary approaches associated with criminal conduct, should be the norm in offender and risk assessment to provide effective treatment[32]. Unfortunately, no structured or scientific offender assessment and intervention practices do, however exist within the Department of Correctional Services[33]. Assessment and intervention mostly depends on the individual practitioner's clinical judgement, skills and experience without the use of evidence based criminal justice specific practice frameworks[34].

[29]Flett, R. A. and Biggs, H. C., Contextual Context for Vocational Placement Officers: Some Preliminary Findings. *International Journal of Rehabilitation* Research, 1994, 15, 187 – 197

[30] E. Olgilvie. Post-release: The current predicament and the potential strategies, 2001, *Criminology ResearchCouncil,* 5-13.

[31] Don Andrews, Principles of effective correctional programs. In L. L. Motiuk and R. C. Serin (Eds.), *Compendium 2000 on effective correctional programming,* 2001 (pp. 9-17). Ottawa: Correctional Service of Canada.

[32] James Bonta, Offender risk assessment: guidelines for selection and use. *Criminal Justice and Behavior*, 2002, 29, 355/379

[33] Anni Hesselink Louw and Leon Holtzhausen, Multidimensional Assessment, Risk Profiling and Sentence Planning in Correctional Services, *Acta Criminologica 16(5) 2003.*

[34] Ibid, 29.

CRIMINAL JUSTICE SOCIAL WORK PRACTICE FRAMEWORK

A criminal justice social work practice approach requires knowledge and skills required for practice in the specialised area of offender rehabilitation and victim restoration. For the purposes of this article, criminal justice social work can be defined as follows:

Criminal justice social work is a specialised practice approach aimed at identifying and addressing offending behaviour, reducing the risk of re-offending, and restoring those that have been injured and affected by crime[35].

Due to the specialised nature of the criminal justice environment, CJSWs need their own unique outline of ideas or conceptual frameworks that help them understand the offender. They also need to be able to identify and understand the various dynamic risk and need factors that lead to criminality as well as how to change offending behaviour. In this context use is made of a specialised practice approach offering clear explanations of specific offending behaviours. This serves as a road map for bringing about specific types of change, i.e. identifying and correcting offending behaviour, reducing the risk of re-offending and restoring the wellbeing of those harmed by crime.

It is important to ask why CJSWs need a practice approach that is different from that of a generalist practitioner. Consider the following[36]:

- Irrespective of the type of crime committed, all offenders have complex offending behaviours and find themselves in situations that place them at risk of re-offending or relapse. A criminal justice specific practice approach provides a standardised, uniformly structured advance for working with the offender, the victim and affected members of the community.
- Irrespective of the many theories, perspectives, beliefs and assumptions about criminality, offending behaviour and correcting offending behaviour, there is a clear, scientific body of knowledge and research evidence. This forms part of a criminal justice specific practice approach and it organises rehabilitation efforts into a meaningful whole.

[35] Holtzhausen, *Criminal Justice Social Work – A South African Practice Framework,* 7.
[36] Holtzhausen, *Criminal Justice Social Work – A South African Practice Framework,* 8.

- Irrespective of the unit of intervention chosen to change criminal behaviour, reducing the risk of re-offending and restoring victims, the CJSW must be able to provide a coherent rationale for actions taken and decisions made during intervention. A criminal justice specific practice approach serves as a point of departure for addressing offending behaviour and restoring harm done.

- **Criminal Justice Social Work Practitioner**
- Applying Criminal Justice Specific Knowledge
- &
- Criminal Justice Specific Skills
- In line with the
- Values of the Social Work Profession

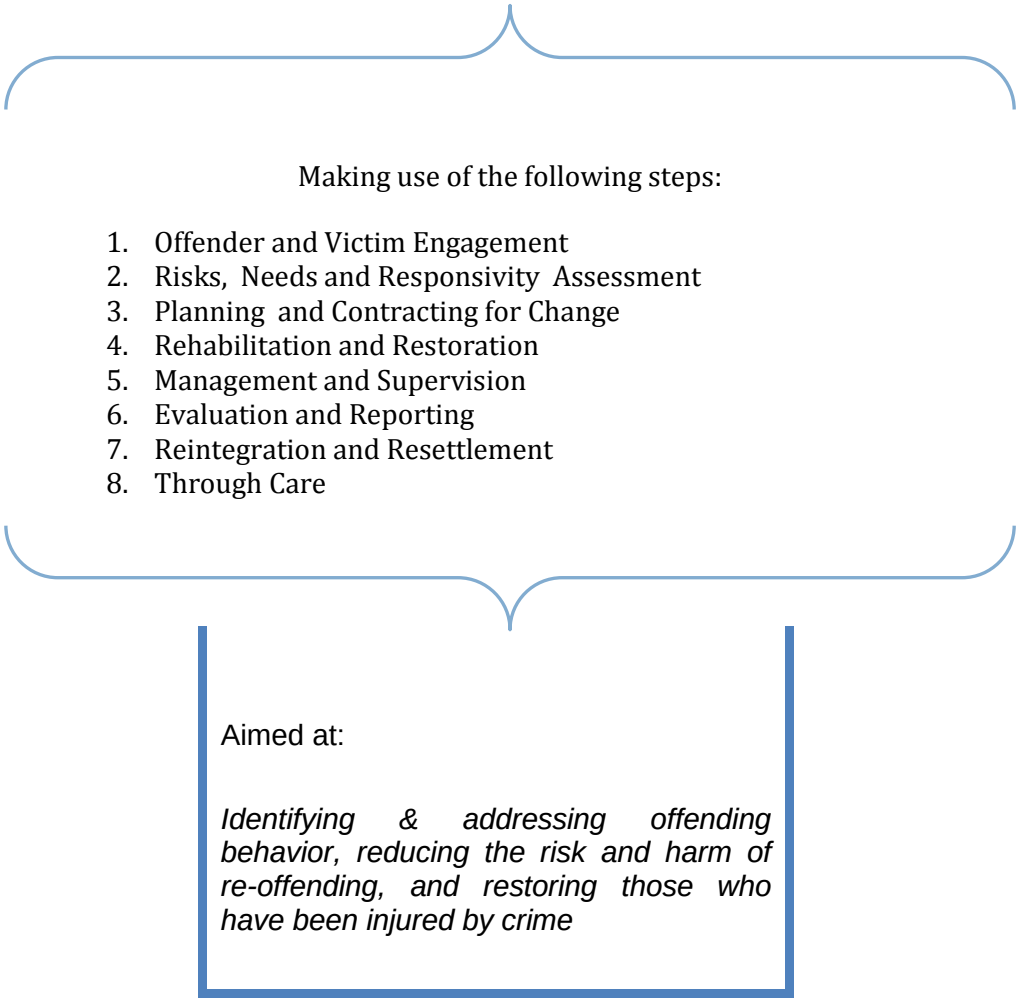
- Irrespective of the 'method of intervention' chosen to work with offenders and victims, a criminal justice specific practice approach provides a systematic, orderly, predictable and measureable way of working within the criminal justice sector.
- Irrespective of the interdisciplinary nature (various professions such as psychologists educationists, healthcare workers, criminologists, correctional social workers, probation officers and counsellors all work in the criminal justice system) of intervention, a criminal justice specific practice approach facilitates communication among criminal justice practitioners.

