

CHALLENGES RESEARCHING CRIME AND CRIMINAL JUSTICE IN AFRICA

Irvin Kinnes¹

1. Introduction

Africa provides us with ample examples and case studies of criminal justice that have immense research challenges. Ongoing wars, conflicts and failed states create the opportunity and environment where governments, paramilitaries and standing armies trample on the human rights of its peoples. Crimes of this nature cannot be wished away, rather they are manifestations of the acute socio-political and economic conditions that many of these states find themselves in. In most cases where there are failed states, states that experience intra-state conflict and military juntas leading these states, sections of the local population suffer human rights abuses. It is not by accident that during periods of intense conflict, there are prolonged states of inaction by leaders, officials and politicians who control the forces of coercion, target the criminal justice systems to mete out justice against their opponents.

There is a distinction between political crime and ordinary crime in that political crimes directly undermine the criminal justice systems of the countries that they occur in. It has implications for the administration of justice, political processes and long term confidence in the police, justice and correctional institutions. Despite the differences as shown by the South African Truth and Reconciliation Commission, human rights violations remain crime nevertheless.

Studying crime and criminal justice is contingent on the state of power relations in the country being researched. Access to materials, reports and statistics, court data and other crime indicators are essential to any researcher concerned with the criminal justice system.

In addition, international instruments appear sometimes to have no effect on the intentions and actions of governing elites in some conflict and war ridden states to comply with protocols and instruments which should be observed in the process.

¹ Irvin Kinnes is a PhD candidate at the Centre of Criminology at the University of Cape Town

This paper is concerned with the challenges that face researchers while researching crime and criminal justice on the African continent and the reaction to resultant findings, reports and the consequences as a result of its publication. It will consider how African countries view crime and criminal justice and the development challenges facing their countries. It look at the development and capturing of crime data and will address some of the common challenges, risks and threats that researchers have to face and deal with. It will also attempt to comment on progress that Africa has made in eliminating such threats to research processes with respect to criminal justice systems protocols, international agreements and and crime in general.

2. Context

The African continent has its fair share of challenges as far as under-development, wars, crime and violence are concerned. With a population of 800 million, it is estimated that between 40-60% of the population lives below the poverty line threshold of \$1 per day¹. Ten percent of the world's population live in sub-Saharan Africa and 64% of all people living with HIV live in this region². Africa has had several wars, inter-state conflicts and some countries are still recovering from colonialism. Poverty remain a huge problem together with the ever growing list of internally displaced people as a result of the wars and conflicts that plays itself out on the continent. Many scholars agree that the state of Africa is a direct result of the legacy of colonialism and that the West should be held responsible for the damage inflicted on the many countries in Africa particularly as far as slavery and colonialism are concerned.

There is a tradition and culture that has developed in many African states when it comes to what is perceived as bullying by the West. There are collective positions, resolutions and decision making through consensus and dialogue in international forums despite the individual interest that each nation state prcatices. This collective culture is what is commonly known as African solidarity and is ostensibly why many countries who are member states of the African Union, practice African solidarity instead of being seen to pandering to the good governance protocols which is defined as a Western concept by some. Some refuse to implement such protocols, even after they have signed such protocols. As Annie Chikwana suggest, the roots of non-

compliance with international protocols lie with the poverty of the countries. She argues:

“African governments subscribe to the normative standards of criminal justice articulated by the UN, the AU and other regional organisations, and these are enshrined in their constitutions. However, in practice, these standards are not met for several reasons: authoritarian systems of government; ineffective procedures; under-equipped, unaccountable, inaccessible and irresponsive law enforcement and justice institutions; and a general climate of helplessness among the population in relation to criminal justice officials.”³

A good starting point when researching the implementation and compliance with international instruments and protocols would be to look at the African Union and its sub-regional formations. It has relevance because it relates to the inter-state and multi-lateral agreements that are reached between states. In a democratic society there normally is respect for the rule of law. When such agreements, ratification of protocols are arrived at and the systems to implement them are agreed and the states renege or ignore its provisions, then it is tantamount to subverting its own democratic practices and its respect for a right based society. This has consequences for the criminal justice systems and the administration of justice in such countries.

The roots of poor implementation of international agreements and instruments such as the Rome Statute that brought to life the International Criminal Court (ICC) lie with the political (un)willingness of ruling elites to subject themselves to its provisions , especially when their interests are directly threatened. The ICC decisions relating to war crimes in the Darfur region of Sudan has already ruffled feathers of the governing elites across the African Union. The matter of the warrant of arrest for Sudan’s President, Omar al-Bashir, indicted by the ICC for genocide in Darfur, came up for discussion at the last African Union Summit meeting in Tripoli, Libya in July 2009. It appears that the majority of those present chose to ignore the indictment⁴ and in fact, the Secretariat issued a statement that condemned the ICC as exacting justice in Africa as it is a soft target. The last point of the resolution reads as follows:

“Decides that in view of the fact that the request of the African Union has never been acted upon, the AU member states shall not cooperate pursuant to the provisions of Article 98 of the Rome Statute of the ICC relating to immunities, for the arrest and surrender of President Omar El-Bashir of the Sudan.”⁵

The accusation of the AU has found support from the renowned and distinguished scholar Mahmood Mamdani who argues that while the perpetrators of the genocide should be prosecuted, “the when and how is a political decision that cannot belong to the ICC prosecutor alone”.⁶

No doubt, there are many more scholars who agree with his position and there are those who contest the position. The reaction to the decision of the AU is a clear demonstration of African solidarity at work.

