

SOUTH AFRICAN CRIME QUARTERLY



Violence, xenophobia and crime: discourse and practice

Reflections on the outrage against human and child trafficking

Young black males at risk of homicidal violence

Masculinity and sexual abuse: a view from South African prisons

Interview with G4S Managing Director: Care and Justice Services

No 33 • Sept 2010

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Children play on the streets of Dunoon as xenophobic tensions mount towards the end of the FIFA World Cup 2010. In 2008 Dunoon was the first Western Cape township to erupt with the xenophobic violence that saw more than twenty thousand foreigners displaced and in safety camps around the province. © David Harrison.

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Editorial

The past few months have been exceptionally busy for civil society in South Africa. A number of key pieces of legislation reached the point of public comment – some for the second time.

The Combating of Trafficking in Persons Bill, the Independent Police Investigative Directorate Bill, the Civilian Secretariat of the Police Services Bill as well as the hugely controversial Protection of Information Bill have all drawn considerable public comment. This is the good news. Despite the often very short timeframes given by parliament for civil society to consider and make input on draft legislation, there has been no shortage of public comment on any of these pieces of legislation. This is an indication of the importance that civil society ascribes to the issues of civilian oversight of the police, human trafficking and the state's commitment (or lack thereof) to transparency and accountability. It is also a sign of a healthy democracy that the portfolio committees have accepted many of the changes to the draft legislation that were requested by civil society.

Yet there is still much work to be done to ensure that the Protection of Information Bill is not passed in its current form. The Bill represents a reversal of hard won achievements to ensure state transparency and accountability. Quite simply, without access to information civil society cannot hold the state to account. Information is also essential to enable policy researchers to assist the state to identify policy shortcomings as well as ways to fix them.

The Bill also comes at a time when the relationship between the media and the ruling party is extremely strained. The ANC's bid to establish a media tribunal has been interpreted as a threat to media freedom and a blunt effort by the ruling party to stop the haemorrhaging of embarrassing information about corruption that frequently fills front pages. These are likely to remain issues of contention for some time to come, but if the last few months are anything to go by, the public debate is likely to remain refreshingly lively.

In the meantime, this edition of *SA Crime Quarterly* deals with a range of equally important, albeit less headline-grabbing issues. Tara Polzer and Kathryn Takabvirwa offer a critical analysis of political statements that dismissed xenophobic violence as being 'just criminal'. Sasha Gear and Kopano Ratele both consider the way in which negative constructions of masculinity contribute to violence. It is my hope that these two articles will initiate a sustained conversation of the gendered nature of violence and crime in this journal.

Over the past few years *SA Crime Quarterly* has carried a number of articles about human trafficking. The debate is far from over, as discussions in the parliamentary portfolio committee on Justice and Constitutional Development around the Trafficking Bill have shown. In this edition Jacqui Gallinetti offers an analysis of international laws that seek to address trafficking and abuse and points to the problems caused by having many different laws, with different interpretations and definitions of trafficking and abuse.

Finally, the interview with Frikkie Venter is a window into the complex world of public-private partnerships in the criminal justice sector. I hope you will find it interesting.

On 1 and 2 December this year the Crime and Justice Programme of the ISS is hosting an international conference titled: *Towards a coherent strategy for crime reduction in South African beyond 2010*. We have

already received a wonderful array of abstracts, submitted by researchers from all over the continent and the world. Keep these dates, and watch the ISS website for details as this promises to be a unique opportunity to share knowledge and insights gained from research on a range of interesting topics. The conference will be held in Gauteng and is open to the public.

Chandré Gould

'Just crime'?

Violence, xenophobia and crime: discourse and practice

TARA POLZER AND KATHRYN TAKABVIRWA*

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The minister of police and other prominent politicians have interpreted violence against foreign nationals as 'just crime', implying that it is criminally motivated, and thus denying the presence or relevance of xenophobic motivations. This article deconstructs this claim by showing that the police have in fact reacted strongly and specifically to this kind of 'crime'; analyses the assumptions about perpetrator motivations implicit in it; and reflects on the normative and political flavourings of terms such as 'crime' and 'xenophobia' suggested by the claim that violence against foreign nationals is 'only' crime. The article concludes by examining the implications of the distinction between 'xenophobia' and 'crime' in terms of shaping institutional responses to violence against foreign nationals and influencing general perceptions of xenophobia, including those of potential perpetrators.

In July 2010, in the days just after the end of the FIFA World Cup in South Africa, minister of police, Nathi Mthethwa, described attacks on foreign nationals in the country as 'just crime', that is, as being criminally motivated, and not 'xenophobia'.¹ This article deconstructs this, and similar statements by prominent politicians, asking what lies behind the distinction these public figures draw between 'xenophobia' and 'crime,' and what the implications of such a distinction are.²

At one level, describing violence against foreign nationals as 'crime' is, of course, empirically correct. Murder, grievous bodily harm, arson, intimidation, incitement to commit violence, robbery, looting: all these are against the law in South Africa. Therefore such actions are indeed 'criminal'.

The statements by the minister of police and others, however, seem to go beyond confirming that violence against foreign nationals is a criminal act. By contrasting 'xenophobia' and 'crime,' they

are making a claim about the motivations of perpetrators, thereby contributing to the ongoing debate about what is 'really behind' violence against foreigners. It is with this broader implicit debate that this article engages.

Why is it important to take a careful look at discourses about violence against foreigners? Violence against foreign nationals constitutes a significant national security threat for South Africa, both in terms of domestic stability and international reputation. Developing effective institutional and social responses to such violence requires an accurate and empirically-based understanding of the nature and causes of violence. In addition, understanding why certain responses are chosen over others requires an understanding of the political values and imperatives informing actions by important institutions such as the police.

The rest of this article therefore puts the police minister's statement that violence against foreign nationals is 'just crime' in context; examines the actual practices (in contrast to the discourses) of the police regarding violence against foreigners; analyses the assumptions about perpetrator

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motivations implicit in the minister's statement as compared with empirical evidence concerning drivers and triggers of violence; reflects on the normative and political flavourings of terms such as 'crime' and 'xenophobia' suggested by the minister's statement; and concludes with implications of the distinction between 'xenophobia' and 'crime' in terms of shaping institutional responses to violence and influencing the general public and potential perpetrators.

CONTEXT

In a statement made on 15 July 2010, minister of police, Nathi Mthethwa, categorically stated that 'there is no such systematic thing as xenophobia in the country.'¹³ He described violence against foreign nationals as 'criminality' perpetrated by 'criminal elements'. A similar position had been taken by the South African Communist Party a few days before, when they proclaimed that 'these are not xenophobic attacks... but acts of criminality...'¹⁴ Even when the minister acknowledged that threats of violence were xenophobic in nature, he underscored criminality as the overriding aspect of the threats, describing them as 'these xenophobic threats by faceless criminals.'¹⁵ This attempt to distinguish between 'xenophobia' and 'crime' is characteristic of multiple statements that the minister and others have made on the issue.

These statements were made in the context of prominent domestic and international media coverage of threats of xenophobic violence, predicted to start soon after the final match of the FIFA World Cup on 11 July 2010. The denials of violence could therefore be dismissed as a World Cup-related public relations exercise, and indeed several politicians decried reports of violence as 'meant to drown the World Cup success in the blood of lies and rumours.'¹⁶

However, the reduction of violence against foreigners to merely 'crime' goes beyond this specific context. It is a long-standing discourse, especially within the police service. In an interview in April 2010, an SAPS captain at Da Gamaskop police station in Mossel Bay described

attacks against foreign nationals in his area during and since 2008 as follows:

[I]n our area it was... more people that saw opportunity to do housebreakings and especially at the businesses of foreigners and do it under cover of xenophobia; so actually, although it was called xenophobia, it wasn't actually xenophobia in our area. We believe it was more criminal activities and not xenophobia as such...⁷

Also in April, the then acting executive director for Safety and Security at Nelson Mandela Bay Municipality characterised violence against foreigners as purely criminal, stating that it was 'never necessarily a xenophobia thing.'¹⁸

The 'crime' explanation for violence against foreign nationals is by no means the only discourse in South Africa, nor is it the dominant one, even among people in government. Prominent alternatives focus on the effects of apartheid and internalised racism ('Afrophobia');⁹ the effects of poverty and 'resource competition' as the basis of a 'popular uprising' against perceived competitors;¹⁰ or faulty immigration policies which have led to a supposed 'human tsunami' entering the country, against which poor South Africans are rebelling.¹¹ Our own research at the Forced Migration Studies Programme (FMSP) has focused on local governance issues as triggers of violence,¹² as discussed further below. Nonetheless, the discourse of violence against foreigners as 'crime' bears singling out due to its prominence and its dominance in the government institution currently most active in concrete action against such violence: the South African Police Service (SAPS).

ACTION VERSUS DISCOURSE

Before delving into the discourse itself, it is important to note a seeming discrepancy between the public statements by the political leadership of the police, which suggest a 'business as usual' approach, and the actions of the institution on the ground, which have shown an exceptional mobilisation of long and short-term resources.

Assessments of the police's role during the May 2008 violence, and in various episodes of violence prior to and since then, have been ambivalent at best, identifying insufficient protection of victims, half-hearted investigations against perpetrators, and in some cases outright collusion with attackers.¹³ Police at senior levels have shown a concern to learn from these experiences, and since 2009 the SAPS has in fact adopted a series of measures to respond proactively to violence against foreign nationals, including the establishment of dedicated structures to address such violence.

A national coordinator for xenophobia has been appointed at director level within the Visible Policing department. The person in that position has recently been promoted to general, suggesting continued recognition for the person and the position. Further institutional structures still in the process of being operationalised include point-persons for xenophobia at provincial level and at lower levels, with duties to monitor and regularly report on incidents of violence and threatened violence against foreigners, thereby increasing levels of oversight and accountability throughout police structures.

A specialised team has been established to collect and collate crime intelligence data concerning crimes against foreign nationals, in order to establish patterns and assist in prevention and response planning. Since early 2010, these police structures have been engaging with other government departments to develop an operational multi-agency preparedness plan for potential cases of widespread violence; although so far with limited success in achieving a collective, practicable plan. Furthermore, the police structures have been developed on the basis of ongoing consultation and engagement with United Nations agencies and domestic civil society organisations, suggesting new levels of openness and a desire to find effective, and not only institutionally expedient, measures to prevent and respond to anti-foreigner violence.

