

**'An Acceptable Level of Violence'
Community Response to Crime: Northern Ireland and South Africa**

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Introduction

South Africa and, more tentatively, Northern Ireland are emerging from bitter ethno-national conflicts in which violence and crime characterised the transition to peaceful political settlements. The collapse of apartheid in 1989, lifting the 30-year ban on the ANC and the subsequent release of Nelson Mandela, created a climate for political negotiation and change in South Africa. This paved the way for an interim constitution, the first multi-racial democratic elections in 1994 and led to the Government of National Unity. The ANC's success in the most recent elections (June 1999) gave the party an overwhelming mandate to accelerate Thabo Mbeki's programme of 'transformation' aimed at tackling the significant socio-economic problems facing South Africa: unemployment, AIDS, crime and education. The legacy of political resistance, often violent, deployed to make the townships ungovernable during apartheid has created a culture tolerant of citizens taking the law into their own hands. Although the number of political killings dropped sharply from about 2,500 in 1994 to fewer than 500 in 1997, Mbeki in his inauguration speech regretted that some South Africans were 'forced to beg, rob and murder to ensure that they and their own do not perish from hunger'. The savagery of the crime wave is however captured in reports that one in every two South African women will be raped during their lifetime, the average South African is eight times more likely to be murdered than the average American, and one policeman is killed each day – 1,400 have died since the ANC came to power. The public response is that 'brutality should be met with brutality. The rich surround themselves with razor wire and private security guards, and the poor resort to vigilantism' (The Economist, 1999: 23).

Northern Ireland's transition to 'peace' has been more recent and capricious. The signing of the Belfast Agreement in April 1998 and its subsequent endorsement in referenda by its electorate (71.2%) and voters in the Irish Republic (94%) heralded a political solution to the seemingly intractable problems which bedevilled the province for 30 years. The British and Irish Governments formally resolved their historical differences through the general and mutual acceptance of the principle of consent – Northern Ireland is part of the United Kingdom, and will remain so, as long as a majority wishes. The Irish constitution (articles 2 and 3) was amended to reflect this understanding and power was devolved (December 1999) to a locally elected Northern Ireland Assembly with a wide range of executive and legislative powers. The Agreement also contained measures designed to create a 'normal and peaceful society in Northern Ireland'. The most significant included the early release of political prisoners, parallel reviews of the policing and criminal justice systems, new independent Human Rights and Equality Commissions, and a commitment from participants to total disarmament of all paramilitary organisations by working with the independent International Body on Decommissioning. Failure to resolve the arms issue (prosaically described as 'no guns, no government') led to the suspension of the Northern Ireland Assembly and Executive in February 2000, a political impasse, and the re-imposition of Direct Rule from Westminster.

The Secretary of State for Northern Ireland recently claimed 'the guns are silent and the IRA's cease-fire has, on the whole, held for over two and a half years' (Mandelson, 2000). Even though the Omagh bomb (15 August 1998) constituted the worst terrorist atrocity in Northern Ireland in which 29 people died and 200 were injured, in 1999 seven civilians were killed, the lowest figure since the 'troubles' began, and the first year ever that no security forces were murdered. This, however, conceals an ongoing level of violence perpetrated by paramilitaries through 'punishment' attacks, beatings and shootings in their role as community 'protectors' upholding the law in areas they control. Up to the end of 1999 police statistics show there have been 2,241 shootings and 1,560 beatings since the figures were first recorded¹. These statistics however are thought to grossly under-estimate the true extent of the problem. Those subjected to beatings and shootings are fearful of involving the security forces in case of paramilitary reprisal and hence there is large scale under reporting. The current political vacuum has led to a significant increase in the number of beatings and shootings. During the Mitchell review of the implementation of the Belfast Agreement (September 1999), Sinn Fein stated the importance of the political process in making conflict a thing of the past, accepted decommissioning as an essential part of the Agreement, and opposed the use of force and 'punishment' attacks. This resulted in the cessation of republican paramilitary shootings until the suspension of the Assembly, at which point they recommenced.

¹ Figures for shootings and beatings were first recorded in 1973 and 1982 respectively and show that loyalists were responsible for 42% of the shootings and 45% of the beatings, republicans carried out the remainder.