Criminal justice social workers use a wide variety of theories, models and perspectives in their work with the offender and victim; in fact social work practice is nothing else than the process of using knowledge and applying theory in order to bring about specific types of change in the client system. The many theories, models and perspectives that social workers use on a daily basis, could all be considered conceptual frameworks – a coherent set of concepts, beliefs values, propositions, assumptions and principles, which offer both an explanation of certain behaviors or situations and broad guidelines about how those behaviors or situations, can be changed. In short, a practice framework is a set of concepts and principles used to guide certain interventions[37].

[37]Sheafor, W. B. & Horesjsi C. R. & Horesjsi G. A. Techniques and Guidelines for Social Work Practice, 2001, Fourth Edition. Needham Heights, United States of America.

In working with the young offender from the Case Study, a criminal justice social worker could make use of a Criminal Justice Practice Framework that provides step-by-step direction concerning how to undertake a planned change process directed at; 1) Identifying and addressing Joseph's violent behaviour, 2) Reducing the risk that he'll re-offend, and 3) Restoring those that have been injured and affected by his crime.

Figure 1.1: **Criminal Justice Social Work Practise Framework**



The abovementioned Figure, illustrate eight core steps that criminal justice social workers make use of, namely; offender and victim engagement, risk, need and responsivity assessment and classification, change planning, criminal justice rehabilitation and restoration, evaluation, reintegration and resettlement and through care, that constitute the Criminal Justice Social Work Practice Framework[38].

[38] Holtzhausen, *Criminal Justice Social Work – A South African Practice Framework,* 17.

CRIMINAL JUSTICE SOCIAL WORK INTERVENTION

The purpose of intervention for the criminal justice social worker is to harness, what is commonly known in the rehabilitation literature as the "therapeutic moment". The “therapeutic moment” can be defined as the teachable moment when a distressed offender asks "How can I live my life differently?"[39]. Rehabilitative programmes rendered to the offender by the criminal justices social worker should be aimed at treating the various contributing factors and problems that interfere with the offender’s ability to function acceptably in society whilst simultaneously reducing the risk of re-offending. For example, many offenders failed to learn appropriate social behaviour when they were growing up. As adults, they are faced with such basic needs as learning how to get along with people and how to maintain employment[40]. It is imperative to start where the individuals are and base the rehabilitation process on the present. The rate of change will depend on re-organisation of the offender’s accumulated feelings, experiences and thoughts to bring about insight, which is a pre-requisite to successful therapy[41]. The way in which the criminal justice system responds may increase offender resistance to change offending behaviour or increase offender determination to change offending behaviour. Reducing re-offending requires a systemic approach that maximises the therapeutic effects of the criminal justice system and minimises the anti-therapeutic consequences of the law[42].

Targeting Offending Behaviour

The use of structured and targeted methods of intervention (usually involving cognitive behavioural methods and focussing upon changing offenders’ attitudes and behaviours) are crucial in the repertoire of techniques and skills of criminal justice social workers in their work with offenders[43.] Criminal justice treatment services

[39] Astrid Birgden, Therapeutic jurisprudence and ‘Good Lives’: a rehabilitation framework for corrections. *Australian Psychologist , 2002, 37, 180_/186.*

[40] Astrid Birgden, McLachlan, C. 2002. Reducing re-offending framework: Setting the scene: Paper No. 1, Office of the Correctional Services Commissioner, Department of Justice. Melbourne, Australia. Pp. 1-14. Internet site: http://www.justice.vic.goc.au. (Accessed on 26 July 2012).

[41] Ibid.