Having said that, there is no given linear development of this solidarity. There have been moments and opportunities where countries have opposed each other as a result of what some Western countries have proposed. An example is Liberia where the Head of State supported the development of the US Africa Command. Other African Heads of State such as Nigeria, Angola and South Africa have indicated that they did not support it.

The actions of the African Union with regard to the ICC arrest warrant effectively means that despite the fact that some of the member states signed and ratified the ICC charter⁷, they decided not to arrest President al-Bashir because of African solidarity. This solidarity creates in African states a way of seeing, a way of understanding that in the end provides real obstacles for researchers studying criminal justice. When states sign and ratify international protocols such as the Rome Statute they are obligated to implement the protocols stipulated by the Statute.

Some of these obstacles for researchers clearly emerges when there is political justification for crimes that elites perpetrate against its own people in the name of the state. This can have repercussions for researchers as in countries where there is political instability, conflict and wars. It could mean that state organs refuse to co-operate with researchers who want to establish what the official position of states are with regard to crime rates, conviction rates, compliance with international protocols etc.

Let us for example look at the case of Zimbabwe. In that country the organs of state has been politically used to beat people (including its own opposition) into submission. The police were unleashed against the opposition in order to protect the interest of the ruling elite during the 2008 elections. Suppression of the opposition through banning, trumped up charges⁸, silencing independent newspapers and

generally beating up supporters of the opposition appears to be the role of the police and the military veterans in Zimbabwe. The role of the police have become politicised much in the same way that the Apartheid used the police against black people. So in the general course of events, the role of the police in Zimbabwe has evolved to legitimising and managing the political crises that have emerged there.

3. Challenges facing Researchers

There are many challenges that face the researcher looking for answers to crime and criminal justice in African countries. These challenges are not unique or special to Africa. They occur in many countries in the globe where the ruling elite of the country has acquired power through undemocratic means; where the leaders have lost touch with the people who elected them into power; countries where conflict pave the way for dictators to emerge; and failed states. There are ample examples of such regimes throughout the world and one only needs to be reminded of North Korea, Zimbabwe, Iraq (prior to the occupation), Haiti and Afghanistan.

Raising these issues is not pandering to neo-liberal ideas of Afro-pessimism; rather it is confronting the fact that Africa appear to be taking the lion's share of the world's conflicts. Any good researcher ought to recognize this and the real research opportunities it presents. This makes the case for Africa special. While the levels of conflicts are high, there has been considerable progress in getting states to reduce conflict and engage in peace-building processes. Amidst the doom, there is a progress as will be shown later in this paper.

There are however considerations and challenges which researchers would have to take account of in completing their assignments, especially when they work in countries where there are wars, conflicts, armed militias, gangsters and intra-state conflict. In this respect, Bruce Baker aptly describes the point:

“The rule of law is possible only in an ordered state. Before enforcing law, government must establish order, yet unfortunately, this has been seriously challenged in Africa over the last decades. 281 million, 45 percent of the population of sub-Saharan Africa live, in countries that have been disrupted (at least in part of their territory) by wars, insurgencies and civil unrest in the last ten years. Since 1970, Africa has endured more than thirty wars, whilst in the past decade more than 17 countries of sub-Saharan Africa have experienced significant period of violent conflict.”⁹

What follows is a list of common challenges that faces researchers in Africa.

Negotiating Acces

From a criminological research point of view however, the question of the role of the police in policing political parties becomes very interesting. It requires the researcher to get his or her hands dirty with respect to researching the police in say downtown Harare. It would require the researcher to be creative and imaginative. Above all, it requires the researcher to negotiate access. One can only imagine interviews being conducted with senior, middle and junior police officers in that country. Under the current conditions of mistrust and suspicion, if the researcher were to apply to conduct such interviews, it will in all probability be refused by the political authorities. If permission were granted, it would be subject to severe bureaucratic processes that would only serve to frustrate the researcher. Now imagine if the researcher is not a citizen of Zimbabwe. The consequences could be dire, the researcher in all likelihood would be accused of spying if one looks at the arbitrary manner in which the police arrest, detain and charge people.