This brief overview of the two countries suggests several things. First, communities, which have been brutalised during conflicts over a long period, become desensitised to violent crime. In the case of Northern Ireland this has been variously described by a former Secretary of State as ‘the peace we have now is imperfect, but better than none’ or perhaps, more tersely, as having ‘an acceptable level of violence’ (Mowlam, 1999). Second, within conflict settings crime can be differentiated into ‘political’ and ‘normal’ crime. The former could include informing and collaborating with the ‘enemy’ even though such activities would not necessarily be deemed as criminal by the State. In contrast, ‘normal’ crime would include break-ins, muggings, rape, car theft, drug-dealing etc., all of which would be considered as criminal by the State and necessitating action by the formal justice system. When the legitimacy of the State and its organs (the security forces and legal system) are integral to the nature of the conflict, however, this forecloses recourse to the normal channels by which communities seek to tackle ‘normal’ crime. Third, and as a direct consequence, communities develop their own response to crime that will be heavily influenced by the violent environment within which they live.

This paper, drawing on focus group interview material, will therefore examine ways in which the communities in Northern Ireland and South Africa have responded to crime both during the conflict and thereafter. If the *raison d’être* for ‘political’ crime has been removed once a negotiated settlement is reached and the legitimacy of the State reaffirmed by agreement, can communities then subscribe to the formal system of criminal justice? Given the relatively recent, albeit fragile, arrival of a ‘peace’ settlement to Northern Ireland the paper considers what lessons, if any, can be learned from the South African post-conflict experience and its efforts to deal with community responses to crime.

Crime in Northern Ireland

The Northern Ireland security forces have prided themselves on having a lower rate of ‘ordinary’ crime than other parts of the United Kingdom, even allowing for evidence of under reporting particularly amongst republicans. In 1994, for example, Northern Ireland had a lower crime rate than in any of the 43 police forces in England and Wales. Figures from the 1998 Northern Ireland Crime Survey show lower levels of crimes against the household than the equivalent British Crime Survey (23% and 34% respectively). In the case of violent crimes against the person, the figures between the two regions are very similar: 4.7% of British Crime Survey respondents compared to 4.4% in Northern Ireland said they had been a victim of violence (Northern Ireland Office, 1999). This contrasts starkly with a report by the Police Authority for Northern Ireland² which monitored the performance of the RUC during 1998/99 and found ‘that many categories of crime are on the increase while police performance in tackling this has not always been as effective as anticipated’ (Police Authority for Northern Ireland, 1999: 9). The report notes that number of violent crimes rose by 21.2%, recorded crimes increased by 27.9%, and crimes against the person went up by 33.2%. These figures were confirmed by a Home Office report which showed that Northern Ireland’s percentage increase (28%) in recorded crime was second only to South Africa where it rose by 37% in 1998. Northern Ireland also experienced the largest rise of the 29 countries examined in the report in the area of recorded violent crime with an increase of 21% while England and Wales, and Ireland recorded decreases of 6% and 17% respectively. Violent crime includes violence against the person, robbery and sexual offences (Barclay and Tavares, 2000). One explanation suggested by the Northern Ireland Police Authority was that reduced levels of security force activity provide greater opportunity for criminals.

The parallels with South Africa are outlined by one observer:

The province could be risking a surge in non-political organised crime, as members on both sides of the sectarian divide exploit the weaknesses of peacetime policing. Urban guerrilla movements such as the African National Congress’s Umkhonto we Sizwe, the Ulster Volunteer Force and the IRA have routinely resorted to bank robbery, protection rackets, and smuggling to fund their military campaigns against the ruling power. When, as was the case in

² The Police Authority is an independent body which is charged under the Northern Ireland 1998 with securing the maintenance of an efficient and effective police service. It is also obliged to make arrangements for obtaining the views of people about policing and for obtaining their co-operation with the police in preventing crime. It was established in 1970 and is due to be replaced by a new Policing Board as a result of the recommendations of the Independent Commission on Policing in Northern Ireland (the Patten Report).

South Africa, the movement becomes the dominant political force, many of its former operatives find themselves unable to adjust to life on the side of the law. Instead, they stay in the shadows, and sometimes join forces in lawlessness with the very men who, when they served apartheid's police structures, were given the task of fighting them (Kiley, 1999: 17).