[42] Hollin, C. R.,Treatment programs for offenders: Meta-analysis, “what works” and beyond. *International Journal of Law and Psychiatry,* 2001, 22, 361−372

[43] McIvor, G., ‘What Works in Community Service?’, 2007, CJSW Briefing Paper 6. Edinburgh: Criminal Justice Social Work Development Centre.

rendered by criminal justice social workers should target offending behavior through the development and delivery of appropriate offender treatment programmes. Andrews, feels that factors placing the offender at future risk, often described as "criminogenic", can be social or personal, and they have a causal or contributory role in offending acts and should thus be the target of intervention[44]. Criminogenic needs (e.g. antisocial thinking, keeping employment), are those aspects of an individual's functioning, which give rise to their antisocial and criminal behaviour. A criminogenic factor may be located in any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of reconviction. In other words, criminogenic needs are certain factors that place the offender at future risk (for reoffending). All offenders display criminogenic and non-criminogenic needs. Criminogenic needs are divided into dynamic (changeable factors) and static (unchangeable factors) risk factors that when reduced, are followed by reduced reoffending. Important dynamic risk factors are among others: anger, prior treatment compliance, personality style, impulsiveness, psychopathy, cognitive impairment, violent fantasies, unemployment, and substance abuse[45].

Dynamic risk factors, which if changed, reduce the likelihood of criminal conduct[46]. On the other hand, static risk factors (also known as "historical factors"), comprise of factors such as criminal history, age and gender and they are also reliable in predicting long-term recidivism risk for both general and sex offenders[47]. Based on the assessment of needs and risks as well as the individual offender's risk profile, characteristics associated with offending behaviour are targeted by the criminal justice social worker during intervention through offence-specific and offence-related programs[48]:

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[44]Andrews, D. A. , The assessment of outcome in correctional samples. In M. Lambert, E. Christensen and S. DeJulio (Eds.), The Measurement of Psychotherapy Outcome in *Research and Evaluation, 2001,* (pp. 160/201). New York: Wiley.

[45]Serin, R., and Kennedy, S., Treatment readiness and responsivity: Contributing to effective correctional programming. 1997, Research Report. Correctional Services Canada.

[46] Grinberg, I., Dawkins, M., Dawkins, M. P., & Fullilove, C. Adolescents at risk for violence: An initial validation of the life challenges questionnaire and risk assessment index. *2004, Adolescence, 40(159), 573-599.*

[47] Leon Holtzhausen, What Works? Core Knowledge Required in Social Work with the Offender. *Acta Criminologica*, *2004, 17(1): 103 – 114.*

[48]Birgden et al, 2002.

- High Risk/Need Offenders receive offence-specific programs that address criminogenic needs like problem-solving skills, violent offending, sexual offending, and drug and alcohol programs
- Low Risk/Need Offenders receive offence-related programs address areas also related to offending in some instances such as problem solving, family support, harm from drug use, and accommodation, education and employment. Offence-related programs include educational, vocational, and recreational skill development.

At the same time, interventions that meet non-criminogenic needs such as anxiety, low self-esteem and psychological distress are also required to motivate offenders to change their offending behaviour.

Evidence Based Social Work Practice with Violent Youth Offenders

Criminal justice intervention programs which are well grounded in evidence based social work practice and research, are likely to produce better outcomes than those which are not[49]. There is a growing body of research, specifically from the field of evidence based social work practice, which shows that criminal justice social work treatment programs should be designed to target behavioural and cognitive factors that are amenable to change through intervention and have a functional relationship with offending (the so called criminogenic needs)[50]. Various programs based on evidence based social work theory and research have been developed in the areas of drug and alcohol use, anger management and violent behaviour, sexual offending and general offending. These types of programs make sense in that the targets addressed (drug and alcohol use or anger problems) have high plausibility as contributors to offending behaviours. Whilst many of the programs offered by criminal justice social workers are originally drawn from clinical treatments and self-reflective practice, they can be adapted and standardized to meet the specific needs of other offender clients as long as there's an empirical base to support their efficacy. The strength of the criminogenic needs approach lies in its ability to be applied across a number of different areas of offending.

CONCLUSION

Currently, South African Policy Frameworks and practices demand that prisons should focus on the assessment and rehabilitation of offenders. Criminal justice

[49] Ibid.

social workers are increasingly faced with violent male offenders exhibiting criminal behaviour rooted in early childhood risk factors. Ideally incarceration should reduce offender’s propensity to reoffend. Unfortunately, assessment and intervention mostly depends on the individual practitioner’s clinical judgement, skills and experience without the use of evidence based criminal justice specific practice frameworks. As long as this continues, practitioners will remain experts in the language of rehabilitation, while they remain amateurs in the practice of rehabilitation. This article argued the need for a Criminal Justice Specific Practice Framework to harness, what is commonly known in the rehabilitation literature as the "therapeutic moment".

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PLUNK OF VICTIMS IN CRIMINAL JUSTICE: "RIGHTS OF VICTIMS THROUGH INTERNATIONAL LAW AND ITS IMPLEMENTATION IN INDIA".

Vikas Gandhi*

ABSTRACT:

Administration of criminal justice consists of three main wings, which are Prosecution wing, Investigation agency (s) and the Judiciary. Circumstance of the victims have been oversights or ignore, while they lives during that time in more vulnerable conditions. There have been conventions, provisions and guidelines for the protection and justice to the victims at International, regional as well as domestic level but the questions are to some extent arises about effective implementation at national / domestic level. This paper will discuss an overview of provisions for the protection of victims in the criminal justice system, at International, regional and domestic (India) level and the guidelines / comments of the apex court as well as the provisions implementing for the victims.

INTRODUCTION:

United Nations, at its 96th plenary on November 29, 1985 of the Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power constituted an important recognition of the need to set norms, guidelines and minimum standards in international law for the protection of victims of crime.[51] The U.N. Declaration[52] recognized four major components of the rights of victims of crime- access to justice and fair treatment[53]; restitution[54]; compensation[55] and assistance[56].

