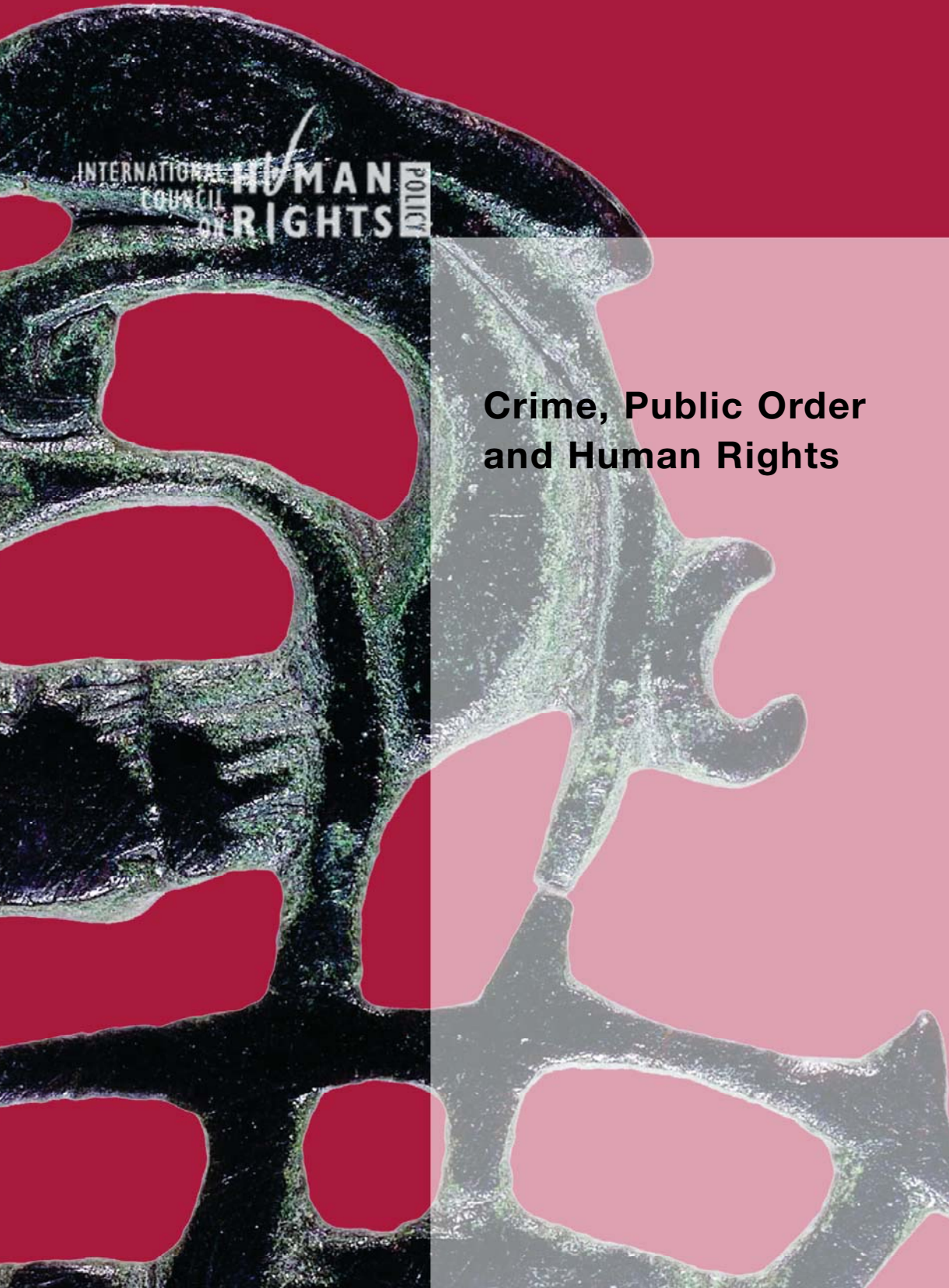


INTERNATIONAL HUMAN RIGHTS POLICY  
COUNCIL OF RIGHTS

# Crime, Public Order and Human Rights



## The International Council on Human Rights Policy

The International Council on Human Rights Policy was established in Geneva in 1998 to conduct applied research into current human rights issues. Its research is designed to be of practical relevance to policy-makers in international and regional organisations, in governments and intergovernmental agencies, and in voluntary organisations of all kinds. The Council is independent, international in its membership, and participatory in its approach. It is registered as a non-profit foundation under Swiss law.



Cover illustration

© The British Museum. Brooch in the Urnes style. Viking, 11th century AD. Found near the village of Kiaby, Skåne, Sweden. This copper-alloy brooch is in the form of a ribbon-bodied animal entwined with interlacing tendrils. The animal does not represent any particular species, but may show Christian influence as a symbol of the struggle between good and evil.

# **CRIME, PUBLIC ORDER AND HUMAN RIGHTS**

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# **CRIME, PUBLIC ORDER AND HUMAN RIGHTS**

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Several papers were prepared as contributions to this draft. Researched and written between June and September 2002, the reports covered crime and human rights in Argentina, Brazil, Nigeria, South Africa and Ukraine. In addition, a thematic paper was prepared to address the issues generally, and contribute to the analytical framework of the report. The papers were prepared by:

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The International Council held an international meeting to discuss the preliminary findings of the project, and to debate the research questions. The meeting was organised in co-operation with the Carnegie Council on Ethics and International Affairs and took place in New York on October 21-22, 2002. It brought together the research team, the members of the Advisory Group and invited experts. In addition to the individuals above, the following people took part in the seminar:

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Previously, the International Council had held a meeting to discuss the research focus of this initiative. That meeting took place in Geneva on November 18, 2001, and was attended by James Cavallaro, Stanley Cohen, Fairouz El Tom, Marcia Kran, Mohammad-Mahmoud Ould Mohamedou, Rachel Neild, Leigh Payne, Makubetse Sekhonyane, Clifford Shearing and

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## INTRODUCTION

Crime and street violence cross borders, ideologies, classes, ages and gender. In many societies, ordinary crime and victimisation have come to be perceived not merely as a high priority problem requiring technical resources. A new discourse has developed, emphasising crime as a threat to individual personal security and a potential source of state instability. In addition, where crime is a problem, a pattern has emerged wherein as a result of rising crime, hardline law and order policies attract public support. Increasingly, punitive and authoritarian methods of control and punishment are suggested or implemented without much public opposition.

This report examines the problems that surges in criminality pose for the provision of security and the safeguard of human rights. While the perspective and responses of authorities are considered, the report focuses on the role of civil society and the particular issues it faces in this environment. The varied responses of the state — from collaborative efforts with civil society to attacks on rights groups, tolerance of police abuse or vigilantism — provide the context in which rights groups must manoeuvre. The main aim is to analyse the challenges that human rights groups must address in the context of rising crime.

Many states have been unable to provide basic security to their citizens. This, in itself, constitutes a failure of the state to discharge its obligation to provide security — to guarantee the rights to life, to physical integrity, to freedom of movement, among others, from violation either by state agents or third parties. Moreover, it has created new challenges for rights groups who must evaluate how best to interact with states that fail to ensure public safety.

Faced with the failure of the state to ensure the security of its citizens, rights groups have adopted a number of approaches, ranging from continued, exclusive focus on the oversight or watchdog function (reporting and denouncing abuses by state agents) to collaborative efforts to provide security services jointly with state authorities, to the development of forms of public discourse that de-emphasise human rights and address security in broader terms. What are the most effective roles for human rights groups to play on issues of public security? What should be the relationship between rights groups and the government?

The changing attitudes of the public toward security issues and the defence of human rights raise another set of issues. Rising crime leads to enhanced fear of criminal violence, in particular, the fear that one may suffer forms of attack, robbery or sexual violence. We have defined this as a sense of

insecurity. This report probes into this sense of insecurity to examine how it is produced, fostered and, hopefully, controlled or limited. We seek to understand what constraints it imposes for rights activists and how they have responded. In particular, we ask what strategies have been most and least effective in defending rights in climates dominated by fear and insecurity. What lessons can be learned by rights defenders who encounter a widespread perception of insecurity?

Surges in criminality can be expected to lead some segments of society to support extreme measures that may violate rights, while many others may remain silent in the face of abuses committed against criminal suspects. In contexts of rising crime and insecurity, other actors such as the media often play a critical role. Journalists, with important exceptions, rarely understand the constraints that human rights norms place on their reporting of security issues and can pander to the prejudices of their public by producing sensationalist coverage of crime stories.

Research has demonstrated that these problems are more prevalent in (though certainly not limited to) transitional societies. In such societies, which are in different phases of evolution from authoritarian to more democratic rule, ordinary street crime increases, posing serious challenges for authorities, citizens and those who defend human rights. The social transformations that characterise societies in transition include changes in state policies and practices relating to crime control. They also provoke changes in non-state responses to these same issues.

Transitional authorities, unable to rely on repressive policing methods and unprepared to provide security within the limits of democratic rule, fail frequently to control rising crime. This failure leads to a widespread public sense of insecurity that makes the defence of fundamental human rights more difficult.

Many countries, including consolidated democracies, face similar types of problems. Nonetheless, the history of authoritarian rule produces a particular situation that heightens concerns with crime. These concerns include a nostalgia for authoritarian solutions to rising crime, cultures of violence within police forces and communities and, sometimes, the presence of former armed groups that become active in criminal networks or repressive private security apparatuses.

Other specific factors that exacerbate the problem include rapid (often chaotic) urbanisation, the precariousness (and sometimes collapse) of major city services, sustained disparities between rich and poor, a culture of violence that is the legacy of years of conflict, the swelling influence in social life of gang activities, the availability of weapons and drugs, the effects of the demobilisation of military or rebel groups, social dislocation, systemic

discrimination, and the abuses and corruption of the police. In addition, the illegitimacy of public institutions and rule by force rather than by consent compound the problem, and constitute factors that foster resentment.

The report examines five case studies of countries that have experienced serious problems of crime. The studies consider societies at different phases in a transition process and seek to draw different lessons from each. The two countries from Latin America (Argentina and Brazil) began transitions from authoritarian rule nearly two decades ago. Nevertheless, there is widespread agreement that in both cases, democratic institutions are still developing and consolidating and that rising criminality poses serious institutional challenges. The Argentine and Brazilian case studies allow us to evaluate the lasting nature of the problems posed for rights defence by rising crime.

In the two states from sub-Saharan Africa, Nigeria and South Africa, the transitions are far more recent. Only a few years have passed since those countries embarked on dramatic processes of change. Nigeria presents an example of transition from military to civilian rule; in South Africa, a repressive and racially exclusive *civilian* rule changed into a more inclusive, more democratic civilian rule. In both cases, significant increases in criminality, accompanied by the perceived failure of the state to respond adequately, have marked the transitional periods.

The fifth country studied, Ukraine, began a transition process in 1990. The Ukrainian case involves a relatively recent transition from a totalitarian, communist regime to a more liberal state. Temporally, Ukraine lies between the extremes presented by Argentina and Nigeria. In the immediate aftermath of the transition in Ukraine, crime rates have stabilised. However, in recent years, criminality and the lack of an effective state response have emerged as key issues.

Two other countries — Peru and the Russian Federation — weigh heavily in our analysis, and examples from these nations are cited throughout. Unlike the Latin American nations included, the former began its transition period recently (2000) and its examination allows us to consider contemporary issues that may no longer be present in the other Latin American states addressed. The Russian Federation, much more than Ukraine, has experienced a highly visible and publicly debated surge in criminality since the fall of the Soviet Union. Our occasional references to the Russian Federation allow us to shed light on issues that arise when crime is viewed as a major political issue.

The selection of these five countries is meant to help reflect on strategies and constraints that shape a range of countries experiencing societal change. Each case presents particular problems and experiences, which the report mines comparatively for applicability to other cases. At the outset of our

research, we believed that we would find important similarities among the regions considered (Latin America, sub-Saharan Africa and Eastern Europe). While we did encounter a number of important commonalities, we also found significant differences, the analysis of which helps us appreciate precisely how particular contexts constrain human rights defenders while others do not produce this effect, or do so to a lesser extent.<sup>1</sup>

## **Scope of the report**

As noted, a number of issues are raised when societies experience sharp increases in crime. Below, we set out in summary form the issues that form the core of this study.

Data from a number of countries demonstrate a close correlation between the process of transition and rises in measured rates of criminal violence. These data — culled principally from several Latin American nations, South Africa and former Soviet states over the past two decades — demonstrate that when significant regime transformation occurs, one of the consequences is a rise in crime. Transformation necessarily implies change in a number of areas. One of them is the area of public security. Practices employed by totalitarian and authoritarian states to maintain control over political dissidence (including targeted killings, curfews, militarisation of security, explicit racial or class profiling) may also serve to curtail ordinary crime.

Transitional, democratic governments often seek to change these practices as part of an overhaul of the existing regime. Often, their determination to end abusive practices has not been matched by a corresponding effort to ensure that new authorities develop and implement effective and legitimate security practices. What may be termed a 'dismantling mentality' thus takes hold. Security forces, hamstrung by the pressure of change, the freer press and burgeoning civil society, find it more difficult to resort to their illegitimate means of social control. At the same time, these forces are largely unable to apply democratic means of crime control. The result, as we see in this report,

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<sup>1</sup> For example, while violent crime is perhaps the single most important political issue at the local level in Brazil's major urban centres, greatly restricting the terms of debate for human rights activists on public security issues, the issue is barely present in public debate in Ukraine. Although violent crime is more prevalent in Brazil, crime rates are high in Ukraine and the rate of incarceration per capita far exceeds that of Brazil. In the Russian Federation, criminal violence is a hotly debated, politicised topic. There, as in Brazil, rights activists are widely viewed as naive defenders of criminality, rather than as legitimate protectors of the rule of law. In Peru, by contrast, rights activists enjoy a relatively high degree of prestige. This prestige may be attributed to the key role human rights activists played in the removal of President Albert Fujimori from office (based on his connection with a major corruption scandal) and the relatively low levels of violent crime in Lima and other major urban areas, at least when compared to other Latin American cities.



is a visible failure to limit crime. This failure may feed on itself, leading criminals to exploit further the perceived inability of police forces to repress delinquency. It may also lead to the greater privatisation of security, or worse still, the development of brutal vigilante groups.

Yet the fact of transition alone does not explain the rise in crime or the failure of states to respond effectively. The five case studies — two of which involve transitions that reach back nearly two decades — demonstrate the persistent nature of criminality, as well as the continued inability of state security forces in post-transitional states to come to terms with rising crime. Of particular importance in transitional societies are pressures to return to the former status quo, including nostalgic appeals to authoritarian or totalitarian methods, the existence of armed groups and/or the proliferation of weapons and a lingering culture of violence and impunity within security forces. Further, transitional societies are often beset by new criminal phenomena, such as economic-related crime, and have neither the expertise nor technological capacity to address them effectively. These factors are enhanced by budgetary constraints and citizen distrust of police, which are likely to be more intense in transitional societies.

In this context, the role of the state is crucial. It is so because (i) governments police crime and provide justice, and (ii) human rights organisations have a complex and changing relationship with the state. States have human rights obligations to people under their jurisdiction — to protect their security and to provide services that prevent crime and violence against the person, including abuse of the rights of detainees. The core issue in countries that are experiencing important societal transformation is thus the state's failure or inability to protect its citizens and to provide an effective justice system (efficient and legitimate policing, rapid and accessible legal systems, and compensation for people injured by crime).

Our research demonstrates indeed that state policies in the transitional period play a critical role in the exacerbation or suppression of crime, as well as in the public perception about public security issues and defence of human rights. The failure to address these issues carefully has led many governments to fail in missions vital to the success of any democratic transition. Thoughtful policies both help control criminal violence and maintain public respect for human rights.

At the same time, the importance of non-state actors must not be underestimated. These include human rights organisations themselves, citizen or business groups that seek to influence public policy, private security firms, community self-protection bodies and vigilante groups. These non-state actors play a critical role in developing the atmosphere in which rights defence takes place.

We therefore consider the range of state and non-state responses to rising crime because these responses structure the context in which rights defence occurs. Our primary focus, however, as noted, is on the challenges presented to and for human rights defenders by surges in crime in transitional societies. These are many. They include the changing relationship with the state. No longer a clear enemy and sometimes comprised in part of former pro-democracy and human rights activists, transitional states frequently welcome the support and assistance of rights groups in restructuring public security policy. This disposition poses challenges for civil society groups: should they collaborate with police and other law enforcement authorities? If so, what are the limits of such co-operation?

Another set of issues is presented by the public reaction to rising crime, in particular, increased hostility toward those seen as coddling dangerous criminals. Well-heeled criminals and criminal suspects may make use of rights guarantees in high profile cases, fuelling the popular perception that rights defenders are soft on crime. Rights groups have adopted a range of strategies to respond to public outrage over surging crime rates. Many of these reflect their relationship with the state. For example, many groups have developed collaborative relationships with the state as a means of deflecting the criticism that rights groups are interested only in attacking police and law enforcement authorities, or that they are concerned merely with abuses committed by police, but not by violence perpetrated by ordinary criminals.

It is important also to establish at the outset what this study does not consider. To begin with, while we present some evidence regarding the increase in street crime in the countries under study, we do not explore in detail the surge in violence that is widely believed to follow the initial transitional period. Indeed, we do not seek to answer definitively the question of whether and to what extent ordinary rates of criminality may be expected to surge in these transitional periods. It is possible, though unlikely, that perceived increases in criminality and thus perceived increases in the sense of insecurity, may not correlate to real increases in criminal behaviour. While this issue is a critical one closely related to our focus, we do not engage deeply in its analysis given that we are concerned with the context in which rights defence occurs when *perceived* surges in criminality threaten personal security.<sup>2</sup>

Shifts in criminality may indeed reflect changes in the nature of victims (whites in post-apartheid South Africa or wealthier segments of society in

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<sup>2</sup> More precisely, we are concerned by both perceived and real increases in crime. In all these societies, real levels of crime are relatively high. Our chief concern is not to measure what is real and what is perceived (a quantitative exercise) but to identify effective policy responses to both real and perceived levels of crime (a qualitative exercise).

Brazil) rather than an overall surge. Yet, at the first level of analysis, this may be a distinction without a difference, at least with regard to the hostile nature of the environment in which rights defenders labour. We do dedicate space in this report to these issues (the nature of changes in victimisation, for example) but always from the perspective of the consequence for the working environment for rights defence, rather than from the perspective of actual rates of criminality.

With regard to the transitions themselves, it should be noted that the countries studied in this report are ones that have undergone transition from authoritarian to civilian rule by relatively peaceful means. We do not consider states that have transited from civil war or intense, violent political struggle to civilian rule, because we judged that such countries are sufficiently distinct to warrant separate treatment.<sup>3</sup> We should note, at the same time, that in several of the states considered (particularly South Africa), violent opposition short of civil war marked much of the period of non-democratic rule.

### **Criminality**

It is also important to clarify at the outset what is meant by 'criminality' and surges in crime. We chose to focus on public perceptions of violent crime that occurs in city streets, alleyways, roads, highways and other public areas.

This definition excludes important types of crime, in particular domestic violence. We do consider some forms of rape. We certainly do not underestimate the seriousness of organised crime, and white-collar crime, nor do we imply that they are not grave. Our decision not to address them in detail here in no way stems from a failure to appreciate their importance in transitional and non-transitional societies. However, we have not uncovered convincing evidence to suggest that surges in domestic, non-public violence correlate with transitions.

A rise in domestic violence often accompanies economic crisis or recession, which may well go hand-in-hand with political transition. More importantly,

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<sup>3</sup> The transition paradigm itself has limited explanatory power and should not be used reflexively to account for a complex and changing picture in many different countries. As one analyst noted, "Of the nearly 100 countries considered as 'transitional' in recent years, only a relatively small number — probably fewer than twenty — are clearly en route to becoming successful, well-functioning democracies or at least have made some democratic progress and still enjoy a positive dynamic of democratisation....Most of the 'transitional countries', however, are neither dictatorial nor clearly headed towards democracy. They have entered a political grey zone....[W]hat is often thought of as an uneasy, precarious middle ground between full-fledged democracy and outright dictatorship is actually the most common political condition today of countries in the developing world and the post-communist world". See Thomas Carothers, "The End of the Transition Paradigm", *The Journal of Democracy* 13, January 1, 2002, pp. 9 and 19.

the constituencies involved in mobilising public opinion and state resources to combat domestic violence are very different from those involved in seeking to control abuses committed by state agents. While the struggle against domestic violence often requires activists to press police authorities to intervene in an unfamiliar context (domestic conflict), the fight against police abuse ordinarily seeks to impose limits on the battle against crime. As a result, a rise in crime tends to make the discourse of rights defence less palatable, generally, and triggers the set of difficulties analysed in this study. By contrast, legitimate demands for state policies to combat domestic violence encounter a very different sort of opposition, not necessarily linked to public outrage over rising crime. Our focus on *public* crimes stems from our belief that these are the crimes that shape public opinion about criminality and thus insecurity. These opinions, as we explain above, are at the very heart of the environment in which rights groups must work.

As noted, while the case studies focus on transitional and post-transitional societies, in the course of our research, we uncovered how important the issues addressed here are in societies that are not undergoing transitions, at least not in terms of the authoritarian versus civilian rule axis. In particular, the research team considered the nature of rights defence within the United States in the aftermath of the September 11, 2001 attacks during a seminar in New York held jointly with the Carnegie Council on Ethics and International Affairs in October 2002. The presentations at that seminar, along with parallel research on these issues have shown that much of what is discussed in this report is as relevant to Northern, non-transitional societies, such as the United States, as it is to Southern states in transition.

Significant parallels were noted in the nature of the defence of human rights of detainees held under anti-terrorist legislation, in contexts where the public's perception is heightened in relation to terrorism issues. Thus, we may pose many of the same questions in these different situations. What constraints does the environment place on the work of rights groups? How have groups responded? What measures have been most and least successful? The answers to these questions in the context of rights defence in situations of rising urban criminal violence may reveal a lot about human rights defence in hostile environments, more generally.

### **The research questions**

At the beginning of the research project, our team set out to answer the following questions:

- How have human rights organisations coped with the various problems that arise when crime levels increase following a transition from authoritarian or totalitarian to democratic government and there is

popular support, as a result, for severe law and order policies? What responses have been successful?

- What crime issues and problems most concern human rights workers, and how does street crime affect the work of human rights organisations? How have human rights workers dealt with these issues conceptually (i.e., how do they see the problem), what problems have they experienced, and what would make their work more legitimate and effective in terms of policy?
- What role can civil society organisations play in reform of public institutions, such as police, and in the absence of effective reform?

### **Structure of the report**

The report opens with a brief overview of the international human rights standards that apply in the context of public security. Unfortunately, as we see throughout this report, those engaged in the practice and reporting of human rights elements in the context of public security disregard frequently these standards, not only in their actions but also in their understanding and framing of the issues involved.

In Section II, the report analyses real and perceived surges in crime in transitional societies, evaluating available data as well as public beliefs about crime in these situations. It then turns to the range of state responses to this situation — from joint programmes with civil society groups at one extreme to the promotion of anti-human rights attacks through irresponsible discourse and policies that foster police violence at the other. This section next looks into the issue of insecurity and the public response to it, addressing in particular the dynamics of public outrage, before considering the surge of private security and vigilantism. Finally, we address briefly some additional constraints that rights activists encounter in responding to perceived insecurity.

Section III considers the role of the mass media in structuring the debate on public security. This section recognises the vital role that the media play in creating, developing and framing human rights issues in their reporting on public security issues. It begins with the recognition that while journalists cover issues in this area with significant repercussions for human rights, they rarely bring to that task the necessary understanding of the international standards set out in Section II, or the sensitivity to these questions that rights activists would like to see.

Sections IV to VIII provide case studies. As noted above, it is here that we present the results of our research on Argentina, Brazil, Nigeria, South Africa and Ukraine. These sections briefly consider the respective transitions, the

role of rights groups in the transition, the nature of crime, and the response of the state to rising criminality in each country. We consider as well, but do not treat exhaustively, the responses of rights groups to the challenges presented by the perception of insecurity.

Section IX picks up where each of the individual case studies have left off, that is, with the responses given by the rights communities to the contexts analysed throughout the report. This section structures the discussion of these responses by the nature of the response, rather than by country. In this way, we evaluate similarities and differences in the measures adopted by the rights communities in these different countries. In structuring the presentation in this fashion, our aim has been to help clarify which responses carry the greatest promise for effective intervention, both in the public debate and in relation to policy formation.

Finally, Section X presents recommendations. These, like the conclusions and views expressed throughout the report, reflect findings that emerged during the research process and views that were widely shared by the activists, experts and scholars who were consulted while this report was prepared.

# **PART ONE**

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**THE PROBLEM**





## I. THE RELEVANT INTERNATIONAL STANDARDS

Over the past half-century, human rights norms in the area of public security, as in many other contexts, have become more detailed and specific. The fundamental rights at stake when state agents seek to enforce the law are primarily those guaranteeing the life and physical integrity of suspects, as well as the right to privacy (that is, to be free from arbitrary searches and seizures). When defendants enter into contact with authorities responsible for detention and prosecution, other protections may come into play, such as the right to humane conditions of detention as well as relevant judicial guarantees. These rights are recognised in the Universal Declaration of Human Rights (UDHR) and enshrined, in broad terms, in the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> Regional human rights treaties from the European,<sup>5</sup> Inter-American<sup>6</sup> and African<sup>7</sup> systems protect these same rights in comparable language. At the same time, a body of norms has developed concerning the affirmative obligation of the state to provide security to its subjects and its responsibility at the international level when it fails to do so. We summarise these norms in the final paragraphs of this section.

More specific treaties, other instruments, and the reports of the special mechanisms established by the Commission on Human Rights and other United Nations bodies have developed these rights further, setting out the

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<sup>4</sup> See International Covenant on Civil and Political Rights, Article 6(1) (right to life: "1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."); Article 7 (right to physical integrity: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."); Article 9(1) (right to be free from arbitrary arrest: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."); Article 10 (right to human conditions of detention: "1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.").

<sup>5</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms and Nine Protocols.

<sup>6</sup> American Convention on Human Rights.

<sup>7</sup> African Charter on Human and People's Rights.

situations in which official use of force may be considered a violation of the right to life or the right to physical integrity. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>8</sup>

It should be noted that torture is defined broadly (any act causing physical or emotional suffering) in terms of the act, though viewed narrowly in terms of who may commit that act (state agents or persons in a position of authority).

The United Nations' Basic Principles on the Use of Force and Firearms by Law Enforcement Officials detail the limited circumstances under which officers of the law may legitimately use deadly force. According to these United Nations standards,

law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.<sup>9</sup>

International human rights standards require that, once deprived of liberty, suspects should enjoy humane conditions of detention. What that means is

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<sup>8</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1(1).

<sup>9</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, Article 9. The Principles continue in Article 10, as follows: "In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident."

set out in a series of international treaties and instruments, and detailed in a 1957 United Nations document entitled Standard Minimum Rules for the Treatment of Prisoners.<sup>10</sup> The Standard Minimum Rules set out the amount for space per detainee as well as their rights to education, work and leisure while detained. This instrument is an international guide for the treatment of prisoners. Its primary objective is to encourage states to implement its standards.

Persons detained by law enforcement agents must be presumed innocent until proven guilty.<sup>11</sup> The burden of proof is on the prosecution and guilt must be established beyond a reasonable doubt.