What appears to have happened in Northern Ireland as the conflict developed is that the boundaries between so called 'normal' and 'political' crime have become blurred, leading to community frustration with the formal system of criminal justice yet, at the same time, fear of the influence exerted by paramilitaries. Questions are now being asked as to whether these erstwhile community protectors have become oppressors and what, if any, is their ongoing role in an era of 'peace'. We now examine in some detail the response of communities to crime during the conflict.

Community response to crime

Paramilitaries in republican areas of Northern Ireland have assumed the role of community 'police' from the very beginning of the 'troubles' in what they describe as the absence of a legitimate police service (Munck, 1988, Kennedy, 1995). Not only do they see the RUC as an instrument of the British state which they do not recognise in Northern Ireland, but point to its religious composition (8% Catholic from a 40% population) and treatment of the minority community (Hamilton and Moore, 1995, O'Rawe and Moore, 1997). They cite cases such as Robert Hamill, beaten to death by a loyalist mob and witnessed by police who allegedly failed to intervene. They claim RUC collusion with loyalist paramilitaries, most notably in killings of high profile Nationalist/Republican figures such as human rights lawyer Rosemary Nelson and solicitor Pat Finucane, and accuse the police of exploiting young petty offenders in return for intelligence information gathering. In contrast, within the loyalist communities, the RUC are seen as legitimate but ineffectual, part of a system of criminal justice which cannot react quickly enough and exact retribution deemed appropriate by victims of crime. Conway (1997) points to significant differences in Loyalist and Republican policing. In the former he suggests they are more involved in policing their own organisations for reasons such as internal disputes and informing. Young people involved in anti-social crime, rather than being marginalised, are often persuaded to either 'join-up' or at the very least contribute part of the proceeds of their criminal activity to the paramilitaries.

Communities have turned to paramilitaries for protection against crimes committed in the areas they control. Typically these will include burglary, car theft and joy-riding, drug dealing and more generally what is described as anti-social behaviour against the community or 'hooding'. Officially when community members complain an investigation is carried out and, if substantiated, followed up by a 'punishment' graduated on a scale or a tariff system consistent with the seriousness of the 'crime'. This can range from warnings, threats, curfew, beatings, shootings, exiling and ultimately execution (Silke, 1998). In practice, however, blame and guilt may be established through little more than hearsay and the level of 'punishment' can be arbitrarily brutal or lenient, depending upon whether the accused 'is connected' (related or linked in some way) to known paramilitaries. Beatings are carried out using weapons such as baseball bats, golf clubs, pickaxe handles, drills, iron bars, hammers, and hurley sticks spiked with nails to inflict puncture wounds.

Community endorsement and support for the system is outlined by two interviewees:

The RUC don't come into our areas so we have to look to the republican movement for policing. Because we don't have cells to lock offenders up the system evolved from there. In the '70s they dropped breezeblocks on them and nobody complained. As a matter of fact, I don't think they are doing enough to them now.

No person will go to the RUC. They will either go to representatives of Sinn Fein, community representatives or members of the IRA to actually get it dealt with. If somebody's caught joyriding in the area, they're going to face the courts, probably get out on bail, more likely get a suspended sentence, and they're free to go out again, start joyriding, terrorising the community again. If they go through the informal system, action will be taken immediately, whether it's exiling, their legs broke or kneecapped. That's tackling the problem, getting to its core. (Focus group interviews, Belfast, September 1999).

All of this ignores available evidence that a number of people have been mistakenly identified by 'punishment' gangs who perpetrate these criminal acts, boys as young as 13 years old hospitalised through paramilitary beatings, and the process used to settle grudges or internal feuds, euphemistically described as 'housekeeping' issues. The police tacitly acquiesce in a system which they know to exist and can exploit for intelligence gathering ('informing' from another perspective), particularly given the vulnerabilities of many of the young people targeted by paramilitaries. Hence communities are caught in a trap. Even though the Northern Ireland conflict reached a political and constitutional resolution through the Belfast Agreement, the associated reforms of the police and criminal justice systems have not yet happened. A hiatus therefore exists. In republican areas the RUC are anathema and communities still look to paramilitaries for community 'protection', yet their political leadership gave a commitment to the Mitchell principles of democracy and non-violence. In loyalist areas, which are much more factional in their paramilitary make-up and therefore less ideologically homogeneous, there is a more irregular approach to community 'justice'. This is best illustrated by a comment from one interviewee in a loyalist area:

Quite frankly, I don't want the paramilitaries to deal with anything. I want the police to have power to look after the community. As far as I'm concerned the paramilitaries have no place in Northern Ireland. I mean they were set up to protect one side and fight the other side. Well that's done. We've got peace now. They're big business. They're hiding behind this paramilitary protection and all this, but really they are extortionists into fraud and drugs. There's no place for them. They're kneecapping a young lad for housebreaking yet they are holding up post offices and banks. (Focus group interview, Belfast, November 1999).

This remark traces the shift in community feelings from a stage when paramilitaries were seen to have a legitimate role to play in a conflict scenario. In these circumstances communities were prepared to overlook racketeering choosing to believe that this was necessary to fund the ongoing 'struggle'. As 'peace' developed they have become intolerant, yet no less fearful, of the role played by paramilitaries. The line between 'ordinary' crime and 'political' crime is indistinct and a frustration is palpable that the formal system of criminal justice has been unable to keep pace with this shift in the attitudes of communities. An international report on armed groups recently argued that 'the distinction between politically motivated action and organised crime is fading away. All too often, the political objectives are unclear, if not subsidiary to the crimes perpetrated while allegedly waging one's struggle' (International Council on Human Rights, 1999: 6). This is particularly apposite in the case of loyalist paramilitaries whose political objectives might broadly be defined as defenders of the Union but, in practice, they have been the countervailing forces to IRA violence. With the Union secured and the IRA on cease-fire, their current role is being questioned by those they claim to protect. In a situation where police reforms have yet to be implemented and the outcome of the criminal justice review is still unpublished, how then do communities deal with crime?

Crime in the transitional period

In this fluid political scenario republican paramilitaries, under pressure from Sinn Fein who must demonstrate their democratic credentials, have given their support to the concept of community restorative justice (CRJ) schemes. Restorative justice, based on some form of victim-offender mediation, seeks to move away from the traditional retributive system of punishing the offender for crimes committed. It attempts to restore and repair relationships between the offender, the victim and the community. Therein victims are given the chance to say how the crime affected them, the offender is confronted with the distress he/she caused, given the opportunity to make amends and offered a way of reintegrating into the community (Zehr, 1990, Considine, 1999). The impetus for republican endorsement of this approach came via a report produced by academics and criminal justice practitioners who designed a restorative justice system appropriate for local circumstances (Auld, *et al*, 1997). It presented a workable model comprising referral, investigation, informal caution, informal mediation, formal mediation, hearing and 'solutions' or 'disposals' (e.g. restitution of damage, referral to a statutory agency, community service, and community boycott). This approach has been enthusiastically embraced in many republican and nationalist areas (Derry and west and north Belfast) with demand outstripping the capacity of CRJ activists to deliver. The principles of restorative justice have also found support in the government's own review of criminal justice in which they argue 'it is necessary to find a means of mobilising local opinion against vigilantes and violence' but 'it must be in partnership with, rather than as an alternative to, the official systems' (Criminal Justice Review Group, 1998: 42).

Therein lies the problem. Community restorative justice schemes in republican areas do not recognise the RUC as integral to the process and critics have branded their approach as nothing more than a cover for a 'Provo police force' (Trainor, 1999). This has prompted questions from Unionist politicians about their long-term role. David Trimble, for example, asked Adam Ingram, the security minister the following parliamentary question:

Does the Minister agree that some of the restorative justice schemes that are operating in Northern Ireland could be accurately described as alternative justice schemes? Does he also agree that those schemes are operating wholly outside the legal system and involve significant abuse of the rights of the people who are caught up within them? (Trimble, 2000: 263).

The Minister responded:

Some schemes clearly do not conform to what is desirable, do not recognise the police and, indeed, may not even recognise the due process of law. Such schemes do not fall within the ambit of restorative justice but of a different type of civil administration and are, therefore, unacceptable. (Ingram, 2000: 263-264).