While it is still too early to tell conclusively, it seems that these measures, combined with the extraordinary mobilisation of personnel and

resources around the World Cup, have significantly contributed to preventing the predicted violence against foreign nationals in July 2010. There are many examples where the police have responded quickly and decisively to early signs of violence, stopping its spread, arresting people inciting and perpetrating violence, and assisting foreign nationals to protect lives and belongings. Senior police officers at provincial and sector level have made their cell phone numbers public in order to facilitate fast responses to threats and attacks. The sustainability of such a response remains to be seen, once the exceptional political and budgetary context of the World Cup has passed. For now, however, it seems that the police did not in fact treat the potential and reality of violence against foreign nationals in July 2010 as a 'normal' kind of crime. Rather, they acted on another of Minister Mthethwa's statements, namely that 'government will not tolerate any violence for any reason against foreign nationals resident in South Africa.'¹⁴

IMPLIED MOTIVATIONS FOR VIOLENCE

If the police's actions suggest a recognition that violence against foreigners is a significant category of crimes, deserving special structures and attention,¹⁵ and if the interventions based on this recognition have been effective, why be concerned with a rhetorical distinction between 'crime' and 'xenophobia'?

There are two reasons: firstly, the distinction implies a debate about what motivates perpetrators who attack foreign nationals; and secondly, the discourse has a direct impact on institutional and public responses to the issue. These are dealt with in the following two sections.

Motivations are important for understanding crime and violence patterns, identifying potential perpetrators, and designing appropriate preventative responses.¹⁶ In the case of violence against foreign nationals in South Africa, any convincing discussion of motivations must be able to explain: a) who commits such violence

(including why such violence tends to be concentrated in certain types of communities), b) who the targets of such violence are and why these particular individuals or groups are targeted, and c) the various forms that intimidation and violence take.

The 'just crime/not xenophobia' discourse, as set up through public statements, can be interpreted to imply that none of the perpetrators of violence against foreigners are motivated by discriminatory sentiments or attitudes, but rather that they are all exclusively motivated by 'opportunistic' greed.¹⁷ The suggestion is, furthermore, that motivations for violence against foreign nationals therefore do not differ from any other forms of violence classed as 'crime'.

This distinction between discriminatory attitudes (i.e. negative perceptions about groups of people by virtue of their nationality, race, religion, etc.) and violent actions is in fact an important and legitimate one. Successive studies have shown that negative attitudes towards foreign nationals pervade all economic, racial and educational strata of South African society. They are by no means limited to, or significantly more virulent in, the poorer, predominantly black, informal settlements where violence has mainly occurred to date.¹⁸ Indeed, far from the political claims that 'South Africans are not xenophobic',¹⁹ many more South Africans of all walks of life espouse strong negative attitudes about foreign nationals than the overt violence in particular places suggests.²⁰ This implies that violence cannot be explained by looking at attitudes alone.

However, postulating motivations of pure opportunism and material interest also do not explain why foreign nationals are targeted above other groups with goods to steal; why such attacks only happen in some places where foreign nationals reside and not in others; or the forms that group mobilisation for violence and actual attacks often take.

Some groups of foreign nationals, specifically shopkeepers in informal settlements, are said to be targeted by robbers because they are perceived

to be more likely to keep cash on the premises (due to difficulties in accessing banking facilities),²¹ or indeed just because any shop is targeted, irrespective of the nationality of the owner. Such examples are used in support of the opportunistic crime interpretation. However, this explanation does not account for aggression in cases where there is no opportunity for material benefit to the attackers. These include threatening statements by neighbours, landlords, taxi drivers, employers and public servants, which foreign nationals have increasingly reported since late 2009;²² throwing a Zimbabwean from a train without taking any of his belongings;²³ and physical attacks on Somali and other foreign shopkeepers without any goods being looted.²⁴

Furthermore, research has shown that in Alexandra township in Johannesburg, the epicentre of the May 2008 violence, poorer foreign residents were more likely to have experienced threats and physical violence due to their nationality than those with more resources,²⁵ challenging the argument that people were targeted for purely material reasons.

The FMSP's in-depth studies of twelve places where violence occurred in and since May 2008 have consistently identified localised competition for (formal and informal) political and economic power as the immediate triggers for violence. Leaders and aspirant leaders mobilised residents to attack and evict foreign nationals as a means of strengthening their personal political or economic power within the local community. In many instances, violence was organised by South African business owners intent on eliminating foreign competitors.²⁶

While such attacks often do include looting, and while such incitement is indeed criminal, the mobilisation element cannot be understood without two factors that go beyond immediate material opportunism. The first is prevalent sentiments against foreign nationals, which, while not sufficient to create violence on their own, nonetheless enable mobilisation against this particular group. The second is the perceived structural 'outsiderness' of foreigners, which

creates a sense of impunity for crimes committed against this group. Even though some perpetrators in May 2008 were arrested and convicted,²⁷ the public perception of judicial impunity remains. The combination of attitudinal and structural 'othering' is what can properly be understood as a climate of xenophobia.

The empirical picture of violence against foreign nationals therefore shows that this is not a one-dimensional or indeed binary issue: neither 'just crime' nor 'just xenophobic attitudes'. A combination of attitudes, structural impunity, political mobilisation, and, in some cases, short-term material gain, is at play.

NORMATIVE AND POLITICAL ASSUMPTIONS

Given this complex picture, what purpose is served by postulating the one-dimensional explanation of 'just crime'? What lies behind the police minister's insistence on referring to violence against foreign nationals as '*so-called* xenophobia'?²⁸ In his non-use of the term 'xenophobia', the minister brings to the fore the need to examine the normative and political assumptions behind the use of the terms 'crime' and 'xenophobia'.

Firstly, the use of criminal terminology makes a normative statement about the perpetrators of such violence, and in so doing, a claim about the majority of South Africans. Criminal behaviour is deemed socially unacceptable, with criminals being outside of the norm. The main response to crime – incarceration – involves physically removing those labelled 'criminals' from the general populace, thereby demonstrating the normative removedness of criminals from society. By classifying violence against foreigners as solely criminal, and its perpetrators as criminals, those who make such claims dissociate violence against foreigners from the general population of South Africans. This is illustrated by Gauteng premier, Nomvula Mokonyane's claim in reference to such attacks: 'We don't actually believe South Africans are xenophobic. We see that as a pure act of criminality.'²⁹

The avoidance of the term 'xenophobia' (and with it the notion of xenophobia) also reflects the assumption that in South Africa xenophobia is an event, and not an ongoing phenomenon. More than that, it is an event that occurred in 2008 and is securely in the past – in a past that cannot and should not be revisited. Hence the minister of police's claim that 'xenophobia is not going to happen.'³⁰ Distinguishing between the widely criticised events of May 2008, and 'isolated criminal elements' in 2010, attempts to make a break from that previous experience. This sheds light on the police minister's reprimand of reporters and civil society for the 'squall of bad omen' by using the term 'xenophobia'.³¹

Thirdly, calling perpetrators 'criminal elements' implies that reported attacks against foreign nationals are isolated cases – unplanned, with no connections or continuities between discrete criminal events. This diminishes the seeming scale of such attacks, making the phenomenon appear more manageable or at least less alarming. It also suggests that conventional and established crime fighting and visible policing approaches are appropriate and sufficient for addressing the issue.

Finally, the choice of terminology has a political and ideological dimension. Much of the leadership of the ANC and broader ruling alliance understands itself as heir to a long non-discriminatory, pan-African tradition. The idea that many, indeed perhaps the majority, of voters may be xenophobic is ideologically and politically uncomfortable. One possibility of dealing with this discomfort is to deny the discrepancy in party and popular positions and claim that it is impossible for 'South Africans' to be xenophobic. Individuals and institutions (including opposition parties, 'the media', and parts of 'civil society') that speak of xenophobic sentiments and tensions therefore become 'peddlers of... rumours and lies who are hell-bent to dent our humanity as a people.'³² The crime discourse, by contrast, does not hold the same ideological and political tinder since 'criminals' are constructed as normatively outside of broader society, rather than representing a potentially dangerous political force within the electorate.

IMPLICATIONS FOR INSTITUTIONAL AND PUBLIC RESPONSES

The normative and political assumptions discussed above, and the public statements that emanate from them, have concrete implications for responses to violence against foreign nationals.

Where violence is characterised and conceptualised as crime, it follows that the response to it is a criminal justice response with a focus on policing. This is beneficial when it results in a show of force by the state as a short-term preventative and response measure. The same is true when it produces a longer-term sense of security and preparedness.

However, when violence against foreign nationals is seen as '*just crime*', there are broader institutional and public implications. For both, the response to such violence is *just* a crime-oriented one. If the characterisation of such violence is overly narrow, essentialising and inadequate, then the response that is informed by it is likely to be inadequate, if not inappropriate.

Institutionally, firstly, the response to violence against foreign nationals becomes the same as the response to any other form of crime, without considering the discriminatory aspect of such violence, as well as its patterned nature. Consequently, focus shifts away from both the underlying causes of such violence and the factors that enable its perpetration against a specific group of people.

The lack of a sustained or preventative approach to violence against foreign nationals is the second risk of a '*just crime*' discourse. As seen in 2008, the security response increases when there is an increase in the number and/or prominence of cases, but this security response declines or ends as soon as the immediate perceived threat is over.

Finally, and perhaps most significantly, statements made by public figures have implications that reach beyond the institutions

they lead. How do the general public and potential perpetrators of violence understand the crime discourse and adjust their actions and attitudes accordingly? If violence against foreigners is characterised as '*just crime*', an activity practiced by certain '*removed*' elements of the population, '*xenophobia*' as a concept and a widespread attitude is not addressed. Furthermore, by distinguishing the '*xenophobic*' attitude from '*criminal*' violent actions, the attitude itself is potentially normalised. It becomes possible for a person in a public meeting to unreservedly proclaim that he or she is '*proudly xenophobic but not a criminal*' or that '*criminals are hiding behind xenophobia*',³³ as if xenophobia were a morally palatable fig leaf.

This is not to deny that strong statements about '*criminality*' from the police may have contributed to preventing violent acts in July 2010, since some potential perpetrators may not have wanted to be associated with '*criminals*'.³⁴ This is clearly a positive outcome in the short term. However, the emphasis on criminality to the exclusion of other elements of xenophobic discrimination presents a slippery slope, where certain acts of discriminatory aggression (such as intimidation and harassment) can be seen as acceptable, as long as they are not violently '*criminal*'. This is reflected, for example, in perceptions that '*xenophobia*' was averted in July 2010 since there have been few cases of outright physical attacks, even while thousands of foreign nationals have experienced sufficient intimidation to effectively displace themselves out of the country.³⁵

In conclusion, governmental and police actions in response to threats and attacks against foreign nationals in July 2010 indicate a seriousness of purpose in the highest offices, which is to be welcomed and commended. However, the adherence to a discourse that characterises such violence as '*just crime*' could in many ways undermine the overall efforts to address and in future prevent the targeting of foreign nationals.