Negotiating access is a crucial step for the researcher and there are inherent challenges that rush up to meet him, especially when conducting research in repressive states. Another challenge is for the researcher to understand the local dynamics, cultures, traditions and practices. It becomes very difficult when researchers are viewed as disrespectful towards local customs. This mitigates against individuals supporting access to the researcher.

In the case of countries that have terrible human rights abuse practices, does the researcher have the right to be quiet in the face of human suffering as we see in Darfur for example? Many of the countries that are accused of human rights abuses deny the extent of the violations and question the validity of the research much in the same way that the United Nations Goldstone report¹⁰ into human rights violations in the Gaza Strip has created denials from both the Israelis and the Palestinians.

How does the researcher remain Objective?

In countries where the organs of state violate its own laws, how does the researcher remain objective, independent and able to accumulate data in order to construct a

research paper while retaining the integrity of the data and the process? How does the researcher ensure the integrity of the research without fear of negative reactions from local militia, warlords etc in a failed state for example? All researchers are human after all and the researcher has positions and interests that could well bring him into conflict with the views of officials, police officers and bureaucrats who abuse power and violate the rights of others.

We have to consider that in countries where a failed state emerges, or where there is internecine and protracted conflict, that the crime and criminal justice researcher may not always have access to information. In countries where freedom of speech is not upheld, researchers may have difficulty publishing their research if it is perceived to undermine the ruling elites. It may have consequences and would depend on the prevailing attitudes of the ruling elites, armies or gang of warlords. In such an environment, it is therefore plausible to believe that a lot of self-regulation and self editing takes place in the heads of researchers who dare to examine the criminal justice system of another country. Consultants cannot do justice to such a research process because they do not stay for the long term examining the changes that take place in the socio-political and legal processes within the country. In addition, most consultants are brought in with the authority and support of the government and they could practice such self-regulation.

Here again, one should proceed with caution because invariably, researchers studying the criminal justice system require access, co-operation and data from officials who manage the justice systems of other countries in Africa. It means that researchers have to adopt creative methodologies which acknowledge the work and progress that have already taken place in such countries. Where no such progress is visible, researchers who have good ethics will have to say what they find in an undiluted form.

In such cases, it requires that the researcher demonstrate an acute knowledge of whom and what the alternative sources for his research should be. In this respect, researchers should have a plan when researching and the methodology should be able to stand the test of criticisms emerging from the research.

Ethics and Morality

During the course of writing this paper, I came across a researcher from Cameroon who indicated that in order for him to gain access to criminal case dockets he was reviewing, he had to bribe the police officer at a certain station with beers¹¹. He lamented that in Africa, “no-one gives you access to case dockets and in any case, there are no statistics.” In order to extract relevant data through data mining processes, it appears that some researchers subtly have to “bribe” others in order to gain access. He was supported by another researcher from Kenya who confirmed the practice. These “bribes” take the form of transport to and from certain areas, lunches, supplying food and hanging out at the expense of the researcher (especially ethnographic research). Adopting such methodologies immediately raises ethical dilemmas for the validity relevance of the research outcomes and ethics employed during the research process.

The ethics of research dictate that researchers should at best attempt not to influence the subject that is being researched as it can interfere with the outcomes and the independence of the research. One of the fundamental issues at stake when studying criminal justice systems in general is our dependence on “official” statistics. We have to beg, borrow and (sometimes as some researchers admit), bribe someone with a bottle of beer. Official statistics and data have their limits in any country and often conceal the dark figure of crime. The methodologies of securing data from official sources should ideally be undertaken without the proverbial conditions attached to it such as writing and defending the state in the case of failed states, or what is left of it.

In circumstances where there are contested power relations in the state, it remains very difficult for researchers to remain objective and deal ethically with subjects, data and processes relating to crime and criminal justice.

Availability of reliable crime data

Other considerations remain the scant measure of crime statistics. Not all African countries make available crime information and one only need to read the UN Office for Drugs and Crime (UNODC) reports¹² to be aware of the nature of crime reporting. Researchers cannot determine the true nature and extent of the crime problems that faces Africa as reliable data eludes them. In addition, the changing nature of crime

adds to the confusion and the regular coup d'états makes the terrain even more lethal for the researcher. Peter Gastrow argues that:

“In addition, there is a dearth of reliable crime data, as crime statistics are available for only about half of all African countries and this data often originates from multiple sources, covering different periods. Perceptions of the extent of organised crime in Africa are often shaped by anecdotal information and media reports that refer to specific cases of arrests and seizures.”¹³

He is not alone in his view of the reality of accessing and understanding crime statistics. The quality of data procured from unofficial sources can be incomplete and this allows for states to question the authenticity of research data that is unverified. Recording crime in Africa is an institutional problem and it creates challenges when it comes to addressing appropriate strategies to deal with crime. A great deal of training of policing agencies is required in many African countries. The United Nations Development Programme Nairobi Victimization survey carried out in 2002 noted that on the issue of unreported crime:

“Existing information is rarely available, and what normally exists is usually based on official records produced by the criminal justice administration. Information of the “dark figure”, citizens’ direct contact with crime and criminal justice administration is generally not readily available.”¹⁴

In this respect, there is justified cause for optimism given the fact that the regional structures of the African Union such as Southern African Development Community (SADC) and Economic Community of West African States (ECOWAS) have established protocols for dealing with issues such as small arms proliferation, regional wars, failed states etc. At a SADC level, the Southern African Regional Police Chiefs Co-ordinating Organisation (SARPPCO) aim to co-operate with each other around issues of trans-national crime.