Others are generally critical of the whole restorative justice approach. Brogden (1998), for example, questions the detail of its implementation. Most sanctions, he argues depend on 'shaming' the offender and reintegration into society. The shaming process requires community solitary not present in Northern Ireland. He also queries what happens to the offender who refuses to accept the legitimacy of the community court and/or the penalty handed down. He concludes that 'as an alternative to 'punishment' beatings and the inefficiencies of the formal system, it is welcome. But restorative justice is also ineffectual. For most part, it represents a road to nowhere' (Brogden, 1998: 14).

Loyalists have also become involved in restorative justice, most notably through a programme entitled the *Greater Shankill Alternatives*. The scheme commenced in 1998 as a direct response to paramilitary 'punishment' attacks. The concept of restorative justice is not as widespread and less well known in loyalist areas. Our focus group participants in the Shankill area, for example, had 'only vaguely heard of the Alternatives project'. It is also more difficult to secure the endorsement of loyalist paramilitaries for restorative justice given their factionalism. What is interesting however is that those involved in the programme grouped 'punishment' attacks into 3 categories: those carried out by paramilitaries on their own members for internal disciplinary matters; those involved in anti-social activities; and feuds between groupings involved with the sale of drugs. In the latter it was argued, with some circumspection, that 'these are not in themselves paramilitary groupings, although there could at times be an overlap in membership' (Winston, 1997). Based on this analysis the community restorative justice project opted to restrict its involvement to anti-social activities. Since then, according to those involved, its work has widened to include 'socially harmful activities, empowerment of the local community and areas of weakness within the formal criminal justice system' (Winston, 1999). Aside from the more limited geographical coverage of restorative justice in loyalist areas, activists claim police co-operation. Republicans contest the nature and extent of this and see it as duplicitous to secure government funding. Their criticisms are, in part, a reaction to their own largely unsuccessful efforts to access public sector resources which they argue are being vetoed by the Northern Ireland Office.

The dilemma facing communities is obvious. 'Normal' crime is increasing and the rationale for 'political' crime waning. The transition to 'peace' has exposed the activities of paramilitaries, especially in loyalist areas, as community oppressors rather than defenders of a cause which has been overtaken by political events. Yet it will take some time for the necessary changes in the policing and criminal justice system to be put in place, and even longer for the communities to have confidence in them. To whom do working class people turn when faced with criminal activities that blight their lives? The apparent support by paramilitaries for community restorative justice schemes may be no more than a cynical response on their part to keep their political representatives involved in the democratic process. There is evidence that they can initiate and discontinue 'punishment' beatings and shootings at will. To cede responsibility for law and order to the formal criminal justice system would be to lose control within their communities where they have some social standing and exercise patronage (the 'hard men' image).

The expectations of the communities, however, are also important here. Their experience is one of living in a conflict setting for 30 years where their major recourse to the 'law' was through the paramilitaries who administered 'justice' expeditiously and often through the use of violence. Brewer *et al* (1998) have argued that civil unrest has, in fact been a contributory factor to the survival of community structures – those under attack have been strengthened as a consequence. Their expectations of the formal system, even a reformed one, based on this experience will be difficult to fulfil. Brutalised communities have become tolerant of rough 'justice'. One commentator on South Africa remarked 'our high rates of criminal violence, road traffic deaths, domestic violence, rape and child abuse are all oblique expressions of the brutality that is embedded in this society' (Smith, 1999). The same is true in Northern Ireland. This questioning of the role now played by paramilitaries has not provided the communities with any obvious answers to tackling crime. As one interviewee put it:

We've been brainwashed over the years. Whenever you heard of a punishment shooting or beating the first thing came into your head was 'what did they do, they must have done something' because we placed so much faith and trust in the paramilitaries. Now I would put a question mark over these things but in or area the attitude is 'well it hasn't come to my door, I'm sorry for you but as long as they leave mine alone'. (Focus group interview, Belfast, November 1999).

Given Northern Ireland's transitional status to a post-conflict society, what lessons can be learned from the experience of South Africa in the community response to crime?