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NOTES

- 1 The Minister initially said the threats were only 'rumours', even though these rumours would be taken seriously and acted upon. Then he admitted they were 'xenophobic threats' but said they were being made by 'faceless criminals' who were not predominantly motivated by 'xenophobia'. See statement issued by the Ministry of Police. 'Minister Mthethwa Condemns and Cautions These Thugs to Refrain from Threats', *South African Government Information*, 1 July 2010, <http://www.info.gov.za/speeches/2010/10070115451001.htm> (accessed 31 July 2010).
- 2 This article is based on a combination of sources from work by the Forced Migration Studies Programme, including over four years of empirical research into violence against foreign nationals; various studies on the police's role, and perspectives on immigration policing and violence against foreigners; two years of direct engagement with high levels of police leadership on early warning and preparedness for xenophobic violence through channels such as the national Protection Working Group, of which the FMSP is a member; and analysis of recent media reports on statements by political leaders.
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- 4 It's Crime, Not Xenophobia, *Mail & Guardian*, 13 July 2010, <http://www.mg.co.za/article/2010-07-13-sacp-its-crime-not-xenophobia> (accessed 31 July 2010).
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- 6 M Gigaba, 'We're being tainted as savage and ferocious animals', *ANC Today*, 12 July 2010, <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71654?oid=186489&sn=Detail> (accessed 31 July 2010).
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- 8 Ibid.
- 9 Consider M Neocosmos, From 'Foreign Natives' to 'Native Foreigners': Explaining Xenophobia in Post-Apartheid South Africa: Citizenship and Nationalism, Identity and Politics, CODESRIA: Dakar, 2006.
- 10 D Glaser, (Dis)connections: Elite and Popular "Common Sense" on the Matter of "Foreigners", in S Hassim, T Kupe, and E Worby (eds) *Go Home or Die Here: Violence, Xenophobia, and the Reinvention of Difference in South Africa*, Wits University Press, 2008.
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- 12 J-P Misago, LB Landau et al., *Towards Tolerance, Law, and Dignity: Addressing Violence against Foreign Nationals in South Africa*, Johannesburg, IOM and FMSP, 2009; J-P Misago, T Monson et al., *Violence against Foreign Nationals in South Africa: Understanding Causes and Evaluating Responses*, Johannesburg, CoRMSA, 2010.
- 13 CoRMSA, 'Protecting Refugees, Asylum Seekers and Immigrants in South Africa', Johannesburg, Consortium for Refugees and Migrants in South Africa, 2010; V Igglesden, T Monson et al., *Humanitarian Assistance to Internally Displaced Persons in South Africa: Lessons Learned Following Attacks on Foreign Nationals in May 2008*, Johannesburg, Forced Migration Studies Programme, University of the Witwatersrand, 2009; South African Human Rights Commission, 'Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals', Johannesburg, South African Human Rights Commission, 2010.
- 14 Ministry of Police, Minister Mthethwa Condemns and Cautions These Thugs.
- 15 There is an extensive literature on 'hate crimes', one manifestation of which may be crimes against foreign nationals, which emphasises the importance of taking discriminatory motivations into account. A new 'hate crimes' bill is currently under discussion in South Africa. While we argue that motivations are important to consider, 'hatred' or discriminatory attitudes are not the only reasons for which foreign nationals are targeted (other reasons may include the belief that they carry cash or that the police are less likely to investigate, etc.). The scope of this paper, however, does not allow for a full discussion of the issue of 'hate crimes' and 'hate crime' legislation.
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- 17 'Xeno fears as shops looted', *The Mercury*, 13 July 2010, <http://www.themercury.co.za/?fArticleId=5552820>.
- 18 See the Gauteng City-Region Observatory (GCRO) report on 'Xenophobic Attitudes', which indicates that their survey found that '69% of Gauteng city-region residents hold xenophobic attitudes.' The report is available on http://www.gcro.ac.za/sites/default/files/Projects/GCRO_2009_QoL_survey_Xenophobic_attitudes_final.pdf. A more extensive GCRO report entitled 'South African Civil Society and Xenophobia', released in July 2010 is available on http://www.gcro.ac.za/sites/default/files/Projects/GCRO_2009_QoL_survey_Xenophobic_attitudes_final.pdf.
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Don't shout too loud

Reflections on the outrage against human and child trafficking

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Human and child trafficking is regarded as an international crime and serious human rights violation. However, the clandestine and transnational nature of trafficking makes it extremely difficult to apprehend or prosecute offenders, or to verify information about the scope and nature of the problem. Yet, despite the lack of quantifiable data, extensive global attention has been focused on the phenomenon of trafficking. This article highlights some concerns regarding conceptual and definitional problems, as well as the seeming international preoccupation with trafficking, in an attempt to position the issue within the larger context of other global human rights abuses.

A brief internet search will reveal many pages of search results for advertisements and campaigns directed at combating human and child trafficking. MTV has produced a range of commercials to highlight the scourge, which also includes a music video of Radiohead's song 'All I need'. Celebrities such as Emma Thompson, Ashley Judd and Demi Moore have appeared on commercials and for campaigns against child and human trafficking. That is not including all the commercial marketing and campaigning undertaken by agencies such as the United Nations Office on Drugs and Crime (UNODC), United Nations Global Initiative to Fight Human Trafficking (UNGIFT), the International Organisation for Migration (IOM) and even the Salvation Army.

This is most certainly not unwarranted. According to the International Labour Organisation (ILO), child trafficking:

is a crime under international law and a violation of children's rights. It reduces victims to mere 'commodities' to be bought, sold, transported and resold. Trafficked children may end up working as domestic servants, street beggars, agricultural labourers, miners, or may be sent to work on construction sites, in sweatshops or entertainment places. In some cases, these children are forced into truly reprehensible forms of child labour such as prostitution, pornography, armed conflict, bonded labour, or other illicit activities.¹

Echoing this sentiment, Fitzpatrick observes that 'one of the most troubling contemporary forms of slavery and human servitude is the trafficking of women and children for purposes of sexual exploitation and other types of forced labour.'² It cannot be denied that human trafficking and child trafficking is a reality that deserves both international and national attention and action. However, what is surprising is the extent of global and local attention given to the phenomenon.

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This article will argue that, since the veracity of claims that trafficking is on the increase has yet to be scientifically confirmed, the attention that human trafficking garners is perhaps disproportionate to the quantifiable scale of other serious human and child rights violations globally. The article examines some of the reasons that may have contributed to the concentrated awareness of the issue. Finally, it argues that the spotlight on the act of trafficking itself may detract from addressing the underlying exploitation and abuse for which people and children are trafficked.

THE SCALE AND EXTENT OF TRAFFICKING

It is widely agreed that there is an absence of reliable information regarding the extent to which trafficking in persons occurs globally. According to Todres, Georgetown University's Institute of Migration Studies concluded:

[T]here is little systematic and reliable data on the scale of [human trafficking]; limited understanding of the characteristics of victims (including the ability to differentiate between the special needs of adult and child victims, girls and boys, women and men), their life experiences, and their trafficking trajectories; poor understanding of the modus operandi of traffickers and their networks; and lack of evaluation research on the effectiveness of governmental anti-trafficking policies and the efficacy of rescue and restore programs, among other gaps in the current state of knowledge about human trafficking.³

This said, efforts have been made in recent years to quantify the extent of trafficking at the global level. However, estimates by various international organisations and government institutions vary. According to *Every child counts: New global estimates on child labour*, of an estimated 8.4m girls and boys in 'unconditional worst forms of child labour' in 2000, an estimated 1.2m children under the age of 18 were trafficked.⁴

UNICEF presents a slightly different set of figures in its 2009 report card on child protection. The

UNICEF report reiterates the point that statistics are hard to gather and often unreliable, and that continued misconceptions of the difference between trafficking and prostitution, and between trafficking and illegal migration, also affect data reliability. The report cites United States Government estimates that 600 000-800 000 people are trafficked each year across international borders. Drawing on its own analysis and that of three other organisations – the International Labour Organization, the International Organization for Migration and the United Nations Office on Drugs and Crime – UNICEF estimates that one sixth to one half of these people are children. It does however caution that there may be questions about this figure, due to methodological weaknesses of analyses, data gaps and numerical discrepancies.⁵

Yet there is quantifiable information on a range of other abuses and conditions that afflict children globally. In 2008 there were nine million deaths of children under five years of age; in 2007 101 million children of appropriate age were not attending primary school; in 2008 two million children 14 years and younger were living with HIV/AIDS; and in industrialised countries alone, five to ten per cent of girls and up to five per cent of boys suffer penetrative sexual abuse during their childhood, with the percentage of children experiencing any form of sexual abuse being as much as three times higher.⁶

This seemingly gives rise to the proposition that while the plight of the world's children generally is highlighted through the media, advocacy and in academia, the attention given to trafficking of children is arguably disproportionate to the apparent scale of the problem. A similar argument could also be made regarding the 'hype' surrounding human trafficking as opposed to other human rights violations faced by men and women globally.

TRAFFICKING AND THE INTERNATIONAL COMMUNITY

It is arguable that one of the contributing factors to the wide-scale global focus on trafficking is the

manner in which the international community has dealt with human trafficking and related human rights abuses.

History has highlighted the existence of slavery, including trafficking in persons, with notable examples being its usage in Roman times and in the United States prior to and during the Civil War in the 1800s. It was only in the 20th century that the international community started taking collective action aimed at preventing and prohibiting it – and did so with great enthusiasm.

The international concern with trafficking arose in the context of the trafficking of 'white slaves' in the early 1900s. In 1910 the International Convention for the Suppression of the White Slave Traffic was adopted, but it only came into force in 1949. In 1921 another international instrument dealing with the issue of trafficking was adopted, namely the International Convention for the Suppression of the Traffic in Women and Children, which came into force in 1922 and was also aimed at supplementing the 1910 Convention. In 1949 the United Nations adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. This Convention came into force in 1951 and its purpose, as stated in the preamble, was to consolidate previous trafficking conventions. In addition, specific references to the prevention of trafficking can be found in many other international laws. The Universal Declaration of Human Rights (1948) directs that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

The Slavery, Servitude, Forced Labour and similar Institutions Convention of 1926 provided for the prevention and suppression of the slave trade and the abolition of slavery in all forms. Further to this, the UN Supplementary Convention on the Abolition of Slavery (1956), through its various articles, commits parties to abolishing and abandoning debt bondage, serfdom, servile marriage and child servitude. It further criminalised slave trafficking, enslavement and the putting of others into slavery.

The ILO Forced Labour Convention (1930) requires that State Parties undertake to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. Similarly, the ILO Convention No. 105 on the Abolition of Forced Labour (1957) requires that 'each member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour.'

This indicates that there have been varied international attempts at eradicating slavery, forced labour and trafficking, creating a complex system of international law on these issues. This trend has continued in modern international human rights law with the issue of trafficking being dealt with by, or the subject of, a number of international treaties. Perhaps the most widely acknowledged treaty dealing comprehensively with trafficking in persons is the Convention Against Transnational Organised Crime (2000) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) (the Palermo Protocol).

However, there are other instruments that create equally binding obligations regarding trafficking in respect of women and children, and which consequently tend to create overlapping conceptual issues and obligations on State Parties to them. First is the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), which directs that State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and their exploitation or prostitution.

