

Rethinking the Clouded View of Human Rights in Policing in Africa the Story of Running Battles between the Citizens and the Police

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Abstract

The world is believed to be continuously evolving. As this happens a lot happens as people seek to survive within their environs. This finds the people and the police at times having to square off as each demands its space. As citizens have grown to be aware of their civil liberties they have gone to challenge the police powers and their subsequent use of force. On the other hand the police have continued to assert their power on the citizens motivated by the fact that lawlessness does not promote peace and stability in any economy. They also believe that there is no economy that can survive without the police. This study focused on the relations of the police and the citizens within greater Harare which is the hub of all activities, be they politics and economics. The study found out that the people and the police are always operating from pole opposite ends. Their interests are also conflicting. The many times the citizens embrace the police and their powers is when they are victims of crime otherwise the police are regarded as enemies of the people. It is recommended that the citizens should understand that the police are a creation of the statutes of the land and seek to perpetuate the interests of the State which are chiefly to promote peace and stability so that the citizens can enjoy the best of their lives in peace.

Keywords: Policing, human rights, running battles

Introduction

The science and art of policing is growing complex with each day in Africa since the turn of the 21st century. Numerous dynamics now characterize policing and security because the citizens are now conscious of their actual and perceived rights. The public now understand or at least perceive where the police need to end the exercise of their force. The police on the other hand still believe that the Constitutions that create them have not watered down their roles and responsibilities to guarantee law and order, protecting people and property. The citizens wherever they seem to suffer from the misapprehension that they can survive without the police, yet empirical evidence has shown beyond any shadow of doubt that no society can survive without the police. No peace, normalcy or stability can be experienced under conditions of lawlessness. The lobbying groups have been known to make a lot of noise about the rights of citizens but when the same citizens violate the laws, they withdraw to the mute mode for instance, on the 28th December 2019, a machete gang gruesomely murdered a police officer in Kadoma (Zimbabwe), yet these groups behaved as though they were on sabbatical. In this regard, the murder of a policeman on duty is viewed as just one of those things. This is the challenge that this study seeks to unpack

The Rights of Citizens and the Need for Efficacy in Policing For Sustainable Development

All people across the globe, that is Africans, Asians, Americans and Europeans ideally are supposed to be equal in virtually all aspects of life. No individual regardless of their stature, muscle or station in life should abuse another for

whatever reason and in whatever circumstances yet human rights abuses are so rampant across the face of Africa and beyond. All citizens ought to understand that 'self is like no other' and that everyone should understand that they are individuals in their own right to the extent that their dignity should never be impaired by anyone. Human rights are thus what everyone has a right to claim whatever their situation in life. Ideally, therefore, everyone within whatever society should have life lens that see all people as beings with entitlements that should never be trampled upon. In this regard Mugabe (the late Zimbabwe founding president) in his acceptance speech as the AU Chairperson aptly said, 'African resources should belong to Africans and no one else. Except those we invite as friends, friends we shall have, yes, but imperialist and colonialists, no. Africa is for Africans, let us sing'. But Zimbabwe was to writhe under sanctions for alleged human rights arising from a need to address historical imbalances. History at some time in the lives of a people will need to be corrected but Zimbabwe soon learnt the hard way that as in the Animal Farm by George Orwell some animals are more equal than others. The Global North whom history acknowledges plundered Africa was never and possibly will never be made to account for those crimes against the African possibly because of the inferiority of their skin. Walter Rodney (1972) clearly articulated how Europe underdeveloped Africa yet today they want to appear like they are the saints of this world as they preach democracy and human right.

There is no single definition of human rights but it is universally accepted that human rights are rights or entitlements that inherently belong to every human being by

virtue of their being persons. Professor Henkin referred to by Chasnda (1999) avers human rights as those benefits deemed essential for individual wellbeing, dignity and fulfillment and that reflect a common sense of justice, fairness and decency. Professor Henkin goes further to argue that human rights are not mere aspirations, or assertions of the good but claims of right not by appeal to grace or charity or brotherhood or love, they need not to be earned or reserved. Human rights need to be guaranteed by the State so that the vulnerable are not taken advantage of by the powerful citizens who might be wielding so much power.