In order for these states to be effective in the implementation of the protocols, they have to be able to share crime data with one another. One of the objectives of SARPPCO is:

“To ensure efficient operation and management of criminal records and efficient joint monitoring of cross-border crime taking full advantage of the relevant facilities available through Interpol”¹⁵

The SADC protocols does not specifically say how crime information should be shared, but joint country operations such as Operation Rachel to reduce the number of firearms entering South Africa by recovering idle arms cache’s in Mozambique and Operation Mandume in Angola and Namibia, illustrates the point.

South Africa, Mozambique and Angola's policing agencies have to share information about the numbers of firearms uncovered, what types of firearms were uncovered, where it was uncovered and eventually destroy it. At a SADC level, where reporting protocols are better, public access to information appears to be easier and therefore some of the regional structures of the AU appear to be creating the opportunity for access to information. But at a country level, the devil is in the detail when it comes to the institutions that are the standard bearers of preventing crime and criminality: the police and justice agencies. Institutionally many of the structures are weak and have weak and corrupt governance structures. The difficulty for researchers is that some of the information relating to police operations of this nature is sometimes classified making public access to records difficult.

Reliability of Data

Baker's (2008:35) foray into policing in Africa tells a story of multiple actors that are involved in what he calls multi-choice policing. He suggests that while the crime rates appear to have doubled, they are not entirely reliable. The problem for many states is that they do not keep accurate records of crimes. This bedevils the processes whereby students and researchers want to access crime statistics. In addition it provides some of the information, but often not the whole picture. Often the reliability of the data is questioned by researchers studying the criminal justice system and administration.

The importance of "looking in the right places" cannot be underestimated. Finding relevant and reliable data also helps to construct what happened even after an event. An example was the manner in which investigators were able to access records relating to the plan to massacre Tutsis in the Rwandan genocide. One of the ways Human Rights Watch researchers were able to extract their data on the genocide through a diary kept by Colonel Bagosora, a key organiser and perpetrator of the genocide¹⁶.

Linda Melvern, in the preface to his book on the genocide, genocide took place describes how and where he got his data:

“In the Rwandan capital, Kigali, I gained access to files and records that were found when the Rwandan government army abandoned the city. These neatly typed letters, memoranda, reports and other documents, all written in French filed neatly in ring- binders, including evidence of the planning of genocide. Many of them are from the G2 department, military intelligence, in the Rwandan army. I also had access to documents taken into exile by the “génocidaires”, the files later abandoned in refugee camps.” ¹⁷

The point cannot be over-emphasized. Securing data through the process of research, especially human rights violations, is a dangerous and difficult task. The process of uncovering information and data sometimes happens by accident as the team of investigators of the South African Truth and Reconciliation found:

“Secure in their secrecy, the DDC had not apparently destroyed the records of deeds done, operations underway, authorisations given, payments made and the list of names of assassins, blackmailers, collaborators and their ‘targets’. Lawyer Tobie Pretorius was at the head of the unit which stumbled on the DDC headquarters. He telephoned Richard Goldstone to report that the unit was inside what was apparently a major clandestine department of Military Intelligence. What should they do?”¹⁸

Zenzile Khoisan, one of the investigators for South Africa’s Truth and Reconciliation Commission also described how he sourced one of the documents that eventually led to the opening up of the Guguletu Seven, a plot by police and state agents to kill members of the Africa National Congress:

“After caucusing and getting copies of statutes and standing orders governing archives, we set out for Guguletu police station to retrieve documents relevant to the Guguletu Seven. This case started as a simple statement, like many others in our manila files, but ended up being our most successful investigation, conducted collectively and a window case for the Western Cape region, involving key decision makers and major perpetrators in a wide range of abuses. It showed connections between the repression at community level, the organisational structures of the security forces, the mechanisms for targeting activists and the involvement of covert structures.” ¹⁹

Data collection processes are important and it should normally be carefully planned. However in conditions of abnormality, this can sometimes lead to situations where the researcher is able to access much more than he set out to uncover in the first place. Alternatively, the opposite can happen and the researcher will not find worthwhile and useful data.