Then there is the United Nations Convention on the Rights of the Child (1989), which addresses child trafficking in Article 35 by requiring states to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form. The Convention on the Rights of the Child has been supplemented by the Optional Protocol on the sale of children, child prostitution and child pornography, which came into force in

January 2000. Its aim is to reinforce, *inter alia*, article 35 of the Convention and it also extends the measures that State Parties should undertake in order to guarantee the protection of the child from sale, prostitution and pornography.

Finally, in the context of international labour law, the Worst Forms of Child Labour Convention No. 182 (2000) was adopted by the International Labour Organisation in an attempt to adopt new instruments for the prohibition and elimination of what the Convention terms 'worst forms of child labour', which includes trafficking in children, slavery and forced labour.⁷

In the African context the African Charter on the Rights and Welfare of the Child provides specifically for the protection of the rights of victims of child trafficking in Articles 24 and 29 and the Protocol to the African Charter (on Human and Peoples' Rights) on the Rights of Women in Africa, which in article 4 directs State Parties to 'prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.'

The legal framework that emerges from the above is complex and varied, with differing obligations for states; overlapping definitions and concepts; and multiple monitoring and reporting procedures.⁸ What has resulted is a plethora of information emanating from the lead agencies (the United Nations and International Labour Organisation); Special Rapporteurs; the different treaty bodies responsible for monitoring the implementation of the Conventions; and from states themselves in the form of their reports on implementation progress.

In relation to the problem of quantifying the extent of trafficking, the differing concepts of trafficking and obligations created by these treaties constitute real challenges. For example, in the case of child trafficking there are three main international conventions – each of which represents a different field of international law – traditional human rights law in the case of the Convention on the Rights of the Child; international criminal law in relation to the

Palermo Protocol, and international labour law in relation to the Worst Forms of Child Labour Convention. For instance, whether a particular child will be regarded as having been trafficked for the purposes of child labour, or for illegal adoption, or for the trade in body parts, will depend on the applicable legal instrument. One danger created by this situation is that in reporting on the implementation of the different treaties, a trafficked child could potentially be counted three times (once for each treaty, provided the conduct fits the concept of trafficking under each instrument), leading to a possible inflation of the extent of the problem.

Is it then so surprising that there is a perception that the scale of trafficking is much larger than can be scientifically proven? Or that trafficking presents a global crisis, given the many ways in which the international community is attempting to address it?

GETTING TO THE UNDERLYING PROBLEM – EXPLOITATION

A further complication resulting from the attention that has been focused on trafficking by the international community and popular media, particularly in respect of children, is that the underlying purposes for which persons are trafficked are potentially obscured by the fixation on the act of trafficking itself.

The resultant exploitation for which persons are trafficked is a critical element of the crime. Forms of exploitation range from forced labour and sexual exploitation to removal of body parts. As each of the forms of exploitation themselves constitute a human rights abuse and/or crime, international and domestic obligations require states to adopt measures to, *inter alia*, also prohibit and prevent the forms of exploitation. For instance, articles 32 and 34 of the Convention on the Rights of the Child require states to protect children from economic exploitation and hazardous work, and sexual abuse and exploitation respectively. Similarly articles 11 and 14 of the Convention on the Elimination of All Forms of Discrimination Against Women require

states to take measures to ensure the rights of women in work and employment. So too, article 8 of the International Covenant on Civil and Political Rights protects all persons from slavery and forced labour. Apart from these well-established international protections, one would be hard pressed to find national legislation that does not provide persons with protection from, for example, sexual abuse and exploitation, or slavery and forced labour.

There is therefore a clearly defined, existing framework at the international and domestic level to protect persons from the forms of exploitation that potentially create an enabling environment for trafficking to take place. One should also bear in mind that most of the victims of these forms of exploitation are not also victims of trafficking. The two are not inextricably linked.

Perhaps it is then more useful to concentrate on combating the actual exploitation for which persons are trafficked, as that would then reduce the need for trafficking. One must not conflate the need for a policy and framework for combating trafficking with the need for a policy and framework for preventing exploitation and abuse. The latter requires a strong legal and policy framework, trafficking notwithstanding. However, one must acknowledge that there are linkages between the two because exploitation is a critical element of the crime of trafficking and one of its primary drivers.

While the seriousness of trafficking in persons as a human rights violation is not in dispute, the risk that one runs by paying an inordinate amount of attention to the act of trafficking is that it may detract from efforts to prevent exploitation and abuse generally.

WHAT LIES BENEATH?

An issue that this article does not attempt to address is what the motivating factors are behind the 'hype' on one hand and the international community's concern with the issue on the other. Are these political, or financial, and where do they originate? Any attempt to answer these

questions will require in-depth research into funding priorities, political agendas and the underlying motivations for law and policy development in relation to trafficking, as well as how these and other factors interlink. However, there are some readily apparent indications of what has contributed to the somewhat recent and heightened discourse on trafficking.

Perhaps one clue is the keen interest of the United States on the issue. This is evident, *inter alia*, from the US Department of State's Trafficking in Persons Report, which is released annually and attempts to analyse country responses to trafficking in terms of prosecution, protection and prevention. The United States Trafficking Victims Protection Act of 2000 requires that an annual report must be submitted to the US Congress, describing the nature and extent of severe forms of trafficking in persons with respect to each foreign country, and an assessment of the efforts made by the government of each country to combat trafficking. Section 108 of the Act sets out minimum standards that need to be complied with for the elimination of trafficking and countries are then assessed to determine whether:

- they fully comply with the minimum standards
- do not yet fully comply but are making significant efforts to bring themselves into compliance therewith, or
- do not comply and have not made any efforts to do so

In terms of section 110, the United States will not provide non-humanitarian, non-trade related foreign assistance to the government of a country for the subsequent fiscal year until such government complies with the minimum standards, or makes significant efforts to bring itself into compliance.⁹

The US annual report on other countries' progress in combating trafficking, as well as the withholding of financial assistance where progress is not happening, places pressure on states to address the issue of trafficking in persons. The appropriateness of the US playing 'international

safe-keeper' of anti-trafficking efforts is questionable, yet it can be argued that the consistent monitoring of progress and publication of the annual report would be a motivating factor for states to make an effort to comply with international obligations.

Another possible indicator of why the international community is paying so much attention to trafficking in persons is securitisation in a global economy. Nicole Jackson, in a study on trafficking in narcotics and persons in post-Soviet Central Asia notes that (in the context of that region) the European Union's motivation for securitising trafficking in narcotics and persons is based largely on its strategy against terrorism, in order to prevent Central Asia from becoming a conflict zone, safe haven for terrorists, or funder of terrorist activities.¹⁰ Jackson also alludes to some other reasons for international organisations' interest in trafficking, including a common belief that international organisations should help vulnerable states counter clandestine transnational activities, based on a perceived moral duty to counter these activities; and that by addressing trans-national trafficking, the international organisations' member states themselves would be protected from any threats to their stability.¹¹ Jackson's study highlights the post- 9/11 resurgence of the notion of statehood and nationalism with concomitant implications for migration and the passage of persons across national borders, whether legal or not.

It is clear from these examples that there are various and complex driving forces behind the attention that has been focused on human trafficking in the last decade or so. However, unravelling the intricacies would require a far more in-depth and evidence-based analysis than the scope of this article will allow.

CONCLUSION

This article has called attention to the need for the international legal framework to be revisited in order to ensure a more streamlined process of addressing the issue of trafficking. More importantly, research on the phenomenon needs

clearer methodological attention. Research designs should take cognisance of the different concepts and purposes of trafficking under the different international legal instruments, as these can lead to confusion and conflation of research outcomes. It is also perhaps time, given the obvious problems in identifying victims and perpetrators of trafficking due to its acknowledged hidden nature, to broaden the focus to monitoring and evaluation research on existing legislation and policy, or research on how cases are investigated and prosecuted in order to better address existing strategies on combating the phenomenon.

Trafficking in persons is a serious and notorious human rights violation. The purposes for which people are trafficked represent some of the worst types of criminal behaviour known globally. However, there are also many other equally serious human rights violations that are in all likelihood more prolific and of greater scale and extent, for example violations of the right to health care and socio-economic rights that lead to 250 million malaria cases annually, with almost one million people dying of the disease.¹² While the plight of victims of trafficking should be highlighted, it is of concern that the limelight into which human trafficking has been catapulted in the last 10-15 years might detract attention from other human rights issues that deserve equal consideration.

Nonetheless, all the attention that has been focused on trafficking in persons has most certainly focused the thoughts of the mainstream public on the issue of trafficking. If nothing else, this has certainly contributed to creating an awareness of the risks involved in trafficking, which is an important step towards ensuring its prevention.



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NOTES

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Watch your man

Young black males at risk of homicidal violence

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This article will argue that masculine domination is a crucial factor in black male homicidal victimisation in South Africa, but that this is not always appreciated. Under apartheid it was black men who were most likely to be at the receiving end of fatal political violence. Currently black men are still most likely to die violently from interpersonal conflicts. This article aims to underline the fact that it is important for political leaders, policy makers and police chiefs to speak out more often, publicly and without beating around the bush, that young black males are at the highest risk of homicide in South Africa. The article also offers an explanation why young black males are most vulnerable to homicidal violence.

The 2010 Global Peace Index (GPI) shows South Africa to have slightly improved in its rankings year-on-year.¹ The country remains one of the least peaceful societies in the world, but it has moved up from number 123 out of 144 in 2009, to 121 out of 149 countries in 2010. This ranking puts us far below neighbouring Botswana, Mozambique, Namibia and Swaziland when it comes to peace. The main drivers for South Africa's ranking are the high negative scores the country is given on perceptions of criminality in society, the number of homicides per 100 000 people, levels of violent crime, the likelihood of violent demonstrations, and levels of organised internal conflict.

The results of the 2010 GPI confirms other studies that have indicated that South Africa has some of the highest rates of violence in the world, even though there has been a steady fall in the per capita murder rate² in the country since the advent of democracy.³ Researchers report that nearly half of the injury-related deaths in the country stem from interpersonal conflicts.⁴ While

interpersonal, together with self-directed, violence has been estimated to constitute about a quarter of all non-natural deaths globally, it is estimated to account for approximately half of reported non-natural mortality in South Africa.⁵ And whereas globally the homicide rate for males is more than three times higher than for females, the homicide rate for South African males is nearly six-fold that for South African females.⁶

Statistics such as these may at times leave the impression that the country is so unsafe as to be uninhabitable. These numbers reproduce perceptions of a country overrun by violent criminals, as can be inferred from the GPI. The fact is, South Africa experiences high levels of violence, but violence is almost never a random event. Despite the seemingly intractable levels of interpersonal violence globally and in South Africa, the determinants and distribution of criminal violence across and within countries are generally relatively well understood. This holds even more for homicidal violence: it is controllable and should, therefore, be preventable.⁷ Studies undertaken from around the world show homicide to be concentrated amongst certain identifiable groups and locations.⁸ The majority of homicides, available evidence indicates, are committed by someone relatively close to the

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victim – with closeness here referring not only to geographic distance, but more significantly to economic and social distance. Even in cases where the parties are strangers to one another, the economic and socio-psychological variables that contribute to the perpetration of interpersonal violence and victimisation are, on the whole, well grasped. This is of course not to argue that individuals are never killed by strangers, but the number of persons who are accidentally or deliberately murdered by total strangers is relatively low when compared to persons murdered by intimates and others who are socially, economically and geographically close to the victim.