In a society ruled by law all public institutions and officials must act in accordance with the law. The law must apply across without fear or favour. There is no individual with more rights than another, thus fundamental human rights are more than mere pious aspirations and this must be understood without any doubt. Accordingly, Justice Gubbay (1989) then Chief Justice of Zimbabwe said, "Although the idea of human rights has become accepted universally, this does not mean human rights flourish everywhere and that the existence of a bill of rights or by adherence to the international law of human rights nor does it imply that human rights have been incorporated into all cultures and are coveted by all governments. With this understanding the murder of George Floyd was deplored by many across the world. Resultantly, the perpetrator was arraigned before a competent court of law for trial. The shooting of Shirleen Abu Lekh (in 2022) a Palestinian journalist by the Israeli forces was equally condemned by many progressive citizens.

From the foregone, it can be inferred that citizens have clear and distinct rights which are acknowledged by various provisions in State Constitutions. Every individual has human rights by virtue of being a person. No individual at law wherever they are has more rights than No individual at law wherever they are has more rights than No individual at law wherever they are has more rights than No individual at law wherever they are has more rights than an another, but what needs to be understood is the fact that while this might be the case the rights are not absolute. The rights ought to be exercised with the full understanding that they have to be exercised within the confines of the law. They have to be enjoyed in a manner that also does not prejudice or jeopardise the rights of others.

The realization that rights enjoyed by citizens do not have to affect the rights of others is an aspect of life that many choose to ignore or seem not to understand yet it is central to survival of humanity. This is actually consistent with the concept of Ubuntu. It is an African to inflict pain on another deliberately if there is no justified cause. Africans believe that "I am because we are", which confirms the concept of being there for each other, being a family together. When this happens, the world would be a better place and habitable in a manner fostering coexistence and tranquility. Citizens should never be allowed to loot, burn and destroy infrastructure during demonstrations. This is criminal and should never be allowed. Individuals and Groups That Decide To Behave In This uncelebrated fashion should thus meet the full the wrath of the law.

African economies have been known to suffer severely from the effects of colonialism. This has repeatedly led to the nonperformance of the African States after attaining political independence. So many theories have been advanced that seek to explain this position. There is no template that can explain why African countries have always failed to recover from the effects of colonialism and thus perform convincingly

in the face of the abundance of resources that Africa is endowed with.

The non-performance of the economies has thus created deep rooted fissures between the people and the institutions responsible for maintaining law and order. The public would need to protest against failures of the State or business. In doing so, which is provided by the constitution, that in section 59 in terms of the Zimbabwean Constitution, they expected to do so within the confines of the law. Section 59 provides citizens with the right to demonstrate and petition. In terms of this provision every individual regardless of their province in life is allowed to exercise that right. The security services also created by the some constitution through section 208 fully acknowledge this.

Section 86 of the some Constitution however proceeds to limit all rights and freedoms it provides to the citizens. It says in section 86 (1) 'the fundamental rights and freedoms set out in this chapter must be exercised reasonably and with due regard for the rights and freedoms of persons'.

It appears like citizens and those that sympathise with them only choose to refer to section 59 and deliberately ignore section 86 which is actually synonymous with choosing to be mischievous. All progressive citizens would not read sections of the Constitutions in isolation if they be committed to peace and progressiveness.

The Constitution impresses upon the police in terms of section 219 the need to maintain law and order, to secure the people of Zimbabwe and their property, to uphold the Constitution, to detect, investigate and prevent crime. Any action by the police that is contrary to this would not be in the interest of greater society. The police are charged with the duty to protect the people and their property which means that they should use all means possible to guarantee the security of all peace-loving citizens. The peace-loving citizens need the protection of the security services so that they continue with their business normally. If they renege on this obligation, they would have betrayed the people who gave them the mandate to defend and protect them from malcontents from within or outside of their communities. This view is also clearly presented by President Paul Kagame of Rwanda, whose vision of the police is summarized by this caption at the Rwanda National Police Headquarters.

'The people of Rwanda must be able to take their security for granted because there is a police that should guarantee that security' what this aptly confirms is that the police have an obligation at law to safeguard the security of all the citizens. If this security is not guaranteed then the police within that particular State would have failed.