Institutional Weaknesses

Institutional weaknesses of criminal justice systems play a significant role in the abuse of rights and crime in Africa. The ability of the policing agencies to effectively respond to threats against people creates the conditions for perpetrators to commit horrific human rights abuses with impunity. Worse still for the researcher is when elements of the criminal justice system is colluding with the warlords and illegitimate power brokers. In Angola, Mozambique and the Democratic Republic of the Congo,

the act of establishing a police service has been difficult and challenging, especially after protracted conflict and wars. What goes hand in glove with the development of policing agencies has been the issues of recruitment, training and standard operational practices. The act of establishing trust with the local population is critical if research into crime patterns is going to succeed especially in states where there has been such protracted conflict.

In areas where there have been cases of state failure such as the Sudan, or Zimbabwe, it creates expectations on the part of the researcher to be innovative and creative without offending the ruling elites. This can prove to be dangerous for any researcher who researches criminal justice in the face of the police army or paramilitaries dealing with opposition. Constructing research reports that are vaguely critical of the actions and the dominant power could prove hazardous to the researcher, especially if an atmosphere exists where criticism of any kind is not tolerated. the attacks on academics and students who were critical of Mugabe and deemed to be supporters of the opposition Movement for Democratic Change is a case in point.

Criminal Justice research should answer key questions relating to the systems and process of the application of justice in Africa. In a recent monograph²⁰, the writers lamented the difficulty of current criminal justice systems in Africa to deal with dispensing justice to the people it manages. Access to Justice is one of the greatest challenges for the beneficiaries of the new governments. Some writers claimed that politics determined the state of the criminal justice system and Etannibi Alemika argues very forcefully:

“Much of the contemporary discourse on criminal justice tends to be dominated by concern with the efficiency and integrity of the institutions and officials within the criminal justice system. The discourse tends to focus more on the instrumentality of criminal justice agencies, while neglecting the important normative aspects of justice for the parties in a criminal process. Consequently, inadequate attention is paid to the philosophy, collective psychology, and the political economy that determine the administration of criminal justice.”²¹

So the political economy of crime administration plays a central role in the outcomes of the criminal justice systems in Africa according to Alemika. It is therefore questionable if during the research process, researchers generally and specifically take this into consideration when managing research design processes.

Regional Academic Co-operation

There appears to be a greater synergy in African Universities with regard to quantifying crime and criminal justice data. Developing a sense of the crime patterns in Africa requires that universities should develop greater interest in developing joint research initiatives which focuses on challenges faced by criminal justice systems. There is still a great reliance on law departments at African Universities and few have begun to specialise and invest in criminal justice or criminology departments, although lots of pieces of relevant research have been conducted by Sociology and Law departments. As Patrick Molutsi argues:

“There is a growing need to co-ordinate the activities of the research community with policy-making processes so that policy makers are informed by detailed studies being done in the subregion by citizens themselves.”²²

If states are to succeed with research agendas that aim to focus on crime and criminal justice, then it becomes one of the most important linkages to make with the research community through academic co-operation programmes with universities in Africa.

Legacy of Colonialism

Colonialism has much to do with the internalisation of the colonial power rules, cultures and prescripts. Judging from the literature, the legacy of colonialism looms large on the African continent when it comes to crime and criminal justice. Countries with colonial justice systems have to redevelop the notions of justice as it often comes into conflict with international instruments and human rights practices.

Researchers often underestimate the damage that colonialism inflicted on the overall management of the criminal administration system in Africa. We should also not forget the role of the over eager officials who view themselves as the total and last gatekeepers between order and chaos in the new dispensation. Very often it is these selfsame officials who end up denying people justice in Africa.

Crime and Politics

Various researchers, most notably Stanley Cohen has written about the similarities between crime and politics. He argued in his book, *States of Denial*²³ that various countries go to great lengths to deny atrocities they commit against their own people. Repressive governments in Africa have a new way of denying the reality of human

rights abuses and their resultant consequences. They deny through blaming everything on former colonial powers, western powers and refuse to take responsibility for their actions.

Repressive governments in Africa disapprove of researchers that write in what they view as negative way about atrocities that are committed by the state. The genocide in Rwanda was carefully planned and meticulously carried out by Hutus. The ethnic cleansing was researched by numerous students and it today it appears that a thriving tourist business has been set up by entrepreneurs who have capitalized on the power of attraction. As John and Jean Comaroff points out:

“Killing fields feature prominently. In Kigali, at the Gisozi Memorial, “vivid images” and “horrifying video clips” trace the history of mass murder in “macabre detail.” Other towns have also opened up massacre sites, partly as places of preservation and recuperation, partly as stops on the travel itineraries of foreigners- many of them on their way to other national attractions, like the habitats of wild mountain gorillas.”²⁴

Political parties are generally able to “justify” their excesses when it comes to human rights violations and they generally tend to argue away the need to observe human rights of others, more particularly, their political opponents. This is just not an African phenomenon, but occurs in societies and states across the world. It is mentioned so as not to make the case for an African exceptionalism, but rather to point out that despite the need to point out the exceptional, we need to look for the commonalities in the behaviour of states across Africa. Class and common interest across the world is inevitably what leads political elites to particular positions. This is not an African thing, more it only serves to demonstrate that Africa is the best model of how not to do it because here is no discretion. Power is naked and exercised without modesty or embarrassment. Rather, political power is a trophy, much like the king who paraded without clothes. The illusion of complete and utter control is often invoked by some political elites who appear to have ascended power through illegitimate means.