International human rights treaties also guarantee a range of public fair trial and due process rights to criminal defendants.<sup>12</sup> Interpretations of these standards by international bodies charged with their application have refined these general principles to assure defendants relatively speedy trials.<sup>13</sup>

Other guarantees include the right to be represented by an attorney in serious criminal proceedings. The Inter-American Commission on Human Rights has considered that statements taken by police officers in the absence of the lawyers of the accused or of any legal counsel who could ensure the proper conduct of the investigation violate Article 8 of the American Convention.<sup>14</sup>

Clauses that describe the right to a fair trial and judicial guarantees in the Universal Declaration of Human Rights, the International Covenant on Civil

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<sup>10</sup> Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977.

<sup>11</sup> Article 11 of the Universal Declaration of Human Rights, Article 14.2 of the International Covenant on Civil and Political Rights, Article 8 of the American Convention on Human Rights, Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, and Article 7 of the African Charter on Human and People's Rights.

<sup>12</sup> The right to a fair trial and other due process protections are contained in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and also in the regional human rights conventions from Africa, the Americas and Europe. See UDHR (Articles 10 and 11), ICCPR (Articles 14 and 15), African Charter on Human and People's Rights (Article 7), European Convention on the Protection of Human Rights and Fundamental Freedoms (Article 6), and American Convention on Human Rights (Articles 8 and 25).

<sup>13</sup> The concept of a fair hearing entails necessarily that justice be rendered without undue delay. The principle of expeditious proceedings is an element of a fair trial. See *Fei v. Colombia* HRC Comm. No. 514/1992, April 4, 1995, UN Doc. CCPR/C/571, p. 86.

<sup>14</sup> InterAmerican Commission on Human Rights. *Annual Report 1994*, OEA/Ser.LN/II.88 Doc. 9 rev. 1995.

and Political Rights, the American Convention on Human Rights, the European Convention on Human Rights and the African Charter on Human and Peoples' Rights do not make precise reference to military tribunals. Nevertheless, treaty bodies have developed a restrictive interpretation in this area.<sup>15</sup> Trial by military tribunals is problematic both when civilians are tried, but also when those accused of serious human rights violations are members of the armed forces and the police. Trial before specialised military bodies, common in many countries,<sup>16</sup> is used frequently to guarantee the impunity of the accused.

### **The state's duty to protect**

If the state is a potential abuser of the rights of people who are falsely or improperly detained for crimes, it is also a provider of services essential to justice and to the protection of life and property. Providing security and tackling crime go hand-in-hand; they also require effective dispensation across the justice sector as a whole. In that respect, the rule of law, in relation to which the human rights laws set out above define themselves, is fundamentally concerned with the protection of victims and victims' rights.

While human rights norms in the area of security have focused on imposing limits on the use of force by states in the course of crime control in recent years, new standards have developed that impose affirmative duties on the state regarding provision of public security.

In the landmark Velásquez Rodríguez case, the Inter-American Court of Human Rights addressed the issue of when a state may be held to be in violation of its international human rights obligations for instances of forced disappearances. In that case, evidence established that Angel Manfredo Velásquez Rodríguez had been disappeared by persons in plainclothes, and that he had later been subjected to severe abuse and "disappeared". The Court also received evidence to the effect that Velásquez Rodríguez' disappearance had been part of a larger pattern of forced disappearances either practiced or, at a minimum, tolerated by the State of Honduras. On these facts, the Court held that Honduras could be held liable for the detention, abuse and killing of Velásquez Rodríguez *even if it had not been practiced by state agents*. The Court wrote:

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<sup>15</sup> See Economic and Social Council of the United Nations, Commission on Human Rights, Sub Commission on the Promotion and Protection of Human Rights, Administration of Justice: Issue of the administration of justice through military tribunals. Report Submitted by Mr Louis Joinet pursuant to the Sub-Commission decision 2001/103. E/CN.4/Sub.2/2002/4. July 9, 2002.

<sup>16</sup> *Ibid.*, criticising such tribunals in Algeria, Colombia, Morocco, the Republic of Korea, Venezuela, Cameroon, Chile, Egypt, Kuwait, Lebanon, Poland, the Russian Federation, Slovakia, the Syrian Arab Republic, Uzbekistan and particularly Peru.

An illegal act which violates human rights and which is initially not directly imputable to a state (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the state, not because of the act itself, but because of the lack of due diligence to prevent or to respond to it as required by the Convention.<sup>17</sup>

While the Velásquez Rodríguez case considers official failure to control security and intelligence forces widely believed to be tied to the state, subsequent decisions of international bodies have expanded its application to abuses committed by third parties with no official links. As may be seen above, the plain language of the Velásquez Rodríguez decision is not limited to the factual situation it evaluates. Thus, subsequent international legal standards have applied the principle established in Velásquez Rodríguez in other contexts and to other rights. For example, the Human Rights Committee, the United Nations (UN) body charged with interpreting the International Covenant on Civil and Political Rights, has held that the right to freedom of movement requires that the “state must ensure that [the right is] protected not only from public but also from private interference”.<sup>18</sup>

The expansion of the principle of state responsibility for the acts of non-state agents has been particularly important in the protection of the right of women to be free from domestic violence. The Human Rights Committee has recognised this explicitly in its General Comment No. 20. So too has the inter-American system for the protection of human rights through the adoption of the Inter-American Convention for the Prevention, Sanction and Eradication of Violence Against Women (known as the Belem do Pará Convention) and through subsequent decisions interpreting that treaty.<sup>19</sup> Yet another focus area for this expansive trend has been the protection of the rights of children. International bodies have made it clear that states are obliged not only to refrain from abusing children, but also to ensure that private parties do not violate children’s rights.

When analysed together, these developments indicate clearly that states have an obligation to provide basic security to the people they govern. This obligation — which flows from the rights to life, physical integrity, freedom of movement and others — has become ever more important to rights groups

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<sup>17</sup> Inter-American Court of Human Rights, Velásquez Rodríguez Case, Ser. C, No. 4, July 28, 1988.

<sup>18</sup> Human Rights Committee, Freedom of Movement (Article 12), CCPR General Comment 27, CCPR/C/21/Rev.1/Add.9 (Nov. 2, 1999).

<sup>19</sup> See for example, Inter-American Commission on Human Rights, Maria da Penha Fernandes Maia case, Brazil, May 2000.

who increasingly seek not only to limit the abuses of state agents, but also to make sure that police and other law enforcement agents protect the security of all citizens.

## II. THE NATURE OF THE PROBLEM

### Rising crime in developing, transitional societies

Over the past two decades, criminal violence is believed to have increased around the world.<sup>20</sup> The World Health Organisation has reported that between 1985 and 1994, youth homicide rates (based on data from sixty-six countries) soared from below ten to more than twenty per 100,000.<sup>21</sup> (In the countries studied in this report, our research found consensus among those interviewed and in the available statistics about the correlation between transition and surges in violent crime.)

Argentina began its transitional period in 1983. Crime started to rise sharply within the next decade. In the Province of Buenos Aires, registered crimes soared from 123,537 in 1990, to 170,726 in 1996, and then 300,470 in 2001.<sup>22</sup> In approximate per capita terms, this represents an increase from 980 crimes per 100,000 in 1990 to 1,280 per 100,000 in 1996 and to 2,184 per 100,000 in 2001.<sup>23</sup> Intentional homicides committed in the Province of Buenos Aires rose from 1,114 in 1990, to 1,160 in 1996, and to 1,632 in 2001.

In Brazil, transition to democratic rule was initiated with the 1985 indirect election of a civilian president. Figures on the homicide rates in both Rio de Janeiro and São Paulo demonstrate dramatic increases from 1980 to 1994. According to anthropologist and researcher on urban violence, Alba Zaluar, between 1983 and 1990, the homicide rate in Rio de Janeiro soared from 23 to 63 deaths per 100,000 residents.<sup>24</sup>

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<sup>20</sup> Given the high rates of underreporting, misreporting and manipulation of data by different authorities, conclusions about crime rates are always subject to doubt.

<sup>21</sup> World Health Organisation, *World Report on Violence and Health*, Geneva: World Health Organisation, 2002, pp. 26-27.

<sup>22</sup> National System of Criminal Information, National Agency of Criminal Policy, National Ministry of Justice, Security and Human Rights (Sistema Nacional de Información Criminal, Dirección Nacional de Política Criminal, Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación).

<sup>23</sup> The figures are based on population statistics for 1989, 1991, 1995 and 2001 from the University of Utrecht populstat site: [www.library.uu.nl/wesp/populstat/populhome.html](http://www.library.uu.nl/wesp/populstat/populhome.html).

<sup>24</sup> Alba Zaluar, "Violence Related to Illegal Drugs, Youth and Masculinity Ethos" (summary by Corinne Davis), in Department of Sociology, University of Texas at Austin, *Final Synthesis/Memoria: Rising Violence and the Criminal Justice Response in Latin America — Towards an Agenda for Collaborative Research in the 21st Century*, mimeo, May 6-9, 1999, Austin, Texas. To a large extent, the data may be viewed as supporting the idea that Brazil followed the trend in Latin America over this period. In Colombia and Venezuela, for example, the rates of youth homicides registered by the World Health Organisation, as well as the percentage of these killings due to firearms, more than doubled. In Colombia, from 1985-1994, youth homicides spiked from 36.7 to 95.0 per

Nigeria's experience of transitional democracy follows a comparable trend. In spite of the government's promises to tackle crime, the rate of armed robbery, political assassinations, ethno-religious killings and other violent crimes remains extremely high.

In the Russian Federation, the total number of registered crimes has steadily increased over the past fifteen years. Although part of the increase may be attributed to changes in measurement, the differences are quite substantial. While the figures for reported crimes hovered around 1.2 million per year in 1987 and 1988, they reached 3.0 million in 1999. Homicides over the same period soared from just under and just over 10,000 in 1987 and 1988 respectively, to over 30,000 for several years in the mid- and late 1990s. Over the period in question (1987-1999), the Russian population remained relatively stable, increasing just over five per cent.<sup>25</sup> The sharpest spike for homicides — an increase from roughly 16,000 in 1991 to some 32,000 in 1994 — corresponds to the first years of transition.<sup>26</sup>

The World Health Organisation reports that from 1985-1994, homicide rates in the Russian Federation for youths aged ten to twenty-four soared from 7.0 to 18.0 per 100,000. Similar increases were registered in other former Soviet republics. In Latvia, for example, youth homicides more than doubled, from 4.4 to 9.9 per 100,000 over the same period. The percentage of homicides due to gunshot wounds also doubled during this period in Azerbaijan, Latvia and the Russian Federation.<sup>27</sup>

Over the same period, while homicide rates rose in some Western states, they remained relatively stable or even fell in others. Even where increases were registered, the rates of change were not nearly as dramatic as those recorded for industrialising societies in transition. From 1985 to 1994, youth homicide rates rose 37.5 per cent in the United Kingdom (0.8 to 1.1 per 100,000), and by 28.6 per cent in France (from 0.7 to 0.9 per 100,000), and declined by 9.5 per cent in Canada (2.1 to 1.9 per 100,000) and by twenty five per cent in Australia (2.0 to 1.5 per 100,000). The main exception to this trend has been the United States, where youth homicide rates increased by

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100,000 (with eighty per cent of the deaths due to firearms in 1984). In Venezuela, youth homicides rose from 10.4 to 24.1 per 100,000 over the period. World Health Organisation, *World Report on Violence and Health*, p. 27

25 University of Utrecht, populstat: [www.library.uu.nl/wesp/populstat/Europe/russiac.htm](http://www.library.uu.nl/wesp/populstat/Europe/russiac.htm).

26 Yury Andrienko, "Explaining Crime Growth in Russia during Transition: Economic and Criminometric Approach", CEFIR Working Papers, February 2001.

27 World Health Organisation, *World Report on Violence and Health*, pp. 26-27.



seventy-seven per cent (from 8.8 to 15.6 per 100,000) over the same period.<sup>28</sup>

### **The dynamics of rising crime in transitional societies**

The problems that crime creates for human rights organisations in different societies vary considerably. Any relatively stable political situation (democratic or authoritarian) will develop some set of arrangements for governing security, in which the state provides policing and justice services, and carries a responsibility for upholding the rule of law.

These arrangements will deliver some level of security. Typically, the distribution of security services is correlated with wealth — the wealthy tend to receive greater security than the poor. While levels of order/disorder vary, both from place to place and from time to time within and across countries, in any particular context, some level of disorder is likely to be recognised as normal. This level will come to be accepted as a benchmark for assessing the degree to which any new regime effectively provides security.

Police forces in authoritarian states tend to suppress not only dissent but also criminality, or at a minimum, they are widely perceived as being effective at crime control. Of course, this control — to the extent that it is not simply a misperception — is usually achieved at a high cost to individual rights and the rule of law. As the case studies demonstrate, crime control in the states examined focused on repressive and frequently brutal methods, including systematic torture and summary execution of suspects.

When governance regimes change, this has consequences for the institutional arrangements that have been in place — that is, for the way in which resource networks are mobilised. One common consequence is that existing institutional arrangements either breakdown or are dismantled more quickly than it is possible to institutionalise new arrangements.<sup>29</sup>

In the case of Nigeria, one of the first items on the Obasanjo government's agenda on assumption of office was to disband the various military-led, anti-crime taskforces and tribunals and transfer their roles to the regular police. Some of these anti-crime taskforces went by such militaristic names as: Operation Sweep (Lagos State), Operation Wedge (Ogun State), Operation Hot Chase (Osun State), Operation Zaki (lion) (Borno State), Operation Gbale (chase) (Oyo State), Operation Wipe (Edo State), Operation Storm (Imo State), Operation Watch (Kwara State), Operation Flush (River State),

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<sup>28</sup> Ibid., p. 27.

<sup>29</sup> Charles T. Call, and William Stanley, "Protecting the People: Public Security Choices After Civil Wars", *Global Governance*, July 2, 2001, pp. 151-172.

Operation Keep Away Criminals (Kebbi State), Operation Scorpion (Adamawa State) and so forth.

In Nigeria, as in other transitional states, the military left the scene with their superior guns, bullet-proof vests, high-performance vehicles, life insurance and higher motivation. The police that succeeded them lacked resources and the government was not in a haste to equip them fully. It did not take long for the consequence to be noticed on the streets in terms of increased crime.

Economic liberalisation and privatisation programmes intensify the surge in crime in transitional societies. Economic liberalisation unleashes a multiplicity of actors and creates new wealth opportunities that are not readily accessible or open to all. It also creates in its wake a mass of dismissed employees from privatised state monopolies, causing an increase in social crime. According to Mark Shaw,

post-authoritarian and post-conflict societies are increasingly subject to structural changes in their economies. While a number of approaches are followed in this regard, transitional societies tend to share the experience of changes in the ownership structure (privatisation), the multiplication of economic actors and influences of globalisation. Many transitional societies also seek to redefine the role of the state by reducing or altering its role in economic activity. In such states, the access to newly created opportunities is not equal for all. This factor...creates contradictory pressures.<sup>30</sup>

One obvious consequence of these contradictory pressures is increased uncertainty about what constitutes proscribed behaviour. One analyst, considering increased crime in the former Soviet Union, asserts that incentives to act extralegally increase “because the confused situation reduces probabilities of detection and conviction” as well as “social disapproval of crime”.<sup>31</sup> Unsettled conditions may also lead entrepreneurs to engage in illegal activities because the cost of conducting business through official channels may become prohibitively expensive.<sup>32</sup>

It is also difficult to ascertain whether a more democratic environment increases the visibility of certain crimes or creates conditions in which new forms of crime appear. Has armed robbery or assassination always been

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<sup>30</sup> Mark Shaw, “Crime and Policing in Transitional Societies – Conference Summary and Overview”, *Crime and Policing in Transitional Societies*, (Seminar Report), Johannesburg: Konrad Adenauer Stiftung, 2001, p. 6.

<sup>31</sup> Richard Lotspeich, “Crime in the Transition Economies”, *Europe-Asia Studies* 47, 4, 1995, p. 565.

<sup>32</sup> Ibid.

frequent but is only now reported? Or have such crimes become more frequent? Added to the above is the issue of displacement of criminal activity. Has it moved from poor to rich neighbourhoods, or from one part of the country to another? And what role do the media play?

It is likely that the perception of increased criminality in post-transition societies is due, at least in part, to the removal of restrictions on the media that are thus freer to report on criminality than during the authoritarian period. An additional element of criminal underreporting in authoritarian and totalitarian societies concerns the abuses of authorities themselves (which constitute crimes) and are rarely registered in official data. Indeed, authoritarian regimes frequently sanitise and inflate the effectiveness of the police. This phenomenon is particularly acute in the former Soviet Union, where research has demonstrated that the state-controlled media followed specific directives requiring that stories about criminality be censored, or, alternatively, that they present cases as solved by efficient police work.<sup>33</sup>

In Nigeria, a series of high profile killings and robberies of influential people's homes followed the inauguration of the Obasanjo government in 1999. The local media provided extensive coverage of these incidents, fuelling the belief that crime rates were rising dramatically.<sup>34</sup> Rights activists in Brazil report a similar phenomenon when high profile incidents of crime victimise upper-middle class or upper class residents in São Paulo or Rio de Janeiro. These crimes are followed by a barrage of reports about 'crime waves' triggered by single incidents. The disproportionate media attention to crime in these instances often reflects the status of the victims rather than an actual rise in crime. Official data are frequently biased in favour of registering crimes committed against middle and upper class victims who often report incidents (where the less affluent might not) for a variety of reasons, including insurance purposes.

These and other issues make definitive conclusions on the link between rise in crime and transition difficult to reach. However, certain features of political transition are conducive to criminal activity. The first is *change* and its management.

Peter Blau and Scott Richard observed in their book *Formal Organizations: A Comparative Approach* that change, whether due to new external developments impinging on the organisation or to internal modifications, produces situations without precedents. In addition, some exigencies that

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<sup>33</sup> See for example, Maria Los, "Post-Communist Fear of Crime and the Commercialisation of Security", *Theoretical Criminology* 6, 2, 2002, pp. 165-188.

<sup>34</sup> After the killings of Anthony Ikhazabour and Lai Balogun, the shooting of the business magnate, Chris Ogunbajo, and the near assassination of Don Etiebet, a former presidential candidate in Lagos and Abuja respectively, media reports lasted for weeks.

### ***Corruption, organised crime and apathy: new dilemmas for rights activists in Ukraine***

Transitions provoke a series of changes that affect criminality and public security. In the newly independent countries of the former Soviet Union, the shift from planned economies to free market models unleashed a wave of economic crimes and the development of dangerous organised criminal syndicates. In Ukraine, the growth of organised crime has presented both public authorities and civil society with a range of new challenges.

While the registered rates for violent crimes in Ukraine are significantly lower than in the other countries studied, estimates of the prevalence of economic crime are staggering: some place the shadow economy at 50-60 per cent of the national total, thus accounting for more than half of all economic activity. According to figures from the Ministry of Internal Affairs, reported economic crimes doubled between 1990 to 1999. The surge in economic crimes has been accompanied by pervasive graft. In 2002, Transparency International's Corruption Perceptions Index placed Ukraine among the twenty most corrupt nations from a field of over one hundred. Studies consistently demonstrate extremely low levels of public trust in authorities.

One of the main consequences of the growth in economic criminal activity and high levels of corruption has been the development of organised crime. While organised criminal groups accounted for 4.7 per cent of crimes in 1990, by 1999 this figure had reached 12.1 per cent. This growth — and the widespread belief of official ties to organised crime — have led to a generalised sense of disbelief in the capacity of public officials to respond to crime. A comprehensive study of attitudes on the police and crime in Kharkiv demonstrated that victims failed to report 85 per cent of crimes. Many respondents indicated their belief that police were tied closely to organised crime and thus reporting incidents was, at best, a waste of time.

All this makes it rather difficult for those who champion human rights to gain public support. While many Ukrainians believe in the principles that rights defenders champion, most consider them naive idealists. Rather than the hostility that characterises much of public opinion about rights defence in the other countries studied, in Ukraine, public apathy (not antipathy) constitutes the major challenge for human rights groups seeking to develop popular support for their work.

Based on Alexander G. Kalman, "Organized Crime and Corruption in Ukraine", Kharkiv: Yaroslav Mudry National Law Academy of Ukraine; Adrian Beck and Yulia Chrisyakova, *Crime and Policing in Ukraine: the Kharkiv Crime Survey 2000*, (Interim Report), Kiev: British Council, 2001.

may arise cannot be anticipated.<sup>35</sup> The sudden change from military rule to civilian rule in Nigeria was unanticipated and political forces had not prepared for it adequately. Criminal groups were thus able to take advantage of that situation. Major General David Jemibewon, former Minister of Police Affairs, corroborated this view when he stated in an opening address he presented at a conference on transitions and policing:

The sudden change that the transition from the long years of military rule to a democratic dispensation brought on the country (Nigeria) was so monumental and managing it was daunting....The Nigeria Police Force that we inherited could be said to have suffered gravely from lack of such regulatory institutions and lack of focus....Our newfound democracy became to some extent a source of insecurity and lawlessness, as rights were misconstrued and exercised without restraint. Views which were considered anti-government and hitherto suppressed out of fear under the military, were now freely expressed and often times violently too. Militant groups that were agitating for one thing or the other, often times armed, sprang up in some parts of the country. The police, who were not adequately prepared for the violent and criminal eruptions that heralded our democratic rebirth, were therefore stretched to the maximum of their capability.<sup>36</sup>

Crime can also be promoted, particularly in periods of transition, when security apparatuses (used by previous repressive governments to control political dissent and crime) are dissolved and replaced by formal agencies that lack the capacity to cope due to neglect by the ousted government. The gap that is created between the legitimate effort to reform and the capacity to cope in the new situation is often exploited by criminal elements. Other factors come into play as well. For example, armed groups may easily transform themselves into criminal gangs.

One of the first acts of new governments is often to dismantle the old security structures.<sup>37</sup> Sometimes, this creates a security vacuum. This gap leads to widespread demands for more effective order maintenance. It can and often does trigger considerable anger among those who have been victimised and who attribute their suffering to this vacuum. This attribution may or may not be accurate; the point is that it is felt. Such collective anger

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<sup>35</sup> Quoted in D. Jemibewon, Opening Address at the conference on Crime and Policing in Transition: Comparative Perspectives, Johannesburg, South Africa, August 30-September 1, 2000, p. 5.

<sup>36</sup> D. Jemibewon, "The Nigerian Experience", *Crime and Policing in Transitional Societies*, (Seminar Report), Johannesburg: Konrad Adenauer Stiftung, 2001, p. 30.

<sup>37</sup> Call and Stanley, "Protecting the People".

shapes the nature of the demand for more effective order maintenance. One common way in which it does this is through a demand for retribution.<sup>38</sup>

The demand for retribution and order comes typically from within both the state and non-state sectors — from state actors such as the police, and from businesses and residential communities. In both cases, the political response tends to be to mobilise coercive resources, because these can be mobilised quickly and because they resonate well with the anger that the security vacuum has generated. While these responses may well be less effective than ones that adopt a non-coercive approach, the latter take longer to put in place and do not resonate as well with popular sentiments.<sup>39</sup>

Given the development of this vacuum, state policy-makers in transitional societies are charged with the difficult task of assuring citizen security while not allowing police and other security forces to revert to abusive practices characteristic of the pre-transitional society. This challenge is rarely met. In many circumstances, authorities turn a blind eye towards continued abusive practices. In other instances, they may actually encourage police to continue to crack down on crime, knowing that in practice this will entail serious rights abuses.

### **Official responses to high crime levels**

Faced with rising crime levels, official responses and policies fall into two broad and opposing categories, each of which we consider below. A first group of responses includes a range of collaborative efforts undertaken jointly with civil society groups. By collaborative efforts, we refer to a range of activities — whether initiated by state authorities or civil society groups — that involve some degree of collaboration between the two. The extent of collaboration varies; the critical element is the presence of a co-operative relationship between security forces and civil society participants, at least with regard to a particular programme or programmes. Collaboration between state agents and civil society groups usually marks a clear departure from the pre-reform period, which is normally characterised by an exclusively confrontational relationship between these two groups.

Co-operation can occur through community policing programmes, police training (usually in conjunction with rights groups) that focuses on respect for

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<sup>38</sup> See Arie Freiberg, "Affective versus Effective Justice", *Punishment and Society* 3, 2, 2001, pp. 265-278.

<sup>39</sup> Voula Marinos, "The Multiple Dimensions of Punishment: 'Intermediate' Sanctions and Interchangeability with Imprisonment", Dissertation, Centre of Criminology, University of Toronto, 2000.

basic rights, witness and victim protection programmes (executed jointly with civil society) and the development of external oversight mechanisms (ombudsmen, civilian review boards, or in most of Latin America, *defensores del pueblo*, or defenders of peoples' rights).

At the other end of the spectrum, a second group of responses and policies may be termed hardline reactions to criminality. Authorities usually adopt these policies without collaboration or consultation with human rights groups, who, by and large, oppose such measures. We should note that some civil society groups (which we consider below and in the country section on South Africa), such as some victims' rights groups, support hardline approaches to criminality. These hardline approaches include increasing severity of punishment, mandatory sentences, attacks on rights defence and defenders (in the media and elsewhere), and, in some cases, policies that foster police violence and summary executions of suspects.

In many societies, particularly in larger countries with significant internal diversity, it is not unusual to find several elements of these opposing approaches in practice simultaneously. This fact complicates the choices for rights groups, adding many shades of grey to the decision to remain fully independent of state authorities or to work with them in designing and implementing joint, collaborative strategies. For instance, because of the state's function as service and justice provider, many rights groups might find joint programmes to implement community policing with transitional authorities a legitimate role for civil society. These same activists, however, would not consider working with authorities to promote policies that foster summary executions of criminal suspects. The twofold rationale for the latter reservation is that summary execution is a grave and specific violation of human rights and, as noted, the state is also a potential abuser of the human rights of alleged criminals.

What then can be done with authorities that *simultaneously* promote community policing efforts in some neighbourhoods and policies that violate rights? This dilemma — which is the result of the Janus-faced nature of the state, and its different functions and behaviours — was presented to rights groups in Rio de Janeiro in the mid-to-late 1990s, as we describe below.

### **Collaborative efforts**

Below, we consider briefly four particular forms of collaborative efforts: community policing, police training, witness and victim protection and external oversight mechanisms. It should be noted that the state's functions are not confined to these four tasks, which cannot be separated from other key justice responsibilities; namely prosecution, detention, provision of

essential services necessary to provide access to justice and the role of judges and courts.<sup>40</sup>

### *Community policing*

Community policing may be defined as those arrangements for the provision of security that afford a “significant role to the ‘community’ in defining and guiding the performance of policing in their locality”.<sup>41</sup> Over the past decade, participation by both police and civil society groups in projects that describe themselves as community policing efforts has grown dramatically. Yet the term remains largely undefined. Provided that there is some interaction between the police involved and the community being served — or some part thereof —, a wide range of models may be termed as community policing. Yet, precisely because the range of policing initiatives that may be classified as community-oriented models is so broad, the term has lost much of its initial meaning. The success of even those models that most criminologists would characterise as legitimate is open to doubt.

Proponents cite several high profile instances of reduction in violent crime as examples of successful community policing initiatives. One frequently noted experience is that of New York City in the late 1980s and 1990s. Following decades of increases in rates of serious crime, the City of New York registered a drastic reduction in criminal violence. Homicide rates fell dramatically and indices for other crimes followed suit. While other factors including demographic changes also share in the credit for these changes, community policing has been cited widely as a main cause of crime control. Still, leading rights groups levelled charges of increased police brutality against the New York Police Department at the very time that it expanded its community-based police initiatives. In Boston, a community policing programme is credited with bringing the homicide rate from a record high of 152 including eighteen schoolchildren in 1990, to a record low of 59 in 1996.<sup>42</sup>

While the term community policing may appear attractive to rights groups, it is sufficiently broad and vague to encompass a wide range of law enforcement efforts undertaken by a diverse field of security forces. The label ‘community policing’ is no guarantee of quality or even a minimum degree of

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<sup>40</sup> On this issue, see International Council on Human Rights Policy, *Local Perspectives — Foreign Aid to the Justice Sector*, Geneva: ICHRP, 2000. This report discusses, among other aid issues, the difficulty of reforming police and justice systems.