There are a number of studies and reports of violence in South Africa that suggest or even confirm that fatal interpersonal violence can be prevented, even if it is not altogether predictable.⁹ This form of violence is shown to be concentrated amongst young men, that is, males in their late teens to mid-40s.¹⁰ More pertinently, urban young black men are at disproportionately higher risk of homicidal victimisation than other groups in South Africa.¹¹ For instance, in South African cities, black males between the ages 20 and 40 are roughly nine times as likely to die from homicidal violence as black females in the corresponding age group, 17 times as likely as white males in the same age group, and about 35 times as likely as Indian females.¹²

Considering that it is widely acknowledged that South Africa is one of the most violent countries in the world today, the high number of violent deaths of young black males is the metaphorical mammoth in the room that everyone pretends not to notice. Perhaps it is time that political leaders and police chiefs are pushed to stop ignoring it. Then again, if it is well known that homicidal violence is largely predictable and controllable, there is possibly a good reason why it is difficult for the country's political and police leaders to prevent South Africans from dying prematurely in such high numbers. Reasons may include a combination of the following: a weak criminal justice process, a lack of political will, a lack of integrated inter-sectoral strategy, weak

management and leadership, an unconvinced focus on social crime prevention, and other factors that have been suggested by researchers as impeding the state's efforts to deal with violence.¹³ However, from a reading of the research and reports on violence, there are very few references to the issue of young black male homicides in South Africa. It is therefore important to gain a better understanding of why more black men die as a result of interpersonal violence than members of other groups; even before dealing with what things may need doing, or doing differently, to save more young black male lives.

WHY YOUNG BLACK MEN IN URBAN AREAS DIE AT HIGHER RATES FROM INTERPERSONAL VIOLENCE

Fearlessness is a compelling stereotype about manhood that a significant number of boys grow up to internalise. This prevalent characterisation of masculinity persuades many young males to actively support the idea that successfully masculine males are always ready for a fight, never show fear, ignore pain, and play it cool. For some men, manhood has thus come to be imagined as a set of ideas and practices that includes a fearsome look and drinking hard, a gangster pose and weapon under the clothes.¹⁴ In many places in the country, but perhaps more so in large townships such as Khayelitsha, Soweto and Umlazi, which remain informally segregated, economically poor, and infrastructurally underdeveloped when compared to previously white areas, this set of images and behaviours is expressive of the ruling version of what it means to be a man. Support for this risk-courting idea of manhood may be what puts significant numbers of young black males at greater risk of premature violent death than other men and women.

Doubtless, not all actions engaged in by men put them at risk of homicide. Vulnerability to homicidal victimisation is unevenly distributed among men and, needless to say, not all men are aggressive.¹⁵ A similar picture holds for black

men: the risk of violent death and violent behaviour varies between ages, socio-economic groups, and areas. Hence, it is those things black males of particular ages engage in to assert that they are successfully masculine, in specifiable locations, at particular times, on certain days, during certain months,¹⁶ that renders them vulnerable to premature death from interpersonal violence.

More precisely, not *all* things *all* males do to assert or confirm their masculinity will put them at risk of being murdered, or of murdering another young person. Wanting to be gainfully employed so as to support a family, for instance, is an important element in the construction of certain forms of black, Indian, white, and coloured South African manhood, however, it is not in itself supportive of risky masculinity. Rather, it is specifically those practices that some men engage in within particular social, economic and neighbourhood contexts to express their manhood and demonstrate fearlessness – 'badness', carrying weapons, and behaviours around alcohol usage – that heighten vulnerability to, or perpetration of, violence.

What this understanding of masculinity and vulnerability underlines is that young black males are killed because of some of the things they do within the constraints or freedoms of their social, economic and physical environments. Their attempts at defining masculinity within these environments and constructing masculine domination are what puts them in the way of early violent death. For instance, while behaving as if they own the neighbourhood at night may enable young black males to feel successful in their manhood, however temporarily, such behaviour renders them vulnerable to conflicts with other males and eventually violent death. And while a black young male may feel he needs to show bravado to be regarded as a man by his peers and females, such an act is the very thing that, in certain contexts, will put him at risk of violent victimisation.

This version of fearless, 'clever' and 'pantsula-esque'¹⁷ manhood in its various guises has for

decades been promoted by various cultural sources such as radio, magazines, newspapers, television, cinema and advertising, from within and outside South Africa. Thus it has become an unavoidable and powerful idea of what 'being a man' ought to be. This dominant idea of manhood appears to underpin some young black men's lives in their interactions with others. Interestingly, this particular set of 'masculinist'¹⁸ urban young black male practices appears by and large resistant to change, in spite of the fact that manhood has been shown to be socially manufactured, historically shaped, culturally contingent, full of contradictions, dynamic, and, most of all, to have different forms. So, it could be that those young black males most vulnerable to homicide are precisely those who 'isolate specific aspects of masculinity and represent these as common and universal', failing to appreciate 'masculine diversity'.¹⁹ Put differently, it could be that some young black males who have limited opportunity to observe and develop different forms of being a man because of the constraints of their cultural, social and economic conditions, are exactly those who have a high likelihood of dying violently.

The notion of different forms of masculinity, or masculine diversity, is one that runs counter to the idea of masculinity as something inborn and inflexible. Researchers around the world have shown that, contrary to the still well-supported idea of sex roles, there is likely to be more than one form of manhood in any one place such as a shebeen, football field, township – or country.²⁰ These forms of manhood are usually hierarchically organised.

The appreciation that manhood is defined by diverse elements forms part of a wider understanding by researchers from around the world about men's acts as gendered. In addition, there are different masculinities, which are unequally valued by men and women, and which are differentially positioned with respect to available power. In relation to homicide it is important to recognise that these different masculinities can play themselves out in intra-male group rivalries. Beyond verbal altercations or psychological intimidation, physical fights often

break out between individuals and groups of males to show each other who embodies the genuine, hard stuff of manhood. Ultimately, then, fighting between males for dominance is the most likely reason why males, more than females, die from violence.

WHAT NEEDS DOING TO SAVE MORE YOUNG BLACK MALE LIVES?

The number of homicides in South Africa, and the seeming intractability of the problem, may be due to the fact that history continues to hold some of us hostage, especially those who hold the important levers of governmental power. The structural and physical violence of the South African state has historically been levelled against black men and women. The fact that apartheid violence was primarily targeted at blacks may have something to do with the caution exercised by those in positions of power when talking about the violence against black men – which is most likely at the hands of other black men. However, this studied carefulness evades a number of issues, such as the obvious fact that the lives of black men need saving. Ironically, in recent times South African politicians and police commissioners have often 'talked tough' about violent criminals, but it is usually without acknowledging that black men are most at risk of dying as a result of criminal violence.²¹ How then do we get to talk about and decrease black men's vulnerability to homicide violence, so often committed by other black men?

Three changes or additions to current policies are proposed. These three recommendations ought to be read as adding to, rather than replacing, previous policy proposals that have been called for by several South African researchers and activists regarding the prevention of violence.²² The political will to decisively move against violence; strong leadership in relevant public service structures; and well-coordinated, multi-sectoral, evidence-based action that brings in health, finance, economic development, social development, education and, of course, justice and police departments, are some of the crucial elements that must go into a national strategic framework on violence prevention.

Homicide is more than a law and order issue

There appears to be a lack of conviction among political leaders and police heads that violence generally, and homicide in particular, are more than law and order issues.²³ At the least, there is no visible action to support any such conviction that might exist. Changes or additions to policy on policing that take cognisance that black male homicide victimisation is a health, development, gender, and human rights issue, in addition to its criminal and justice aspects, are overdue. What this demands in relation to the high levels of black male homicide is for the state policy on policing to take on board strategies that emphasise less reactive law and order enforcement logic, and more of a better-informed preventative and security logic that recognises the social, economic and infrastructural aspects of the problem.

Recognise masculine domination as a significant driver of the black male homicide problem

A take-home lesson from critical studies on men referred to above is that some masculinities are motivated to dominate others. The dominance motivation appears to be central to the relationships that certain males have with females; and even more importantly here, the desire to impose their will on others has been shown to be significant to the relationship some men have with other men. In highly unequal societies, where avenues for individual and social human development opportunities are unevenly distributed and where large numbers of young black males are unemployed and without good prospects, violence becomes a critical mechanism in some men's strivings to be regarded as successfully masculine. As has been noted in respect of some African countries, if the violence of men is to be drastically reduced, governments and other role players have to take into consideration the association of masculinity with aggression.²⁴ What this suggests is that knowing something about the expression of masculinity in low-income environments within unequal societies is an important factor in any serious effort to

effectively police young black males and, more critically, to prevent them from being murdered. In policing young black men, the South African police need to get better, up-to-date knowledge and training in young black men's constructions of masculinity. Such knowledge and training could make the police more effective in policing places where young black men hang out, with a good chance that it will save many more lives than is the case at present.

Moving beyond unhelpful racial self-consciousness

Lastly, in view of the fact that in the past it was black men who were likely to be at the receiving end of apartheid's patriarchal racist violence, and that in the present dispensation black men are still most likely to die violently from interpersonal conflicts, it may be time that those in relevant leadership positions tread less cautiously when it comes to tackling the problem of black male homicide. In short, saving lives seems to call for less racially self-conscious, appropriately targeted, and well thought-out policing of black men, while remaining aware of the history of violence against black men.

Given South Africa's historical and current race-based inequalities some of these recommendations will almost certainly be regarded as problematic. However, given the apparent silence or equivocation in respect of the problem of black male homicide, it is imperative to state these recommendations forthrightly.



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NOTES

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Imprisoning men in violence

Masculinity and sexual abuse: a view from South African prisons

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This article explores sexual violence in male prisons in South Africa. It focuses on the social meanings and identities that surround sexual violence, particularly the ideas of manhood that shape both the perpetration of sexual abuses and how it is dealt with – or not. The dominant inmate culture endorses prison rape and long-term relationships of sexual abuse, largely through legitimising violence and through replicating societal notions of gender and sexuality. The Department of Correctional Services and its staff have so far failed to meaningfully engage with the problem of sexual violence in prisons, or to provide adequate support for victims. There are indications that the department may be beginning to address the problem, but past attempts to get the issue of sexual violence recognised, provide cautions as to how this should be done. Specifically, there is a need to ensure that damaging and brutal notions of masculinity are challenged rather than accentuated in the process of addressing the problem.