* Assistant Professor of Law, Gujarat National Law University, Gandhinagar

[51] S. Muralidhan, Rights of victims in the Indian criminal justice system, National Human Rights Commission Journal (2004), see also: http:/www.ielrc.org/content/a0402.pdf,visited on 25.6.2013, p 1

[52] http://www.un.org/documents/ga/res/40/a40r034.htm,accessed on 29/06/2013

[53] Clause 4 and 5 of U.N. Declaration read thus:

Protection of Victims' Rights under International Law:

There is no universal convention dealing with the rights of victims of conventional crimes, the United Nations General Assembly adopted, in 1985, the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, the text of which had been approved by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.[57] To promote implementation, a *Guide for Practitioners Regarding the Implementation of the Declaration* was prepared,[58] and the United Nations Economic and Social Council, by resolution 1990/22 of 24 May 1990, invited the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to give wide distribution to the Guide.[59] The Declaration defines the notion of victim of crime and abuse of power and specifies victims' rights of access to justice and fair treatment, restitution, compensation and assistance.[60]

The basic principles contained in the Declaration "apply, with no discrimination, to all countries, at every stage of development and in every system, as well as to all

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"4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms."

[54] This contemplates deprivations both by state and non-state actors. Under clause 8 of the U.N. Declaration, restitution includes "Clause 11 provides that "where the government under whose authority the victimizing act or omission occurred is no longer in existence, the state or government successor in title should provide restitution to the victims."

[55] Under Clause 12 of the U.N. Declaration the onus is on the state to "endeavour to provide financial compensation to both victims who have suffered bodily injury or impairment of physical or mental health as a result of serious crimes as well as the family of those who have died as a result of victimization."

[56] This includes "the necessary material, medical, psychological and social assistance through governmetal, voluntary, community based and indigenous means" (clause 14) Part B of the U.N. Declaration concerns victims of abuse of power "that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights."

[57] See UN doc. E/CN.15/1997/16, Use and application of the Declaration of Basic Principles of Justice for Victims of Crime and
Abuse of Power, note by the Secretary-General, para. 1.

[58] UN doc. A/CONF.144/20, Annex, Guide for Practitioners Regarding the Implementation of the Declaration of Basic
Principles of Justice for Victims of Crime and Abuse of Power (hereinafter referred to as UN doc. A/CONF.144/20, Annex, Guide
for Practitioners).

[59] UN doc. A/CONF.144/20.

[60] http://www.ohchr.org/Documents/Publications/training9chapter15en.pdf, visited on 25/6/2013

victims".[61] They furthermore "place corresponding responsibilities on central and local government, on those charged with the administration of the criminal justice system and other agencies that come into contact with the victim, and on individual practitioners".[62] Paragraph 3 of the Declaration states expressly that:

"*The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability."* Lastly, it is of interest to note that, although it was not in force on 24 June 2002, the *United Nations Convention against Transnational Organized Crime*, which was adopted by the General Assembly on 15 November 2000, contains specific provisions in article 25 concerning "*Assistance to and protection of victims". Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention, contains even more detailed rules regarding* Assistance *to and protection of victims of trafficking in persons*". The text of these provisions may be found in Handout No. 2. However, as the Convention on Transnational Organized Crime had, as of 24 June 2002, only 15 out of the 40 ratifications required before it can enter into force, by the same date, the Protocol had been ratified by 12 States.

Apart from insisting on the need to treat victims with "compassion and respect for their dignity," one of the striking and progressive features of the Victims' Declaration is that it considers an individual to be a victim, regardless of whether the state identifies, apprehends, prosecutes, or convicts the perpetrator. The term "victim" also includes the immediate family or dependents of the direct victim and individuals who have suffered harm while trying to prevent victimization, such as witnesses or human rights defenders. The available judicial and administrative mechanisms should enable victims "to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible." The Victims' Declaration advocates for restitution, compensation, and "material, medical, psychological and social" assistance in the interests of justice. Some of the specific rights enshrined in the Victims' Declaration include the right to be referred to adequate support services; the

[61] UN doc. A/CONF.144/20, Annex, Guide for Practitioners, p. 3, para. 1.
[62] Ibid., p.2, para. 1.

right to receive information about the progress of the case; the right to privacy; the right to counsel; the right to protection from intimidation and retaliation; and the right to compensation, from both the offender and the state.[63]

International instruments ratified by India for Victims:

The right to a remedy for victims of violations of international human rights law is found in numerous international instruments ratified by India, including the Universal Declaration of Human Rights,64 the International Covenant on Civil and Political Rights,65 the International Convention on the Elimination of All Forms of Racial Discrimination,66 and the Convention on the Rights of the Child.67 Most recently, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law68 (Basic Principles and Guidelines) makes it obligatory for States Parties to the above mentioned treaties to "respect, ensure respect for and implement" the treaties in such a way that "their domestic law provides at least the same level of protection for victims as required by their international obligations."69 While it reiterates provisions for the protection and redress of victims similar to those mentioned under the Victims' Declaration, it also emphasizes the need to prevent repetition of the same offenses by promoting the observance of codes of conduct and ethical norms by public servants; strengthening the independence of the judiciary; and reviewing and reforming laws in this regard.