Community response to crime in South Africa

Prior to the peace process in South Africa, the police and criminal justice system were viewed by large sections of the population as being not only illegitimate but also tools of the repressive apartheid state. The police were concerned with policing the apartheid laws, crushing resistance, recruiting informers and supporting vigilante groups rather than combating crime. While the courts were busy enforcing apartheid legislation instead of trying alleged criminals and incarcerating those found guilty of crimes such as rape and murder. Thus the townships in many areas were devoid of a police presence and a dispute settlement/policing vacuum emerged. Subsequently township inhabitants developed informal criminal justice mechanisms for dealing with crime in their community. These mechanisms were developed in part from traditional rural practices such as the *lekgotla*³, which emphasised the restoration of harmony and the re-integration of offenders into the community. Sentences handed down to those found guilty included fines, corporal punishment and community service. Neighbourhood patrols and street committees were also established in an attempt to deal with 'normal' crime, for instance robbery, theft and rape. With the emergence of the politicised youth or 'comrades' people's courts were established within the townships and residents were encouraged to take their problems to the 'comrades.' These courts were seen as part of the political struggle against apartheid as they represented an alternative to the state structure and dealt with both 'normal' and 'political' crime. They advocated discipline, organisational accountability, recognition of the true enemy (the state and its surrogates), and an understanding of the damage that crimes against the oppressed caused, namely that they were diversive and counter-productive to the struggle. Those found guilty by the people's courts were often given punishments of a community service nature such as painting an old person's house or tidying their yard, a fine or in more serious cases limited physical punishment with a sjambok (whip). As Schärf and Ngcokoto note, 'the main aim of such exercises in 'people's justice' was to show the wrongdoers that they had not been abandoned by their community' (Schärf and Ngcokoto, 1990: 350). Gradually these courts which numbered some 400 by 1987, began to acquire the reputation of 'kangaroo courts' (Brogden and Shearing, 1993, Minnaar, 1995). Such courts are characterised by their predetermined assumption of guilt of the accused, instant redress and often engage in human rights abuses. The people's courts of the 'comrades' in some cases meted out beatings and whippings with a sjambok, with sentences of up to 300 lashes and on occasions a death sentence was passed. By the mid-1980s, those individuals accused of 'political' crimes such as collaboration, informing or being a 'sell-out' (working as a councillor or a police officer) were 'necklaced' for their alleged crimes. The

³ The *lekgotla* is a court comprised of elders of the community who convene a meeting to listen to disputes and problems within the community and pass judgement. The *lekgotla* emphasise a conservative moral code including respect for elders, the importance of kin and patriarchal authority. The plural of *lekgotla* is *makgotla*.

necklace method involves the placing of a petrol-filled tyre around the accused's neck that is then set alight. Estimates suggest that between 1985 and 1990 some 350 to 400 people were killed by this method of execution with a further 500 necklaced between 1990 and 1994 (Minnaar, 1995).

Not everyone within the townships supported the anti-apartheid struggle and by the mid-1980s vigilante groups in opposition to the 'comrades' and supportive of the *status quo* had emerged. Such groups were violent, organised and received varying degrees of police support. Members included local elites including businessmen, elders and their supporters, urban gangsters and police personnel (Haysom, 1986, Murray, 1994). These vigilantes only responded to 'political' crime which, was defined broadly as any action against the apartheid state. Their activities included physical attacks on individuals and the destruction of dwellings. By 1988, more than 90% of unrest related deaths were attributed to vigilante violence and some 6 to 7,000 people had died by 1992 as a result of such attacks (Murray, 1994).

The various mechanisms developed by the township inhabitants to counter crime within their areas received varying degrees of community support and legitimacy. Like the *makgotla* before them, the people's courts of the 'comrades' lost support when their methods and punishments became more arbitrary and violent. As Brogden and Shearing note, 'township ordering processes could only work effectively as long as they were regarded as legitimate by all those who appeared before them - or dared not resort to the state system' (Brogden and Shearing, 1993: 164). With the ending of apartheid and the negotiation of a political settlement, the question arises as to whether community responses to crime would continue in the 'new' South Africa?