Some human rights activities have been known to suggest that the police should fold arms each time the people want to exercise their constitutional right to demonstrate. It is at this instance that they have clashed with the police who insist that whatever they have to do, there must be due diligence in full compliance of the law. To say therefore that the police outrightly abuse people's rights in instances where due diligence would not have been done is rather unfortunate.

This is however not to say, there are no members of the police who wantonly abuse the rights of the citizens. The police as an institution has a deliberate policy that addresses the actions of such malcontents. The police also have a reputation to protect and sustain and their Public and International Relations department has the duty to engage and repeatedly reengage the citizenry so that there is rapport in all seasons.

Running Battles of The Police and Citizens: Is This The Way They Should Relate?

Running battles between the police and the people have been a repeated phenomenon in African towns. In this vein Zimbabwe is not an exception. The Marikana shooting in the Republic of South Africa is a good example of running battles of the people and the police. The police in this scenario ended up having to use maximum force that resulted in the death of 34 citizens and injuring 78. The Marikana massacre which took place on 16 August 2012, is actually regarded as the most gruesome action by the police against civilians. The police however, argue that they were acting in self defence since civilians were said to be armed, and also killed two police officers and two miners.

When there is confrontation the police have no choice but to respond with fire so that they assert their position as enforcers of the law. Before the use of fire, the police enlist "the principal of minimum force". This refers to the use of that force as may be necessary in the circumstances. Then police have always argued also that in terms of their public order strategy, they do not start by using force. Their approach demands that they adopt a strategy commensurate with the level of intensity of the violence. Ideally a public order event has three overlapping levels viz peaceful, intermediate and violent. Once the level of the disorder has been established the police would have to adopt the following strategies

- Mediation
- Early resolution
- Control and containment
- Dispersal
- Return to normalcy

The idea of this kind of an intervention is in recognition of the rights of the citizens but should they opt to be defiant the police would need to use all they have to ensure normalcy returns. The amount of force that the police applies is therefore determined by the amount of force or resistance from the citizens. The police in the majority of cases may also be guided by the second law of motion as espoused by Isaac Newton. The law says 'to every force there is always an equal and opposite reaction'.

The citizens should never be allowed to be a law unto themselves. The police through various statutes and laws have an obligation to ensure that peace and tranquil are experienced by all citizens. If the police fail to assert their authority they may be harmed by some malcontents within society. This can be seen from the disturbances that rocked Bulawayo beginning of 2019 that resulted in the death of a police officer. The same was to happen towards the end of 2019 when a machete wielding gang gruesomely murdered a police officer who had been lawfully deployed to protect the miners at a mine in Battlefields (Kadoma Zimbabwe). This was very sad and should never be allowed to prevail, yet there can be recurrence as long as the citizens do not appreciate the role of the police.

Recommendations

In view of the data generated in this study it is recommended that:

- The citizens should be encouraged by authorities to have respect of their police officials
- Any citizens that fail to show respect of the police to be dealt with at law
- Civil liberties should not be abused or confused with lawlessness

- Communities should socialize their members on the need to upright citizens and in the process uphold laws of the land

Conclusion

The police should be viewed as the last line of defence of the people within virtually all communities. The people should appreciate that the police are there to guarantee their safety and security and thus need their support at all times. The police should never be viewed as the enemies of the people. This would not be health for the survival and growth of a community. The peace that communities require can only be achieved if the police squarely assert their authority which is accorded to them by various provisions at law. The public should equally appreciate that the world over there is no society which can survive purposefully without the police.

References

1. Amnesty International Policing to Protect Human Rights: A survey of police practice in countries of the Southern Africa Development Community, 1997-2002.
2. Baker B. Multi Choice Policing in Africa, Nordisk Afrikainstitutet, Uppsala, 2008.
3. Chingozha MP. Policing: Can Society Dispense with it? Tepp Marketing Publishers and Distributors, Bulawayo, 2010.
4. Dr. Prachi Pargaonkar. Analysis of Government Policies, A Critical Study with Special Reference to Indian Textile Industry Post GATT. *Int. J Res. Acad. World.* 2022; 1(12):09-11.
5. Human Rights Trust of Southern Africa Zimbabwe Republic Police Human Rights and Policing: Towards Ethical Policing Training Guide, Harare, 2000.