The regional level:

At the regional level, the member States of the Council of Europe concluded, in 1983, the European Convention on the Compensation of Victims of Violent Crimes, which entered into force on 1 February 1988. As of 29 June 2013, it had secured a

[63] Victims' Declaration, *supra* note 1,
[64] G.A. Res. 217 (III) art. 8, U.N. Doc. A/810 (Dec. 10, 1948).
[65] International Covenant on Civil and Political Rights art. 2, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.
[66] International Convention on the Elimination of All Forms of Racial Discrimination art. 6, *entered into force* Jan. 4, 1969, 660
U.N.T.S. 195.
[67] Convention on the Rights of the Child art. 39, *entered into force* Sept. 2, 1990, 1577 U.N.T.S. 3.
[68] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, annex, U.N. Doc. A/RES/60/147 (Mar. 21, 2006).
[69] *Id.*

total of 25 ratifications and accessions.[70] This treaty was drafted in response to an increased awareness that assistance to victims "must be a constant concern of crime policy, on a par with the penal treatment of offenders. Such assistance includes measures designed to alleviate psychological distress as well as to make reparation for the victim's physical injuries."[71] It was also considered necessary to compensate the victim in order "to quell the social conflict caused by the offence and make it easier to apply rational, effective crime policy".[72]

One of the concerns underlying the Convention was to provide a compensation scheme that would allow States to step in and compensate the victim or his or her dependants, who rarely obtained any compensation in practice because of the offender's non-apprehension, disappearance or lack of means. Another concern was to give increased protection to foreigners moving between the member States of the Council of Europe.[73]

The European Committee on Crime Problems of the Council of Europe is to be "kept informed regarding the application of the Convention" and the States parties are to transmit to the Secretary-General of the Council of Europe "any relevant information about its legislative or regulatory provisions concerning the matters covered by the Convention" (art. 13). For more details of the principles lay down by this Convention, which are limited to compensation, subsections 2.2 and 2.4.3. By virtue of Recommendation No. R (85) 11 on the Position of the Victimin the Framework of Criminal Law and Procedure, the Committee of Ministers of the Council of Europe expanded on the need to protect victims of crime who may suffer physical, psychological, material and social harm and whose needs "should be taken into

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70 http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=116&CM=3&DF=29/06/2013&CL=ENG, accessed on 29/6/2013

71 8See Explanatory Report on the European Convention on the Compensation of Victims of Violent Crimes, http://conventions.coe.int/treaty/en/Reports/Html/116.htm (Council of Europe web site), p. 1, para. 1 (hereinafter referred to as Explanatory Report). This Explanatory Report does not, however, "constitute an instrument providing an authoritative interpretation of the Convention although it might be of such a nature to facilitate the application of the provisions contained therein" p. 1, para II.

72 Ibid., p3,Para

73 Ibid.

account to a greater degree, throughout all stages of the criminal justice process".[74] The preamble to the recommendation, states that the operation of the criminal justice system "has sometimes tended to add to rather than to diminish the problems of the victim," that "it must be a fundamental function of criminal justice to meet the needs and to safeguard the interests of the victim" and that "it is also important to enhance the confidence of the victim in criminal justice and to encourage his co-operation, especially in his capacity as a witness."[75] Moreover, measures to help the victims "need not necessarily conflict with other objectives of criminal law and procedure, such as the reinforcement of social norms and the rehabilitation of offenders, but may in fact assist in their achievement and in an eventual reconciliation between the victim and the offender".[76]The member States of the Council of Europe were therefore asked to "review their legislation and practice" in accordance with the guidelines contained in the recommendations and which relate to:

1. The police level
2. Prosecution
3. Questioning of the victim court proceedings
4. The enforcement stage
5. The protection of privacy
6. Special protection of the victim
7. Conflict resolution schemes
8. Research

Protection and Redress for Victims of Human Rights Violations:

Contrary to the situation in respect of victims of ordinary crime, international human rights law lays down some clear legal rules regarding the responsibility of States vis-à-vis abuses of power that constitute violations of individual rights and freedoms. Moreover, these rules have been further developed in a large number of cases by the international monitoring bodies. However, only a brief survey is feasible in this context of States' general legal duty to ensure the effective protection of human rights and of the most relevant specific legal obligations that this entails: the duty to

[74] 12Fifth and seventh preamble paragraphs
[75] Second, third and fourth preamble paragraphs.
[76] Sixth preamble paragraph

prevent human rights violations; the duty to provide domestic remedies; and the duty to investigate alleged human rights violations, to prosecute those suspected of having committed them and to punish those found guilty. Lastly, the duty to provide restitution or compensation to victims of human rights violations and the problem of impunity for human rights violations will be examined.[77]

The general legal duty to ensure the effective protection of human rights:

This highlights some general considerations relating to States' legal duty effectively to protect human rights and fundamental freedoms.

The Universal level

Under article 2(1) of the International Covenant on Civil and Political Rights, each State party "undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant" (emphasis added). In interpreting article 2, the Human Rights Committee considers it necessary "to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights."[78] The obligation to ensure thus gives rise to positive State party obligations to secure the enjoyment of the guaranteed rights and freedoms to all persons within their jurisdiction. It follows from this basic and positive

[77] The present chapter is based only on legal provisions interpreted by international monitoring bodies. The question of remedies
for victims of human rights violations has, however, also been dealt with, inter alia, by the United Nations Commission on Human
Rights; see, for example, UN doc. E/CN.4/2000/62, The right to restitution, compensation and rehabilitation for victims of gross
violations of human rights and fundamental freedoms, Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni; see, in
particular, the annex to this report containing draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for
Victims of Violations of International Human Rights and Humanitarian Law.