<sup>41</sup> Rachel Neild, “Community Policing”, in Washington Office on Latin America, *Themes and Debates in Public Security Reform: A manual for civil society*, Washington, DC: Washington Office on Latin America, 1998, p. 3.

<sup>42</sup> *Ibid.*, p. 7.



good faith on the part of those involved. As such, rights groups must exercise care in choosing partner authorities.

Despite mixed reviews and the lack of clear guidelines, the community policing model has been adopted in a number of transitional societies. Because police in these societies can rarely count on the trust of local communities, they have relied on civil society groups to assist in developing rapport with communities in which this model has been implemented.

One example of the dilemmas posed by the opportunity to implement community policing programmes is that of Rio de Janeiro in the mid-1990s. At the same time that state authorities were promoting police involved in fatal shootings, one leading non-governmental organisation (NGO) worked with police in a large middle class neighbourhood on a model community policing initiative. While the initiative produced some positive results, the NGO encountered difficulties in its relations with state authorities.

#### *Police training*

A second focus of collaborative efforts has been initiatives designed to restructure police training. Transitional authorities generally agree that pre-reform security forces lack understanding of the principles of democratic policing. One response to this lack of understanding has been programmes that redesign the curriculum in police academies (or create additional courses) in democratic policing or human rights norms. Over the past two decades, a range of such training courses has developed. These include courses on human rights norms and instruments, and practical training on policing in a manner consistent with international human rights law. In the section on responses, we consider the successes and failures of different methods of engagement in police training.

#### *Witness and victim protection*

A recurring problem hindering attempts to reduce crime is the difficulty of prosecuting and removing corrupt and violent police officers, members of organised criminal syndicates and high level drug traffickers. In most cases, witnesses and victims are unwilling to testify against such people. Such reluctance stems largely from the legitimate fear of retaliation and a general sense of disbelief in the criminal justice system and distrust of the police. In response to this recurring problem, civil society groups have worked with authorities to develop programmes to protect witnesses. These programmes have largely followed the model of similar initiatives in the United States and Italy that have demonstrated success in fighting organised crime. Programmes in many of the societies we studied, however, have incorporated a critical difference: civil society involvement and even control of the operations of the programmes.

In 1995, in Pernambuco State, in north-eastern Brazil, the Office of Legal Assistance for Grassroots Organisations (Gabinete de Assessoria Jurídica às Organizações Populares, GAJOP) set up a witness protection programme in conjunction with state authorities. This programme involved provision of services, entirely co-ordinated by civil society, yet financed by the state. The programme's early success led the federal government to replicate the model at the national level and in a number of states over the next several years. (It must also be noted that, even by Northern standards, witness protection programmes are highly expensive, stretching even the most well-funded budgets.)

#### *External oversight mechanisms*

An important measure taken by governments to assure greater transparency and accountability of their security forces has been the creation of independent oversight bodies to supervise the work of police forces. These bodies include a broad range of organisational structures and employ a variety of names. Oversight bodies may be national or local, general or thematic and directed by a single person or a committee. Names include 'ombudsman', 'police oversight commission', 'civilian complaints review board' and, in Latin America, *defensor del pueblo* and *ouvidoria*.

In many countries, these oversight bodies have worked closely with civil society groups. Usually, those named to head these bodies, as well as many staff members, have come from the ranks of rights groups. In practice, wherever their staff may come from, the oversight bodies rely heavily on human rights groups to receive denunciations, as well as witnesses' statements and other information concerning abuses committed by authorities. When they work well, these bodies provide a vital space for human rights defenders to register complaints and press authorities to investigate and prosecute those responsible.

### **Hardline policies**

Governments often respond to crime by introducing policies that offend human rights principles and put civil liberties at risk. Those whose rights are most immediately endangered when such laws are introduced are individuals alleged to have committed crimes. Putting such laws on the statute book can eventually weaken the rights of citizens more widely. Human rights organisations in countries that have emerged recently from periods of authoritarian rule are acutely aware of this danger. Hardline approaches may be divided into those that focus on severe and mandatory prison sentences, attacks on rights defenders, those which foster police brutality, and political manipulation of public security issues. We consider each in turn.

### *Mandatory and minimum sentencing*

States often respond to popular pressure to get tough on crime by increasing severity of sentences or requiring mandatory prison terms for particular crimes. In Brazil, for instance, in response to a wave of kidnappings in the late 1980s, the Brazilian Congress passed a Heinous Crimes Law, requiring extreme sentences for a series of crimes and removing the possibility of parole for these offences.

As we describe in the section on South Africa, the government there adopted harsh sentencing policies and others designed to restrict the availability of bail in an effort to demonstrate its commitment to reducing crime. It imposed minimum sentences for serious offences and restricted judicial discretion in the sentencing process. The legislature passed amendments to the Criminal Procedure Act that provided greater leeway for courts to refuse bail and allowed them to consider criteria such as the sense of ‘community outrage’ in deciding on bail. This measure mirrored the maximum-security prison model of the United States, even authorising solitary confinement.

### *Attacks on rights defenders*

As noted, where public outrage against crime leads to the demand for harsh retributive justice, those who defend rights or criticise the retributive model — on the basis of the human rights framework which endorses justice, prosecution, sentencing and imprisonment, but not vengeance — open themselves to attack. Such attacks frequently come not only from police officers and victims’ rights groups, but also from politicians seeking to seize political advantage. Those who defend human rights are often accused of protecting criminals and ignoring the rights of victims. They are blamed for hindering the police and obstructing expedited justice.

The case studies in the sections that follow contain examples of such attacks. In Rio de Janeiro, the state secretary of public security from 1995-1998 referred repeatedly to international rights groups as ‘*alienígenas*’ or ‘space aliens’ and attacked time and again the idea of human rights as concerned only with (the protection of) criminals. In Argentina, as we explain below, pro-police forces have organised massive rallies in defence of police (and against rights defenders). In South Africa, verbal attacks on rights defenders, depicted as ‘advocates of criminality’, are commonplace.

### *Policies that foster police violence*

Worse still, public authorities may develop, support or fail to curtail policies and practices that foster police brutality and killings by security forces. In Rio de Janeiro, state security secretary Nilton Cerqueira called repeatedly on police in public statements to shoot first in encounters with criminals. As described in the Brazil section, São Paulo authorities widely praised police after an incident in which twelve suspects were killed, despite evidence (later

confirmed) that the victims had been executed. Similarly, Rio de Janeiro authorities promoted brutality in their discourse and in their policies. For example, they increased the salaries of, and promoted officers engaged in acts of “bravery” (which often involved killings of suspects), and allowed police to carry additional weapons (a practice that facilitated summary executions by enabling police to plant their second weapons on dead victims).

As the Nigeria chapter details, official response to crime has prioritised militarised sweeps into poorer communities. Soldiers have been deployed to quell civil unrest. Authorities have also given security agencies sophisticated weapons and reintroduced ad hoc security taskforces, such as the Rapid Response Squad and Operation Fire-for-Fire. Their aim in doing so was to arrest rising crime and armed banditry. Yet, not surprisingly, such militarised sweeps have often led to high numbers of civilian casualties.

#### *Political manipulation of public security issues*

As noted, when criminality spreads, people in all walks of life feel more insecure. This is particularly true of vulnerable people (women, the elderly, the sick, more generally those who are poor). It is entirely possible that the perception of insecurity does not track a corresponding increase in crime. Public perception may be created or manipulated through intentional or unintentional processes many of which we discuss within this report. For our purposes, it is sufficient to understand the relationship between perceived insecurity and constraints on rights activism. At this point, we may identify at least three factors, examined briefly below, that influence and intensify the extent to which this perception constrains the work of rights defenders.

First, politicians may seize on public security as an issue to be exploited for political gain. In this context, intelligent, reasoned discourse on public security may be stifled by inflammatory “law and order” or “tough on crime” rhetoric. As Rachel Neild writes, human rights defenders who speak out against police abuse

face denunciation by politicians for coddling criminals and must contend with the argument that tough-on-crime policies entail a necessary trade-off in the abrogation of some rights. In transitional societies, where rights are fragile in both public consciousness and political discourse, this hard-line appeal threatens a loss of public support for hard-won rights.<sup>43</sup>

In the country sections, we cite several examples of efforts made by public authorities to question the legitimacy of rights activists based on their defence of criminal suspects’ and defendants’ rights.

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<sup>43</sup> Rachel Neild, “The New Face of Impunity”, *Human Rights Dialogue* 2, 8, Fall 2002, New York: Carnegie Council on Ethics and International Affairs, p. 7.

Second, as a result of media, political and other pressures, public opinion may view the defence of human rights as equivalent to the defence of criminals and criminality. Third, people may become so overloaded with information about public security issues that they may lose interest in the issue and become disillusioned and cynical — no longer willing to distinguish between officials and criminals and unwilling to believe that things will improve.

### **Defending human rights in periods of change**

Dealing with crime presents human rights organisations with a number of difficult challenges. To understand their nature, it is important to recall the history and development of human rights work. Virtually without exception, in authoritarian states, the main focus of human rights organisations has been on egregious violations committed by officials with the active participation or complicity of high-level authorities. Focusing on these abuses makes sense from a number of perspectives: nationally, these abuses will be understood to be one of the symptoms of what is wrong with the current government and will thus tend to strike a chord of empathy with large segments of the population.

Internationally, these abuses will be recognised universally as instances of human rights abuses, that is, situations of civil and political rights abuses directed by or acquiesced in by the state. They must, however, be understood (and dealt with) in the context of the conceptual framework that underpins the human rights tradition, namely that:

- human rights law attaches duties and responsibilities to the state and officials (as a result, non-state actors, including ordinary criminals, have been rather ignored until recently);
- human rights practice has been to hold authorities accountable for abuses and failure to carry out their responsibilities; and
- abuses are more clearly identified and sanctioned under human rights law than is official ineffectiveness (i.e., torture or illegal arrest are explicit infringements; low arrest rates or slow justice systems are more difficult to classify as violations).

In authoritarian systems, moreover, impunity for abuse is central. Re-establishing accountability through the rule of law is a vital precondition of reform. In a more democratic environment, issues of effectiveness (conviction rates, policing competence and so forth) become clearly issues that need to be addressed in order to promote human rights in a preventive rather than remedial manner.

The fundamental challenge for human rights organisations is therefore whether they should continue criticising the state (for the same or different things?) or whether and to what extent they should help the (democratic or democratising) state to remedy its areas of incompetence. The predicament is about addressing the *function* as well as the *behaviour* of the state. On the basis of the notion that the state provides certain services that are essential for the protection of human rights (including justice, policing, security and so on), the positive choice for NGOs is co-operation. The alternative implies an ‘anti-state’ position, which assumes that the state is inherently repressive and unreformable. Yet collaborating with state authorities poses serious risks of loss of independence and complicity in severe rights abuse.

In democratically accountable societies or societies that are reforming in that direction, like those studied here, the latter (exclusive oversight) position may be unsustainable. The challenge is not between collaborating in the state’s reform processes or not, but how to collaborate without losing the ability to condemn abuses when officials commit them, and how to avoid co-optation.

Rights groups that focus on abuses during pre-transition periods tend to be positioned poorly to address the rights violations that occur in post-transition periods, particularly those associated with ordinary crime. Their pre-transition work often focuses on documentation and denunciation, skills that may be relevant in the post-transitional context, at least to the extent that they engage in oversight of public officials. One critical change for groups that address abuses committed by state agents concerns the nature of the victims of rights abuse. Rather than political opponents, dissidents, students, labour leaders or members of armed opposition groups, the targets of abuse in the transitional period and beyond are ordinary criminal suspects.<sup>44</sup> As Juan Méndez has written when analysing transitions in Latin America,

targets of state violence are different now: police and military officers no longer direct their actions against a political adversary, however defined, as was the case during dictatorial regimes. The victims of torture, extrajudicial execution, and the occasional forced disappearance are now anonymous; these victims are not the well-known political prisoners with whom the rest of the world instantly sympathises, but instead tend to be young persons from a poor district whose victimisation hardly merits a newspaper story.<sup>45</sup>

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<sup>44</sup> It is understood that the victims are also ordinary people who are the targets of criminals, or who suffer indirectly from the state’s failure to honour its obligations.

<sup>45</sup> Juan E. Méndez, “Problems of Lawless Violence: Introduction”, in Juan E. Méndez, Guillermo O’Donnell, and Paulo Sérgio Pinheiro, eds., *The (Un)Rule of Law and the Underprivileged in Latin America*, Notre Dame, Indiana: University of Notre Dame Press, 1999, pp. 19-20.

This change has vital consequences for the work of rights groups. In many cases, they must choose whether to co-operate with authorities at all. The issue arises due to potential ethical issues and for strategic and practical reasons.

Nevertheless, the challenge is presented by the changed nature of rights groups' relationship with the state. In most transitional contexts, many rights groups no longer view the state as an enemy. If NGOs did not have the choice of engaging with authoritarian states on these issues (because no political space existed to do so, and the key issues were impunity and abuse of political rights), following reform this is no longer so. As issues of accountability and the rule of law come to the fore, the state's failure to curb crime, arrest and prosecute criminals, and provide security and redress to its citizens leads NGOs to consider issues of reform of state institutions. At the same time, the development of international human rights norms that require states to provide security as a means of protecting the rights to life, physical integrity and freedom of movement (among others), has led rights groups to address public security differently. Even those groups that maintain an oversight approach find they must address not only abuses committed by state agents but also official failure to protect the public.

In many countries, a significant number of rights activists enter positions with the government. This in itself can be a problem for civil society, as many of its most talented professionals transfer out of the third sector. Other, more complicated issues arise in terms of the definition of the roles of government and civil society. These definitions are clouded by the presence of large numbers of former rights defenders in the ranks of the government. Personal relationships can blur institutional distinctions — new government authorities will often expect collaborative attitudes from their former colleagues in civil society.

In this new environment, rights groups must decide on what terms they will engage with government. To what extent and under what conditions should a human rights organisation work to strengthen the capacity of the state to deliver basic services that are its responsibility? When is refusal to collaborate warranted or necessary? What should the state do (and civil society not do)? What level of abuse by officials justifies withdrawal?

At the October 2002 review seminar for this project, Innocent Chukwuma, Executive Director of the Centre for Law Enforcement Education (CLEEN), a leading Nigerian NGO that has pioneered democratic police training in that country, emphasised the potential incompatibility of working *with* the police and maintaining a watchdog role *vis-à-vis* their operations. Because of the rejection by police of non-governmental organisations dedicated to such oversight, Chukwuma explained that his group and others are forced to

choose between collaboration and oversight. “It is very difficult for groups to work from different approaches in terms of relationship with the government.” “It is more efficient,” he continued, “to address different issues and to maintain an exchange of information among rights groups”.<sup>46</sup> Rights groups in Brazil and elsewhere have faced similar dilemmas. Those that have worked collaboratively with the police, for example, have avoided denouncing police abuses. In practice, this often becomes the price of maintaining open and mutually trusting relationships with police.

### **The dynamics of public outrage**

As Rachel Neild stated in a paper entitled “From National Security to Citizens Security” that draws on her experience of working in Latin America:

Almost all new democracies manifest an overwhelming increase in common crime and delinquency, including homicide, giving rise to a generalised feeling of fear and insecurity amongst the population. The result, in many cases, is a groundswell of popular sentiment in favour of a return to authoritarian modes of governance and repressive approaches to crime.

In a subsequent article, she elaborated on this sentiment:

Surveys sometimes show massive support for abusive responses to crime, even among the poor who bear the brunt of both crime and police abuse. In some cases, people’s support for democracy itself has eroded.<sup>47</sup>

A similar phenomenon has been documented in transitions in other regions of the world. Writing about the end of Gorbachev’s rule in the U.S.S.R., Peter Solomon concludes that

dislocations in the economy and the beginning of the private sector fuelled an increase in criminal activity. Glasnost made crime highly visible, instilling in the Soviet public a fear of crime that put liberalisation out of step with reality.<sup>48</sup>

Faced with rising crime, or at a minimum the perception of greater criminality, people who believe themselves to be at risk seek simplistic, often harsh solutions. An important part of the process involves the development of the

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<sup>46</sup> Comments by Innocent Chukwuma, Review Seminar, New York, October 21, 2002.

<sup>47</sup> Neild, “The New Face of Impunity”.

<sup>48</sup> Peter H. Solomon, Jr., “Reforming Criminal Law under Gorbachev”, in Donald D. Barry, ed., *Toward the Rule of Law in Russia?: Political and Legal Reform in the Transition Period*, New York: M. E. Sharpe, 1992.



public's conception of crime and criminals. A number of factors are involved in the development of attitudes about crime and criminality. Many of them are beyond the scope of this study, which focuses on the response of rights groups to the issue. Nonetheless, we must seek a basic understanding of the dynamics of the formation and intensification of opinions hostile to the rights of criminal suspects if we are to address the context in which rights defence occurs.

Sociological analyses inform our understanding of the nature of public response to crime, particularly violent criminal acts. David Garland, in a text inspired by Emile Durkheim, summarises public response to criminal behaviour in the following terms:

The criminal act violates sentiments and emotions which are deeply ingrained in most members of society — it shocks their healthy consciences — and this violation calls forth strong psychological reactions, even among those not directly affected. It provokes a sense of outrage, anger, indignation and a passionate desire for vengeance.<sup>49</sup>

In this context, those who defend the rights of criminals — or even those who approach punishment from a non-retributive perspective (that is, one not driven by the desire for vengeance) — may be cast as opposed to this societal drive for retribution. As the desire for revenge intensifies (either due to increased frequency of criminal acts or the gruesome nature of particular crimes), the animosity directed at rights defenders and others who oppose the retributive model will also intensify. It is important to note here that this public anti-crime sentiment, desire for retribution and rejection of rights-based and non-retributive approaches will be driven by public perception of crime and criminality. This in turn may be shaped by a range of factors not necessarily directly related to actual crime rates.

University of North Carolina Law Professor Joseph Kennedy, in the context of perception about crime in the United States, provides insight on the nature of the process that intensifies the widespread hostility towards those who defend the rights of criminal suspects. The point of departure, according to Kennedy, is the vilification of criminals through the hypervisibility of certain types of crimes and offenders and the subsequent application of that view to all offenders.

Behind the revolutionary increase in the severity of criminal punishment in our society during the last few decades lies a simple but neglected pattern: abstract categories of crime and criminals are conceived of in the

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<sup>49</sup> David Garland, *Punishment and Modern Society: A Study in Social Theory*, Chicago: University of Chicago Press, 1990, pp. 22-23.

most serious and extreme possible terms. The terms 'drug dealer', 'child molester', and even 'violent crime', evoke images of offender and offense that are far more serious than the average offender or offense....Simply put, we think of crime and criminals in monstrous terms, and we have created a criminal justice system designed for punishing monsters even though we live in a society where such monsters are very much the exception to the rule.<sup>50</sup>

The phenomenon described by Kennedy is not unique to the United States. Instead, as we see in the case studies evaluated in this report, simplified and exaggerated characterisations of criminals dominate public perception of public security. Oleksandr Betsa, the Law Programme Manager at the International Renaissance Foundation in Kiev, told us that while murders connected with rape, robbery and infanticide made up just 3.5 per cent of all homicides in Ukraine, these types of killings dominated media coverage of crime in the country. Similarly, he confirmed that while professional killers commit only a minuscule portion of all homicides, their crimes are also very likely to be widely reported.<sup>51</sup>

In any of the countries studied (and many others, for that matter) one needs only glance at the day's gory newspaper headlines and accompanying gruesome photographs of mangled bodies to understand this phenomenon. Needless to say, stories of banal crimes rarely receive such attention, particularly not in newspapers directed at poorer audiences. It should come as no surprise, therefore, that little-informed, often poorly-educated potential victims of crime should have little tolerance for those who defend the rights of criminal suspects (or that they are equally incensed about the corruption and inefficiency of the police). In environments of polarisation and demonisation, rights defence is viewed as defence of the monstrous criminal described by Kennedy and others, and thus illegitimate.

The core problem for human rights organisations is therefore not merely abuse of criminals by the state. It is equally the state's failure (and inability in the short-term) to provide security and justice according to the rule of law and in accordance with international human rights standards. If they remain in an engagement mode that focuses solely on the former issue, NGOs open themselves to accusations that they are 'defending the criminals' — precisely because their analysis is partial (it only addresses one aspect of the problem) and has not evolved alongside the political environment.

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<sup>50</sup> Joseph Kennedy, "Crime Punishment, and Perception", *Human Rights* 29, 2, ABA Section of Individual Rights and Responsibilities, Chicago, Spring 2002.

<sup>51</sup> Interview, Kiev, November 1, 2002.

### ***Police inefficiency and popular support fuels growth of violent vigilantes in Nigeria***

Press accounts from the international media on the Bakassi Boys, the Odua Peoples' Congress and other violent vigilante groups in Nigeria often focus on the brutal nature of the instant street justice they mete out. Another focus, particularly that of international human rights groups, has been state support for vigilantes which serve as officially recognised parallel police forces in several Nigerian states. While outrage over the crimes of these groups and official complicity is an important response, to understand the climate in which Nigerian rights groups operate, one must appreciate the broad support these groups enjoy with many segments of the population.

In the commercial centres of Aba and Onitsha, many believed that criminals had taken over the major markets, hotels and streets. Vendors regularly paid protection money to local thieves; the public sense of insecurity reached worrisome levels. When the police were not absent, they were believed to be complicit with the thugs that had instilled fear in these communities. The development of the Bakassi Boys — fuelled largely by shoe merchants — and their violent confrontations with suspected criminals were widely viewed as the cause of a reduction in street crime in these cities. While official figures are largely unavailable or unreliable, media sources have cited numerous statements from Nigerians — even including from leading rights activists — attributing to vigilantes a key role in reducing crime.

The result of this perceived success has been widespread popular support for vigilantism in Nigeria. What began in Aba and Onitsha spread; new groups sprung up throughout Nigeria. With this approval came animosity against those — rights activists — who question the legitimacy of groups such as the Bakassi Boys and support the rule of law. Rights defenders told us they feared speaking out against vigilante groups. While support for vigilante groups has waned, particularly as they have come to be seen as armed detachments of influential politicians, the phenomenon of public support for vigilantes is one that clearly frames the challenges facing rights defenders in contexts of rising crime and insecurity.

## Private security as a response to state failure

In many societies, public dissatisfaction with the efforts of the state in dealing with rising crime and disorder has gone hand-in-hand with increased public tolerance of repressive approaches to crime control by law enforcement agencies and, in extreme cases, resort to self-help measures that frequently violate basic human rights.<sup>52</sup> Explaining the root of this development, Shaw argues that the

establishment of liberal democracy brings paradoxical forces into play in most transitional societies. On the one hand, the conditions for the growth of crime are enhanced, on the other, citizens look (as they have never done before) to the state for protection. Given the very real constraints on the post-transition state in delivering effective systems of criminal justice (such as low skill levels, lack of representative institutions and poor resourcing), citizens are likely, over time, to seek alternative forms of protection such as vigilantes and, for the wealthy (including the business sector), this increases privatisation of policing and crime prevention.<sup>53</sup>

In many transitional states facing increased crime, the private security industry has grown rapidly, often surpassing in number and capacity the public law enforcement contingent. These private forces range from uniformed guards, regulated by law, to loosely joined bands of thugs. While they vary in nature, these forces are one manifestation of dissatisfaction with public security policies and an effort to privatise access to security. As such, they tend to be distributed according to socio-economic power, that is, one finds more private security in wealthier neighbourhoods.

In Nigeria, rising crime has led to an explosion in the private security industry. Conservative estimates place the ratio of private guards to police at three to one. The ratio might increase to five to one, if one includes night-watchmen popularly called *maiguards*.<sup>54</sup> A growing trend among businesses requiring private security forces has been to hire guards directly from the streets to uniformed security jobs the next day.<sup>55</sup>

Even where they are legal on the surface, private security firms often operate at the margin of the law, engaging in practices that differ only minimally from

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<sup>52</sup> Innocent Chukwuma, "Vigilantes and Policing in Nigeria", *Law Enforcement Review*, July-September 2000, Lagos: CLEEN, p. 15.

<sup>53</sup> Shaw, "Crime and Policing in Transitional Societies", p. 8.

<sup>54</sup> Innocent Chukwuma, "Police Transformation in Nigeria: Problems and Prospects", *Crime and Policing in Transitional Societies*, (Seminar Report), Johannesburg: Konrad Adenauer Stiftung, 2001.

<sup>55</sup> *Ibid.*

those of vigilante groups, discussed below. Often, the failure of authorities to regulate the private security industry leads to abuses by private employers in the hiring of agents. Caldeira writes that

it is complicated for a condominium to hire private guards directly and fulfil all the requirements, particularly regarding the acquisition and registration of guns. In this context, it seems easier to use the illegal market and employ ex-policemen or policemen, who have their own guns as well as good relationships inside the police 'to clean up any major problem' (i.e., murders), as the person in charge of security in a large condominium put it.<sup>56</sup>

According to Caldeira and others who have studied public security in Brazil, the clandestine security market is connected with death squads, *justiceiro* (literally 'justice makers'), and other vigilante groups.<sup>57</sup>

### **The growth of vigilantism**

One of the most troubling aspects of community response to the upsurge in crime and the loss of confidence in public service police has been the emergence of militant and violent vigilante groups, often with open or tacit approval of some authorities. Unable to hire private security forces, poorer classes have turned to vigilantes in Nigeria and South Africa and to *justiceiros* or killers in Brazil. As the section on Nigeria demonstrates, vigilante groups have surfaced and grown throughout that country. These include the Odua People's Congress (OPC) in the south-west, the Bakassi Boys in the south-east, and other smaller less conspicuous groups. Following the dissolution of military-led anti-crime outfits in the transitional period, many state governments became disenchanted with the response of police to rising crime. Because these local governments could not invite the military without the approval of the federal government, many instead openly encouraged the formation of militant vigilante groups or supported surreptitiously the activities of existing ones.

The record of these groups has become well known to human rights activists beyond Nigeria's borders. In particular, reports on the Bakassi Boys, who are known for their brutal methods that include hacking suspected criminals to death, have appeared in major international media sources. There can be little doubt that the Bakassi Boys and other vigilante groups have been

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<sup>56</sup> Teresa P. R. Caldeira, *City of Walls: Crime, Segregation and Citizenship in São Paulo*, Berkeley: University of California Press, 2000, p. 205

<sup>57</sup> *Ibid.*, p. 206.

### ***South African police attitudes toward vigilantes***

One of the main challenges facing rights groups in their efforts to protect human rights during periods of rising crime is the battle for public opinion. Too often, reactionary politicians and abusive authorities have been able to portray rights defenders as supporters of criminality and vigilantes as champions of the common man. An essential element in the process of changing public opinion about crime and human rights are the police themselves, and in particular, their attitudes about criminality and basic rights.

A 1999 study by David Brice and Joe Komane, researchers at the Centre for the Study of Violence and Reconciliation, demonstrates the difficulties inherent in shifting police practice toward vigilantes. While a number of those interviewed — particularly senior officers — indicated disapproval for vigilante practices, many more junior officers admitted to tolerating or even condoning mob justice.

One sergeant told the researchers that vigilantism “is not a good thing to do but there is no way it can be stopped as long as the situation of crime is not adequately addressed by the government”. Another sergeant supported mob flogging of alleged rapists, an incident depicted on South African television, as “a very good lesson for people who commit crime and think that they can get away with it”. While acknowledging that these actions were wrong, the officer indicated that his sympathies lay with the initial victims and not the criminal suspects

Regardless of their attitudes, and more critical from the public policy perspective, most police interviewed agreed that, in practice, they would not act to stop vigilantes. To do so, they told the researchers, would present too many risks for them in the communities in which they lived and worked.