Crime in the post conflict era

In the years leading up to South Africa's first multi-racial democratic elections the country experienced both a decline in overt political violence and a dramatic rise in 'normal' crime. Figures for the transition years of 1990 to 1994 show a 7% decrease in the murder rate but increases in rape (42%), robbery (40%), vehicle theft (34%) and burglary (20%)(Shaw, 1996: 159). In the same period people's courts continued to operate and employ varying degrees of punishment. For example, in Nyanga (near Cape Town) 2 men were given a 100 lashes for stealing a pair of shoes (SAPA, 1991) while in Mamelodi (near Pretoria) a newspaper reporter was sentenced to 500 lashes for writing about the township's informal courts (Cembi, 1991). Given the reputation of people's courts for brutality and summary justice, anti-crime committees have been set up within a number of townships. In some areas training programmes have been developed and operational guidelines issued. The committees have had varied success (Minnaar, 1995). Furthermore, non-violent community courts have also been established. These courts or forums as they are frequently known as operate a restorative justice philosophy echoing the practices of the *makgotla* and seek to involve the community directly in the resolution of disputes and problems. Punishments are non-physical and involve an element of shaming. A community forum co-ordinator explains how this is done to those found guilty:

We educate them so that they respect the community, because most of the activities, like the punishments, it's not a punishment where people are sjambokked, it's education where people get themselves embarrassed, because when people come from work, they want to see the people who have been punished by the court...So people like to see them, and laugh and go and look there. So if they see you there they will laugh at you. Everybody will know he was a thief, or whatever (Interview with Mr Citabatwa, Guguletu, March 1999).

With the democratic elections of 1994 the new government with its inherited structures of law and order was finally recognised by the majority of the population of South Africa as being the legitimate government of the people. The (new) government has attempted to address the problems of illegitimacy and accountability within the criminal justice system. In 1995, the South African Police Service Act was passed. This act not only renamed the police but also envisaged their transformation into a public service provider. It also allowed for greater civilian oversight and community co-operation with the police through the creation of Community Police Forums. Within the magistrate's court system, lay assessors drawn from the community have been introduced thereby giving the community a greater say in the sentencing of those found guilty of crime. More recently the Law Commission has begun to explore the possibility of not only recognising the informal community court structures which operate a restorative justice approach in the townships but also incorporating them into the formal system. It should be noted that these reforms have not resulted in the eradication of informal justice in the

townships. High crime rates, perceived police ineffectiveness and alleged corruption within the criminal justice system have all contributed to the continued existence of retributive informal justice. The 'comrades' are no longer involved in such justice rather new groups have emerged, these include Peninsula Anti-Crime Agency (PEACA)⁴ in the Western Cape, *Mapogo a Mathamaga*⁵ in the Northern Province and the willingness of taxi associations in some townships to become involved in crime solving for a fee. Furthermore, in some cases spontaneous mobs form to mete out justice to alleged criminals. All of these groups stand accused of using corporal punishment and violence in responding to crime. Indeed *Mapogo's* leader, John Magolego asserts that public flogging, 'is the African way of stopping crime. The criminal must lie on the ground, and we must work on his buttocks and put him right' (Quoted in Soggot and Ngobeni, 1999). Alleged suspects are usually beaten until they confess or provide information as to the whereabouts of stolen goods. *Mapogo* has also been accused of throwing suspects into crocodile-infested waters while taxi-drivers in Guguletu are implicated in the dragging of alleged criminals behind vehicles.

To the inhabitants of the townships the kangaroo courts of the taxi associations or justice of the mob are the only effective source of crime control and justice available to them. The police and criminal justice system, although accepted as legitimate, are now perceived as ineffective, cumbersome, and in some instances corrupt. The anti-crime activities of the taxi-drivers in Guguletu were seen by many residents as an effective crime control measure; not only were goods and monies retrieved and the alleged criminal dealt with, but the actions of the taxi-drivers were viewed as a deterrent to other criminals in the area. Community endorsement and support for their actions are outlined by two interviewees:

You have just bought a new microwave, a new fridge and son. Perhaps you go to work, the kids go to school, you come back later during the day and everything is gone and it's quite a difficult situation. You have seen the taxi people working. They were able to catch the thief, bring back the stolen goods. So you are obviously driven towards the taxi people to ask for help. Immediately they have picked up the individual and the individual has dished out the necessary information in terms of where the goods are. The taxi people go beyond that to the extent of perhaps killing the person, and that leaves the community spirit crushed (Focus group interview, Guguletu, November 1999).