[78] 71See General Comment No. 3 (Article 2 – Implementation at the national level), in UN doc. HRI/GEN/1/Rev.5, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* (hereinafter referred to as *United Nations Compilation of General Comments*), p. 112, para. 1; emphasis added.

legal duty that States parties may also be required effectively to investigate, prosecute and punish violations of individual rights and freedoms.[79]

As a general rule it must be emphasized that, notwithstanding the fact that the legal obligations to "respect" and to "ensure" human rights are not included expressis verbis in the treaty concerned, States in any event have a legal duty to perform their treaty obligations in good faith. This basic rule of international law, also known as pacta sunt servanda, has been codified in article 26 of the Vienna Convention on the Law of Treaties and is, of course, equally applicable to human rights treaties as to other international treaties. By failing, for instance, to prevent or vigorously to investigate alleged human rights violations and, where need be, to follow up the investigation with a prosecution, a State undermines its treaty obligations and hence also incurs international responsibility for being in breach of the law.[80]

Article 1 of the American Convention on Human Rights uses terms reminiscent of those in article 2 of the International Covenant in that the States parties "undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms without any discrimination" (emphasis added).

These terms were interpreted by the Inter-American Court of Human Rights in the Velásquez Rodríguez case81, which concerned the disappearance and likely death of Mr. Velásquez at the hands of members of the Honduran National Office of Investigation and the Armed Forces. With regard to the obligation to "respect the rights and freedoms" recognized by the Convention, the Court emphasized that "the exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State." This also means that "the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power."[82]

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[79] See, for example, Communication No. 821/1998, *Chongwe v. Zambia* (Views adopted on 25 October 2000), in *GAOR*, A/56/40 (vol. II), p. 143, paras. 7-8.

[80] http://www.ohchr.org/Documents/Publications/training9chapter15en.pdf, visited on 25/6/2013

[81] *A Court HR, Velásquez Rodríguez Case, judgment of July 29, 1988, Series C, No. 4*, pp. 151-152, para. 165.

[82] *A Court HR, Velásquez Rodríguez Case, judgment of July 29, 1988, Series C, No. 4*, pp. 151-152, para. 165.

Moreover, the obligation to "ensure" the free and full exercise of the rights guaranteed by the Convention "implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridical ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."[83] The Court added that-

"The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation – it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights."[84] What is "decisive" in determining whether a right recognized by the Convention has been violated is, in the words of the Court, whether the violation has occurred "with the support of the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible".[85]

The States parties' legal undertakings under article 1 of the American Convention thus form a clear web of preventive, investigative, punitive and reparative duties aimed at effective protection of the rights of the human person.[86]

Article 1 of the European Convention on Human Rights stipulates that "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" (emphasis added). Rather than giving an independent interpretation of the term "secure" in article 1, the European Court of Human Rights has preferred to weave this term into the other substantive provisions of the Convention and its Protocols. For instance, when interpreting the right to life as guaranteed by article 2 of the Convention, the Court has held that the first sentence of article 2(1) "enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of

[83] Ibid, see also: http://www.ohchr.org/Documents/Publications/training9chapter15en.pdf, visited on 26/6/2013
[84] Ibid
[85] ibid
[86] ibid

those within its jurisdiction."[87] In the words of the Court- "This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose life is at risk from the criminal acts of another individual."[88]

In the case of McCann and Others v. the United Kingdom[89], the Court held that "a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life [in article 2(1)], read in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in (the) Convention', requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State."[90]

In order to secure the right to life under article 2 of the Convention, the High Contracting Parties are thus under an obligation to resort to effective measures of prevention, investigation, suppression and punishment of violations of this right. It is noteworthy that the obligation to prevent offences against the person is not necessarily complied with by the implementation of general preventive policy measures but may, in individual cases, also imply a duty to take positive measures of an operational nature (see infra, subsection 3.3).

The positive obligations that may be "inherent in an effective respect of the rights concerned"[91] under the European Convention are not limited to article 2 and the right

[87] *Eur. Court HR, Case of Mahmut Kaya v. Turkey, judgment of 28 March 2000,* para. 85 of the text of the judgment as published at: http://echr.coe.int/.
[88] Ibid, loc. cit.; emphasis added.
[89] *Eur. Court HR, Case of Mahmut Kaya v. Turkey, judgment of 28 March 2000,* para. 85 of the text of the judgment as published at: http://echr.coe.int/.
[90] 80*Eur. Court HR, McCann and Others v. the United Kingdom, judgment of 27 September 1995, Series A, No. 324*, p. 49, para. 161.
[91] 81*Eur. Court HR, Case of Ozgur Gundem v. Turkey, judgment of 16 March 2000*, para. 42 of the text of the judgment as published at: http://echr.coe.int/.

to life but may also have implications for the protection of other rights and freedoms such as the right to freedom from torture in article 3,92 the right to respect for one's family life in article 8,[93] the right to freedom of expression in article 10[94] and the right to freedom of peaceful assembly and to freedom of association in article 11.[95] The nature and extent of such obligations depend, however, on the right at issue and the facts of the case considered.

Lastly, it should be noted that the duty to secure the rights and freedoms laid down in the European Convention and its Protocols may also entail a legal duty for the Contracting States to take positive action to ensure respect for those rights and freedoms between private citizens.[96]

Indian Criminal Justice System vis- a-vis Victims of Crime:

A look at the Indian criminal justice system reveals the same bleak picture: it is not victim oriented but accused oriented. Under our procedural criminal law, the accused is treated as privileged person and is provided with all possible help including a defense counsel at the cost of the State. A number of constitutional protections are also available to an accused under Articles 20, 21 and 22 of the Indian Constitution. But very few legal provisions are there to afford assistance and compensation to victims of crime. In the public mind, the interests of the offender seem to be receiving greater attention than the interests of the victim.[97]

The Indian Constitution, the supreme law of the land, enunciates no specific provision for victims, but right to compensation has been interpreted as an integral

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[92] *Eur. Court HR, Case of Assenov and Others v. Bulgaria, judgment of 28 October 1998, Reports 1998-VIII*, p. 3290, para. 102.