Sexual violence in prisons is a global problem and one typically marginalised by correctional administrations and research on prisons, with the result that we do not have a clear understanding of its true extent. Nevertheless, the growing body of evidence in South Africa (albeit still underdeveloped), together with that from other contexts, supports the view that there can be little doubt that the problem is widespread, and in urgent need of attention. After years of sometimes hopeful but frequently disappointing and frustrating attempts by activists, researchers and individuals in the Department of Correctional Services (DCS) to place sexual violence behind bars firmly on the South African agenda, there is finally cause for cautious optimism. Important legislation, the Criminal Law [Sexual Offences and Related Matters] Amendment Act, 2007, that recognises that men as well as women can be

raped, has been introduced, and should assist DCS in tackling violence in its centres. The issue has also received public coverage through the open sessions of the Portfolio Committee on Correctional Services, which has recognised the matter as requiring attention. Minutes of an April 2010 meeting of the Portfolio Committee dedicated to this issue suggest that at least some members intend keeping it on the agenda.¹ Most significant is DCS's recent commitment to developing relevant policy. So while the bulk of the work remains to be done, we hope that these moves signal a real chance to finally tackle the problem.

However, without an appreciation of the cultural workings involved in the dynamics of sexual violence we are unlikely to make much progress in tackling it. A key challenge for the drivers of these new policy processes will be to ensure that they engage with the social and identity-shaping

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dynamics involved in the violence, central amongst which are destructive ideas about gender and sexuality. This article considers the particular versions of masculinity expressed in experiences of prison rape, and by prison staff.

The article is based on qualitative and quantitative research with past and current male prisoners. During 2000 and 2001, multiple-session focus groups with young offenders were conducted along with a focus group and individual in-depth interviews with ex-prisoners in Gauteng (n=23).² Although based in Gauteng, some respondents had been incarcerated in prisons in other provinces as well. This was exploratory research that sought to understand the nature and circumstances of sex and sexual violence taking place in men's prisons. In 2004 and 2005 the Centre for the Study of Violence (CSVR) surveyed juvenile inmates in a Gauteng correctional centre (n=311) through administered questionnaires that posed questions about their experiences of violence, sex and sexual violence in prison, as well as about more general features of their personal lives and experiences in prison, including issues related to HIV and AIDS, sexuality and gender.³ In addition, the CSVR has recorded views that have repeatedly emerged in capacity-building and awareness-raising processes with DCS staff, locally and nationally, over a number of years.

The starting point for this article is the finding that male perpetrators of same-sex rape in prison are relatively forthcoming in talking about this violence, whereas victims are reluctant to report the same violence. The article explores this issue in context and shows that the greater ease with which perpetrators talk about their violent behaviour is explained by the social place sexual violence occupies in prison. The article also reveals how particular notions of gender and sexuality are related to violence in ways that have pertinence far beyond prison walls.

DISAPPEARING TRICKS: INMATE CULTURE AND SEXUAL VIOLENCE

Understandings and experiences of sexual violence in men's prisons are strongly influenced by

dominant inmate culture. The behaviours and beliefs that make up this culture are considered 'normal' in that context, and are upheld by those inmates wielding power. In South Africa, a longstanding collection of gangs known as 'the Numbers' has helped to shape inmate culture.⁴

Sexual violence in prison is interwoven in the hierarchies and rituals of these gangs. So, for example, coercive sexual relationships are structured into gang hierarchies, and sexual violence is used in the classification of new members into these hierarchies.⁵ But while sexual activity is embedded in inmate and gang culture, the ways in which the culture normalises violence simultaneously makes it invisible. For example, male victims of sexual violence in prisons are not acknowledged as men, but are commonly believed to have been turned into 'women'.⁶ As one respondent said,

If ... sex [is done to you], ... you are now a woman ... There is nothing we can do ... and we don't care ... When [you] walk past people want to touch [you] or threaten to rape [you].⁷

Another aspect of invisibility is that sexual violence is normalised through forced partnering, which is often referred to as prison 'marriage'.⁸ Most rape victims are taken as wives or 'wyfies' in forced 'marriages' by perpetrators who are viewed by members of the dominant culture as 'men'.

'Wyfies' (who have had this feminised identity imposed on them) are seen as the means to the 'men's' sexual gratification and, in the majority of cases, 'marriages' become the place of ongoing sexual abuse for 'wyfies'.

While these marriages are abruptly and brutally brought about through rape and various degrees of coercion (many of which now fall into the legal definition of rape determined in the Sexual Offences Act, and implied through its definition of consent), in more than a few ways they also mimic heterosexual marriages outside prison. This resemblance is drawn on to justify and legitimise these unions. Inmates say things like, 'but prison wives are treated just like women

outside.⁹ Ultimately 'marriages' also veil the issue of violence by the way their protagonists are referred to: victims are 'wives' and perpetrators 'husbands'.

There is also a temporal aspect to this. We found that inmates will identify and name rape, and the threat of rape, as being at a height when people first arrive in prison, but say that it then dwindles, and that sex happens much more by agreement thereafter. It appears, however, that although in 'marriages' the same level of very direct violence may not be seen, the force involved does not necessarily diminish. Rather, the force, together with any recognition of its victim, recedes from sight because of being contained in the 'normal' recognisable institution of 'marriage' (that may appear just like marriage on the outside).¹⁰ This is also apparent in other characteristics of the forced 'marriage'. For example, the 'husband' (perpetrator) is expected to provide his 'wyfie' with goods and luxuries.¹¹ Pertinent too is how, in some respects, the 'marriage' may serve to 'protect' the 'wife' from other forms of violence. Without being 'owned' by a 'husband', inmates who have had a feminised identity imposed on them risk being abused by other inmates who would regard them as available sexual property.¹² These 'benefits' of the 'marriage' assist in conceptually obscuring the violence and exploitation on which it is predicated.

Other powerful discourses focus very specific unwanted attention on the victim, blaming him for what has happened to him and building the perception that rape is the victim's fault and the perpetrator has done nothing wrong.¹³ While these discourses work to make the violence seem normal and acceptable (or hide it altogether) at the same time as stigmatising victims, there are other forms of violence that are central to establishing identities that are desirable and validated in inmate culture.

MASCULINITY AND VIOLENCE

The meanings attached to 'manhood' in prison demand a capacity to both use and withstand violence,¹⁴ the ability to manipulate others, and

self-sufficiency. Violence is so part of 'manhood' that if someone who has been made into a 'woman' wants to escape the abuse and be promoted to 'manhood', he is expected to commit violence to prove his worthiness.¹⁵

This resonates with Whitehead's analysis of men's violence in contexts where men feel threatened and are compelled to prove their 'manhood'. Whitehead identifies two categories of violence used to assert masculinity amongst men in such contexts. While the first establishes both victim and perpetrator as manly and 'worthy rivals', the second category of violence functions to *exclude* victims from the category 'man'. Rather, it positions him as unworthy of manhood and is seen as turning him into a 'non-man'.¹⁶

The rape of men in prison can be seen as an example of this second type of violence: it is understood to turn the victim into a non-man ('woman') while confirming the masculinity of the perpetrator. On the one hand the violence of rape is seen as destroying the victim's claim to masculinity, which in turn is about a fundamental loss of respect and identity amongst peers.¹⁷ On the other hand, once an initial rape has occurred, the legacy of the supposed loss of masculinity and enforced feminised identity is that the victim is viewed as sexual property – so paving the way for further sexual abuse.¹⁸

The notion that 'real' men cannot be raped – and that if they were real men they would have managed to fight off attackers, is widespread in society generally.¹⁹ Consequently there is minimal, if any, room in prevalent understandings of masculinity for experiences of men's victimisation.

MORE DISAPPEARING TRICKS: (THE LACK OF) OFFICIAL RESPONSE TO SEXUAL ABUSE

The official response of the Department of Correctional Services and its staff to sexual violence, as articulated through actions and policies, has lacked consistency and commitment. DCS has over the years started sporadic initiatives

seeking to remedy the generally unacknowledged status of sexual violence in prisons. But these have been dogged by problems, including personnel and leadership changes, uneven commitment to the issue by consecutive leadership, restructuring, bureaucracy, a lack of priority given to the issue, and a lack of follow-through when attention is given to the issue.

While a few individual staff members and centres have taken steps to address rape in their localities, they have done this without the assistance of departmental policy or a guiding framework on the issue.²⁰ The Correctional Services Act 1998, for example, makes no mention of sexual violence, and a brief section on sexual assaults in the more detailed B Orders (which delineate staff duties) provides only vague and minimal direction to staff, and then mainly medical staff.²¹ Existing evidence, however, highlights severe gaps in medical officials' handling of cases.²² The most common scenario seems to be that staff, who receive no dedicated training to deal with sexual violence, operate on the assumption and acceptance that it is 'part of prison life' and/or not something they can do – or are expected to do – much about.²³ Staff complain, for example, of a lack of management prioritisation of the issue, of relevant training, and of mechanisms to deal with perpetrators and protect victims.²⁴ The result is that widespread abuse fails to get close to the attention it requires, and DCS fails in its obligation to keep inmates safe.

Ultimately, albeit in ways different from the inmate culture, official practices also make prison rape invisible. Quite literally, rape is not evident in the prison records of violence.²⁵ There is no category for rape/sexual assault in DCS data-gathering systems. So if an inmate is raped, this is recorded as 'assault'. The invisibility of rape in the records is echoed in the lack of support services available to victims, as well as the lack of mechanisms to prevent and detect abuses and deal with perpetrators.²⁶ The DCS complaints mechanism for prisoners has also been shown to be ineffective for serious and sensitive complaints, and inmates regard its efficacy with scepticism.²⁷

Many staff members apparently accept the camouflaging of sexual abuse in the forced 'marriage'-type relationships organised through the inmate culture (discussed above). Anecdotal evidence emerging from workshops and meetings with staff reveals a tendency to view sexual encounters between inmates that are obviously coerced, as consensual. The way in which the discourses surrounding 'marriages' succeed in normalising and legitimising violence among the inmate population thus also seems to determine staff members' attitudes to sexual violence.

Findings from our survey of juvenile inmates in a Gauteng correctional facility underscore the lack of capacity among staff members to deal with sexual violence.²⁸ The incarcerated youth were markedly more pessimistic regarding staff members' handling of sexual assault, compared to their handling of general assault. Pessimism increased with time spent in prison, suggesting that the more they had seen how things worked, the more pessimistic they became. Twenty-six per cent of juvenile inmates who had been in the centre more than a year agreed that, '[M]ost officials won't do anything to stop it if they know about a prisoner being forced to have sex against his will'.²⁹ And 20 per cent of these inmates agreed that, '[W]ith most of the correctional officers, if you report that you've been raped they are likely to joke about it and say something like "such things are part of prison life"'.³⁰

The lack of awareness of the dynamics of sexual violence, as well as oppressive attitudes to gender and sexuality, are related to a historical failure by the department to acknowledge and prioritise sexual violence and sexual health – both issues of magnitude for detention settings.