Based on David Bruce and Joe Komane, “Taxis, Cops and Vigilantes: Police Attitudes towards street justice,” *Crime and Conflict* 17, Spring 1999, pp. 39-44.

involved in severe abuses. Nonetheless, in a number of states, vigilante groups have been legalised and are supported by state governments. As CLEEN and Human Rights Watch reported,

the methods the Bakassi Boys have used to carry out their 'mission' have been extremely brutal, ruthless and arbitrary. Scores of people have been extrajudicially executed or mutilated in public by the Bakassi Boys; hundreds of others have been tortured and detained in their 'cells'. Few people appear to question the legality of their actions; large sections of the public, the media and some politicians have applauded them on the basis that they have 'succeeded' in bringing down crime levels in the areas where they operate. Likewise, few people have challenged the Bakassi Boys' claim that all those they target are known criminals; most have preferred to turn a blind eye to the fact that many of their victims may be innocent and that even those who are guilty have a basic right to due process.<sup>58</sup>

To be fair, there is some evidence that vigilante groups provide basic security in some villages and towns, at times in exchange for small stipends, and, in some circumstances, may be accountable to local police. Vigilante groups attract considerable popular support, creating another important challenge for rights groups:

Public attitudes towards the Bakassi Boys have been characterised by contradiction and formed by a combination of fear, despair and helplessness. After suffering years of violent crime, abuses by the security forces, and government inaction, people appeared to have given up expecting the government or the police to provide protection or security. When the Bakassi Boys took on the task of fighting crime, they were hailed as heroes. The overwhelming feeling of many people was relief at being able to "sleep with both eyes closed" — an expression commonly used when describing the "post-Bakassi era". With the realisation that the Bakassi Boys' methods were sometimes arbitrary, and often brutal, the relief gradually became tinged with fear; however, there is still very little public expression of indignation at the violence used by the Bakassi Boys. A sociology professor accurately summed up the public attitude towards the Bakassi Boys: "People's tolerance of vigilante groups is very high. It is frightening, even among reasonable people. They complain about extrajudicial executions, yet they support an organisation totally dedicated to it."<sup>59</sup>

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<sup>58</sup> CLEEN, and Human Rights Watch, "Bakassi Boys: The Legitimisation of Murder and Torture", *Human Rights Watch Short Report* 14, May 5, 2002.

<sup>59</sup> *Ibid.*

In such situations, human rights groups face the following dilemma: how to call plausibly on the state to do its job — rather than allowing vigilante groups to operate in an abusive way — if the state institutions are regarded as unwilling or unable? What can constitute an effective human rights strategy in that context?

To be certain, rights groups encounter frequently a series of difficulties in their firm defence of fundamental rights. To begin with, the nature of the victims of rights abuse in this context shifts dramatically. Rather than political activists with whom rights defenders may share some ideological or political bond, those who suffer abuses at the hands of the state are now criminal suspects, persons with whom rights defenders may have no particular empathetic tie. Some groups consulted in this research (particularly those founded by family members of victims of political repression) told our research team that their members found it difficult to defend this new class of victims believing it to somehow degrade the memory of their own victims.

It is indeed important to understand that the insecurity (or sense of insecurity) ordinary people feel is at the root of popular anger and tolerance of extra-legal or hardline policies to suppress criminality. The problem of crime goes beyond the treatment of criminals. As it is experienced by ordinary citizens, crime can, no doubt, be best addressed if the state provides better judicial and police services and if society provides adequate social protection, which makes recourse to crime by the desperate unnecessary and illegitimate.



### III. RIGHTS, SECURITY AND THE MEDIA

We began this report by noting that the focus of our inquiry is the environment in which human rights defenders engage in the public security debate, rather than an examination of actual rates of criminality; it is that context which constrains human rights defence rather than statistics about crime. The media play a fundamental role in structuring public opinion on public security and thus the context in which rights defence takes place. The media often influence, sometimes create and actively participate in the coverage of public security issues. How this is done — and how it might be improved — requires a closer examination of how the media cover human rights issues.

Human rights activists ordinarily maintain close, though complex, relationships with the media. In most situations, rights groups find their main access to public opinion is through radio, television or newspaper journalists. Some rights defenders recognise the enormous power that media sources have in framing and shaping public discourse on human rights. As a result, they work closely with the media, seeking to assure coverage for human rights issues and to influence how they are reported. While public security often raises human rights concerns and while journalists in many societies provide ample coverage of such questions, their reporting focus is often distant from the advocacy positions of most activists.

To understand the nature of the relationship between the media and human rights groups concerning public security, we first examine the media's work and approach to human rights more generally.

#### **The media and human rights**

A report by the International Council on Human Rights Policy examined the role of the media in reporting human rights, critically analysing the treatment afforded to these issues by journalists at the local, regional and international level. While that study did not focus specifically on the issue of public security, many of its insights and conclusions regarding the nature of media coverage of human rights are highly relevant to understanding how journalists address public security.<sup>60</sup>

That report emphasised the importance to activists of understanding the dynamics of media reporting of rights stories:

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<sup>60</sup> See International Council on Human Rights Policy, *Journalism, Media and the Challenge of Human Rights Reporting*, Geneva: ICHRP, 2002.

We need to know how the media work, to look at how broadcasters and journalists see their task, to examine what pressures are brought to bear on them and, perhaps most to the point, to understand better what makes news and what we mean by 'good' reporting on human rights issues.<sup>61</sup>

In the highly charged areas of public security, this advice is particularly relevant.

One of the principal conclusions of the Council report concerns the lack of detailed understanding of human rights norms, instruments and mechanisms among most media outlets, be they local, regional or international. While journalists may routinely identify grave human rights violations, the study found their understanding of human rights was thin. The report concluded that, "[w]ithin journalism there is a serious lack of knowledge of what human rights are. Many journalists — like many politicians and others working in civil society — are not familiar with the Universal Declaration of Human Rights and the international human rights treaties and mechanisms".<sup>62</sup>

The report also highlighted other factors that make accurate and thoughtful coverage of human rights issues the exception, rather than the rule. Among these, technological advances permitting immediate, constant reporting (via the internet) deserve special mention. The possibility of instant and inexpensive coverage has forced reporters to respond more quickly and frequently, as a result, less accurately. On public security issues, this tendency often leads reporters to file stories based on consultation with fewer sources. In the case of criminal incidents (such as serious crimes committed by or against police, for example), this may lead reporters to consult only official (police) sources. The latter, in turn, often take advantage of the fact that reporters work on tight schedules to create situations which the media will be unable to check with additional sources. Thus, for example, in Brazil, it is not uncommon for public security officials to release news towards the end of the afternoon, effectively preventing reporters from seeking alternative views before their deadlines close. Once reported, the story is likely to be retransmitted, often without questioning the source or veracity of the original reports.

In the context of public security, media ignorance of rights standards and procedures is often magnified and is one of the key obstacles to effective defence of rights. In the countries examined here as well as in many others, for example, it is common for reporters to refer to *suspects* detained by

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<sup>61</sup> Ibid., pp. 122-123.

<sup>62</sup> Ibid.

authorities as *criminals*, or to suggest at least that they are responsible for the crimes for which they have been arrested. This implicit imputation of guilt is based generally on the police version of events alone, and disregards flagrantly the suspects' right to be presumed innocent. Media accounts of crimes routinely omit terms such as "allegedly" in reporting crimes.

In this regard, Yevgeny Zakharov of the Kharkiv Human Rights Protection Group told us that Ukrainian journalists rarely used the term "allegedly", thus accepting at face value the official accounts of criminal incidents. Zakharov explained that his group trains journalists to report on incidents affecting human rights, emphasising the need to respect the presumption of innocence. It goes without saying that this is particularly critical in cases in which police are accused of rights abuses directed against criminal suspects. In practice, Zakharov noted that the routine failure to respect this presumption fosters anti-suspect sentiment. "People believe that if a detainee is a criminal, there are no limits on how to treat the person. Anything goes." "By contrast," he continued, "if people believe that the victim is or might be innocent, then they condemn police [brutality]".<sup>63</sup> This demonstrates the critical importance of the media's characterisation of the detainee.

Another problem specific to the context of public security concerns the relationship between reporters and their official (police) sources. Reporters in many countries are assigned to cover security issues (commonly known as the police beat). These reporters inevitably develop close, personal contacts with the police who, in turn, give them access to information on breaking important cases. Reporters that benefit from such privileged relationships with police sources are often reluctant to file stories that are damaging to the police.

### **Sensationalism**

The trend toward simplified, entertaining stories is another media tendency, identified in the above-mentioned International Council report, and one that takes on particularly troublesome characteristics in the public security context. The study also notes that 'dumbing down' and 'infotainment' (i.e., the trend to present news reporting as entertainment) have increasingly become the norm in media at all levels (international, regional and local). The combination of 'dumbed down' news with 'infotaining' theatrical techniques often leads to alarmist, sensationalist crime stories. Particularly gruesome or

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<sup>63</sup> Interview, Kiev, October 31, 2002.

extremely violent crimes provide ideal raw material for populist reporting. While a single story by a single media outlet may have limited impact on public opinion, massive, repetitive coverage of otherwise isolated incidents (another phenomenon identified in the report) helps create the impression of a pattern, rather than a single event.

Rights activists in several countries spoke of particular high profile cases, their coverage by the media, and their disproportionate impact on the public security debate. A violent robbery in São Paulo in 1996 was such an incident. There, five men held up a bar in the upscale Moema neighbourhood, killing a young dentist and a young woman, the latter after having completed the robbery. The incident received massive, repetitive coverage, due in part to the cruelty of the robbers and the fact that one of the bar's owners was an actor affiliated with Brazil's largest television network. As a result of the media barrage, the state secretary of public security was pressured to provide additional coverage on Moema and other wealthy neighbourhoods and to scrap a new security policy that had apportioned police patrols according to homicide rates.

Sensationalist media reporting also affects how justice and home affairs issues are dealt with by supranational bodies such as the European Union (EU). It was this kind of media coverage that encouraged the EU to give priority to transnational crime in the Baltic States, when in fact, more pressing local issues should have been addressed.

### **Over-simplification**

Another dynamic with potentially disastrous consequences for rights defence is the media's tendency to portray complicated issues in simple, black and white terms. In the context of public security, such reductionism often leads to a simplistic portrayal of crime — suspects and victims — that eliminates uncomfortable grey areas and encourages grossly polarised analyses. Accordingly, criminals are 'bad' — often horrendously 'evil', while victims are 'good', wholesome, and innocent. Media sources, though often committed to fairly portraying the complexity of reality, tend to find cases that fit neatly into such simple paradigms, because they are more attractive, easier to explain and improve sales or ratings.

As a result, the media may disproportionately cover stories that foster a simplified view of reality. Between a story that describes a violent dispute between members of rival gangs that results in a homicide, a domestic squabble between relatives or acquaintances that ends in death, and the murder of a young schoolchild by a particularly depraved sex offender, editors will have little doubt about which ought to receive most coverage.

While crime statistics demonstrate that the first two crimes are far more common, the general public, whose information comes from media sources rather than crime statistics, may be induced to believe that the exceptional is the norm. To the extent that the media present an over-simplified, Manichean vision of crime, this will be the view adopted by most. The consequences of these media biases are critical for rights defenders, who must find ways of convincing the public that their views are misguided if they are to win support for work that involves defending the rights of criminal suspects.

Over-simplification also leads the media to treat poor communities as breeding grounds of criminality. The drug trafficker, robber and thief are routinely caricatured. As Brazilian scholar Cecilia Coimbra writes in her analysis of media reporting of crime in Rio de Janeiro after the transition to civil rule, criminals became ‘the new enemies’ of the state: “In the same way that dangerous ‘enemies of the state’ were constructed in the 1960s and 1970s...today, especially via the mass media, ‘new internal enemies of the state’ are being produced: they are from the poorest sectors; they are those — who by virtue of being ‘suspects’ in the eyes of the ‘the keepers of order’ — should be avoided and eliminated.”<sup>64</sup>

Most violent street crimes may be committed by the urban poor, but this does not mean that most poor people in cities are criminals. Media over-simplification of criminals, however, tends to support such assumptions, which may be used to legitimate aggressive or abusive policing of poor communities, such as violent sweeps, raids of neighbourhoods or roundups of young, urban slum residents *en masse*. Over-simplified reporting also contributes to attacks on rights defenders by idealising their positions and claiming they are not in touch with the realities of criminality (as portrayed by the media).

### **From ‘feel good’ news to sensationalism: Former Soviet Union**

Perhaps nowhere is the development of sensationalist reporting on criminality more visible than in the countries of the former Soviet Union. While the media may be no more sensationalist than elsewhere, their reporting on crime stands out, given the change in the approach to crime that has characterised journalism in these countries over the past decade. From being a taboo subject, reported sparingly in a light favourable to authorities and always under the watchful eye of official censors, crime has moved to the front page. Recent scholarship on Poland,<sup>65</sup> as well as our research in

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<sup>64</sup> Cecilia Coimbra, *Operação Rio - O Mito Das Classes Perigosas*, Rio de Janeiro: Oficina do Autor, 2001, pp. 57-58.

<sup>65</sup> See Los, “Post-Communist Fear of Crime and the Commercialisation of Security”.

Ukraine and in the Russian Federation, sheds light on the mechanics of this phenomenon.

It is certainly true that the break-up of the Soviet Union in 1991 offered great opportunities for criminal organisations to exploit, and resulted in an increase in crime beyond those levels already registered during the Gorbachev period of the 1980s. Popular paranoia about crime, however, was not due only to the actual increase in criminal behaviour. As in Poland, a newly liberalised media moved away from the 'feel good' news reports of the pre-*Glasnost* era and began reporting on rising urban crime and newly published crime statistics. Suddenly, urban Russians felt threatened by their compatriots in ways they never had before Gorbachev's *perestroika*. This feeling was exploited promptly by politicians who took up the slogan of 'fighting crime' to defend conservative policies aimed at slowing down the pace of reform.<sup>66</sup> Crime continues to be a sensitive political issue in the Russian Federation, where rates of violent crime remain at levels significantly higher than during the Soviet Union era. Still, it is difficult to evaluate the extent to which its profile is due to rises in measured crime levels as opposed to increased reporting.

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<sup>66</sup> Victor M. Sergeev, *The Wild East: Crime and Lawlessness in Post-Communist Russia*, New York: M. E. Sharpe, 1998.

## **PART TWO**

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### **CASE STUDIES**





## IV. ARGENTINA

### Historical background

In 1976, a military coup seized control of the Argentine government, deposing President Isabelita Perón, and imposing a brutal dictatorship that would continue until 1983.<sup>67</sup> During the dictatorship, Argentine security forces committed gross human rights abuses on a massive scale, driven by an extreme brand of the national security doctrine that advocated eliminating all those viewed as hostile to the state. Estimates place the number of persons seized, forcibly disappeared and/or murdered between nine thousand and thirty thousand.<sup>68</sup>

Following its loss of prestige after the economic downturn of 1982-1983 and the disastrous Falkland/Malvinas War with the United Kingdom, the military government ceded power. Elections were held in October 1983 and two months later the civilian government of President Raúl Alfonsín took office.<sup>69</sup>

Before turning over control to the newly elected civilians, the military junta enacted an amnesty law — the “Law of National Pacification” — which sought to protect military personnel from prosecution for crimes committed during the dictatorship.<sup>70</sup> As a result, the problem of accountability for rights abuse during the years of military rule became one of the most important and controversial issues facing the newly-elected democratic government. In several speeches before and after his election, Alfonsín had stated the

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<sup>67</sup> President Raúl Alfonsín took office on December 10, 1983.

<sup>68</sup> Official sources indicate that the number of disappeared was between nine thousand and eleven thousand. See Commission on the Disappeared (CONADEP), *Nunca Mas: The Report of the Argentine National Commission on the Disappeared 5* (1986). This official report estimated conservatively the disappearances at nine thousand. Conversely, human rights groups estimate the disappeared at thirty thousand under military rule. Some of those killed or disappeared were members of left-wing guerrilla organisations, others were targeted for being their relatives, friends, lawyers, or for being journalists, ‘dangerous’ writers, politicians, human rights group members and trade unionists. See Emilio F. Mignone, *Derechos Humanos y Sociedad: El Caso Argentino* [Human Rights and Society: The Argentine Case], Buenos Aires: Ediciones del Pensamiento Nacional and Centro de Estudios Legales y Sociales/CELS, 1991.

<sup>69</sup> For an historical account about the transition to democracy, see Carlos Santiago Nino, *Radical Evil on Trial*, New Haven: Yale University Press, 1996.

<sup>70</sup> Law No. 22.924, September 22, 1983. For an account of the beginning of the trial, see Enrique Dahl, and Alejandro Garro, “Argentina: National Appeals Court (Criminal Division) Judgement on Human Rights Violations by Former Military Leaders (Experts)”, *International Legal Materials* 26, 317, 1987. For an analysis on the Law 22.924 and its problems see Marcelo A. Sancinetti, and Marcelo Ferrante, *El Derecho Penal en la Protección de los Derechos Humanos* [Criminal Law in the Protection of Human Rights], Buenos Aires: Hammurabi, 1999, pp. 256-293.

principles upon which the government would set its human rights policy. In the inaugural session of the legislature, he emphasised that his goals included reinstatement of the rule of law. Systematic impunity for the grave human rights violations committed under the military regime was clearly incompatible with this ideal.<sup>71</sup>

### History of the human rights community

Even before the onset of the military dictatorship, groups dedicated to the defence of human rights existed in Argentina. Among these, the Liga por los Derechos (Human Rights League), affiliated with the Paris-based International Federation of Human Rights (Fédération Internationale des Ligues des Droits de l'Homme, FIDH), stands out. During the transition, rights groups gradually gained space in the public debate, led by the mothers and grandmothers of those forcibly disappeared. Beginning during the military dictatorship, every week, dozens of women would gather in the Plaza de Mayo, in downtown Buenos Aires, carrying pictures of their loved ones who had been taken away by government agents.<sup>72</sup> At first, police violently repressed these demonstrations,<sup>73</sup> but over time, the political cost of such public, visible violence against women (and mothers) became too great. The women, whose maternal interest in the welfare of their disappeared children could not credibly be described as subversive, opened a path for others to criticise the abuses of the military regime. In 1979, Emilio Mignone, Augusto Conte, Alfredo Galleti and Boris Pasik founded the Centre for Educational and Legal Studies (CELS). A pioneer group, CELS dedicated itself at first to the fight for justice in cases of forced disappearance and later addressed other rights abuses committed by the military regime.<sup>74</sup>

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<sup>71</sup> Nino, *Radical Evil on Trial*, pp. 68-69. See also Carlos Santiago Nino, "The Human Rights Policy of the Argentine Constitutional Government: A Reply", *Yale Journal of International Law* 11, 217, 1985.

<sup>72</sup> Among these women were the Madres de Plaza de Mayo (Mothers of the Plaza de Mayo), who created a domestic political movement out of their demands for finding their missing sons and daughters. They first appeared in public in the Plaza de Mayo on April 30, 1977. They continued with these meetings for years, every Thursday at 3:30 p.m. See, generally, Marguerite Guzman Bouvard, *Revolutionizing Motherhood: The Mothers of the Plaza de Mayo*, Wilmington, Delaware: Scholarly Books, 1994. The organisation called Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo), created in the same year was a branch of the Madres de Plaza de Mayo. It worked to find the young sons of the disappeared or the babies that were born while the pregnant women were held in detention. See Rita Arditti, *Searching for the Life: The Grandmothers of the Plaza de Mayo and the Disappeared Children of Argentina*, Berkeley: University of California Press, 1999.

<sup>73</sup> For an account on the police intimidations see Arditti, *Searching for the Life*, p. 35.

<sup>74</sup> During the initial years, CELS worked to document rights abuses carried out by the Argentine Armed Forces. For more information about CELS, see [www.cels.org.ar/english/index.html](http://www.cels.org.ar/english/index.html).

The human rights movement received an enormous, if unexpected, boost from the disastrous military campaign launched by the military government to retake the Malvinas or Falkland Islands from Britain. The United Kingdom responded by sending troops to the islands. The result was a military engagement in which the British recovered the disputed territory and the Argentine military junta collapsed. The disgrace of losing the war cost the military government enormous political capital. Opponents of the regime, in particular those who denounced its human rights record, gained influence in the public debate on military rule. The role of human rights groups and their leading advocates became essential to the transition process.

When elections were held in October 1983, the issue of impunity for human rights abuses was thus thrust on the national agenda. After assuming the presidency of Argentina, Alfonsín announced that the government would try military officers for human rights violations, beginning with the nine individuals who had headed the three successive military juntas from 1976 to 1983.<sup>75</sup> Jurisdiction over prosecutions of military personnel was entrusted initially to the Supreme Council of the Armed Forces. The tribunal found that the operations against subversion were “unobjectionable” in their form and content.<sup>76</sup> However, Congress enacted a law that introduced a broad and obligatory appeal to the civilian federal courts,<sup>77</sup> and, eventually, the Federal Appeals Court (Criminal Division), pursuant to that law, took over the proceedings.

On April 22, 1985 the public civil court trial began. It involved the prosecution of 709 counts of murder, unlawful deprivation of freedom, torture and robbery, among other crimes. The federal prosecution selected the cases to cover crimes committed in different districts of the country and at different times. Its strategy was to prove that the military junta had planned the repression systematically. The trial lasted for eight months; more than eight hundred witnesses testified before the court.

On December 9, 1985 the Federal Court of Appeals (Criminal Division) convicted and sentenced five of the nine junta members to prison. Jorge Videla and Emilio Massera, commanders of the Army and Navy, were convicted to life sentences. Roberto E. Viola received a seventeen-year term and Armando Lambruschini received an eight-year term. Brigadier Orlando Agosti received a four-and-a-half year term. Finally, Brigadier Omar Graffigna,

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<sup>75</sup> On December 13, 1983 President Alfonsín enacted a decree ordering, as Commander-in-Chief of the Armed Forces, the arrest and prosecution of the nine military officers who formed the first three military juntas from 1976 to 1983 (Decree No. 158, promulgated December 13, 1983). See Dahl, and Garro, “Argentina”, p. 319.

<sup>76</sup> Dahl, and Garro, “Argentina”, p. 325.

<sup>77</sup> Law 23.049 promulgated February 14, 1984.

and the three leaders of the last military junta — Leopoldo Galtieri, Basilio Lami Dozo, and Jorge Anaya — were acquitted on all charges. This trial had no precedent in modern times in Latin American history. Never before had military leaders in Latin America been held responsible for actions committed under their governments. For the first time in the political history of Latin America, a democratic government decided to prosecute its military predecessors for human rights abuses in accordance with the rule of law.

Following the collapse of the military regime, human rights organisations concentrated their efforts on two main objectives. The first called for prosecution of members of the armed and security forces that had participated in grave human rights violations during the dictatorship. These included massive, illegal detentions and forced disappearances, kidnapping, torture and appropriation of babies born in captivity. Secondly, they called for an investigation into the fate of thousands of people that had been forcibly 'disappeared' during the dictatorship. The main concerns of human rights organisations in the mid-1980s were therefore to keep memory alive and fight impunity of state and military officials.

Although they shared these common goals, the actions and strategies of human rights organisations nevertheless varied. While Abuelas de Plaza de Mayo concentrated their efforts — and still do — on trying to find their grandchildren and returning them to their families, Madres de Plaza de Mayo<sup>78</sup> focused mainly on locating the corpses of their sons and daughters and keeping memory alive. Both these institutions presented theirs as a moral fight, while other organisations such as CELS developed their legal work and social analysis of state terrorism. Many Argentine activists have worked simultaneously in more than one rights organisation.<sup>79</sup>

The most prominent military officials were taken to court and prosecuted in 1985 for some of the crimes they had committed. However, impunity laws, passed in 1986 and 1987, impeded further prosecutions of many of those

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<sup>78</sup> Madres de Plaza de Mayo separated into two different groups in January 1986. The two groups were known, after that year, as Asociación Madres de Plaza de Mayo, led by Hebe de Bonafini, and Madres de Plaza de Mayo Línea Fundadora. Although the break-up was the result of conflictive political and ideological positions and demands, two of the most relevant issues were the enactment of reparations legislation and the acceptance of violence.

<sup>79</sup> See Mignone, *Derechos Humanos y Sociedad*; and Juan E. Méndez, *Verdad y Justicia. Homenaje a Emilio F. Mignone*, San José: Instituto Interamericano de Derechos Humanos and Centro de Estudios Legales y Sociales/CELS, October 2001. Two examples can be given to support the latter. Abuelas were originally members of Madres that later formed an independent association with its own resources, objectives and offices while CELS' founding members were the fathers and mothers of disappeared persons that decided to fight for their relatives using legal resources. In both cases, their members abandoned the participation in Madres.

implicated in human rights violations during the dictatorship.<sup>80</sup> The presidential pardons, in 1989 and 1990, of even those criminals that had been convicted and sentenced,<sup>81</sup> ignited anew the efforts of human rights organisations to secure investigation and prosecution of those responsible for grave abuses.

Although the original demands for justice did not end, different human rights concerns arose in the 1990s, as re-democratisation advanced. Post-transitional instances of police brutality, including instances of torture and summary executions, abusive prison conditions, corruption, social violence and arbitrary detentions became prominent on the national human rights agenda.

In summary, during the 1970s and 1980s, human rights organisations in Argentina fought for investigation and prosecution of those responsible for the massive disappearances and political killings of the dictatorship. The persistence of abuses by security forces (albeit with different victims) and the surge in criminality would transform the agenda of these groups during the next two decades.

### **Rising crime**

To understand this shift in priorities, we need only consider statistics on criminality in Argentina in the years after the pardons in 1989 and 1990. The number of offences registered by the police in the City of Buenos Aires increased from 51,203 in 1990, to 126,920 in 1996, and to 202,083, nearly four times the figure of a decade earlier, in 2001.<sup>82</sup> In the Province of Buenos Aires, registered crimes soared from 123,537 in 1990, to 170,726 in 1996, and 300,470 in 2001.<sup>83</sup> Intentional homicides committed in the Province of Buenos Aires rose from 1,114 in 1990, to 1,160 in 1996, and to 1,632 in 2001. In the City of Buenos Aires, in turn, 47 intentional homicides were registered in 1990, 177 in 1996 and 152 in 2001. In this context, the number of police officers killed or injured in armed confrontations in the Buenos Aires

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<sup>80</sup> *Punto Final* (Final Point) Law N°23.492, December 12, 1986 and *Obediencia Debida* (Due Obedience) Law N°23.521, June 4, 1987.

<sup>81</sup> Decrees N°1002 and N°1004, issued October 7, 1989 and Decrees N°2741 and N°2743, issued December 30, 1990.

<sup>82</sup> Source: National Agency of Criminal Policy, National Ministry of Justice, Security and Human Rights (Dirección Nacional de Política Criminal, Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación).

<sup>83</sup> The rate moved up from 331 in 1998 to 388 in 2001. Source: National System of Criminal Information, National Agency of Criminal Policy, National Ministry of Justice, Security and Human Rights (Sistema Nacional de Información Criminal, Dirección Nacional de Política Criminal, Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación).