[93] 83*Eur. Court HR, Case of Gaskin v. the United Kingdom, judgment of 7 July 1989, Series A, No. 160*, pp. 16-20, paras. 41-49.

[94] 84See, for example, *Eur. Court HR, Case of Ozgur Gundem v. Turkey, judgment of 16 March 2000,* para. 43, as published at http://echr.coe.int/.

[95] *Eur. Court HR, Case of the Plattform "Ärzte für das Leben" v. Austria, judgment of 21 June 1988, Series A, No. 139*, p. 12, para. 32.

[96] *Eur. Court HR, Case of X and Y v. the Netherlands, judgment of 26 March 1985, Series A, No. 91*: in this case the Government had a positive legal duty to ensure an effective right to respect for the private life of a mentally handicapped girl who had been raped but who was legally unable to institute criminal proceedings against the alleged perpetrator of the crime; this gap in domestic law constituted a violation of article 8 of the European Convention, p. 14, para. 30. See also *Eur. Court HR, A. v. the United Kingdom, judgment of 23 September 1998, Reports 1998-VI*: in this case domestic law did not provide adequate protection for a child who had been beaten by his stepfather; "the failure to provide adequate protection" constituted a violation of article 3 of the European Convention, p. 2700, para. 24.

[97] N.K. Chakraborty, Victim assistance and compensation to crime victims under Indian Criminal Justice System in National Seminar on Victimology, May 12-14, 1998, Organized by Punjab Police Academy.

part of right to life and liberty under Art. 21 of the Constitution. As early as in 1983, the Supreme Court recognized the petitioner's right to claim compensation for illegal detention and awarded a total sum of Rs. 35000 by way of compensation. In delivering the judgment, Chandrachud C.J. observed: "Art 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of relief from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art 21 secured is to mullet its violators in the payment of monetary compensation.[98] In Sebastian Hongray v. Union of India two women filed a writ of habeas corpus to produce their husbands who were missing and alleged to have been murdered. The authorities failed to produce them and the Court directed the respondents to pay Rs. 100000 to each of the wives of the missing persons. In several cases thereafter, the apex court has repeated its order, making compensation an integral aspect of right to life[99]. Section 357 Code of Criminal Procedure, 1973 empowers a Court imposing a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, in its discretion, inter alia, to order payment of compensation, out of the fine recovered, to a person for any loss or injury caused to him by the offence[100]. However Section 357 (1) is subject to some limitations as may be stated below:

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[98] *Rudul Sah* v. *State of Bihar* AIR 1983 SC 1086.

[99] See also, *Bhim Singh vs. State of Jammu& Kashmir* (1985) 4 SCC 577 ; *People's Union for Democratic Rights vs. State of Bihar, 1987 (1) SCR 631; People's Union for Democratic Rights Thru. Its Secy. vs. Police Commissioner, Delhi Police Headquarters, (1989) 4 SCC 730 ; Arvinder Singh Bagga vs. State of U.P. (1994) 6 SCC 565 ; Dr. Jacob George vs. State of Kerala (1994) 3 SCC 430 ; Paschim Bangal Khet Mazdoor Samity vs. State of West Bengal & Ors.(1996) 4 SCC 37 and Mrs. Manju Bhatia vs. N.D.M.C. AIR 1998 SC 223* .

[100] Sub-section (1) of Section 357 reads as :

When a Court imposes a sentence or fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgement, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855[5] entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating or of having dishonestly assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen,

1. Compensation to victims can be awarded only when substantive sentence is imposed and not in cases of acquittal.
2. Quantum of compensation is limited to the fine levied and not in addition to it or exceed the fine imposed.
3. Compensation can be ordered only out of fine realized and if no fine is realized, compensation to victim cannot be directed to be realized.
4. In very rare cases under IPC, the maximum amount of fine is imposed. Moreover the maximum fine as prescribed in IPC amount 150 years back is now inadequate in terms of real losses to victims.
5. Compensation to victim under this section can be allowed by the court if it is of the opinion that the compensation is recoverable by such person in a Civil Court6.

The Supreme Court of India while discussing the scope and object of Section 357 Cr.P.C., 1973 in *Hari Krishnan and State of Haryana* v. *Sukhbir Singh*[101] observed:

"It is an important provision but the courts have seldom invoked it, perhaps due to the ignorance of the object of it. It empowered the courts to award compensation to victims …It may be noted that this power of the Court to award compensation is not ancillary to other sentences but is in addition thereto. This power was intended to do something to reassure the victim that he/she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is indeed a step forward in our criminal justice system."

Apart from the above legislative mandate, no other statutory provision exists for the purpose of adequately compensating or otherwise, assisting the victims of crime. Most often, the trial begins and ends with the accused- his act which constitutes the offence in question and the socio- economic and/or other mitigating factors that encircle the act leading to lesser or no conviction. The question of compensation to victims comes up rarely, if at all, and the same is so very meager that it does not suffice the needs.