Moreover, the policies governing the work of correctional officers³¹ do not state just what is and what is not allowed.³² This manifests in confusion amongst staff across the DCS hierarchy about the acceptability or not of different sexual behaviours amongst inmates. Part of the problem is that in the absence of a clear framework and policy, different behaviours are often conceptually conflated. In other words, sex is not differentiated

from sexual violence. This is evident, for example, in staff members' use of the term 'sodomy' in ways that do not distinguish sex from rape.³³

Ultimately, such conflation acts to keep sexual violence hidden while at the same time generating homophobia (by muddling consensual sex between men with rape), and jeopardising health initiatives to promote safe sex. A clear symptom of the latter are emotionally charged, erroneous expressions by many people working in prisons that making condoms available to inmates encourages sexual violence, and that to reduce sexual violence we therefore need to halt access to condoms.³⁴ The same arguments have been put forward by individual members of oversight bodies, pointing to the urgent need for raising awareness on these issues, and a need to tackle associated homophobic attitudes.³⁵ While apparently these views are not representative of oversight committee members,³⁶ the absence of responses that clearly establish the facts and separate the issues is notable and concerning. Such muddling endangers progress made in securing access to condoms for inmates in order to address the spread of HIV-AIDS and other STIs. Even with an HIV and AIDS policy that requires condoms to be available to inmates (albeit still with gaps),³⁷ such attitudes impact on implementation: staff are reluctant to make condoms available, inmates are increasingly hesitant to seek condoms, and homophobia is endorsed because seeking condoms (for consensual sex) is erroneously assumed to present evidence of violence.³⁸

Overall, the official lack of adequate attention to sexual violence in DCS facilities endorses destructive notions of manhood by failing to recognise and support male victims of rape. However, the discourses and beliefs that feed this situation are prevalent in society more broadly, where we are attached to ideas of men's invulnerability.³⁹

But recent and overdue initiatives, both in DCS and society more broadly, provide scope for cautious optimism. Male victims of rape have finally been recognised in South African law with

the adoption of the Criminal Law [Sexual Offences and Related Matters] Amendment Act, 2007. While Muntingh and Satardien note that prison contexts were neglected in the drafting of this legislation, the new law provides much-needed guidance for differentiating coercion from consent and establishes a range of crimes pertinent in prison settings.⁴⁰ Moreover, senior DCS officials have committed the department to tackling sexual violence. A policy framework for managing this is in progress, and the department has undertaken to rectify the absence of sexual violence in prison records.⁴¹

Also hopeful is the firm and keen interest that the Portfolio Committee of Correctional Services has shown.⁴² But the greatest challenge remains for DCS and those overseeing it to ensure that these initiatives do not fall victim to the same fate as previous initiatives (such as the Anti-Rape Strategy initiated in 2002, and Commissioner Petersen's prioritisation and exposure of the issue in 2008),⁴³ and to ensure that commitment is maintained so that inmates and staff at local level rapidly feel the benefits.

WHY CAN'T WE ACCEPT MEN'S VULNERABILITY?

It would be pertinent to consider another discourse that tries to oppose the dominant culture that makes the rape of men in prison invisible. This discourse informs activists attempting to obtain recognition for victims of prison rape.⁴⁴ They have highlighted the potential for male rape victims to themselves become violent in the future. So, in its bluntest form, a regularly stated argument put forward that, unless we pay victims the attention they deserve, they will become rapists on the outside in attempt to 'regain their manhood'.

The interplay between victimisation and potential perpetration is a complex one. Social and psychological factors will indeed see some victims become perpetrators.⁴⁵ But it is by no means a certainty that aggression and violence follow sexual victimisation. In terms of how prison rape may generate future violence, it seems noteworthy

that in these well-intentioned discourses, the victims are singled out as potential perpetrators while those doing the raping and coercing (the prison 'men') are ignored – but that's not to say that they are not sometimes the same people.

The benefit of this approach is that it draws attention to male rape victims – but it can also be damaging. By foregrounding victims as future rapists on the outside, activists risk further stigmatising those victims. So they are seen, not as victims or survivors, but as dangerous potential perpetrators. This implies that they are not worthy of attention because they have been harmed and violated.

Notions of masculinity in inmate culture make recognition and respect conditional on a capacity for violence. The activist discourse ends up doing the same thing by saying that these men's potential for violence is the reason we need to pay them attention. The vulnerability of men is seemingly a reality that society refuses to acknowledge, unless we feel threatened by what our ongoing disregard may bring about. Therefore, in attempting to address male vulnerability, an uncritical assumption is often made about the link between men and violence – and such efforts then run the risk of endorsing the very beliefs we seek to debunk.

The tendency to stigmatise male victims of sexual violence in this way has been documented beyond the prison context, as has the negative effect that it has on victims.⁴⁶ It may prevent victims from seeking help (which in prison is even more likely because of fear of reprisals and that they will not receive any assistance),⁴⁷ and jeopardise the nature or availability of support they may find (or not find) if they do take the unusual and courageous step of seeking it.

This begs critical examination of our expectations of men, and requires that we find ways to support alternative expressions of masculinity that include an appreciation of men's vulnerability. This is essential to end societal gender-based violence. The conceptions of manhood that see men oppressing and violating women and perpetrating

sexual violence against each other, and society's refusal to acknowledge male vulnerability, are all closely related.

GROWING OUR YOUNG MEN IN PRISON

The CSVR survey asked young respondents about different kinds of processes that they had been through that they felt had turned them from boys into men.⁴⁸ The emphasis was on their feelings, and they were told to include formal and informal processes, as well socially acceptable and frowned-upon processes. We found that the longer they had spent in prison, the more prominent were rights of passage to manhood that had taken place while they had been inside prison.

While this is fairly unsurprising, it is notable that the process did not require exceptionally long periods of imprisonment. For example, amongst those who had served two to three years of their sentences, 52 per cent had participated in processes inside prison they felt had turned them from boys into men. For some of them these manhood processes were having an impact soon after they arrived in prison. We also found that much of what they knew about sex was learned from their in-prison experiences.

This highlights the importance of prison experiences for inmates' sense of themselves and the critical role that prison plays in their approaches to sexuality and gender. These are approaches on which they will likely base their future relationships when they return to society. Deeply destructive notions of what it means to be a 'man' are entrenched in prison, and include the experience that victims of prison sexual violence will be unrecognised or receive only stigmatised and humiliating attention, while there are no negative consequences for perpetrators, who may even garner respect as a result.⁴⁹ But while these harmful ideas about manhood may be particularly exaggerated in prison, the discourses that support them are powerful outside prison as well.

CONCLUSION

Correctional centres and awaiting trial facilities are key sites of men's victimisation. Beyond the damage done to direct victims, violence is a central feature of prison culture and as such, a socialising force for the inmates living it. Tackling the problem of sexual violence requires multi-pronged strategies that focus on preventing it and appropriately responding when it does occur, whilst taking into account the social dynamics prevalent in our prison environments and the shaping of sexual violence. It also requires documentation and data collection for a better understanding of the extent and nature of the problem, the challenges of addressing it and models of intervention. Existing research, the relevant experiences of local DCS and civil society practitioners, as well as recent experience in other countries (where this process has already begun)⁵⁰ provide good starting points – together with direction to be found in South Africa's new sexual offences legislation. By tackling sexual violence in these ways DCS would not only have a much needed impact in the lives of those directly involved, but would unsettle the current legitimisation of violence evident in inmate and staff cultures.

Herein lies an opportunity for DCS to take a lead in challenging oppressive notions of masculinity that link respect with violence, refuse to acknowledge male vulnerability, and, in doing so, fuel violence in prisons and beyond the prison walls.



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On the record...

Interview with Frikkie Venter, G4S Managing Director: Care and Justice Services

The Minister of Correctional Services recently made it known that the department is reviewing its policy on public-private partnerships (PPPs) for prisons.¹ Currently there are two private prisons in South Africa, and the government has decided to build another four. However, for reasons that are not quite clear, there remains a great deal of controversy surrounding PPP prisons. One thing about which there is no disagreement, however, is that services at the existing two PPP prisons are of extremely high quality. Chandré Gould spoke to Frikkie Venter, G4S Managing Director in South Africa, about public-private-partnerships for prisons.

Chandré Gould (CG): Many people may be nervous about handing the job of running prisons over to the private sector. After all, this has been something that the state has been responsible for in countries all around the world for hundreds of years. You would obviously say that there is a place for the private sector in the running of prisons. What would you argue is the advantage of private sector involvement in incarceration?

Frikkie Venter (FV): I think the first thing is that the concept is not strange in South Africa. In the 1800s the private sector was involved in mine prisons.

In South Africa one of the main reasons for the recent private sector involvement in prisons was that the state needed an asset and didn't have the capital available for the building of new prisons. The state wanted an arrangement where they could pay off a prison, like you pay off a mortgage. The other reason was that basic rights were entrenched in the new constitution. The government wanted to ensure that rights were protected in new prisons and wanted to draw on best practices from Europe and abroad. The third reason was that it was expected that there would be a transfer of knowledge through this process. So the state prepared output specs for the contracts. Included in the contracts were penalties if the service provider did not deliver as required.

So at these PPP prisons service delivery is guaranteed through a punitive structure. Interestingly, there is no benefit for over-performance, which is strange for these types of contracts, but that is the way South Africa wanted to go at that time. The service delivery is monitored by about five correctional services officials, called controllers. These are DCS staff members, based at the PPP prisons, who see when you default on the contract and can report on that so that the operator incurs a financial penalty.

Perhaps the question should be: if the private sector can deliver the same service or outcome that government wants, cheaper than government can, using their business skills and efficiency to manage the process, why would we spend taxpayers' money on getting less for more? One needs to understand that the private sector has to be profitable. But at the same time we need to ensure the outcomes that government needs in terms of rehabilitation and so on. I think the Mangaung prison has shown that it can be done.

CG: If the private sector can do it, why can't the public service do it? Why can't the Department of Correctional Services deliver the same kind of service that you are delivering?

FV: When I was an employee of the Department of Correctional Services and they started talking

about a PPP prison, I had exactly the same thought. 'We can do it ourselves, why do we need the private sector to do that?' What's quite clear is that a government is a political animal and you cannot move as quickly as you want on an operational level without getting the buy-in of the whole structure on top. So if you wanted to create for instance a C-Max prison, that will take ages to happen. The state can do it if it has the proper structures in place and if there's clear guidance on what it wants. But the private sector is more mindful of cost. It has the ability to be more innovative, not be bogged down by red tape, and the private sector can change its systems overnight to ensure service delivery. Government doesn't have that flexibility within its systems.

CG: You were in the Department of Correctional Services for 18 years. You didn't think that PPPs were necessarily a good idea. What brought about the change of heart?