By practicing the politics of showmanship, power and brinkmanship, states only do damage to their own criminal justice systems and this provides the researcher with more opportunities to investigate, ask, research and draw conclusions. Rather it is a combination of such political leaders and their ever eager civil servants who ingratiate themselves with power hungry political leaders that poses a greater threat to the independence and objectivity of research processes in their respective countries.

In this regard the institutions of the African Union and Nepad provide the opportunity to reduce and undoubtedly remove the suspicion, mistrust and doubt that many researchers have expressed. The move towards open institutions assists the researcher in his quest for clear and correct data. One of the key developments has been the African Peer Review Mechanism.

In Africa, crime and politics is so closely interwoven that making sense of what happens in the criminal justice field sometimes require the involvement of politicians to explain crime patterns within the country. This is nowhere more sensitive than in South Africa where crime has become politicized after the Apartheid government criminalised involvement in politics for the majority. The politicisation of crime has consequences for the officials of state who has to explain the absence, increases, displacement and magnitude of crime statistics. Opposition parliamentarians raise these issues and constantly demand that government be accountable for the high crime rates. Contrary to this not being patriotic, this accountability is the essence of good governance processes in a Democracy. Some politicians and government officials in African countries are very quick to accuse researchers, who dare to make public research reports that are critical of such governance processes as being unpatriotic. It is these actions that have the unintended consequence of creating a self- regulating regime process in the minds of researchers.

Despite the legacy of colonialism, wars, famine and conflicts, there appear to be an emerging consensus that this is changing with researchers bold enough to challenge the status quo by creating opportunities for institutionalisation of research processes in Africa.

Competing International Interests

It is often not considered how the involvement of foreign countries through investments, trade and aid has an effect on the attitude by Africans towards them. It is reflected and articulated in politics very clearly depending which side of the fence you sit on. This also provides the context to the relevancy of the research. Researchers could find themselves being labelled as supporting certain other interest when levels

of foreign competition in any Africa country are high. The prevailing attitude by African countries is that Africa should sort out its own problems. As Gambari argue:

“African states need to develop innovative home-grown strategies to cope with the new security challenges of the post-Cold war era.”²⁵

The beginning of the twenty-first century have seen a renewed scramble for Africa by foreign countries. The United States, the European Union and China in particular have rushed to provide aid to African countries where there is the possibility of stable government and access to their resources. The visit by President Bush and Obama to African countries during their tenure appears to have been designed to consolidate American interest and prepare African countries for its proposal for an African Command (AFRICOM). The AFRICOM proposal of the United States appears to fit into its neo-geopolitical policing plans. According to Isike *et al*:

“Many African Governments regard AFRICOM as the logical outcome of the US’s need to secure its growing strategic interests by maintaining continuous access to, or control over , African resources. An American government official acknowledged as much when she commented essentially AFRICOM’s *raison d’être* is about American interests: ‘Let’s face it, AFRICOM is not about Africa; it is about the United States. It is about what the United States needs’.”²⁶

China too has been increasing its presence in Africa with a view of supporting African development. It has numerous agreements with African countries to develop infrastructure and support economic development and trade. According to Aning and Lecourtne, China is developing African infrastructure because:

“The main point here is the ideological battle between the West and China over which economic model is best for Africa. Good governance and human rights issues that fit in perfectly with the neo-liberal discourse on economic development are opposed to ‘no economic and political conditions’ in the case of development by China. Yet, human rights have in reality never been a guiding principle in determining how Europe engaged with Africa.”²⁷

In addition, the European Union has also stepped up its role in Africa with regard to peacekeeping in the Sudan, foreign aid through assistance measures and trade . All of these activities should be noted by researchers in that it potentially becomes a risk for research processes already underway in respect of policing in individual countries. Depending on the types of research, outcomes can be used by either party to promote their own interest when it comes to investments and development assistance.

4. Institutionalising Research Opportunities in Africa

It should be noted however, that considerable progress has been made with creating a sustainable research base on the African continent from which scholars, researchers and academics are able to draw data from. The growth and institutionalisation of organs such as the African Union, NEPAD, The Pan African Parliament(PAP) and the African Peer Review Mechanism in particular create the conditions of openness, transparency provide a profound measure of accountability of states that are part of such organs.