Metropolitan Area rose from 66 in 1996 to 138 in 2001 while the number of civilians killed — in the same jurisdiction and circumstances — increased from 152 in 1996 to 261 in 2001.<sup>84</sup>

The number held in federal prisons initially fell from 4,856 in 1983 to 4,473 in 1990. Since then, it has risen consistently, reaching 6,112 in 1996 and 8,836 in 2002.<sup>85</sup> According to the Human Rights Secretary of the Province of Buenos Aires, by April 2002 there were 16,126 persons in provincial prisons whose maximum capacity is 14,275. In contravention of the law, another 7,196 persons were detained in police stations at that time.<sup>86</sup>

### **Crime, public opinion and the role of rights groups**

Not surprisingly, this increase in crime rates was accompanied by a dramatic change in social perceptions of insecurity and the legitimacy of the state. A public opinion research carried out by Gallup in Argentina in November 2001 showed that just thirty-two per cent of the Argentine population trusted the police and twenty-six per cent had confidence in the judiciary.<sup>87</sup> One of the consequences of this distrust is exemplified in another poll, which showed that only forty-seven per cent of those who had been robbed or had been victims of an attempt during the previous year notified the offence to the police.<sup>88</sup>

A third public opinion poll carried out in July 2002 showed that fifty per cent of those surveyed considered that security levels in their neighbourhoods were worsening. Only 34% felt the same way in August 1990. The figure rose to thirty-nine per cent in June 2001 and to fifty per cent in July 2002.<sup>89</sup> The

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<sup>84</sup> Source: Centro de Estudios Legales y Sociales (CELS) on the basis of media reports.

<sup>85</sup> Source: National Ministry of Justice, Security and Human Rights (Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación).

<sup>86</sup> Source: "Overpopulation in prisons and police stations in the Province of Buenos Aires", Secretary of Human Rights, Government of the Province of Buenos Aires (Secretaría de Derechos Humanos, Gobierno de la Provincia de Buenos Aires), on the basis of data provided by the Provincial Penitentiary System and the General Superintendence of the Provincial Police.

<sup>87</sup> Gallup Argentina; Public Opinion Research "Trust in the institutions in Hispano-America", Argentina and other fifteen Hispano-American countries. Co-ordinated by Consorcio Iberoamericano de Empresas de Investigación de Mercado y Asesoramiento (CIMA), November 2001.

<sup>88</sup> Gallup Argentina; Public Opinion Research A232 "Security", Argentina, national level. Prepared especially for *La Nación*. February 2001. The same poll that registered extremely low levels of confidence in police and judges demonstrated that sixty-two per cent of those interviewed expressed confidence in television news broadcasts.

<sup>89</sup> Gallup Argentina; Public Opinion Research A307 "Violence and Security"; Argentina, national level. Prepared for *La Nación*. July 2002.

same study also found out that sixty-nine per cent of those questioned considered police patrols in their neighbourhoods to be insufficient.

Clearly, as crime has risen in Argentina, the perception of insecurity and dissatisfaction with quality of police services have increased in parallel. Security and policing have become ever more sensitive political issues. Public security was one of the main topics under discussion during the 1999 electoral campaign. In that context, the former vice-president and then candidate for governor of the Province of Buenos Aires, Carlos Ruckauf, proposed to “kill the killers”. Even though law and order policies had been promoted by the previous administration,<sup>90</sup> Ruckauf’s discourse was considered decisive in his successful campaign for governor, which may reflect citizens’ concern for insecurity and lack of concern for human rights and basic guarantees.

As in the other societies studied, the principal victims of institutional violence are members of vulnerable groups who come into frequent contact with police: teenagers, immigrants and the poor. Because those who have any intercourse with the police are widely viewed to be engaged in some illicit behaviour, those who defend their rights are popularly understood to be defending criminals. As a result, it is widely believed that human rights organisations’ work consists of “defending criminals”. This poses a serious challenge for these organisations dedicated to documenting and denouncing instances of institutional violence given that many of those whose rights they defend will have violated the law.

Given the intense surge in criminality and in police abuse in response to this phenomenon, rights groups increasingly adjusted their mandates to include, if not prioritise a new class of victims of state violence: alleged criminals and others perceived to be suspect by the police, primarily young men from poorer backgrounds. Under these circumstances, defending the rights of people suspected of having committed some sort of crime could indirectly entail — to some human rights organisations — associating their sons, daughters or relatives, who had thought differently and fought for a better society, with delinquents. According to activists María del Carmen Verdú and Sergio Di Gioia, this sense of distaste created tensions and conflicts within and between some organisations, at least initially.

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<sup>90</sup> And even by former President Carlos S. Menem who, in July 1990, sent an initiative to the National Congress fostering the enactment of death penalty for the authors of kidnapping followed by murder, rape of minors followed by murder and drug traffickers. However, the negative reaction of the legislators and of many sectors of society, including the Catholic Church, forced Menem to withdraw the initiative. See Mignone, *Derechos Humanos y Sociedad*, p. 21.

From 1985 nevertheless, human rights organisations began to work independently and, at times, jointly on these issues.<sup>91</sup> In addition, beginning in the late 1980s new human rights organisations formed to tackle these concerns.<sup>92</sup>

Thus, by the early- and, more clearly, mid-1990s, three different types of human rights organisations in Argentina were working in this area. The first consisted of the so-called 'historic' organisations that focused their demands on issues related to memory and the fight against impunity, led by Madres and Abuelas de Plaza de Mayo. A second group included established organisations, such as CELS, Fundación Servicio Paz y Justicia (SERPAJ) and Asamblea Permanente por los Derechos Humanos (APDH), which opted to widen their institutional mandate to include post-transition institutional violence. The third group, finally, was comprised of new human rights organisations that formed to address human rights violations in the more democratic Argentina. The fact that some lawyers employed by the Coalition Against Police and Institutional Repression (Coordinadora contra la Represión Policial e Institucional, CORREPI) also belong to the Human Rights League and that CORREPI meets in the League's offices shows links between some of the established organisations and the new ones.

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<sup>91</sup> CELS, Asamblea Permanente por los Derechos Humanos (APDH) and Fundación Servicio Paz y Justicia (SERPAJ) decided to widen the scope of their actions to embrace forms of institutional violence other than massive detentions and disappearance of people and even social, economic and cultural rights. Some of their early publications included: Asamblea Permanente por los Derechos Humanos/APDH, "Mesa Redonda: edictos policiales y libertades constitucionales", Buenos Aires, December 1985; and Asamblea Permanente por los Derechos Humanos/APDH, "Violencia Policial. Violencia policial en la Argentina y los medios legales para combatirla", Buenos Aires, October 1986. Centro de Estudios Legales y Sociales/CELS — Núcleo de Estudos da Violência/NEV, "Informe sobre violencia política", Universidade de São Paulo, Dossiê NEV Nº6, 1991.

<sup>92</sup> These organisations included the Coalition Against Police and Institutional Repression (Coordinadora contra la Represión Policial e Institucional, CORREPI), the Centre for Research and Study of Human Rights (Centro de Estudios e Investigación sobre Derechos Humanos, CEIDH) and the Commission of Relatives and Victims of Social Violence (Comisión de Familiares de Víctimas Indefensas de la Violencia Social, COFAVI).



## V. BRAZIL

### Historical background

On March 31, 1964, a military coup ended the civilian rule of President João Goulart and the grassroots reform campaign that he had begun. While the military leaders suspended the political rights of many, the first years of the dictatorship were not marked by massive rights violations. It was only after the adoption of Institutional Act Number 5 in December 1968 (which granted military authorities vast powers and severely restricted individual rights) that the worst period of repression began. During the last years of the 1960s and most of the 1970s, rights abuses intensified and included all the worst forms characteristic of the southern cone: torture, forced disappearance, political killings and imprisonment, as well as other serious, though less violent abuses (censorship, restriction of freedom of association and so on).

By the late 1970s, the worst abuses had subsided significantly: the military had eliminated — by the most brutal means — the vast majority of groups advocating or practising armed opposition. A gradual opening began in this period, leading to the 1979 Amnesty Law pardoning those responsible for rights violations and permitting the return of political exiles. During the late 1970s, defence of human rights was widely thought of as related to the pro-amnesty campaign. The political opening continued into the early 1980s, leading to the registration of political parties and election of state governors in 1982. Relatively free elections at state level were being held even while the military controlled the federal government, at least until 1985 (year of the first indirect presidential election) and arguably until 1989 (when the first direct presidential election took place). What is critical from the perspective of human rights defenders is that, in the principal 1982 campaigns in Rio de Janeiro and São Paulo states, the successful opposition candidates emphasised human rights in their campaigns and government programmes. This would come to shape the way in which Brazilian society has understood human rights.

### History of the human rights community

Human rights defence in the post authoritarian period began shortly after the coup that deposed civilian president João Goulart. Groups that supported the Goulart government (traditional labour groups from the Getúlio Vargas era, student groups, academics) organised a series of protests to demand a return of democratic rule.<sup>93</sup> In 1968, over 100,000 protesters converged on

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<sup>93</sup> Daniel Aarão Reis Filho, *Ditadura militar, esquerdas e sociedade*, Rio de Janeiro: Jorge Zahar, 2000.

downtown Rio de Janeiro in a protest known as the *Passeata dos Cem Mil*. The military government responded to this protest by declaring the infamous Institutional Act Number 5, cited above, which suspended all political parties and created a national security state. The years between 1968 and 1974 were marked by torture, and disappearances of political prisoners.

The most repressive years of military government ended in 1974. The period between 1975 and 1979 was a time of great social mobilisation in support of human rights. The Amnesty Movement called on the government to grant amnesty to political prisoners. New groups began to emerge. They included a new trade union structure, women's groups, organisations representing homosexuals, networks addressing issues of race and many others. That these movements flourished was largely due to the institutional support of the Catholic Church.<sup>94</sup>

By 1979, a *détente* of sort was under way. On January 1 of that year, Institutional Act Number 5 was suspended and the Amnesty Law, which pardoned political prisoners and allowed exiles to return to the country, went into effect.<sup>95</sup> By the early 1980s, the dictatorship was nearing its end. The states held gubernatorial elections in 1982, and opposition party candidates from Rio de Janeiro (Leonel Brizola) and São Paulo (André Franco Montoro) ran on pro-human rights platforms.<sup>96</sup>

During his campaign for governor, Montoro emphasised a return to the rule of law. Brazilian scholar Teresa Caldeira writes that "the opposition to the military was expressed by the slogan, *retorno ao estado de direito* (literally 'return to the state of right or law', which translates more appropriately as 'return to the rule of law'). This meant not only a return to constitutional rule and democratic elections, but also the control of all sorts of abuses of power".<sup>97</sup> Part of Montoro's platform included reforming the Internal Affairs Division of the Civil Police (Corregedoria da Polícia Civil) to control violence and corruption within the police force. As a testament to his respect for human rights, Montoro initially chose as the head of his public security team, José Carlos Dias, a well-known lawyer for political prisoners during the dictatorship and ex-president of the Justice and Peace Commission of the Archdiocese of São Paulo, one of the most active groups that defended

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<sup>94</sup> Scott Mainwaring, "Grass-roots Catholic Groups and Politics in Brazil," in Scott Mainwaring, and Alexandre Wilde, eds., *The Progressive Church in Latin America*, Notre Dame: University of Notre Dame Press, 1989, pp. 184-185.

<sup>95</sup> Reis Filho, *Ditadura militar, esquerdas e sociedade*, p. 77.

<sup>96</sup> During the dictatorship, the military only allowed two parties: the military's party ARENA and MDB, the Brazilian Democratic Movement, (Movimento Democrático Brasileiro).

<sup>97</sup> Caldeira, *City of Walls*, p. 165.

human rights during the dictatorship. Given the context of rising crime, human rights defence was just as difficult after the dictatorship as it had been before.<sup>98</sup>

Perhaps the most controversial of Montoro's public security policies came in 1983, when he took Rota, a highly repressive special division of the military police force, off the streets.<sup>99</sup> Rights groups had denounced Rota's role in a number of extra-judicial killings and had identified it as the most violent division of an exceptionally violent police force. During his campaign, Montoro announced that he intended to dissolve Rota, sparking a wave of protests. In 1982, a poll taken by *Folha de S. Paulo*, one of São Paulo's major daily newspapers, indicated that eighty-five per cent opposed disbanding Rota. The Montoro administration decided against eliminating the Rota because of the widespread public support the group enjoyed. Instead, its mandate was changed.<sup>100</sup>

As the military loosened its grip on Brazilian society, the Church-based activists who had fought against the most extreme abuses and then pressed for amnesty in the late 1970s focused on human rights defence more broadly. In 1982, activists from primarily Church-based grassroots groups all over Brazil formed the National Human Rights Movement (Movimento Nacional de Direitos Humanos, MNDH). A reference for many years in the field, the MNDH has maintained its fundamentally grassroots nature. Closer to the other end of the organisational continuum one finds the Centre for the Study of Violence (Núcleo de Estudos da Violência, NEV), a group composed of leading intellectuals affiliated with the University of São Paulo. The NEV has worked jointly with the prestigious Teotônio Vilela Commission (Comissão Teotônio Vilela, CTV), its affiliated activist branch. During the early transitional years, the NEV and the CTV played a vital role as the most prominent critics of abuses committed by security forces. In the mid-1990s the NEV adopted a policy of close engagement with the federal government. In this role, the NEV drafted state reports to United Nations oversight committees and oversaw the organisation of the drafting of two national human rights action plans in 1995 and 2002, as discussed below.

The Office for Legal Assistance to Grassroots Organisations (Gabinete de Assessoria Jurídica as Organizações Populares, GAJOP) followed a similar trajectory. Based in Recife, the largest city in Brazil's impoverished north-

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<sup>98</sup> Ibid., p. 166.

<sup>99</sup> Rota, (*Rondas Ostensivas Tobias de Aguiar*) was organised in 1969 during the military regime to fight terrorist attacks and bank robberies. Rota was responsible for most of the killings in São Paulo by the police force during this period (Caldeira, *City of Walls*, p. 170).

<sup>100</sup> Ibid.

east, GAJOP primarily focused on denouncing abuses in domestic fora. It developed an innovative witness protection programme in the state of Pernambuco in 1995, and since then, it has worked closely with federal authorities to develop such witness protection programmes. At the same time, through a programme developed in 1999, GAJOP started working on human rights defence at the international level.

The influence of the Church remains critical in rights defence in Brazil. It works primarily through many pastoral commissions, which address the needs of a variety of constituencies throughout the country. The most important in terms of human rights are the Pastoral Land Commission (Comissão Pastoral da Terra, CPT), the Prison Ministries (Pastoral Carcerária) and the Indigenous Missionary Council (Conselho Indigenista Missionário, CIMI).

In the past decade, however, a number of groups with more specific foci and approaches have emerged. One has been Viva Rio, a consortium of civil society and businessmen seeking to respond to violence in Rio de Janeiro. It was created in 1993, in response to two high-profile killings by police (in July 1993, a massacre of eight sleeping street children in the Candelária Plaza, and, a month later, a massacre of twenty-one residents in the Vigário Geral community). Now the largest NGO in Brazil, Viva Rio oversees dozens of projects in poor, urban communities in Rio de Janeiro. Viva Rio has been engaged in community policing efforts as well as alternative dispute resolution. Its approach to the government has been largely collaborative: the group seeks to fill the void created by the inefficiency of the state rather than work exclusively from outside to press authorities to shoulder their responsibilities more effectively.

Few Brazilian NGOs have focused on the use of international mechanisms and media as means of denouncing rights abuse. Several international organisations — Human Rights Watch, Amnesty International and the Centre for Justice and International Law (CEJIL)— have been actively working on Brazil, though with headquarters abroad. A prominent, though relatively new Brazilian organisation dedicated to the use of international pressure for rights defence is the Centro de Justiça Global (Global Justice Centre).

### **Rising crime**

There can be little doubt that crime has increased in Brazil since the early 1980s. Academic studies based on official government statistics indicate that, within the last twenty years, there has been a considerable increase in crime in Brazilian cities accompanied by reduced public tolerance for human

rights.<sup>101</sup> The sharpest increase came during 1983 and 1984 (a year after the first direct state elections since the 1964 coup) when property crime rates increased by 26.78 per cent and 33.34 per cent respectively and then stabilised at a new plateau.<sup>102</sup> In Rio de Janeiro, a small decrease in crime over the period 1979-82 was followed by a sharp rise after 1984.<sup>103</sup> Other studies indicate that homicide in Rio de Janeiro increased from 23 deaths per 100,000 residents in 1983 to 63.03 deaths per 100,000 inhabitants in 1990.<sup>104</sup>

The causes of crime are complex, and there is a growing consensus that crime has become increasingly organised and professional. Anthropologist Teresa Caldeira writes, "we are seeing the increase of organised and armed crime, not a wave of offences committed by inexperienced individuals who turn to crime in a crisis".<sup>105</sup> While crime is widely believed to affect virtually all social classes (although in different ways, as discussed below), police activity to suppress it targets poorer, urban residents almost exclusively.

In the past two decades, several detailed studies have mapped patterns of criminality to assess which neighbourhoods are most affected by different types of crime. In Rio de Janeiro and São Paulo, the two urban areas on which the most reliable data have been produced, the likelihood that a person will be the victim of a homicide may vary by as much as twenty times, depending on her neighbourhood. Nonetheless, homicide rates even in upscale neighbourhoods are high in absolute terms (and much higher than rates for corresponding neighbourhoods in first world cities). It has largely been the dissatisfaction of middle and upper class Brazilians with their security services that has driven public policy in this area. As noted above, police efforts to repress crime almost always focus on marginalised urban areas.

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<sup>101</sup> Caldeira, *City of Walls*; Edmundo Campos Coelho, "A Criminalidade Urbana Violenta", *Série Estudos* 60, Rio de Janeiro: Instituto Universitário de Pesquisas do Rio de Janeiro, 1987; Antônio Luiz Paixão, "Crimes e Criminosos em Belo Horizonte, 1932-1978", in Paulo Sérgio Pinheiro, ed., *Crime, Violência e Poder*, São Paulo: Editoria Brasiliense, 1983.

<sup>102</sup> *Ibid.*

<sup>103</sup> Coelho, "A Criminalidade Urbana Violenta".

<sup>104</sup> Cited in James Cavallaro, "Human Rights and the Proliferation of Crime: The Perception of Human Rights and Its Effects on Rights Defence in Brazil", presented at ICHRP, Focus Meeting on Crime, Public Order and Human Rights, Geneva, 2001, p. 4.

<sup>105</sup> Caldeira, *City of Walls*, p. 135.

## Crime, public opinion and the role of rights groups

In August 2002, Wladimir Reale, President of the Rio de Janeiro Police Chiefs' Association (Associação dos Delegados do Rio de Janeiro) appeared on *Fantástico*, a popular Sunday night television programme viewed by a large cross section of Brazilian society. Reale was interviewed alongside Ignacio Cano, a sociologist from the State University of Rio de Janeiro (Universidade Estadual do Rio de Janeiro). The two proposed opposing strategies for dealing with crime. According to Reale, "the police must exercise their legally conferred right to kill", to which Cano retorted, "such a right does not exist".<sup>106</sup>

While Reale defended a no-holds-barred approach and confrontation with criminal suspects, Cano stressed that police should improve their intelligence gathering and investigative skills. He criticised police corruption and their own involvement in crime. At the end of the interviews, *Fantástico* conducted a telephone poll asking viewers to indicate which of the two views on crime they favoured. Approximately seventy-five per cent voted for the views defended by the police officer. While the poll was not necessarily scientific, it is telling because *Fantástico's* viewers represent a large cross-section of Brazilian society, including the poor and the middle class.

The case of journalist Tim Lopes, who was murdered while reporting on abuses in a Rio de Janeiro *favela*, is similarly revealing. In August 2002, two months after his death, two of the four members of the group accused of his murder were gunned down in alleged confrontations with the police.<sup>107</sup> A third suspect allegedly committed suicide while in police custody.<sup>108</sup> Despite suspicion that these were instances of summary execution, no human rights group had investigated these deaths openly by late 2003.

In October 1994 and again in November 1995, police officers in Rio de Janeiro entered the Nova Brasília *favela* (an area known to be dominated by drug traffickers) and summarily executed twenty-seven residents. According to the police, these residents were killed in the crossfire between police and drug traffickers. No local rights groups came forward to contest the official story. Two international human rights organisations, Human Rights Watch and CEJIL investigated one of the incidents and filed a petition with the Inter-American Commission on Human Rights. Although the practice of these international NGOs was to file joint petitions with local, Brazilian human rights groups, in this case no organisation expressed interest in associating itself with the initial filing.

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<sup>106</sup> Rede Globo, "Criminalidade Polêmica", <http://redeglobo.globo.com/>.

<sup>107</sup> "Crescem mortos em confronto com polícia", *Folha de S. Paulo*, August 17, 2002.

<sup>108</sup> Marcelo Beraba, "A Morte do Capeta", *Folha de S. Paulo*, August 16, 2002.

Crime proliferation and public support for harsh order laws, undoubtedly complicate the work of national human rights organisations in Brazil. The relationship between human rights organisations and government varies at federal, state and municipal level. Between 1980 and 2000, human rights groups made significant progress at the federal level. At state level, by contrast, they continued to face many challenges.

The creation in 1995 of a human rights commission, within the Federal Congress, was a clear victory for human rights defenders. The overwhelming majority of state legislatures have established human rights commissions, and these have facilitated the passing of new laws guaranteeing human rights, and have denounced human rights abuses alongside civil society groups. They have also helped mobilise civil society and bring human rights groups together. For the past eight years, the Human Rights Commission of the National Chamber of Deputies (the Federal Congress' lower body) has hosted the Annual Conference for Human Rights, the most important gathering of NGOs in Brazil.

Human rights groups have also made important advances at state level. In some states, human rights lobby groups pressured state legislatures to create ombudsmen offices to oversee police departments. However, many police ombudsmen do not have the authority or independence to conduct thorough investigations into police abuse.

Finally, public funds affect the relationship between human rights groups and the government. When international funding declines, many human rights groups seek funding within Brazil. Yet, even if not openly, the government attaches political conditions to its funding of NGOs, thus restricting the scope of human rights work. As a result, groups that receive government funding are more reluctant to criticise official policies.





## VI. NIGERIA

### Historical background

From 1960, when Nigeria gained independence, until 1999, military regimes ruled the country for all but eleven years. The military remained in power for ten years before the most recent transition to democracy. Despite the country's rich natural resources, military rule failed to bring prosperity. Massive corruption schemes (Sani Abacha is believed to have embezzled as much as US\$6 billion during his reign) left Nigeria as poor as less endowed countries in the region.

On May 29, 1999, Olusegun Obasanjo was sworn in as Nigeria's first democratically elected president since 1983. His assumption of power followed a period of transition leading to elections and the drafting of a new constitution. The military government created a twenty-five-member Constitution Debate Collating Committee in November 1998, headed by Justice Niki Tobi. The 1999 Constitution was promulgated by the Abubakar government a few days before the May 29 presidential inauguration.

### History of the human rights community

Civil society groups in Nigeria played an important role in ending military rule and making human rights a prominent issue. Yet the movement has a recent history. According to Etannibi Alemika, a professor of criminology of the University of Jos, until 1989, most human rights defenders had worked as individuals focused on litigation.

The beginning of institutional human rights work in the country can be traced back to the military government of General Ibrahim Badamasi Babangida, which came to power in a palace coup in August 1985. In his maiden address, Babangida declared that his government would "uphold fundamental human rights".<sup>109</sup> Though previous regimes had pledged to uphold the fundamental rights principles set out in Nigeria's Constitution,<sup>110</sup> his was the first administration that "made the observation of human rights a platform on which to stake the legitimacy of a military government".<sup>111</sup>

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<sup>109</sup> Ibrahim Babangida, *Selected Speeches of IBB*, Lagos: Precision Press, 1992.

<sup>110</sup> As a matter of fact, no military government lasts long without promising to respect human rights and organising a transition programme that would culminate in handing power over to an elected civilian government.

<sup>111</sup> C. Gahia, *Human Rights in Retreat: A Report on the Human Rights Violations of the Military Regime of General Ibrahim Babangida*, Lagos: Civil Liberties Organisation, 1993.

Babangida pledged that criticisms of his government “will be given necessary attention, and where necessary, changes made in accordance with what is expected of us”.<sup>112</sup>

The government squandered the public goodwill that these commitments generated. Within a year of assuming office, Babangida was leading a full-blown military dictatorship employing wide arbitrary powers to circumscribe virtually every civil right. Human rights violations multiplied. In response, in October 1987, a group of lawyers and journalists founded the Civil Liberties Organisation (CLO). The group gathered documentation, litigated cases, and exposed the conditions in prisons and police jails. CLO’s successes laid the foundation for Nigeria’s human rights movement.

In the last fifteen years, over two hundred human rights organisations have been established across the country. Initially, most focused on police abuse, prison conditions, torture, detention without trial, extra-judicial killings and litigation. However, as the military government of General Babangida became more vicious and more unpopular, human rights groups began to agitate for an end to military rule.

This second phase of the work of human rights groups in Nigeria began in 1991 with the formation of the Campaign for Democracy (CD), a coalition of human rights groups, specifically established to campaign against military rule and in favour of democracy. The government unleashed a reign of terror against dissent, whether imagined or real, and detained many human rights and political activists, including student and labour leaders. This repression compelled human rights organisations to focus more on victims of political detainees and victims of state crimes. As Chima Ubani of the Civil Liberties Organisation argues,

in the time of IBB (General Ibrahim Babangida) and Abacha (General Sani Abacha), the predominant pattern of crime was state-sponsored and the victims were opposition politicians, human rights advocates and people you could categorise as the opposition, i.e., political opponents. Those were the high profile victims of state-sponsored crimes at the time. So human rights groups had to pay more attention to their cases than that of ordinary criminal suspects.

Babangida’s departure in 1993, after he annulled the June 1992 presidential elections — regarded as the freest elections in Nigeria’s history<sup>113</sup> — did not ease the political situation. In terms of hostility to dissent and repression of human rights activists and political opposition, the regime of General Sani

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<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

Abacha, which came into power on November 17, 1993, was worse than its predecessor.

The Abacha regime dismantled all the structures of transition to civil rule put in place by the preceding government, and was arguably the most brutal regime in Nigeria's history. Numerous human rights activists and members of the political opposition were detained, driven underground or forced into exile. Ending military rule came to be seen as the first task of civil society, because it was argued that otherwise any discussion of respect for human rights would be superficial.

This perception guided the work of human rights groups during General Abacha's regime. Even though the regime unfolded its own transition to civil rule programmes in 1995, civil society groups did not have confidence in the process and the government did little to change that perception as the five registered political parties adopted General Sani Abacha as their sole candidate. Only his death in June 1998, under mysterious circumstances, saved Nigeria from his impending transformation into a civilian dictator.

The history forms the background for civil society response to the transition programme of the succeeding government of General Abdulsalam Abubakar in 1998, which culminated in the inauguration of an elected government in May 1999. Needless to say, human rights groups remained sceptical of the sincerity or ability of the military to act as midwife to the birth of democracy in Nigeria. A major divide formed within mainstream human rights organisations, between those who took a hardline position and refused to work within the framework of the transition programme, and those who preferred to assist and encourage the military to hand over power following elections. The first group organised under Joint Action of Nigeria (JACON), while the second group formed the Transition Monitoring Group (TMG).

### **Rising crime**

All the respondents interviewed for this study were of the view that crime, especially violent crime, has increased, compared to periods of military rule. According to professor Alemika,

in terms of the level of criminality...one can say the incidents have increased. It has also become violent....In my perception, armed robbery appeared to have been generalised as a form of crime. So, when people are talking about crime, they are talking about armed robbery and assassination.<sup>114</sup>

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<sup>114</sup> Chukwuma, "Police Transformation in Nigeria", p. 15.