People go to the taxis because they are looking for a quick fix, because the police is a long road that can take years. The taxis, you go now and you get your stuff in the afternoon, and the case is solved, everything (Focus group interview, Guguletu, November 1999).

In discussing community responses to crime it is important to remember that the recourse to violent action outside the formal institutions of the State is a well-established principle in South Africa. Indeed a 'culture of violence' can be said to exist in which society endorses and accepts violence as an acceptable and legitimate means to resolve not only problems but also to achieve goals (Hamber and Lewis, 1997). Thus the sjambokking of 'skollies' (local hoods) by organised groups such as *Mapogo* or the coming together of concerned community members like taxi-drivers or ex-combatants has become common place in the townships in the 'new' South Africa.

Conclusions

In terms of what 'lessons' Northern Ireland can draw from the South African experience a number of points can be raised. Firstly, the implementation of reforms needs to involve a 'whole package' approach. The police reforms in South Africa have addressed the problem of legitimacy but new problems of effectiveness and transparency have emerged. The 'new' police service established in 1995 has inherited many of the personnel recruited during the apartheid years, some of which are badly trained and educated. It is estimated that 25% are illiterate and around 13% do not hold a driver's licence although the ability to read and write and possess a formal driver's licence are requirements of the South African Police Services Act (Randall, 2000). The service also suffers from a lack of

⁴ PEACA is based in Khayelitsha, a township near Cape Town and was started in August 1998. It is comprised of ex-combatants of the liberation struggle who have come together to fight crime and its members number 1500.

⁵ *Mapogo a Mathamaga* was established in August 1996 and has some 40,000 members who pay a monthly subscription to the organisation in return for protection against crime.

resources, detective training and high absenteeism. The creation of Community Policing Forums and encouragement of community involvement also appears to be a rather superficial measure given the general lack of resources and in some cases police antagonism to civilian scrutiny. The introduction of lay assessors at magistrate court level was designed to allow the community a greater say in matters of concern to them. Much confusion exists about the scheme and it appears to be haphazardly applied working in some areas and not in others. The low levels of state aid to people without work in addition to the high levels of unemployment exacerbate the crime situation in the townships. For some crime is the only option if they are to survive. Thus it can be suggested that unless economic reforms are implemented to alleviate levels of poverty and deprivation there will always be crime in the townships. Secondly, on the issue of community restorative justice the townships have a long history of such an approach and even in those townships where it is operating successfully instances of retributive informal justice still occur. Community restorative justice projects are a relatively recent approach in Northern Ireland and there is no guarantee that they will work or result in a cessation of punishment attacks. Thirdly, in South Africa the police are now accepted as legitimate but a culture of violence persists. The 'comrades' may no longer 'police' the townships but other groupings have emerged who are willing to mete out their version of justice and/or retrieve stolen goods thus bypassing the formal criminal justice system. A negotiated peace that results in the community accepting the formal system does not necessarily mean that the utilisation of often 'successful' methods of retributive informal justice will be abandoned. This is perhaps more true in Northern Ireland where the transition to a post-conflict society is staccato with the row over decommissioning impeding political progress. In circumstances where reform of the key organs of crime prevention, the police and the criminal justice system, are inextricable bound to the faltering political process, then communities will continue to seek redress through the paramilitaries. For those in Northern Ireland and South Africa weaned on political violence, the promise of a robust and effective formal system of criminal justice seems a remote prospect. In the meantime the alternative informal system continues, sustained by a demand from communities conditioned to violence who endorse, without necessarily agreeing with its excesses. The key lesson for Northern Ireland is that political, constitutional and criminal justice reforms must operate in tandem to restore confidence in communities that real change is taking place. There must be an acceptance that such change will not happen overnight and the process is fragile and subject to scrutiny by those suspicious of its effectiveness. Any hint that the guarantors of change (e.g. the Equality Commission, Police Ombudsman, Patten) are being frustrated in their efforts, will simply reinforce community mistrust and reassert their reliance on paramilitaries. The ultimate goal is the transition from 'an acceptable level of violence' to real peace.

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