Research poses many challenges to nations that are not transparent, democratic and accountable to its electorate. This is not only true for Africa; it applies to repressive societies across the world. The question of access to research reports, investigations, peer reviews, decisions, data etc. is obviously made easier through the participation of sub-regional organisations such as SADC and SARPCCO.

Any researcher working on crime and criminal justice would welcome the process and opportunity of working through “official” structures in order to receive the data that he or she require for research purposes. But these too have its risks for individual states when it comes to sharing information. Countries are nervous of sharing sensitive data on crime that would make them look bad in the eyes of their peers. It is at this crucial junction that the African Union Peer Review Mechanism becomes effective and challenges the assumptions that the outside world has about Africa.

The African Peer Review Mechanism (APRM)

From a research point of view, the APRM is a positive development in the governance of political, economic and development processes. It will assist greatly in making available country data that sometimes have eluded researchers due to non co-operation from officials. What makes the APRM process effective is that it is a voluntary process and the review is undertaken by peers. It is not mandatory and it is accompanied by civil society input, which makes the process (and data) more reliable and provides legitimacy for the research community. It helps to create conditions whereby researchers from any country are able to access important documents relating to country profiles and general population data etc.

Twenty nine states have signed up for the African Peer Review Mechanism with the Republic of Cape Verde being the last state to sign up at the eleventh summit of the APRM in Libya on 30 June 2009.

The process for peer review is based on the participating countries participating in a five step process that would include acceding to a self assessment process, based on the four thematic areas that the APRM would look at. This includes Democracy and Good Political Governance, Economic Governance and Management, Corporate Governance and Socio-Economic Development. The first key thematic area has nine key objectives²⁸:

- Prevent and reduce intra- and inter-country conflicts.
- Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, a Bill of Rights and the supremacy of the constitution are firmly established in the constitution.
- Promotion and protection of economic, social, cultural, civil and political rights as enshrined in all African and international human rights instruments.
- Uphold the separation of powers including the protection of the independence of the judiciary and of an effective Parliament
- Ensure accountable, efficient and effective public office holders and civil servants
- Fighting corruption in the political sphere.
- Promotion and protection of the rights of women
- Promotion and protection of the rights of the child and young persons
- Promotion and protection of the rights of vulnerable groups, including displaced persons and refugees.

The five steps would include an initial information gathering stage on the four key thematic areas prepared by the APR Secretariat. The country would also conduct a self assessment based on the thematic areas.

The second stage is a country review visit consisting of wide consultations with government officials, political parties, parliamentarians, representatives of civil society. The third stage is the preparation of the APR Team's report based on the findings of the first two stages. It is measured against the applicable political,

economic, corporate governance and socio-economic development commitment made in the country's Programme of Action. The fourth stage begins when the Report is submitted to the APR Forum through the APRM Secretariat. Consideration and adoption of the Report with decisions being taken, by the APR Forum and the last stage is the public release of the APRM Report, with tabling in the Pan African Parliament, the African Commission on Human and People's Rights, the Peace and Security Council, and the envisaged Economic, Social and Cultural Council (ECSOCC) of the AU.²⁹

The APRM creates the conditions of accountability during the review process because it has to involve civil society. Government are not expected to present its picture on its corporate governance processes in health, fiscal policy and attainment of the Millennium Development Goals (MDG) and so on. It is expected that there should be a strong civil society element. This has the effect of counter-balancing the views of governments in the self assessment stage. It is something that the Chief Executive of the APRM, Bernard Kouassi takes very seriously indeed:

“It is true in the base APRM document it says civil society must be involved but it does not come out very strongly. We intend to clarify and strengthen that section. But if you read all the APRM documents they are clear that civil society must be involved at every stage, and if government attempts to control the whole process, we will refuse to allow it. We say there must be equitable representation of civil society on the governing council and in the processes used to gather input for the report and in creation of the plan of action, which are the steps the country pledges to take to rectify the problems identified. The secretariat cannot force anyone to do anything, but if we look at the governing council and there is not equitable representation of civil society, we will not evaluate you. It must have broad based civil input.”³⁰

Judging from the availability of reports and information from its website alone, one cannot help but accept that while it is early days with respect to the number of countries that have undergone such peer review processes.

SARPCCO

Integration of budgets plays an important role in the accountability of countries that participate in SARPCCO. When countries launch joint crime control and trans-national operations such as we are seeing between South Africa, Angola and Namibia, then there are opportunities for accountability to their domestic parliaments. The police budgets are usually open to scrutiny by the oversight mechanisms in the home

countries. The South African parliament's portfolio committee on Police is regularly scheduling hearings and asks for briefings by the South African Police Service about cross border operations and the associated costs thereof.

The net effect of policing agencies reporting to their respective parliaments assists with parliamentary democracy and good governance processes. It ultimately makes the work of the researcher easier. While co-operation agreements between the members of SARPCCO takes place between police commissioners, there is political oversight by the respective political heads.