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in compensation any *bonafide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

See also, Probation of Offenders Act, 1958 and Fatal Accidents Act,

[101] AIR 1988 SC 2127

Legislative Intervention

While the above case laws depict a bright picture drawn in favor of victims, the reality remains that victims in India are still a poor lot. They have as yet not received the sympathetic treatment they deserve; rather they have time and again been discarded and sidelined for a wrong committed against them. As per the recommendations of the Supreme Court of India in Delhi Domestic Working Women's Forum[102], a Criminal Injuries Compensation Board is yet to be constituted. Neither a law for Compensation to victims of criminal violence has seen the light of day. What results from such laxity is the dependence of the victims on their own resources if any to tide over the problem and/ or begging before the State authorities for any support which it may or may not provide. The Law Commission of India, expressing its concern for crime victims, has suggested few proposals for reforms. The Fourteenth Law Commission in 1996 in its 154th Report on the Code of Criminal Procedure suggested a comprehensive victim compensation scheme to be administered, on recommendations of a trial Court, by the Legal Services Authorities constituted at the District and State levels under the Legal Services Authorities Act, 1987. The Law Commission desired the District and State Legal Services Authorities to have special considerations while compensating victims of custodial crimes, and of child abuse; rape victims, and physically and mentally disabled victims of crimes. The recommended sec. 357A, which devised the proposed 'Victim Compensation Scheme' read as under:

> Section 357A-Victim Compensation Scheme'-
>
> (1) Every State Government in co-ordination with the Central Government shall prepare a Scheme for providing funds for the purpose of compensating the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
>
> (2) Under the Scheme the District Legal Services Authority at the district level and the State Legal Services Authority at the State level shall decide the quantum of compensation to be awarded whenever a recommendation is made by the trial court to that effect.

[102] *Supra*

(3) If the trial court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 (3) is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may recommend to the District Legal Services Authority if the compensation in its view is less than Rs.30,000/-, or to the State Legal Service Authority if the compensation is more than Rs.30,000/-.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place it is open to the victim or his dependents to make an application under sub-section (2) to the District Legal Services Authority at the district level and the State Legal Services Authority at the State level for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), as the case may be, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall after due enquiry award adequate compensation by completing the enquiry within two months.

(6) District Legal Services Authority or the State Legal Services Authority, as the case may be, to alleviate the suffering of the victim may order immediate first aid facility or for medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the Officer-in-Charge of the police station or a Magistrate of the area concerned or any other interim relief as the appropriate authority deems fit.103However, like other suggestions of the Law Commission, the proposed compensation scheme has not been given effect to.

The writer is of the opinion that a separate statutory scheme to compensate victims crime as a matter of legal obligation on the part of

[103] *Ibid*., Chapter XV : Victimology, para 17. It is further pertinent to note that the Supreme Court of India also urged the National Commission for Women to prepare a Compensation Scheme for compensating rape victims. It, against the backdrop of art. 38(1) of the Constitution, also pleaded for setting up of Criminal Injuries Compensation Board for the purpose. See *Delhi Domestic Working Women's Forum* v. *Union of India*, (1995) 1 SCC 14 and *Bodhisattwa Guatam* v. *Subhra Chakraborty*, AIR 1996 SC 922. For comments, see infra. K. I. Vibhute, Victims of Rape and their Right to Live with Human Dignity and to be Compensated : Legislative and Judicial Responses in India.

the State must be drawn up. Its purpose may be described as: “not to award damages of a kind comparable or analogous to damages which an injured party, as a plaintiff, might seek and recover from a tortious wrongdoer, but to give to the victim of a criminal act or omission some solatium by way of compensation out of the public purse for the injury sustained, whether or not the culprit is brought to book, and whether or not the culprit might otherwise be liable to the victim”104 The Scheme must be administered and regulated by the Criminal Injuries Compensation Board constituted at the district, state and central levels. The District Board must be chaired by a retired judge with two members of the Bar and two social workers drawn from the general populace. All such boards must necessarily include three women members. Any claimant, member of the public or public servant shall have the right to file a claim for compensation. Every such claim shall be scrutinized by the Board, with a minimum of three members present, on the basis of materials placed before it, such as medical report, copy of FIR etc. A claim shall not fail in the absence of adequate material. The Board, after scrutiny of the relevant material and/ or otherwise, shall call upon the claimant. On being satisfied of the grounds of the claim, arising from an offence, the Board shall determine the quantum of compensation. Payment of compensation shall not be dependent on the conviction and/or acquittal of the offender. Immediacy in payment of compensation is a dire requirement as, much of its efficacy/need may be lost with the passage of time. Thus, payment of money after two or five years of the incident would be of no utility; rather its immediate access would benefit the victim to tide over the physical as well as mental distress through proper medical/psychological care and treatment. All order of payment must be made within 3 months of filing of claim. The State and Central Boards would have the role of monitoring the scheme, making necessary changes in procedure etc. Determination of the quantum of

[104] *Fagan* v. *Crimes Compensation Tribunal* [1981] VR 887 at 892 cf. Ian Freckelton, Criminal Injuries Compensation for Domestic Sexual Assault –Obstructing the Oppressed

compensation must be a matter of discretion for the Criminal Injuries Compensation Board constituted at the District, State and Central level. However, in no case should it fall below the bare minimum fixed by the State or be a mere token amount for the satisfaction of the court and the accused. Having regard to the heinousness of the crime, the Board should be stern in ordering a hefty amount as compensation. The nature of injuries caused, the gravity of the injuries, the impact of the incident on the victim, the present situation of the victim should be factors to consider in the matter of fixation of compensation.

Concluding Remarks:

State, today, needs a legislative compensatory and victims' interest protection scheme to provide immediate- necessary assistance to victims of crime. The same may be left only to judicial discretion to be pondered upon at the conclusion of the trial, depending on the aptitude of the accused; it must be drawn up as a matter of right (with proper understanding of duties of other sides), should be independent from the final decision of the trial.

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