FV: Towards the end of my career at corrections I was given the opportunity to open C-Max. Because that project was heavily supported by the Commissioner and the Minister, we were not bound by all the red tape of a normal project. So I got a feel for how quickly you can implement things if red tape is not there. At that time I was working directly for the Commissioner so could move quite quickly. Having had the experience of being able to deliver a project successfully and quickly (it took six weeks) it was difficult to go back to the normal state of affairs in Correctional Services where there was little opportunity to make an impact. I just couldn't do it anymore, since I knew I had it in me to make a difference, but felt restricted in executing what was necessary. When I was approached by private sector and given quite an open hand on how to establish a 3 000-bed facility, I jumped at that opportunity.

CG: Few of our readers will be fully informed about the current state of affairs in relation to the new PPP facilities. Briefly, there are currently two prisons in South Africa that are public-private partnerships. There are four more planned. What is the state of play? Where are we at?

FV: In terms of the two current projects, I think that status is quite clear. They are contracted to run the course of the existing 25-year contracts. In May last year the private sector was invited to submit bids for the remaining PPPs. We made submissions that are valid until November 2010. But the department has not opened the boxes containing those bids. This is partly due to the fact that the new Minister came in and she had to apply her mind to the concept of PPPs. She was followed by a new Commissioner, who had to have the same opportunity. So seemingly right now there are some reservations about the model and they are talking about a policy review. Whether that is being undertaken, or was undertaken, or whether it's in progress or not, we don't know. The fact is that we expect a briefing note from the department to tell us what stage we are at, and whether the DCS wants to change some of the specifications. This is a concern for us because some companies were shortlisted on being able to deliver specific outcomes. If I had been one of the companies that had not been shortlisted because, say I didn't have the custodial capability, and now custody is not part of the new specification, I would want the whole process to be opened up again. So there is some dilemma in terms of fair treatment, I think.

CG: So the DCS might have to reopen the tender if the specifications change significantly?

FV: If it changes significantly, they'll have to consider whether it can fit into the current process or not.

CG: So what, in essence, will be the effect of having a policy review? Quite aside from what the difference in policy might be ultimately. What is the impact of the minister's decision to revise the policy at this particular point?

FV: Any minister should have the opportunity or the leeway to change his or her mind. But what we have here is a situation that puts international investment at risk. The problem is essentially a lack of consistency that creates an uncertain environment, and which may result in international investors being cautious of South Africa as an investment destination.

To date the private sector companies, including my company, have spent between R30 and R40 million on their bids. So when at the end of that bidding process, after you have spent your money, government comes back and they say that they wish to revert to a model that was debated three or four years ago, it is frustrating, and undermines investor confidence. What we want as the private sector is consistency and certainty. Keep in mind that we did not approach government with the idea of PPP prisons. The government approached the private sector and said, 'this is what we want and you can bid on it', and they provided specifications for what they wanted. It was on that basis that we prepared our bids. Now it looks like they want to change the specification again. If there are to be major changes to the specifications that require a redesign of the facilities, who is going to pay the architect? Can investors take that additional risk? If there is no solid commitment from government to move forward with PPPs, they cannot expect the private sector to continue making investments in the process. There needs to be clarity about what government wants and a long-term commitment to that in order to advance and create investor confidence.

CG: The principle underlying policy change or policy development should be that evidence suggests that a particular policy is the best way to solve the particular social problem. It seems to me that in a number of sectors at the moment we are seeing quite dramatic policy changes. For example, we've seen radical policy changes in the police that don't seem to be based on any evidence of what works or what could improve policing. Is there anything to suggest that there's new evidence, new information, new conditions that should give rise to a shift in policy in relation to PPP prisons, or is this shift, in your view, a response to political changes?

FV: I think it's difficult from where we sit to determine whether this is just a political change or whether it's a policy change. Nothing has happened in the last few years, as far as we are aware, that suggests that there should be a policy change. There were no changes to the Act [Correctional Services Act, No 111 of 1998]. The

Act that made provisions for the first PPP is still unchanged up to now. So clearly, legislative changes have not influenced this at all. What has changed is that in 2002 there was a lot of talk about the private sector being expensive (even though our calculations suggest that the private sector can run prisons at a lower cost than the state). Recent figures published by the Department of Finance suggest that the PPP prisons are costing less than correctional centres run by government, whilst the PPP Centres deliver higher levels of service. So it seems that 'value for money' or the concerns about cost have been the main reasons for concern by the state.

Yet there are glowing reports about service delivery at the private prisons being of a higher standard and more outcomes-based. One of the PPPs in fact contributes 40% of the total departmental targets in terms of key performance indicators set for rehabilitation programmes. In other words, centres accommodating 2,7% of the sentenced population contribute 40% towards delivering the DCS objectives. So quite clearly we are supporting them quite heavily to reach their target and we are doing more than logically would have been expected. So in terms of service delivery, in terms of legislation, in terms of money, there's no reason to doubt this process.

Whether the recidivism rate is lower or higher after offenders leave our facilities cannot be determined because currently the offenders stay with us for a period and then they move back to correctional services facilities. Whether they continue with the programmes they were involved in at our facilities, we don't know. Whether any programmes are available at the prisons they are transferred to, we don't know. We can't assess whether the programmes have a direct result that's positive, because prisoners have left us.

Having said that, as far as I can see there is no other reason than politics, that can drive policy review. Because what you have at the PPPs is cost-effective, good, value-for-money service. Just look at the situation in relation to the new Kimberley prison.

That facility was built by government, and what was reported to parliament in relation to the Medium Term Expenditure Framework, is that the cost of that facility was twice as high as the cost of prisons built through PPPs. At twice the price you would expect more services. That's not evident at this point in time. So it seems to me that the state is prepared to pay more for less.

CG: There's been concern expressed in the past about the fact that the PPPs create a situation in which there are vastly different services offered to the 2,7% of prisoners housed there as to the majority of prisoners in state institutions. So, for example, you have two PPP facilities where rehabilitation programmes are being offered because you are contractually required to do so, and not doing so would result in a financial penalty to you. However, the fact remains that we have two facilities housing some 6 000 inmates receiving the best possible care. Ideally all inmates in South Africa should be receiving the same quality of care. And yet the majority of inmates in South Africa are likely receiving an inferior quality of care. How do we justify providing these kinds of services to a small number of inmates while the rest do not have access to the same quality services? And how do we address that? Is there a solution to this?

FV: I think this is a real human rights question. But I don't think it's a difficult one to answer. To say that about 95% of the sentenced population, that's the people that are not in the private sector, are not receiving services that are conducive to human rights, or up to scratch with international standards, and then to argue that the solution is to reduce all conditions to the lowest common denominator is the wrong way to go. We have to look at corrections holistically. We need to define what our focus is and where money should be spent. Last year, during the budget vote, we heard in parliament that most of the money for DCS goes towards security and less and less is going towards rehabilitation. We have seen the salary increases for civil servants. The portfolio committee has referred to the bloated management structures of the department. So there is a need to relook at how the money

allocated to the department is spent. I think that's where the real answer lies.

The private sector is quite efficient because we run on business principles. We are there to make a profit. That means we have to deliver the services better than our competitors and achieve the required outcomes. For PPP prisons, not meeting the contractually specified outcomes can result in penalties that will reduce profits. We also have to run our facilities with fewer levels of management to reduce staff costs, without affecting supervision and support. The effect is that you run an efficient service. And if we can take that model and employ it in the other correctional centres, perhaps we will have learned effectively from the experience of PPPs. The point is that if through PPPs service delivery is optimised at a lower cost than that at which the state can deliver the same services, we owe it to taxpayers on the one hand, and to the person receiving that service, on the other, to do what's in their best interest.

That does not necessarily mean the private sector should run all prisons. The UK has an interesting approach. They had a private sector-run prison, and when after five years it was time to renew the contract both government and the private sector could tender to run the facility. In other words, the government department could tender to run their own facility. What happened is that the prison officers' association (the union) managed the bid for the department. Like the private sector, they had to tender to deliver particular outcomes set by the state. The state could then evaluate the bids in terms of cost-effectiveness. In that case the bid by the department was lower than the private sector. But there was a mechanism to hold the department to account for delivery of services. Suddenly there were measurable outcomes that you could track, that you couldn't before, and government officials couldn't use the excuse 'I don't have the budget' because they had set the price. Apparently the services improved dramatically in that prison because there were measurable outcomes. So whether it's government or the private sector providing the services doesn't really matter, as long as you have the required outcomes.

In South Africa all prisons, private sector and government, fall under the same regulations, the same Act. But you see vast differences in service delivery. In the private sector you will find active supervision of staff and prisoners, which you won't always find in state prisons. And that's because the state is not outcomes-driven. So the question is how do we ensure outcomes? How do we manage facilities and monitor outcomes? I don't think that any government will say, for instance, outsource even 30% of an important function like corrections.

I think what we need to do is to say what type of offenders are we targeting, how we can ensure maximum impact in terms of rehabilitation. If the private sector is more effective in doing that, then let's give it to them to change the face of crime.

CG: In other words, what you're saying is that unless we apply the same kind of principles of accountability to government departments that we do in public-private partnerships, we're not going to be able to improve service delivery?

FV: Yes. It's about management.

CG: Do you have any final comments?

FV: I just think that people should understand why we have PPPs. The government says, 'We want a service. We can do it ourselves, but can the private sector do it cheaper and better?' If the private sector is cheaper and better, then the benefit goes to the taxpayer. There's more money available for something else, like improving the education system. Entering into a PPP is like buying a house: if you don't have the cash today to buy a house, you want to be able pay off your house over a period that means that you have money available to also feed your children. This is the rationale behind a PPP. The state wants the infrastructure, they can't pay for it now without diverting from other essential services, and therefore they utilise this mechanism of procurement to get the service. It's not that difficult to understand.

NOTES

- 1 Correspondence between Mr ZI Modise, Acting Chief Deputy Commissioner: Corrections, and Ms C Frank, Acting Executive Director of the ISS, dated 22 July 2010.



2010 ISS International Conference

Towards a coherent strategy for crime reduction in South Africa beyond 2010

Crime and the functioning (or dysfunction) of the criminal justice system in South Africa have been subjects of intense research and public debate over the past 14 years. Tremendous advances have been made in the transformation of the police service and the courts since 1994 and new laws give effect to the principles of gender parity and to the humane treatment of young offenders. Several policies have put forward ideals for how crime should be prevented and addressed holistically and for how the treatment of offenders should contribute to the reduction of re-offending.

But criminal violence remains high and it has become increasingly clear that there is a need to reconsider what we know about crime and criminal justice in South Africa; to identify gaps in our knowledge and to assess what the evidence that does exist tells us about the kind of policies and approaches that can contribute towards the reduction of crime and violence.

The conference will provide a forum for South African and international researchers and academics to share data, research methods and policy approaches to crime and criminal justice. The conference will explore the following themes:

Theme 1: Innovative approaches to criminal justice

Theme 2: Crime and crime trends

Theme 3: Social crime prevention

The conference will take place in Johannesburg on 1 and 2 December.

Contact: Chandre Gould (cgould@issafrica.org) or Millicent Mlaba (mmmlaba@issafrica.org) if you would like to attend.



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