Despite the temptation by politicians to interfere in criminal investigation processes, organisational protocols help to reduce such interference. It is healthy for democracy when there are checks and balances dealing with crime in different countries. The fact that countries are subjected to peer review processes can only help to build the democratic space.

Other Challenges

There are many other challenges to take account of when dealing with research into criminal justice. Firstly, apart from the conflicts, understanding security governance architecture and the context for any of the conflicts, researchers must also know what they are looking for. It does not help the researcher not to know what they are looking for when confronting crime and criminal justice systems and processes.

Secondly reporting requirements help a great deal if this has been set prior to research projects and there is inter-agency co-operation between policing agencies, research or academic community members and the funders. It is often a difficult process for researchers to manage research agendas of funders, needs and requirements of individual policing agencies and sometimes deal with the unwritten agendas of politicians.

Lastly the country transport, financial, communication and technological infrastructure of some states makes it difficult for researchers to communicate effectively and reach their intended research target. Getting to remote parts of any country where there are no reliable public facilities and resources can create a problem for researchers, especially if they intend to visit or interview some official

from that particular part of the country. Planning and thorough preparation prior to research therefore becomes essential for researchers before embarking on their respective projects.

Civil Society

While little was written about civil society, it nevertheless plays a key role in shaping discourses and policies about crime and criminal justice. Researchers should not under-estimate the role of civil society with when it comes to record keeping, monitoring criminal justice processes and statistics. There has been a dependency on government processes, ‘official statistics’ and reports when it comes to crime and criminal justice. As already pointed out earlier in this paper, the ‘official data’ is not always reliable and accurate. It should be noted that there are numerous organisations, non-governmental organisations that conduct research into criminal justice and crime across Africa. These organisations have developed over the years, rich databases about the state of various criminal justice systems in African countries.

In this respect therefore, researchers should develop their networks with the research and academic community as sources of knowledge, when it comes to crime and justice. It helps to be able to work within defined parameters and knowing where to access information and data required for a particular study

Civil society organisations in South Africa responded better than the police when the criminal xenophobic attacks occurred in 2008. They were better placed to develop an understanding and a response to the violent attacks and internal displacement of members of the Africa refugees. While the South African state was attempting to respond to the crises, many NGO’s had already sourced alternative accommodation and protection for refugees. Below is a matrix of the protocols that members of African states had sign and ratified for those nationals fled to South Africa during the conflicts and wars in their country. Amnesty international drew up the list of countries that had complied with international protocols, but could not provide protection for its own people. Embarrassingly for the South African government, while it was a signatory of most of the protocols, it did not protect the refugees during their time of need.

Table 1

		1	2	3	4	5	6	7	8	9	10
	South Africa	Zimbabwe	DRC	Malawi	Ethiopia	Somalia	Tanzania	Uganda	Congo	Burundi	Nigeria
Optional Protocol to the Convention against Torture	○										
Convention relating to the Status of Refugees (1951)	•	•	•	•	•	•	•	•	•	•	•
Protocol relating to the Status of Refugees (1967)	•	•	•	•	•	•	•	•	•	•	•
Convention relating to the Status of Stateless Persons (1954)		•						•			
Convention on the Reduction of Statelessness (1961)											
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families								•			
Rome Statute of the International Criminal Court	•	○	•	•			•	•	•	•	•
International Covenant on Civil and Political Rights (ICCPR)	•	•	•	•	•		•	•	•	•	•
(first) Optional Protocol to the ICCPR	•		•	•				•	•		
Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty	•										
International Covenant on Economic, Social and Cultural Rights	○	•	•	•	•		•	•	•	•	•
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	•	•	•	•	•		•	•	•	•	•
Optional Protocol to CEDAW	•			○			•			○	•
Convention on the Rights of the Child (CRC)	•	•	•	•	•		•	•	•	•	•
Optional Protocol to the CRC on the involvement of children in armed conflict	○		•	○			•	•		○	○
International Convention on the Elimination of All Forms of Racial Discrimination	•	•	•	•	•		•	•	•	•	•
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	•		•	•	•			•	•	•	•

• Party to the treatise
○ Signed but not yet ratified

Source: Amnesty Annual Report International Report, 2008

Conclusion

Much has been written about Africa and lots about research methodologies. It has not been the intention of this paper to write about these issues. Rather it concentrated on some of the more common challenges facing crime and criminal justice researchers on the continent. The challenges are not common to all African countries, but certainly some are present in a few countries.

While research is taken for granted in other developed countries with respect to access, openness and availability of raw data, it is not necessarily the same for Africa. It has awoken from its deep post colonial slumber and has started the process of setting up institutions and arrangements for good governance practices. The understanding of this context become vital for any researcher or research institution shaping research on the African continent. Internationally, criminal justice practices have challenges that should be understood by researchers . There are such challenges facing researchers across the globe. In Africa, it is more acute.

ENDNOTES

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