Corroborating the views of Alemika, Hussain Abdu of the Centre for Human Rights and Investigative Journalism, based in Kaduna, argues that

during the period of military rule, soldiers were all over the place, in fact by 8:00 p.m. you could hardly see people on the streets of Abuja because they believe that Al Mustapha (the chief security officer of the late military head of state, General Abacha) moved up and down with his boys picking up people and throwing them into detention. So many people were disappearing. So, the level of crime was not as high then as it is now *because there is democracy*. (Emphasis added.)

Similarly, Chima Ubani of the CLO stated:

Although no one has conducted any systematic research to support scientific conclusion on rise in crime, the general impression one gets is that there has been an upswing in the rate of crime since the advent of civil rule. An indication of this will be the frequency of media reports of major cases of criminal activities. Especially those of violent nature, i.e., those involving loss of life, and so many cases of daredevil armed robbery, have been reported within this period of civil rule. From such indices, one has been able to get the clear feeling that more criminal activities have been taking place since the advent of this dispensation.

Even though police statistics on crime were unavailable, studies on fear of crime and how Nigerian society has responded to it confirm that violent crime is perceived to be rising. In a study entitled *Architecture of Fear*, which looks at building designs and construction strategies in residential neighbourhoods in Nigeria, Tunde Agbola argues that

looking around Nigerian cities, one will notice the general trend towards the construction of high walls around residential units, which have become so high that they obstruct the visual beauty of such buildings, sometimes concealing them altogether; erection of houses which are intricately shielded with burglary proofing; construction of lighting facilities at every corner of the residential environment; and a host of other protective devices, all of which give credence to the assertion that city architecture in Nigeria today is governed by the fear of incursion by robbers.<sup>115</sup>

Social behaviour has changed as a result. In major cities, nightlife has collapsed, along with of a host of businesses that depend on it. A few years ago, in Lagos, for instance, almost every street corner had a night club or cafés opened for business in the evenings; but today many have closed down for lack of patronage, because of robbery attacks or because the

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<sup>115</sup> Tunde Agbola, *Architecture of Fear*, Ibadan: African Book Publishers, 1997, p. 5.

police has shut them down following complaints by residents that they provided hideouts for criminal elements.

Interviewees also agreed that most of those involved in crime today are young and an increasing number are educated. According to Festus Okoye of the *Human Rights Monitor*,

There is a police station they call *Gidan Kaya* (in Kaduna). Why they call it *Gidan Kaya* is because most of the people they arrest there are youths who are involved in criminal activities...the only change I see is that previously, most people who committed these crimes were illiterate. But now if you look at the statistics on the ground you find out that most of these robbery cases and...violent crimes are [committed by] university graduates.

Corroborating this view, Jiti Ogunye, a human right lawyer and former General Secretary of the Committee for the Defence of Human Rights, based in Lagos, remarks:

Looking at armed robbery, many students of tertiary institutions have been arrested among robbers...when students of tertiary institutions who are supposed to be learning also get involved in this kind of act, the situation is much more serious.

### **State response to rising crime**

In his inaugural speech, President Obasanjo addressed the major concerns the Nigerian public had with the previous military government and promised that his government would not conduct “business as usual”. He proceeded to establish the Oputa Commission, the Kolade Panel for review of contracts, and trials of key functionaries of the Abacha government accused of human rights abuse, among other positive acts.<sup>116</sup> At the law enforcement level, all military-led anti-crime security task forces were dismantled and replaced by the regular police. The government promised to reform the police and to provide them with better logistical support, and sought training assistance from the governments of the United States and the United Kingdom.

However, the euphoria soon began to fade. As violent crime and civil disorder continued to rise, the government was increasingly criticised for failing to provide safety and security. In the Niger Delta, restive youths fighting environmental despoliation and decades of neglect had perfected abduction of oil company workers. In the north and the east, religious violence in

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<sup>116</sup> Chukwuma, “Police Transformation in Nigeria”.

Kaduna and counter reprisals in Aba and Umuahia left hundreds, if not thousands, dead.<sup>117</sup>

Federal and state authorities have focused efforts on recruiting police, deploying soldiers to quell civil unrests, importing sophisticated guns for the security agencies and reintroducing ad hoc security taskforces, such as the Rapid Response Squad and Operation Fire-for-Fire<sup>118</sup> in a bid to arrest rise in crime and armed banditry. However, indications are that, as more weapons and police personnel are deployed, crime and sectarian violence soar. The best that has been achieved appears to be crime dispersal from one state or region to another.

Draconian laws such as the legalisation of vigilante activity in eastern Nigeria and the extension of Sharia (Islamic law) to criminal matters in some states in northern Nigeria, reflect the state's panicky response to crime. In Anambra State, for instance, a Vigilant Service Law was enacted in 2000 to "provide for the registration of vigilante groups in communities and for related purposes". The relevant section of the Act reads:

The groups shall have powers to:

- (a) arrest any person who commits a crime before them;
- (b) patrol the streets or villages at any time of the day and especially at night;
- (c) maintain security barricades at night in appropriate places;
- (d) question and hand over to the police, any person of questionable character or of a suspicious movement; and
- (e) enter and search any compound into which a questionable person runs while being pursued.

As we will see in the discussion of vigilante groups below, these wide powers have been used to commit atrocities with full support from state governments.<sup>119</sup> Similarly, Sharia laws in some northern states give Sharia judges powers of life and death over matters that would constitute minor offences in other parts of the country.

### **Crime, public opinion and the role of rights groups**

Public disenchantment with the criminal justice system and particularly with police failure to reduce crime has led people to increase their private security

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<sup>117</sup> Ibid.

<sup>118</sup> Operation Fire-for-Fire is part of an eight-point strategy launched by the chief of police in Nigeria to crack down on violent crime.

<sup>119</sup> C. Tertsakian, *The Bakassi Boys: The Legitimisation of Murder and Torture*, New York: Human Rights Watch and CLEEN, 2002.

and encouraged the formation of bodies that challenge the monopoly of violence by the state. For example, people

- construct high-walled fences and gated streets, developing what has been described as an ‘architecture of fear’;
- employ private security firms; and
- tolerate the emergence of vigilante organisations.

Almost every house in middle and upper class residential neighbourhoods in most cities of Nigeria is fenced round with high concrete walls, and shielded with burglary proofing, and numerous security devices. Many streets are gated and locked at night, usually between 10:00 p.m. and 5:00 a.m. These measures according to Agbola, “give credence to the assertion that city architecture in Nigeria today is governed by the fear of incursion by robbers”.<sup>120</sup>

Businesses and wealthy families routinely employ private security companies. Conservative estimates place the ratio of private guards to the police at three to one, although the figure might be as high as five to one, if night-watchmen popularly called *maiguards* are included.<sup>121</sup>

The most troubling community response to loss of confidence in the police is, however, the emergence of violent vigilante groups in certain parts of the country, with the open or tacit approval of some state governments. After the transition to democracy in 1999 and the discontinuation of military-led anti-crime outfits, many state governments became disenchanted with police response to rising crime in their states, but could not invite the military back without the approval of the federal government. Instead, many openly or surreptitiously encouraged the formation of militant vigilante groups.

Of all the vigilante groups that operate in Nigeria, two are especially notorious. These are the Bakassi Boys, active in the east, and the Odua People’s Congress (OPC), which dominates the south-western part of the country. The Bakassi boys, who straddle four eastern states, trace their history to Aba, a commercial city in the region that was the scene of an upsurge in violent crime in 1997-1999. According to eye witness accounts, robbery and extortion by armed gangs were a daily routine and began to affect more than just the population of Aba, as traders from all over the country, who used to go to Aba to transact business, started staying away.<sup>122</sup>

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<sup>120</sup> Agbola, *Architecture of Fear*, p. 5.

<sup>121</sup> Chukwuma, “Police Transformation in Nigeria”.

<sup>122</sup> Tertsakian, *The Bakassi Boys*.

The Bakassi Boys were said to have routed the suspected criminals and gangs that held the city to ransom. Their methods included amputation, lynching, roasting and torturing. Soon after, news of their 'success' and mythical invincibility spread to other cities in the region, including Umuahia, Owerri and Onitsha. It did not take long for the residents of these cities to invite them.<sup>123</sup> Subsequently, three eastern states — Imo, Anambra and Ebonyi — have passed legislation authorising the Bakassi Boys activities. The Anambra Vigilance Services Law of 2000, quoted earlier, illustrates the powers of intrusion into people's privacy and restraints on their liberty, that the law allows.

According to Kayode Ogundamisi, its National Secretary, the OPC came into existence as a platform to champion Yoruba interests, cultural values, and heritage, and to champion the campaign for an autonomous south-western region or possibly an independent republic.<sup>124</sup> According to Ogundamisi:

The emergence of the OPC became an historical necessity considering the many years of deprivation and outright restriction of political power to regions outside the Southwestern part of Nigeria. The annulment of the June 12, 1993 presidential election alleged to have been won by Chief MKO Abiola was another factor that gave impetus to the formulation of the OPC. The OPC therefore came into existence on the twenty-fourth of August 1994 with an immediate agenda of sending the military out of political power by all means necessary and the convocation of a sovereign national conference that would lead to the restructuring of Nigeria.

On why the OPC ventured into crime fighting, Ogundamisi attributed it to the failure of the police to discharge their duties. In his words:

The Nigerian police can be described as a corrupt, ineffective and weak organisation. This is borne out of the fact that over the years the police have failed to perform their constitutional and legitimate role of protecting the lives, property of citizens, prevent crimes and prosecute offenders. It is also noteworthy to say that the police force in Nigeria lack adequate manpower, fire power, motivation and will to confront the menace of increasing crime rate in a society with an astronomical increase in unemployment and poverty.<sup>125</sup>

In the words of Chima Ubani of the CLO, Lagos, "these vigilantes at first, were popularly seen as civil intervention to check criminal activities, but over time, these outfits degenerated and they began to commit so many atrocities

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<sup>123</sup> Ibid.

<sup>124</sup> Interview, staff, Centre for Law Enforcement Education, Lagos, August 2002.

<sup>125</sup> Anthony Opara, "Organised Crime and Democracy in Nigeria", *Law Enforcement Review*, April-June 2000, Lagos: CLEEN, pp. 22-23.



against the populace, embarking on wholesale and summary execution of people suspected of one crime or another, in essence usurping the functions of not only the police, but also the judiciary in one breath — doing away with a number of innocent people on mere suspicion, thus returning us to a state of jungle justice or mob justice which were also some of the things we campaigned against during military rule”.

He continued: “Ironically, with the advent of civil rule, we now saw an upsurge in jungle justice where groups like the Bakassi boys in the east, the OPC in the west, and the community specific ones like the Offa in Kwara, who now took it upon themselves in the name of law enforcement to begin to visit violence on fellow citizens. We then saw that while the focus had essentially been on the police in terms of human rights violations, in the context of law enforcement, in the last three years, we have also been forced to focus on outfits like vigilantes as primary violators of human rights in the self assigned duty of law enforcement.”

How have human rights groups responded to the upsurge in crime and violence that followed the election of a civilian government? The first issue that arises from the views of respondents interviewed for this study is that the rise in crime and violence has not had a significant effect on the direction of their work. Secondly, they are more concerned with the emergence of non-state actors, such as militia groups, than by the behaviour of official institutions, such as the police.

Participants at a seminar on crime and policing in transitional societies, organised by the South African Institute of International Affairs (SAIIA) in 2000, discussed the relationship between political transition and criminality:

Even though [the transition to democracy] in Eastern Europe, Latin America and some parts of Africa [has] renewed hope among the peoples of the regions, it has also brought in its wake a surge in crime and disorder before it has the opportunity to germinate and bear fruits.<sup>126</sup>

When asked whether increase in crime had in any way influenced the direction of his organisation, Segun Jegede, the director of the Lagos-based Committee for the Defence of Human Rights (CDHR) said: “Largely no. Apart from the general requirement of being security conscious, which every residence of Lagos has come to imbibe, our work has not been affected by concerns about crime.”

This view was shared by many of the respondents. According to Mallam Yau Zakari Ya’u, “the change is not direct”. Similarly, Abdul Oroh of the CLO argues:

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<sup>126</sup> Chukwuma, “Police Transformation in Nigeria”, p. 15.

We believe it (the change) is basically in the context of the transition because we were never involved in crime fighting or prevention but we believe that a properly trained police force will be better to deal with crime.

Corroborating Oroh, Festus Okoye noted:

We do not really go out of our way to look for individual cases of ordinary criminal suspects to defend unless people bring them to us. Our main area of focus under the new dispensation is to work for the reform of the criminal justice system, believing that if the justice system is transformed it would adequately deliver justice to both the victim and the suspects. This was a conscious decision we took immediately [after] the new government came [to power]. It was not informed by rise in crime.

Several factors might explain why human rights groups in Nigeria appear not to have responded in any significant way to the challenges that the increase in crime waves have thrown up to their work. Firstly, most of the groups do not routinely defend ordinary criminal suspects, which might have led them on a collision course with the public's tolerance for militarised approaches to crime control. None of the human rights leaders interviewed for this study included defence of the due process safeguards of criminal suspects in their areas of focus, though they condemned, usually through statements to the media, the brutal methods employed by both the security forces and vigilantes to deal with suspects. Their reluctance to take up cases of ordinary criminal suspects may be informed by the groups' history of concentrating on cases of victims of political crime under the military. Since victimisation by the state has not totally disappeared, rights groups have not felt the need to fundamentally alter the focus of their work.

Secondly, while rights groups criticise the failure of transitional authorities to implement sweeping, democratic changes, these groups themselves have failed, for the most part, to rethink their mission in the transitional state.

Thirdly, and perhaps most importantly, funding for activities that criticise the government's human rights record have become scarce since the inauguration of the government. Many donor agencies (especially government sources) that fund human rights work now focus on partnerships between civil society groups and government agencies. Their objective is to assist government agencies to take over the delivery of services effectively. The effect, however, has been to reduce the resources available for watchdog activities, including the treatment of criminal suspects and protection of due process safeguards.

As a result, many of the old human rights groups, which fought military rule, such as the CLO and the Constitutional Rights Project (CRP), are currently

struggling to continue the advocacy work they did under previous regimes, while many new groups that focus on partnership work with government agencies are expanding. These elements help to account for the relatively low influence of crime on the work of Nigerian human rights groups.

Undoubtedly, however, the greatest threat facing human rights work in some parts of the country is militant vigilantism. Though human rights groups recognise the dangers posed by the activities of vigilante groups to Nigeria's nascent democratic experiment and condemn them occasionally, there is no consensus on a strategy to deal with the situation. Opinion is divided between those who call for their outright disbandment, and for trial of their leaders, on the one hand, and those who argue that their activities should be regulated and closely supervised by the national police, on the other.

While informal groups that act as judge, jury and executioner threaten the development of democracy, the police alone (at least in Nigeria) cannot adequately provide safety and security services without the involvement of community groups.

Furthermore, it is doubtful whether the Nigeria Police Force as presently constituted and organised can fully enforce the disbandment of every group that is identified as a vigilante formation in the thirty-six states of Nigeria, or bring their operatives to trial. Moreover, if the police were able to disband all of them, this would be tantamount to telling inner city communities and rural areas that are rarely covered by police patrols that they have no right to organise and protect themselves against criminal attack.

Human rights organisations need therefore to analyse the vigilante phenomenon critically and handle the issues that arise carefully. Their aim should be to protect the due process safeguards of criminal suspects and, at the same time, recognise the rights of the communities to organise and protect themselves against crime, when the police cannot do so.



## **VII. SOUTH AFRICA**

### **Historical background**

South Africa became a united, functionally sovereign state by virtue of the 1910 Act of Union. Shortly after South Africa formally gained its independence in 1934, the white minority began to create special designated areas, or homelands, for non-whites to live in. On May 26, 1948, the conservative, Afrikaner-led National Party won parliamentary elections and introduced its policy of apartheid, or apartness. For the next four decades, this policy of racial superiority and segregation would dominate South African politics and life.

Beginning with a 1946 General Assembly resolution on the unfair treatment afforded to South Africans of Indian descent, the United Nations took an increasingly active role in condemning the policy of apartheid. The issue transcended South Africa's borders and became one of the principal human rights causes of the 1970s, 1980s and early 1990s. Still, the fundamental impetus for reform, which culminated in the election of Nelson Mandela to the presidency in 1994, came from within the country and was led by domestic human rights and democracy advocates.

The transition from a minority regime characterised by a policy of racial superiority to a democratic state was ushered in by the 1993 Constitution and historic elections in April 1994. South Africa put in place a system of democratic governance based on universal suffrage and underpinned by a Bill of Rights. This system is widely regarded as one of the most comprehensive and visionary charters of rights.

The reform process was onerous. Former laws and institutions were designed to uphold and maintain the apartheid state, and a sweeping legal and institutional transformation was required to ensure that they would support and advance the values enshrined in the South African Constitution, namely equality, human dignity and the advancement of human rights.

It was also necessary to uphold the criminal justice system. Millions of South Africans and many of those in government and civil society had first hand experience of the legal injustice under apartheid. Detention without trial, confessions extracted violently, a judiciary obsessed with advancing the interests of the apartheid state and a penal system that brutalised and offered no prospect of rehabilitation were some of the characteristics of that system.

A dynamic and industrious Parliament, a Constitutional Court that was demonstrably independent, a host of Chapter Nine Institutions<sup>127</sup> and a vibrant civil society sector ensured the promulgation of new laws and the amendment of existing ones. A new Correctional Services Act<sup>128</sup> sought to ensure that the penal system and the conditions of detention were consistent with international standards. Similarly, various amendments to the Criminal Procedure Act relevant to arrest, and use of force were effected. In striking down former laws, including the death penalty,<sup>129</sup> corporal punishment,<sup>130</sup> and various presumptions that undermined the presumption of innocence,<sup>131</sup> the Constitutional Court gave notice that it would exercise vigilance in ensuring that state institutions complied with the letter and the spirit of the Constitution.

The apartheid state was relatively efficient at guaranteeing the security of white people. While it maintained a presence in many black areas, its objectives and concerns were primarily white security. Its principal strategies for promoting security were not based on established procedures of the criminal justice system — victim reports, police investigations, prosecution, sentencing and imprisonment — but on repressive regulation (pass laws, zoning, racial profiling and a range of other exclusion strategies designed to separate poor black people from rich white people). South Africa's policing institutions were designed, organised and equipped over many decades to implement these policies, and, as a result, crime in white areas was kept low.

With the end of apartheid, the police too were reformed.<sup>132</sup> Racial profiling, pass laws and so on were dismantled, and the new government set about transforming the police into a criminal justice agency. Conventional crime fighting tactics were to be adopted. Teams were established to review

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<sup>127</sup> See the Constitution of the Republic of South Africa, 1996, Act 108 of 1996, Chapter Nine, p. 99. Chapter Nine institutions have been established to support and strengthen the new democratic order.

<sup>128</sup> Correctional Services Act, 1998 (Act no 111 of 1998).

<sup>129</sup> See *S. vs. Makwanyane*, 1995(6), BCLR 665 (CC), 1995(2), FACR, (CC), 1995(3), SA, 391 (CC). The court declared the death penalty to be in conflict with various provisions of the Bill of Rights, including the right to life, and equality, and the prohibition of cruel, inhuman and degrading treatment.

<sup>130</sup> See *S. vs. Williams*, 2000(2), SACR, 396, (C). The court found that the use of corporal punishment and a sentencing option was unconstitutional, in that it violated the guarantee that prohibited cruel, inhumane and degrading treatment.

<sup>131</sup> *S. vs. Zuma*, 1995(4), BCLR, 401 (CC), 1995(1), SACR, 568 (CC), 1995(2), SA, 642 (CC). The court set aside provisions in the criminal procedure act that placed the onus of proof on an accused person to prove that a confession was not voluntarily given.

<sup>132</sup> See the report by P.A.J. (Tank) Waddington to the Goldstone Commission, circa 1992; for a more recent statement see Akshey Kumar, "India: Beware! Cops on Duty", *Businessline*, July 9, 2001.

developments in policing and criminal justice around the world. Policy documents set out objectives and approaches for crime control. Criminal justice experts from abroad were invited to develop training materials.

Police reform was and remains a mammoth undertaking. The South African police employ over 150,000 officers scattered across a huge country. Many of these officers are poorly educated. The old police culture is well entrenched and there are few incentives for adopting new ways. Police stations are not equipped to support the sort of policing that is now expected. Similar problems exist within other agencies of the criminal justice system.

The old system was therefore dismantled. The new one to replace it was not established quickly. Crime statistics bear out the system's incapacity to address the universe of crimes it faces efficiently. During 2000, some 2,575,617 crimes were recorded by the police in South Africa. About 1.9 million cases were either withdrawn or undetected. Of the balance, approximately just over half a million cases were referred to courts. Of the latter, (just over half) 271,057 resulted in prosecutions. From these, 211,762 led to convictions.<sup>133</sup> Thus, when cases are prosecuted, the possibility of a conviction is high. However, the figures also demonstrate that the proportion of cases prosecuted (in relation to recorded crime) is quite low — approximately ten per cent.

Old methods of investigations, deeply ingrained and entrenched in police culture, were left intact. A resistance to change by some officers compounded the situation. This had a predictable outcome in a number of high profile criminal trials where the courts were compelled, often on technical grounds, to return not guilty verdicts. These verdicts could be attributed to police ineptitude and substantial non-compliance with constitutional requirements. In other cases public anger and the need for visible intervention by the police led to a miscarriage of justice.<sup>134</sup>

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<sup>133</sup> Crime Information Analysis Centre, *South African Police Services*, Pretoria, July 2001. See also M. Schonteich, *Lawyers for the People: The South African Prosecution Service*, ISS Monograph Series 53, Pretoria, March 2002, pp. 91-92.

<sup>134</sup> Some high profile incidents of the inefficiency of the criminal justice system included:

- *The Phoenix cash robbery*. A R35million cash robbery led to the arrest of an organised gang. Notwithstanding powerful evidence implicating the accused, the attempt by the police to use illegally obtained evidence in the form of an unauthorised wiretap of a telephone conversation between alleged conspirators to the crime led the Court to acquit the accused gang;
- *State vs. Sifiso Nkabinde*. In a murder trial of a notorious warlord in a strife-torn part of the country, the Court was again presented with the attempt to admit evidence illegally obtained. The acquittal of the accused led to considerable public outcry;

Commenting on this general phenomena, Amnesty International noted:

There is widespread evidence of poor investigative and interview skills and an over-reliance on extracting confessions from suspects, requiring both human rights training and high quality skills training to raise levels of professionalism.<sup>135</sup>

The general-secretary of the Police and Prisons Civil Rights Union (POPCRU) remarked that, when the new Minister of Police was appointed shortly after the 1994 elections, he imposed a moratorium on the employment of new police officers. This meant that police employed for many years in the apartheid police force continued their employment in the new police service. Rights training for such officers was essential but did not take place in an organised and sustained manner. As a result, ignorance about the new Constitution remained widespread, and some officers continued to resist the new disciplines and culture of the police service. They complained, for example, that the prohibition to torture criminals in order to extract a confession was a soft approach to dealing with the hard issue of crime.<sup>136</sup>

### **History of the human rights community**

In the long struggle against apartheid, South Africa's civil society became the region's most diverse and organised. At the time of its first democratic elections, South Africa boasted some fifty thousand NGOs, the largest number on the continent. Schooled in methods of confronting repressive authorities through intelligent use of international media, solidarity campaigns and other methods, South African rights groups believed themselves well prepared to assume the challenges of rights defence under democratic governance. The first years of transitional rule, however, demonstrated how different the challenges facing civil society would be in the post-apartheid era.

In the early post-apartheid era, South African NGOs were still deeply affected by the previous period's mindset. As the country entered the transition, there was above all need for practical policy measures from government, but many

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- *The rape of nine-month old baby Tshepang* in a rural part of the country led to understandable public anger and a demand for swift action. Six suspects were arrested and held without bail in custody for about six months until the charges against all of them were withdrawn. DNA evidence was unable to link any of them to the crime and since then the proper suspect was arrested and indeed convicted (Sowetan, January 24, 2002).

<sup>135</sup> Amnesty International, *Policing to protect human rights: A survey of police practice in countries of the Southern African Development Community, 1997-2002*, London: Amnesty International, 2002, p. 77.

<sup>136</sup> Interview with Abbey Witbooi, Braamfontein, July 25, 2002.



NGOs focused on ideas and general frameworks.<sup>137</sup> They often failed to take people with them and lost touch with what communities were feeling — namely, fear. Some viewed government as an enemy and refused to cooperate with it. In addition, many key NGO staff moved into government positions weakening the sector in terms of capacity but also funding. Their often adversarial relations created tensions between government and NGOs.

### **Rising crime**

Given the monumental challenges facing police after the transition, it is no surprise that crime rates began to soar almost immediately after the end of apartheid. While the reliability of figures for the last years of apartheid are open to question, criminologists estimate that in the late 1980s, the murder rate increased by as much as fifty per cent between 1985 and 1990. It levelled off in the early 1990s, but other forms of serious violent crime such as rape and robbery increased dramatically (by fifty per cent or more between 1990 and 1995).<sup>138</sup>

As one analyst summarised the situation, “one of the most striking elements of the post-1994 South Africa is the way in which crime emerged quickly as a key governance issue. The hopes of the government and the South African public that the legitimacy of the first democratically elected government would serve to reduce crime rates soon floundered”.<sup>139</sup>

In the words of another, “Public perceptions regarding the need for substantial reform in juvenile justice in South Africa were very positive at the time of South Africa’s first elections in 1994....However, things have changed over the past few years, and public opinion has become more conservative”.<sup>140</sup> This change in perception was, no doubt, influenced strongly by increased crime levels.

### **Crime, public opinion and the role of rights groups**

The inability of the police services and courts to respond adequately to the challenge presented by the Bill of Rights rapidly led many ordinary people to

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<sup>137</sup> Interview with David Bruce, Braamfontein, 2002.

<sup>138</sup> B. Dixon, and L. Ncube, “A Cloud Hangs over Rainbow Nation”, Institute for Justice and Reconciliation, 2002. See [www.ijr.org.za/art\\_pgs/art38.html](http://www.ijr.org.za/art_pgs/art38.html).

<sup>139</sup> M. Schonteich, “Crime and Confidence: Voters’ Perceptions of Crime”, *Nedbank ISS Crime Index* 4, 2, 2000.

<sup>140</sup> Ann Skelton, extract from a document prepared for the office of the United Nations High Commissioner for Human Rights in preparation for a conference on Public Perceptions and Juvenile Justice.

conclude that the Constitution and the Bill of Rights had become obstacles rather than allies in the fight against crime.<sup>141</sup> In the media, balanced and analytical coverage of crime and institutional responses to it was glaringly absent; the media fuelled public anger and outrage by questioning, often without any proper basis, the role of the Constitution and the Bill of Rights. Trial by, and in the media became common. Demonstrations outside courthouses and within the community visibly displayed the level of public anger and the demand for drastic action.

An annual national survey conducted by the Human Science Research Council since 1995 asks people's opinion about the extent to which government has control over the crime situation. In 2001, less than one in ten South Africans (nine per cent) believed that government had "full control". Nearly half (forty-nine per cent) said government had "some control". No less than thirty-five per cent thought government was "not in control". The remaining (seven per cent) of the sample said they did not know.<sup>142</sup>

During 1999, the Institute for Security Studies (ISS) conducted a survey in the Eastern Cape to measure attitudes to punishment. Of the overall survey, just over three-quarters of respondents thought that sentences handed down by the courts had an effect on criminals' propensity to commit crime. Sixty per cent of respondents thought that courts were too lenient. Only ten per cent felt that sentences were about right. A small minority (four per cent) stated that sentences were too harsh. Four-fifths of respondents said that, compared to 1994, there was far more crime in South Africa. A similar number were of the view that lenient sentences have played a major role in the increase in crime. An overwhelming majority, eighty per cent, thought that introduction of harsher sentences would bring crime down.<sup>143</sup>

The criminal justice system found itself in a deep crisis, operating in an environment where the government was seemingly unable to respond effectively and decisively, while human rights organisations were unable to provide effective leadership. This resulted in the birth and growth of self-help groups, and the rapid rise of vigilantism.<sup>144</sup> The founder of Mapogo-a-Mathamaga,<sup>145</sup> one of the most notorious groups, explained the basis for its

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<sup>141</sup> Interviews with Vinodh Jaichand, Pretoria, August 2002 and Bruce, July 31, 2002.

<sup>142</sup> M. Sekhonyane, and A. Louw, *Violent Justice, Vigilantism and the State's Response*, ISS Monograph Series 72, Pretoria, April 2002, p. 14.

<sup>143</sup> M. Schonteich, *Sentencing in South Africa: Public Perception and Judicial Process*, ISS Occasional Paper 43, Pretoria, November 1999, p. 1.

<sup>144</sup> *Ibid.*

<sup>145</sup> See definition in Sekhonyane, and Louw, *Violent Justice, Vigilantism and the State's Response*, p. 35.

creation in these terms: "I am providing a service because the government has failed in its duty to protect. I will continue doing what I do as long as the government remains in breach of its duty to protect the community against crime and criminals."<sup>146</sup> In South Africa today, few take issue with such sentiments; many would countenance action outside the law if it proved effective.<sup>147</sup>

The growing popular support for such vigilante groups was clear evidence that they were filling a void and that, in general, the public was not too concerned by the methods such groups used. Arbitrary arrests, assaults, ill-treatment to secure confessions were regarded by the public as appropriate responses in the face of brutal and relentless crime.<sup>148</sup>

The government in general and the police in particular publicly distanced themselves from vigilante groups, but none were prosecuted. Many considered this was a tacit admission by government that it was not in control of crime in the country. Crime statistics and victim surveys appeared to lend credence to this claim.

The response of human rights non-governmental organisations was both *disorganised* and *ineffective*. Most underscored the importance of constitutional ideals and argued that a harsh law and order would undermine these ideals.<sup>149</sup> Such an approach did not address the fundamental concern being expressed, that the criminal justice system was becoming ineffective under the new constitutional order. As one activist put it, "difficulties arise with civil society, which seems to be unwavering in its perception that the criminals' rights are favoured as against those of victims".<sup>150</sup> Another analysed the situation in these terms:

The fear of crime of the general public has increased and so has the moral panic around such crime. There is a perception that criminals get away with murder and are not getting their just desserts. In addition, there is a perception that the agencies of the criminal justice system are ill equipped to deal with such crime effectively that satisfies victims of crime. Therefore, in some instances members of the community have taken the law into their own hands. The prevalence of vigilantism is primarily in

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<sup>146</sup> Presentation by J. Magolego at an ISS Seminar on Vigilantism in South Africa, Pretoria, June 8, 2001. See also Sekhonyane, and Louw, *Violent Justice, Vigilantism and the State's Response*.

<sup>147</sup> Sekhonyane, and Louw, *Violent Justice, Vigilantism and the State's Response*, pp. 40-44.

<sup>148</sup> Sekhonyane, and Louw, *Violent Justice, Vigilantism and the State's Response*, p. 40.

<sup>149</sup> Interview with Jaichand, August 2002.

<sup>150</sup> Interview with M. C. Moodliar, Johannesburg, August 2002.

response to the frustration that people have with the perceived ineffectiveness of the agencies in the criminal justice system.<sup>151</sup>

In the months and years following the transition, rights groups did not analyse the failures of the criminal justice system in terms of lack of resources, poor training, institutional failure, inadequate co-ordination among the branches of the criminal justice system, and widespread corruption within the system. Instead, they maintained a legalistic discourse that focused on the adequacy or inadequacy of the law. To some extent, this suited the police service well, since it diverted attention away from their shortcomings.

All of these factors together created conditions that encouraged government to act more assertively. Pressure from the communities increased. The government realised that, to restore public confidence, it had to be seen to win the fight against crime. Incidents of vigilantism, notably in the Western Cape, strengthened this view. The government developed new 'tough' policies. These included minimum sentencing, which effectively removed the court's discretion in the sentencing process; amendments to the Criminal Procedure Act that provided courts more power to refuse bail to consider vague criteria such as the sense of 'community outrage' in deciding on bail and imprisonment;<sup>152</sup> and closed prisons, modelled closely on the maximum security prisons of the United States, which provided for effective solitary confinement.

Human rights organisations cautioned government about these initiatives, which, they argued, watered down constitutional guarantees, and threatened a return to the old order. The government, buoyed by public opinion, nevertheless persisted. Tough talk by government officials was further evidence that government was prepared to take the constitutional risks in order to curb crime.<sup>153</sup>

Following a referral by government, the South African Law Commission (an independent statutory law reform and research vehicle) produced a discussion document on the need for anti-terror legislation. Its conclusions recommended detention without trial, a wide and sweeping definition of terrorism that would cover even legitimate public protests, and the exclusion of court oversight over detention decisions. A significant public debate followed and, again, despite objections from human rights organisations,

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<sup>151</sup> Interview with Duxita Mistry, Johannesburg, August 5, 2002. See also M. Schonteich, *Tough Choices: Prioritising Criminal Justice Policies*, Institute for Security Studies, ISS Paper 56, Pretoria, May 2002.

<sup>152</sup> Department of Correctional Services, *Annual Report*, Pretoria, 2001.

<sup>153</sup> Interview with Mistry, August 5, 2002.

government maintained its tough stance. The September 11, 2001 attacks on the United States and their aftermath gave greater impetus to the process and the Law Commission subsequently considered all the public and institutional responses to the Draft Bill.<sup>154</sup>

Some victims groups, particularly those with more resources and access to the media, began to make their views known and in particular to advocate better arrangements for victims of crime.<sup>155</sup> They argued, correctly, that victims were marginalised in the criminal justice system and should play a more substantive role in that system.<sup>156</sup>

Such groups clashed, at times, with human rights groups. There was fierce argument over matters such as bail, the presumption of innocence, sentencing and prison conditions. These differences were more about competition for influence in the constitutional landscape, than trying to find common ground on specific solutions. It could yield one result — strong public and government support for better protection of victims rights 'at the expense of offender's rights'.<sup>157</sup> In this way, the debate succeeded in polarising human rights groups.<sup>158</sup>

The second democratic election led the government to take a new position stance. Firstly, South Africa began to witness conservative policy initiatives that sought to pacify public anxiety as well as victims of crime and violence. Secondly, physical access to parliament became limited and access to parliamentary committees became stricter. These limitations meant that NGOs were locked outside the policy and law-making process and had to reconsider their stance. It has become clear to many NGOs that a change in tone and attitude is necessary if they are to establish a meaningful relationship with government. NGOs began reflecting on their discourse and strategies. It is slowly but gradually being recognised that a complex relationship with the state is possible — one that enables NGOs to support reform programmes while remaining independent and able to critique abuse. This nuanced understanding reflects a growing maturity among many NGOs. Many of the innovative approaches they are exploring are set out in Section IX.

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<sup>154</sup> Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act 74 of 1982), South African Law Commission, discussion paper 92, project 105, part 1, July 2000, Pretoria, *Sowetan*, August 27, 2002.

<sup>155</sup> It is worth noting the divisions among victims' rights groups. Many women's rights groups, for example, while focusing on defending the rights of female victims of sexual abuse, have been sensitive to the need to avoid hardline, extremist anti-defendant discourse and policies.

<sup>156</sup> Interview with Ann Skelton, Pretoria, August 27, 2002.

<sup>157</sup> Interview with Skelton, August 27, 2002.

<sup>158</sup> *Ibid.*



## **VIII. UKRAINE**

### **Historical Background**

Ukraine gained independence from the Soviet Union in 1991 after centuries of domination by foreign rule. Most of the country had been under Russian control for approximately three hundred years, and the entire country had been a Soviet republic from 1920 to 1991. Only western Ukraine (annexed to the Soviet Union in 1939) remained outside Soviet control, albeit relatively briefly. With the collapse of the Soviet Union in 1991, independence essentially landed in the lap of the Ukrainian people. While there had been some non-violent demonstrations, no strong independence movement could be said to have developed during the 1980s, in contrast to several other Soviet republics. This is routinely attributed to a combination of fear of Soviet authorities and identification with the Russian Federation. Even today, a decade after independence, Russian is still spoken widely in much of the country. In other former Soviet republics, by contrast, rejection of the Russian language has gone hand-in-hand with rejection of Soviet control.

Ukraine's Parliament declared the country's independence on August 24, 1991, a declaration ratified subsequently by referendum. The Russian Federation, Belarus and Ukraine founded the Commonwealth of Independent States (CIS) on December 8, 1991. CIS members came subsequently to include the Republic of Armenia, the Azerbaijan Republic, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, the Republic of Tajikistan, Ukraine and the Republic of Uzbekistan. However, Ukraine chose to be an associate and not a full member of the Commonwealth.

### **History of the human rights community**

Unlike the other countries studied in this report, at the time of its transition from totalitarian to more democratic rule, Ukraine did not have a well-developed, functioning network of human rights organisations. The few organisations that existed prior to independence were comprised mainly of dissidents and lacked structure and personnel. As a result, much of the work of rights groups today is a result of planning and organisation after the beginning of the transition, rather than development from existing work.

Today, the Ukrainian human rights movement is composed of dissident groups (Memorial and the Helsinki Group), branches of international human rights organisations such as Amnesty International, and local organisations

including Helsinki-90, the International Human Rights Society,<sup>159</sup> and various civic activists, lawyers, and others interested in the human rights movement. An interesting recent phenomenon is the founding of institutional human rights organisations. Usually, these are associated with law schools. They operate free human rights clinics or provide analysis on legislation. Institutional human rights organisations — due to their academic origin and restricted spheres of activity — do not fit squarely into the notion of human rights NGOs that is used in this research, and they are not considered in this report.

More than a decade after the transition, a limited number of active and efficient human rights organisations work in Ukraine, and no national network co-ordinates human rights NGOs throughout the country. Few organisations address human rights protection conceptually. This is so despite statistics<sup>160</sup> that show more than one hundred NGOs being registered as human rights organisations. In reality, no more than twenty are actively involved in curbing crime and violence.<sup>161</sup>

A common feature of Ukrainian human rights NGOs is the modest number of NGO leaders who possess a legal education or a background in human rights protection. As a rule, those who are genuinely interested in human rights have relatively little formal training. The lack of adequately trained and educated leaders undermines the effectiveness of the work of human rights organisations by limiting their access to information and resources.

A few Ukrainian human rights NGOs collect and disseminate information on police abuses, in order to combat torture and ill-treatment. The Kharkiv Human Rights Protection Group published a book based on newspaper articles and its own research into ill-treatment and torture in Ukraine. It includes information on 205 cases of torture and ill-treatment of suspects by police. In twenty-six of these cases, the suspects died.<sup>162</sup>

Ukrainian human rights NGOs are not self-sustaining and depend on financial support from abroad. Donor assistance reached a peak in 1994-1995, according to those interviewed. Since then, it has declined significantly. Dependence on international or foreign donors impedes consistency and the

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<sup>159</sup> The Ukrainian-American Bureau on Human Rights is a synthesis of a dissidents' movement and a partner of an international organisation. This organisation was founded by the group of dissidents. It then joined American human rights organisations. Currently, although it has preserved its name, it is a purely Ukrainian organisation.

<sup>160</sup> <http://khpg.org>.

<sup>161</sup> Interviews with Yevgeny Zakharov, Kiev; Zenovij Siryk, L'viv; and Oleksander Shevchenko, Kiev.

<sup>162</sup> Information Bulletin of the Kharkiv Human Rights Protection Group.



integrity of human rights NGOs strategy and activity planning — as well as co-operation among them.

Unsatisfactory funding of Ukrainian NGOs limits the number of active staff. According to the majority of NGO leaders interviewed, few human rights NGOs have more than five to eight active staff members and, when they obtain a grant, most human rights NGOs hire additional staff *ad hoc*. The financial constraints limit the effectiveness and activities in which they can engage.

In dealing with issues of crime, most organisations have focused on fighting violations of human rights by police and other law enforcement institutions. These groups focus on holding Ukrainian authorities accountable for police abuse and brutality as ill-treatment and torture of detainees by police appears to be relatively widespread.

Two major strategies are used: a proactive and an analytical approach. The former includes *pro bono* legal assistance for victims of rights abuse and use of the media. The latter includes analysis of legislation, surveys on human rights standards and legal norms, monitoring of public institutions, training, and printing and disseminating information about human rights.

Co-operation is relatively poor, human rights organisations do little work together at national level. Their financial weakness has led many to direct their work more towards donors priorities than the domestic audience. This undermines further public support, and diminishes substantially their effectiveness.

## **Rising crime**

It is crucial to take account of the crime level in Ukraine, and public perceptions of crime, when analysing the work of rights organisations and their priorities and strategies. Influenced by Ukraine's social and economic instability at the time, crime rates remained high until the middle of the 1990s — largely due to the collapse of the social security system, severe economic problems, and insignificant attention to the civic education of young people. From 1992 until 1995, official figures registered a constant increase in crime. In 1995, crime rose by 12.2 per cent relative to 1994. In 1996, crime then decreased by 3.8 per cent. The decline continued over the next few years: in 1997 by 4.5 per cent, in 1998 by 2.2 per cent, and in 1999 by 3.0 per cent. According to Ministry of Internal Affairs data, there were 5,037,000 registered crimes in 2001, a decrease of 9.0 per cent compared to 2000.<sup>163</sup>

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<sup>163</sup> Annual report of the Ministry of Internal Affairs 2001.

The pattern of crime in Ukraine also changed after independence. The early 1990s were marked by street violence; at the end of the decade this had declined to be replaced by crimes related to corruption.<sup>164</sup> Public opinion, monitored by the Democratic Initiatives Foundation,<sup>165</sup> show that crime, as a social phenomenon, has generally not been associated with a danger to personal integrity.<sup>166</sup> This said, crime and social violence have disrupted the social and political order.<sup>167</sup> If, at the beginning of the 1990s, criminal reports (including the novelisation of the American motion picture *Pulp Fiction* of Quentin Tarantino) were popular and widely read (since there were no 'crime serials' in the Soviet era), today the public has limited interest in crime.<sup>168</sup>

At the same time, the Ukrainian Centre for Economic and Political Studies (also known as The Razumkov Centre) showed in a recent survey that sixty-five per cent of Ukrainians believe that the police are incompetent and involved in 'political activities'.<sup>169</sup> A study conducted by researchers at the University of Leicester for the British Foreign and Commonwealth Office demonstrated that most Ukrainians do not trust police and consider corruption to be the police service's most important problem.<sup>170</sup> National monitoring by the International Foundation for Election Systems (IFES) — supports this finding.<sup>171</sup>

After ten years of independence, the government's crime fighting policy seeks to punish criminals in order to deter crime. Police continue to use old Soviet principles of investigation. In particular, the idea that "confession is a queen of fact-finding" encourages them to extort confessions from suspects by any means necessary.<sup>172</sup>

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<sup>164</sup> Divergence between officially registered criminal cases and the number of complaints submitted to police during 1996-2001 as reported by human rights NGOs leads to the conclusion that police in Ukraine are overloaded by complaints, and, therefore, are forced to limit arbitrarily the number of cases they investigate and register officially. Thus, the number of registered criminal cases does not necessarily reflect the level of crime committed in Ukraine.

<sup>165</sup> E. Golovakha, "Political Portrait of Ukraine: General Overview of Public Opinion", Democratic Initiatives Foundation, May 1993-January 1998.

<sup>166</sup> Ibid.

<sup>167</sup> The notion of 'crime' herein excludes 'corruption'.

<sup>168</sup> Golovakha, "Political Portrait of Ukraine".

<sup>169</sup> Oleksander Boyko, "The Process Has Been Started...", *Komsomolskaia Pravda Ukrainy* 116/117, July 3, 2001, p. 4.

<sup>170</sup> Adrian Beck, and Yulia Chrysyakova, *Crime and Policing in Ukraine: the Kharkiv Crime Survey 2000*, (Interim Report), Kiev: British Council, 2001.

<sup>171</sup> Thomas Carson, "Approach to Changes, the Current Situation and Civic Actions in Ukraine", IFES internal research paper, December 5, 2000.

<sup>172</sup> Torture continues to be practiced on a routine basis to obtain confessions. According to

Although reliable data are difficult to obtain, figures provided by rights activists demonstrate that despite the relatively low level of violent crime in Ukraine, the rates of incarceration are extremely high. Tatiana Yablonska of the Ukrainian-American Bureau on Human Rights indicated that between 200,000 and 250,000 people were held in prison in Ukraine.<sup>173</sup> Given the population of roughly forty-nine million, the per capita rate of imprisonment approaches 500 per 100,000, nearly six times the levels in Western Europe and three times the rate in Brazil, a country with rates of violent crime several times higher than Ukraine.

Until recently there was no provision in the Criminal Code of Ukraine<sup>174</sup> prohibiting and imposing liability for inhuman treatment or torture. Though Ukraine has ratified the European Convention on the Elimination of Torture and Degrading Treatment, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights, the legal system of Ukraine requires enacting legislation for their guarantees to take effect.<sup>175</sup>

### **Crime, public opinion and the role of rights groups**

Narrow public support also impedes the effectiveness of Ukrainian human rights organisations. This is due both to weak communications and widespread indifference to human rights in the society. In addition, because mainstream human rights organisations avoid being politically affiliated, they do not work with political parties or other political entities, and this limits their ability to influence Parliament, and lobby for changes in Ukrainian legislation. Ukraine is still developing its laws on non-governmental organisations, and a legislative vacuum exists in this area.

The indifference of Ukrainian society to human rights flows in part from the concept itself. Like many other states that for a long time espoused Soviet ideology, Ukraine is reluctant to define rights in terms of individual freedom, putting the individual's rights before those of the state. Socialist legal

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the annual report of the Ombudsman, in 1998-1999, 194 criminal cases were filed against 285 police officers for treating suspects and detainees in an inhuman and degrading manner. In 2001, 154 criminal cases against police abuses were initiated, of which thirty-seven led to court proceedings, leading to fifty-two convictions. In 2002, the Ombudsman received 2,209 complaints of ill-treatment of suspects by the police. Ivan Kraynij, "On the Wave of Legal Chaos", *Ukraina Moloda* 179, July 11, 2002, p. 3.

<sup>173</sup> Interview, Kiev, November 2, 2002.

<sup>174</sup> Criminal Code of Ukraine (not in force) dated 28.12.60 (2000-05), *Visnyk Verkhovnoji Rady Ukrainy*, 1961, N 2, p. 14.

<sup>175</sup> G. Ginsbug, *From Soviet to Russian International Law: Studies in Continuity and Change*, New York: Kluwer Law International, 1998.

teaching did not address theories of inherent or natural rights, or acknowledge them.<sup>176</sup> In both practice and theory, Soviet ideology ignored the rights of those who breached the law.

Western European and Soviet-Ukrainian concepts of human rights both presumed that human rights are protected through the mediation of states. Consequently, they both put emphasis on positive human rights, and consider that negative rights should be protected by positive state obligations. The difference lay in goals: Western European advocates of rights notion aim to protect the individual, whereas the Soviet approach emphasised the interests of society as a whole. No conceptual difference was assumed to exist between the interest of the state and those of society. The Ukrainian-Soviet concept of human rights did not, therefore, consider individuals to be the subject of human rights. This led in turn to the belief that advocates who fought for individual rights against state institutions would forfeit public support and become social outcasts. Many victims of police abuse choose not to pursue legal remedies for rights violations. Some are afraid to file a complaint against police due to their distrust of the justice system.

Under these circumstances, human rights organisations have focused on increasing public awareness of human rights as a strategy to fight rights abuses. They do so through their publications, educational programmes, and other activities. Another main strategy of human rights organisations has been to monitor the activity of public institutions to try to increase their accountability.

To address police violence, rights groups have organised human rights training sessions and disseminated brochures on the rights of detainees and on court procedures. This work is especially important because the state has withdrawn from such education. Human rights organisations (the Law and Democracy Foundation, Ukrainian Legal Foundation, the Kharkiv Human Rights Protection Group, Donetsk Memorial, Podilsky Centre for Human Rights, Sevastopol Human Rights Group, among others) also organise human rights clinics that provide legal aid. These offer financial assistance as well as legal advice to victims, and also help the organisations involved to gain expertise in human rights case law, and to accumulate and generalise information on human rights violations in Ukraine.

The activities of Ukrainian rights groups may be divided into the following categories: (i) documentation and denunciation of abuses; (ii) promotion of

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<sup>176</sup> Rett R. Ludwikowski, "Fundamental Constitutional Rights in the New Constitutions of Eastern and Central Europe", *Cardozo Journal of International and Comparative Law* 3, Spring 1995, pp. 73-158.

human rights standards and awareness through events and training courses for public officials and security officers; (iii) provision of free legal services through human rights clinics; and (iv) legal analysis and lobbying for legislative change.

The Ukrainian Ministry of Internal Affairs has largely ignored human rights organisations as well as the media, and remains a closed institution. The human rights leaders we interviewed described the ministry's lack of co-operation. This is at odd with the Ministry's newly stated policy of openness, transparency and professionalism in its relations with civil society organisations.<sup>177</sup>

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<sup>177</sup> Ihor Hryb, daily chronicle, *Uriadovy Kurier* 87, May 19, 2001, p. 5.



## **PART THREE**

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**TOWARDS SOLUTIONS**





## IX. RESPONSES OF HUMAN RIGHTS GROUPS

Faced with the challenges posed by rising crime and increased public sentiment of insecurity, rights groups have responded in a variety of ways. While these vary considerably, they are sufficiently similar to warrant joint consideration. In addition, by analysing these responses in one section, we hope to gain insight into the types of approaches that have been successful in addressing the challenges that crime and insecurity pose.

The responses described to us are conditioned primarily by the context in which organisations work. While Nigerian rights groups face challenges to the very idea of the rule of law when they confront well-structured, officially condoned and popular vigilante groups, Ukrainian activists battle against a culture of state impunity and apathy. In Argentina, Brazil and South Africa, by contrast, apathy and vigilantism pose problems, but a significant daily obstacle is a media-fanned perception that rights groups defend criminality. In all these societies, human rights activists must consider how best to deal with state authorities, both on an individual and institutional basis. What level of engagement with police and other criminal justice system actors is appropriate?

Contextualisation is key, to be certain. A lot can be learned, however, by comparing the responses of different human rights communities in different contexts. This reveals the dilemmas and tensions that rights groups must manage. In particular:

- the need to engage with processes of reform vs. the need to remain independent; and
- the need to defend principles of human rights vs. the need to build public support for human rights.

These dilemmas cut across all contexts. They shape the responses of rights organisations, but also the perceptions of peer organisations, government and the public at large.

Before examining these questions in more detail, some observations should be made about how rights groups themselves perceive the issues addressed in this report. Throughout, we have considered surges in crime and perceptions of crime, as well as the causes and effects of crime, focusing on the role of rights organisations. In the course of the research, however, it became clear that many rights groups have not reflected consciously on the set of problems presented here. This is not to say that such groups do not consider these issues important. It is rather to note that the groups frequently had not planned or strategised activity. The activity of many groups had

simply developed over time in reaction to a political landscape which had changed profoundly, but which had not been studied.

For example, a number of organisations had come to 'prioritise innocent people', but the groups involved might not themselves identify this as a strategy. The Brazil section described how local groups in Rio de Janeiro shied away from taking up two high profile police massacres in *favelas* (poor, urban hillside communities) that cost the lives of twenty-seven residents. The groups balked at involvement because the victims were widely believed to be drug traffickers, or associated with drug trafficking. Viewed from a comparative perspective, this singular response can be seen to be part of a broader pattern.

In categorising the responses of rights groups, we therefore hope to foster more conscious reflection about the trends identified in this report and their impact on the work of rights organisations. To begin with, NGO responses may be divided into three broad categories:

- *oversight activity*. In this box, we find a number of strategies — legal approaches at domestic level, advocacy (with different audiences), documentation and reporting (again, with different audiences).
- *collaborative efforts* with public authorities. Again, the range is immense: these responses include direct provision of public security services (such as directing witness protection programmes), as well as training of police, prosecutors and judges.
- *broad engagement* in the security debate. In this category, we include efforts designed to increase the engagement of rights groups and the broader question of how to best provide security for the population.

### **Oversight activity**

Within this broad area of watchdog functions, a number of strategies and responses are designed to enhance the effectiveness of techniques denouncing abuse by state agents. Below, we set out several examples of the principal approaches taken within this rubric.

#### *Multiplication of oversight*

Faced with rising crime, some groups have multiplied their use of oversight. Training programmes that enable communities to denounce instances of police abuse fall into this category. Faced with an increasing docket of cases of human rights violations in the Province of Buenos Aires, for example, CORREPI has given non-professionals legal skills that enable them to perform actions generally undertaken by lawyers, including documentation of

cases. In a similar way, education projects for students and young professionals seek to build a cadre of future activists.

#### *Advocacy focus on innocents*

In the face of public hostility or indifference to the abuse by law enforcement agents, NGOs are often forced to rethink their advocacy strategies. In practice, advocacy strategies are not often structured coherently, but take the form of responses to pressing issues. In both cases, many organisations come to focus on the abuses involving innocent people. Across the countries studied, our researchers consistently found that the general public and the media were more sympathetic to such cases. While some argue that an excessive focus on cases of this sort may be counter-productive, it does create a space within which human rights can be discussed. Many groups expressly limit their mandate to 'innocent' people. COFAVI, an Argentine rights group, refuses to take the cases of individuals killed in prisons or police stations, locations where, presumably, law-abiding citizens are not taken.

Examples in several of the countries studied show that well publicised incidents of police abuse have enormous potential to mobilise public and political opinion. One example involved a police roadblock videotaped by an amateur cameraman on the outskirts of São Paulo, Brazil. Over several nights, the videos showed police extorting, beating, torturing and even murdering passengers in vehicles randomly stopped by police. Aired on March 31, 1997 on Brazil's leading station, TV Globo, the video produced an unprecedented wave of protest. Within little more than a week, Congress passed a law criminalising torture (an obligation Brazil had assumed eight years earlier when it ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), and the State Legislative Assembly passed a law formalising the police ombudsman's office.

The Peruvian experience is also instructive. During former president Alberto Fujimori's rule, Peru passed a draconian anti-terrorist legislation, which violated fundamental due process and fair trial rights. Rights activists considered that the law was so flawed that *any* conviction under its terms would be a miscarriage of justice. Yet the principal coalition of rights groups in the country (La Coordinadora Nacional de Derechos Humanos) decided that it would assist only those who were not tied to underground groups, and in particular to the Shining Path rebels.

Leading activist Francisco Soberón, head of the Coordinadora, explained the dilemma of Peruvian rights groups at the time: facing a popular but authoritarian government and a very intolerant violent terrorist movement, NGOs needed to separate themselves from the goals of Shining Path in order

to survive to defend human rights principles.<sup>178</sup> Carlos Basombrío, then head of the Legal Defence Institute (Instituto de Defensa Legal, IDL), further explained that public support for the rule of law, which was under fire during the worst years of Fujimori's rule, would have been weakened had human rights groups appeared to defend Shining Path.

#### *Personalisation of victims*

Some organisations personalise those who are victims of institutional violence. Since its creation, Foro Memoria y Sociedad in Argentina, has presented offenders' criminal behaviour as a consequence of adverse socio-economic and cultural conditions. To do so, Foro reports on the lives and sufferings of victims of institutional violence. It thereby establishes a link between delinquency and structural conditions in order to improve understanding and undermine the idea that poor people are enemies of the middle class. Foro's approach may be seen as an attempt to demonstrate the responsibility of society as a whole for the criminal acts of perpetrator-victims.

Similarly, CORREPI, another Argentine NGO, seeks to distinguish criminality associated with poverty from organised crime. In this sense, it promotes sympathy for offenders, stressing that they are victims of their social and economic environment, and also victims of professional criminals — often connected to the police — for whom they are forced to work. Its aim is to show that criminality will not decline unless its causes are addressed.

#### *Publicising statistics on rights abuse*

Argentine organisations also publicise (on the basis of various criteria and using different sources) the number of civilians killed in confrontations with security officers. CORREPI, Foro Memoria y Sociedad, the Centro de Estudios e Investigaciones en Derechos Humanos (CEIDH) and CELS, all prepare and publicise reports of this kind at least once a year. By means of this systematic documentation, apparently isolated episodes acquire impact and can be viewed as part of a widespread practice. Rights groups in other countries have also used this technique to focus attention on police abuse. In Rio de Janeiro and São Paulo, where figures are available, rights groups and ombudsmen offices regularly release statistics of police killings of civilians.

#### *Advocacy at the international level*

Historically, many human rights techniques have been designed to 'blame and shame', that is, to use the threat of international public opinion to coerce recalcitrant states to stop abuses. This model — to the extent it is effective

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<sup>178</sup> Interview, Lima, May 2002.

at all — was designed to address abuses planned, co-ordinated and carried out by state security forces, ordinarily targeting dissidents, guerrillas, or others tied to opposition movements. In the context of this report, states are certainly responsible for some targeted abuses, though less frequently.

International advocacy has nevertheless proved to be an effective strategy. Often, particularly in smaller cities distant from national or regional capitals, rights groups encounter significant problems in their efforts to place abuses committed by police against criminal suspects or detainees on the public agenda. Public authorities may be indifferent or hostile to suspects', defendants' and prisoners' rights. Local media sources may identify with these positions, rather than those advocated by rights groups. In these circumstances, one means that rights groups have used in several of the countries studied has been to seek recourse at the international level. They may file petitions before international bodies such as the Inter-American Commission on Human Rights of the Organisation of American States, or human rights treaty bodies of the United Nations, or with the UN's special mechanisms, or release reports abroad, sometimes in conjunction with international NGOs.

In Ukraine, from 1997 to 2001, a few governments and international civil society groups began programmes to train Ukrainian lawyers on means of accessing the European Court of Human Rights (ECHR). Largely as a result, from early 2000 to late 2001, the number of appeals filed before the European Court doubled.<sup>179</sup>

Local groups that use international advocacy frequently find they can raise issues that would otherwise have been neglected. While the shooting by police of a criminal defendant may not provoke any official response, when a petition is filed with an international body and that body forwards it to the government concerned, it may lead to action. Similarly, the same incident might be ignored by the local media, but would immediately become newsworthy when it becomes subject of an international complaint against the government. Several groups with whom we spoke, particularly CELS in Argentina, Global Justice in Brazil and CLEEN in Nigeria, used this strategy. CLEEN's report on the Bakassi Boys, prepared jointly with Human Rights Watch, produced far greater reaction than a report researched and released locally would have achieved.

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<sup>179</sup> Jeffrey T. Checkel, "International Assistance and Human Rights in Post-Soviet Ukraine" (paper presented at the Program on New Approaches to Russian Security Conference), January 25, 2002. [www.csis.org/ruseura/ponars/policymemos/pm\\_0235.pdf](http://www.csis.org/ruseura/ponars/policymemos/pm_0235.pdf).

## Collaborative efforts with public authorities

### *Direct provision of services: community conflict resolution*

In 1997, the Rio de Janeiro-based NGO Viva Rio formed the Balcão de Direitos (the 'Rights Stand') programme to help victims of violence in poor urban slums seek justice. During the programme's first year, lawyers and law students, working with a "citizen agent",<sup>180</sup> provided direct legal advice and services in six *favelas*. They hoped to restore law and order by bringing the state to the *favelas*.<sup>181</sup> After the programme's first year, staff members realised that legal services alone would not bring justice to victims of violence. For this to change, structural reform of Brazil's legal system would be necessary. The judiciary was slow and inefficient and its language was inaccessible to most *favela*-dwellers.<sup>182</sup> Moreover, many individuals did not want the kind of justice that the state could provide. Many sought alternative solutions to their problems, including channels to dialogue with their assailants.<sup>183</sup>

In light of its experience with local communities, Viva Rio began to consider informal legal codes and norms, that differed significantly from institutionalised laws. It expanded its work to include a civics and citizenship programme designed to increase the political awareness of community leaders.<sup>184</sup> In this way, the idea of 'bringing the state to the *favelas*' was turned inside out: Viva Rio 'brought the *favelas* to the state'. In seeking to fill gaps left by the state, Viva Rio came to see that, to provide access to abandoned communities, the latter needed to be able to critically monitor the state's behaviour and performance.

In Argentina, CEIDH directs a project in two poor neighbourhoods in the city of Rosario to develop alternative forms of conflict resolution by the community. These could ultimately address security problems that are commonly considered only from a law and order perspective. The rationale behind this project, like the Balcão project in Rio de Janeiro, is that police are not readily prepared to solve community problems, many of which are rooted in security issues. Moreover, police themselves may be responsible for

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<sup>180</sup> The citizen agent (*agente da cidadania*) is a person from the *favelas* who acts as a liaison between the lawyer and the individual seeking legal assistance. According to Strozenberg, the citizen agent's role is fundamental because it is through his/her connections or reputation that people in the *favelas* decide to seek assistance from the Balcão.

<sup>181</sup> Interview with Pedro Strozenberg, Rio de Janeiro, November 6, 2002.

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

generating some of the most serious difficulties that communities face. Both the Balcão and Rosario projects fill a void left by the state's failure to provide security to poor communities.

#### *Community policing*

In several of the countries studied, police have embarked on community policing projects, and in several instances, NGOs have been the driving force behind these. Such projects routinely require NGOs to work with communities, and also with police and public security authorities.

As noted earlier, the term community policing is overly broad and may encompass many types of security efforts. While rights groups, university-based criminologists, funders and others have devoted a great deal of attention to community policing, in the belief that it can solve many policing problems, there is no clear consensus as to its effectiveness. Among scholars and activists in this field, a rich ongoing debate has sought to isolate those factors most likely to result in successful policing, while being respectful of fundamental rights.

The Institute for Democracy in South Africa (IDASA) provides a good example of co-operation with public institutions. After the presidential elections in 1994, IDASA called on the community and South African Police Services (SAPS) to work together to restore credibility to the policing system. IDASA asked communities to cease thinking of SAPS as their enemy, and to begin a new era of law enforcement. At the same time, IDASA also encouraged the formation of a Community Policing Forum so that community members could play a part in upholding law and order. It was hoped that this would ease the transition from a hostile to a collaborative relationship between the communities and SAPS.

In 1998, IDASA played an active role in developing a National Crime Prevention Strategy. At a time when many individuals and organisations advocated stricter policing and harsher consequences, IDASA called for new initiatives that would reform existing methods of policing without using unnecessary violence. IDASA discouraged arbitrary detention and the use of brutality.

In the same year, IDASA was one of the architects of a White Paper on Safety and Strategy. IDASA argued for an effective combination of reform and law enforcement, stating that if crime prevention were to be effective, change would have to come from both directions. After the initial draft of the White Paper was completed, IDASA and the other participating organisations called for a public hearing to finalise the document. Prior to this hearing,

IDASA ensured that the draft was distributed properly to the participating individuals and organisations.<sup>185</sup>

At other levels, Community Police Fora — often facilitated by such NGOs as IDASA, the Centre for the Study of Violence and Reconciliation (CSVr) and U Managing Conflict (UMAC) — ensured that police and communities were able to pool resources in combating crime. These incidentally became a structure through which police could be held accountable. The model of Community Police Fora yielded mixed results but in many instances its success showed communities the advantages and benefits of working within the law. In Alexandra, an area north of Johannesburg, a community group known as Sector 4 actively assists victims of crime in reporting matters to the police, helps them in getting to Court and acts as intermediary with the Prosecutor where necessary. The group ensures that relevant witnesses make contact with the police and testify in Court.<sup>186</sup>

The approach of working within the law and supporting police and prosecutorial initiatives carried distinct advantages. Victims as complainants were able to understand the system, became more realistic of their own expectations of the system, and generally felt more centrally involved in processes that affected them.

#### *Police training*

As noted, the political reform process often encourages state security agents to work collaboratively with civil society representatives. Many rights groups have become engaged in training police. Many different programmes exist, but these efforts may be divided into two broad categories: efforts to instruct police officers in human rights law, and efforts to ensure that, in their daily activities, the police respect fundamental rights and the rule of law.

#### *Human rights training*

In several post-transitional societies, initial enthusiasm led a number of rights groups to work closely with newly elected authorities to help reform police. One area of intense collaboration has been in the area of police training. In several of the countries, rights groups have led sessions to instruct police officers on human rights norms.

#### *Training in policing methods that respect rights*

Another mode of police training has focused on instructing officers on how to carry out their duties effectively but in a way consistent with their legal and

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<sup>185</sup> Response from IDASA by Jared Cohen, Ivor Jenkins, Paul Graham and Samantha Fleming, August 8, 2002, Cape Town.

<sup>186</sup> Presentation by Bulldog Rathokolo, Chairperson of Sector 4 at an ISS Seminar on Vigilantism, August 2000.



constitutional obligations. In South Africa, this challenge has presented itself squarely, given the overhaul imposed by the new Constitution and Bill of Rights.<sup>187</sup> Some rights groups have learned of the critical importance of moving away from abstract human rights law instruction and focussing on training sensitive to the harsh realities of everyday policing. As Elrena van der Spuy of the University of Cape Town's Institute of Criminology writes: "Flying in international human rights consultants to teach the abstract principles to the pre-modern world is a recipe for disaster. Very few consultants seem to have had even the foggiest idea of what it actually meant to police the streets in a society as haunted by the excesses of the past or the strains of the present as the South African one."<sup>188</sup>

One programme focusing on law enforcement that respects rights is being conducted by the South African Human Rights Commission (SAHRC), the Lawyers for Human Rights (LHR) and the National Consortium for Refugee Affairs (NCRA) on the rights of refugees, asylum-seekers and migrants. The object of the training is to assist the police in enforcing appropriately various pieces of legislation relevant to migrants, asylum-seekers and refugees while recognising constitutional and human rights norms.

Technikon South Africa, one of the largest tertiary institutions in the country, offers a course in "Police Practise and Management", which attempts to provide practical guidance to police officers in the challenge of policing in a democracy. The objective of such training is to demonstrate that compliance with the law does indeed lead to greater efficacy and advances the prospect of a conviction. Compliance minimises challenges to the admissibility of evidence and fairness of procedures. On the other hand, non-compliance makes it more likely that technical challenges on admissibility of evidence will be successful, thereby further undermining credibility and trust in law enforcement.

#### *Development of policy jointly with government authorities*

Another approach taken by rights groups in several countries studied has been to work with authorities in the design of public policies. These efforts have met with varying degrees of success, for a variety of reasons. In some instances, rights groups have had broad access to policy-makers and their voices have been heard and incorporated into the formation of laws, regulations, guidelines and other policies. South African rights groups played an influential role in shaping public policy on defendants' rights, particularly in the first years of the debate. More recently, rights groups that work to limit police abuse have lost favour with authorities, while organisations that

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<sup>187</sup> Interviews with Witbooi, July 25, 2002 and Bruce, July 31, 2002.

<sup>188</sup> Correspondence with research team, April 27, 2003.

### ***Police training in Brazil: from rights principles to practical procedures***

In the aftermath of the 1993 United Nations Conference on Human Rights, international organisations took up with great enthusiasm the idea of human rights training for law enforcement officers. The underlying assumption was that abuses are committed generally out of ignorance of the basic human rights principles as established in international law. Some of the beneficiary countries, such as Brazil, accepted this assistance with open arms, and began to build human rights modules into the required training for police and prison officers.

A decade later, there is little hard evidence that informing law enforcement personnel about international human rights conventions actually alters their behaviour. Indeed, these human rights courses were often delivered without any appraisal methodology in place to measure their long-term impact. At best in the classroom, trainee officers could be successfully engaged and 'converted' by use of participatory methodology. The problem was that these enthusiastic converts, and also those who sat sullenly and resistantly through these classes, would then go back to their workplaces, to the prison or the police station and barracks, environments in which human rights concepts remained utterly alien. The power of peer pressure, of 'locker room' culture, of entrenched organisational cultures and practices exerts a far greater influence on behaviour than a transitory and somewhat intellectual education in human rights speaks. It was eventually recognised that dealing with human rights concepts divorced from the daily procedures and challenges of policing and guarding prisoners could actually be counter-productive. A 2001 study of prison guards in Rio de Janeiro uncovered overwhelming hostility towards 'human rights' which they associated with 'protecting the rights of criminals'.

As a result, international organisations now start with the practical sides of training, with improving professionalism. Respect for human rights is implicit and integral, not explicit, therefore reducing the chance of misunderstandings and alienation. A recent ethnography of the military police in Rio de Janeiro revealed that the officers resorted to excessive force because they had never been trained to use appropriate force or other strategies in approaching criminal suspects. This training is now being supplied by the International Committee of the Red Cross. Similarly, the International Centre for Prison Studies is helping headquarters personnel and prison governors in São Paulo to develop a human rights approach to prison management which includes strategic planning, performance indicators and procedures. The United Kingdom police are instructing the Civil Police in interrogation methods and scene of crime preservation techniques which should reduce the use of torture to extract confessions. The UK police themselves work from a manual, the Police and Criminal Evidence Act, in which every procedure outlined complies with European Human Rights law. Increased respect for human rights can only emerge in organisations with improved procedures and accountability. Which is more likely to influence a police officer about to mistreat a suspect — an admonition to remember the Universal Declaration of Human Rights, or the prospect of being demoted, disciplined, sacked or prosecuted?

— Fiona MacAuley

propose co-operation with police through community policing or defend victims rights have had more influence.

In other contexts, efforts to work with authorities have been more successful in setting priorities — though less successful in implementing programmes. Brazil's National Human Rights Programme (Programa Nacional de Direitos Humanos, PNDH) is a case in point. The PNDH was created by a participatory process that began in 1995, and involved the government and human rights groups. (A second version of the PNDH emerged through a similar, collaborative process in May 2002.)

The PNDH was driven by two factors. First, President Fernando Henrique Cardoso was the former head of the Ministry of Foreign Relations and he placed considerable weight on Brazil's image abroad. Under Cardoso, the federal government maintained a policy of dialogue at home and abroad in which it acknowledged human rights abuses in Brazil. The government's change in policy was motivated by a wish to increase foreign investment and integrate Brazil more completely into the international economy. The Cardoso administration's policy created space within official institutions for civil society to propose policies on human rights issues.

The PNDH was driven by members of civil society who used this new space. Paulo Sérgio Pinheiro played a critical role in this regard. At the time, Pinheiro was a political science professor at the University of São Paulo and director of the university's Centre for the Study of Violence. He co-ordinated the meetings between civil society and government which led to the PNDH. In addition, by the time the PNDH was created, many individuals associated with the human rights movement had taken positions in government. These people also helped to create the political commitment necessary to approve the programme.

Although the PNDH certainly represented an advance for human rights activists, an enormous gap remained between federal policy goals, as presented in the Programme and federal legislation, and government practice. The federal government's security record illustrates this gap. Very few measures included in the PNDH were actually enacted into law, and those that were enacted were due to public outrage at incidents of high profile human rights abuse. At the end of Cardoso's administration, many rights activists felt they had been misled. Rather than a joint civil society-government policy plan, the PNDH, one activist told us, represented a wish list designed for international consumption.

#### *Defending the rights of victims*

Some human rights organisations have sought to resolve the tension between human rights and public insecurity by incorporating defence of

victims' rights into their work. Unfortunately, in most of the countries studied in this report, the majority of human rights groups continue to regard advocates of victims' rights as antagonists.

This has been true of South Africa. Immediately after 1994, little attention was given to the role and place of victims in the justice process. As victims have become an increasingly organised and vocal lobby, however, this has changed. A number of initiatives seek to give victims a more substantial role in the legal and security processes. The main achievement of this movement, which has increasingly been supported by traditional rights groups, is the Victims' Charter.

The Charter responds to the oft-heard criticism that South Africa's Constitution and Bill of Rights are silent on the rights of victims, even though these have been recognised internationally. It is essentially a set of service standards for the police, justice officials, social welfare agencies and health care providers, rather than a compendium of justiciable rights. Once operational, it will become a tool to measure the performance and improve the accountability of key institutions. NGOs have participated in the deliberations leading to its finalisation, and will have an important role to play in monitoring compliance when the Charter becomes operational. The Charter in no way weakens the content of any rights that offenders have in terms of current law.<sup>189</sup>

The victims' rights movement in South Africa has also successfully revised sentencing guidelines. Sentencing has traditionally been the exclusive domain of court officials. Victims of crime had little if any role, and sentencing took no account of their interests. A new sentencing framework was developed by the South African Law Commission, which aims at providing greater victim involvement in both the sentencing process and consideration of parole, without giving victims an undue influence in the process. In addition, it directs courts to properly consider issues of reparation and restitution during the sentencing process.<sup>190</sup>

Finally, the South African Law Commission has embarked on an investigation, including a public consultation process, to assess the feasibility of introducing a Victims Compensation Fund that would compensate either all or designated categories of crime victims.

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<sup>189</sup> The Victims Charter was developed by the Department of Justice and Constitutional Development in collaboration with the South African Law Commission, the South African Human Rights Commission and the office of the National Director of Public Prosecutions. The Department of Justice is in the process of finalising the Charter.

<sup>190</sup> See 1997 Criminal Law Amendment Act. Also see South African Law Commission, Discussion Paper 91, Project 82, *A New Sentencing Framework*, May 2000.

These victim empowerment initiatives have generally taken an inclusive approach to victims of crime and tried to bring them into criminal justice processes. The effect has been to moderate victims' demands, though much still remains to be done.

### **Broad engagement in the security debate**

Engaging in security debates whose terms are decided by others, by government and by those that demand harsh law and order policies, certainly creates a danger that the security concerns of rights organisations may be marginalised. On the other hand, not taking part in the crime and security debate may marginalise human rights organisations more completely.

For most rights activists, therefore, participating in the security debate entails a dangerous foray into uncharted territory. They must deal with security institutions they mistrust. They must build capacity in areas where they may have little or no experience. They need to evaluate difficult options in relation to security management. Despite the dangers, some degree of engagement has become increasingly necessary. As Elrena van der Spuy of the Institute of Criminology at the University of Cape Town notes, "in a context [in which] the demand for police effectiveness is often viewed to be at odds with due process... [human rights advocates must] argue point for point why adherence to due process is a necessary prerequisite for police effectiveness".<sup>191</sup> A small group of NGOs in the countries studied have taken steps to develop the expertise necessary to evaluate public security policies effectively.

One such group is Instituto de Estudos da Religião (ISER), a pro-human rights research centre in Rio de Janeiro. Its team of academically-trained researchers has produced quantitative reports on human rights issues in public security. Among these are studies of the use of deadly force by police, a report which involved one review of 450,000 police reports over four years, and another of over three hundred cases in the military justice system. In both instances, the reports were well documented and their results difficult to attack. In Argentina, CELS has been working to form public policy research groups on security concerns. It has sought to bring activists and academics together to develop expertise to engage in the debate in an informed, rights-sensitive manner.

However, broad debate on public security issues requires not only quantitative and qualitative understanding of what is wrong with current

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<sup>191</sup> Elrena van der Spuy, correspondence with research team, April 27, 2003.

models, but also appreciation of how public security works in practice and how it could work better. As groups engage more completely in the public security debate, they also need to understand the day-to-day nature of police work.

### ***Argentine group works to break perceived connection between criminality and human rights defence***

The Argentine rights group CELS addressed the alleged tension between demands for personal security and the defence of human rights. In this sense, it has sought to demonstrate that heightened levels of violence and human right violations affect both those in conflict with the law as well as law-abiding citizens and even policemen. Three examples, summarised below, demonstrate this approach.

In 1997, CELS legally represented a member of the Federal Police who suffered harassment in connection with his refusal to participate in illegal activities. Its work on this case allowed CELS to demonstrate the direct, active role of police in rising crime. The organisation's defence of this police officer allowed it to demonstrate that human rights defence was not antagonistic to police work, only to criminal police behaviour.

In September 2000, a police officer killed a bank robber and his hostage in the Province of Buenos Aires. As a result of CELS' work, the families of both the assailant and the hostage came to see that their relatives were victims of institutional violence and decided to work together to seek justice.

In November 2001, CELS presented a collective *habeas corpus* in favour of the nearly seven thousand people deprived of their freedom in inhuman conditions in police stations in the Province of Buenos Aires. In this legal presentation, CELS argued that prison overcrowding not only aggravates detention conditions, but also removes police (who oversee many detention centres) from their crime prevention and control duties.

For several years, in order to attack directly the accusation that human rights groups concern themselves only with criminals, CELS has researched and compiled data on the number of police officers killed, as well as the number of those killed by police. Once it has gathered these data, CELS uses them in advocacy campaigns, primarily with the local media.





## **X. RECOMMENDATIONS**

The recommendations below are organised according to the type of activity performed by particular civil society groups. Thus, recommendations to groups involved in collaborative efforts with state authorities will not be applicable to groups with an exclusive focus on oversight, and vice versa. This said, some recommendations targeted at a particular group of rights activists may be relevant to others that have a different focus.

We begin with pointers that may be relevant to all rights groups working in the area of public security and then proceed to groups that focus on what areas we have termed 'oversight activities', 'broad engagement' and 'collaborative efforts'.

### **To the public security human rights community**

*Reflection and self-criticism.* Because of the intense daily pressures on human rights defenders, rights groups do not always routinely evaluate the effectiveness of their strategies. Human rights organisations should reflect on their approach and consider developing new strategies for addressing rising crime in ways that both protect the due process safeguards for criminal suspects and address the community's concerns for safety and security. Such a reflection might involve a self-conscious evaluation of the merits and drawbacks of dominant methods, and consider the pros and cons of other approaches.

*Create more effective security networks amongst human rights NGOs.* Often groups and organisations sharing similar overall objectives work separately from each other and create the impression of a sector that is divided and unable to articulate a clear and common position. While groups will wish to retain their independence and the features that make them unique, this does not prevent co-operation. Indeed, a more self-conscious understanding by rights groups of the diversity of their approaches to issues of criminality and rights defence might allow them to see their work as complimentary. This, in turn, might lead to greater co-operation and reduce competition for funding.

### **To watchdog groups**

*Focus on cases that can transform public opinion.* There are advantages in focusing attention on high-profile cases that have the potential to transform public opinion. Paradigmatic cases in this regard are likely to be ones in which innocent victims suffer grave abuses. This said, the key duty of human

rights organisations is to address substantive issues in injustice. Personalising the victim and focusing on less culpable victims should not cause key issues to be marginalised, and rights groups should continue to defend the rights of all persons, including those who have committed criminal offences.

*Demand rigour and include quantitative analysis in research and reporting.* Professional criteria must be applied to NGO research and documentation. NGOs should work with reliable sources and statistics to give to their reports and petitions credibility. It is important to strengthen and improve research techniques. This implies continued investment in capacity building. It is critical that rights groups should be able to present coherent, rational and scientific responses to emotional and irrational arguments about criminality and law and order.

*Work closely with the media.* Creating close ties with the print and broadcast media will help educate the public on human rights issues. It will also enrich debates about human rights and public security. Rights groups should use media outlets as a platform to inform people of their legal rights and the importance of respecting those rights. Careful reflection about how best to work with journalists is particularly important to watchdog groups, which are particularly subject to negative media portrayal of their work.

*Work closely with allies within the state.* Rights defenders in transitional societies, even those in traditional watchdog groups, should recognise that the state is far from monolithic. State institutions charged with oversight of the criminal justice system, such as ombudsmen offices or prosecutors, may make excellent partners for investigating and denouncing official abuses. Other bodies, such as legislative human rights commissions at federal, state or local level, have also proved to be important allies for civil society groups in many of the countries studied.

### **To groups seeking broad engagement in the security debate**

*Hone technical understanding of public security issues.* Human rights groups should better understand the institutional obstacles to effective public security policies. During authoritarian rule, rights groups are concerned primarily with forcing a democratic transition. In the post-transition period, human rights work becomes more technical. Organisations require a precise understanding of complex policy issues. They must hone their advocacy skills in order to lobby for legislative changes and legal mechanisms consistent with democratic institutions.

*Focus on innovative human rights education and consciousness raising.* NGOs should mobilise society in innovative ways that move beyond

conventional means such as report writing and casework. New channels of communication are needed to dispel myths propagated in the media and in public discourse. Conventional means of communication are often not sufficient to change public opinion. Rights groups should employ many approaches such as imagery, music and theatre to influence public attitudes to crime and security issues.

*Train media in human rights standards and sensitivity.* Focused, structured training workshops have assisted the media in reporting accurately and responsibly on emotive crime matters. The training should be aimed at assisting reporters to avoid sensational and emotional reporting around crime and to encourage them to report in ways that inform public debate on matters of crime and violence.

*Highlight positive police practices.* To overcome police distrust for human rights work, human rights groups can emphasise positive examples of police work and techniques. Human rights defence should be seen to support good policing, and not merely to criticise abusive police practices.

*Research the operation of the criminal justice system.* The cases studied in this report reveal that quality data on the operation of the criminal justice system, including police, prosecutors, the judiciary and the prison system, is vital and that it is often lacking. Either alone or in conjunction with universities or other research centres, rights groups should study the system in order to engage better in the public debate on crime and public security.

*Inform public opinion.* NGOs can provide public education on policies, legislation and strategies, and where and how communities can engage government to ensure equal access to justice. Well-rounded and accessible information about the legal and human rights framework, showing where opportunities exist to engage policy-makers on important matters in policy-making, contributes to public participation and in the long-term will improve the accountability of the state and state officials.

*Monitor legislation.* Proactive monitoring of legislation helps to prevent the promulgation of weak or ill-considered legislation. In this regard, NGOs should develop or strengthen their capacity to monitor the legislative process effectively. They might establish parliamentary monitoring bodies to track debates, including budget speeches, hold media briefings and collect important documentation from parliament and parliamentarians. Rights groups should prepare submissions at an early stage, when proposed legislation is being conceived since it is difficult to reverse policy decisions once they have been taken.

### **To groups engaged in collaborative efforts with public authorities**

*Focus human rights training on practical skills rather than (merely) on legal norms.* Training in, and knowledge of human rights should be an integral element of training for all law enforcement personnel. However, human rights should also be included in introductory or mid-career courses in crime investigation skills and public order policing. Training should emphasise principles and values that will help improve rather than hinder service delivery. It should also be accompanied by programmes to professionalise the police service: provision of adequate resources and salaries are important to maintaining the confidence, image and morale of the police, prosecutors and correctional services.

*Monitor and evaluate police training.* Often NGOs conduct training for members of police officers but fail to assess its impact. The danger is that ineffective training programmes could be discarded in favour of old practices and patterns.

*Facilitate access to justice.* NGOs can help improve public access to the criminal justice system. The justice system and its processes are complex and, particularly in societies where levels of functional literacy are low, NGOs can ensure that the public understand the system, know what their rights are, and are assisted to enforce their rights.

*Hold parliamentary workshops.* Rights groups should work to develop workshops with parliamentarians on international and national human rights standards in general, and on law making particularly in the face of public pressure to pass draconian measures that may violate these standards.

## **INTERVIEWEES**

### **Argentina**

Centro de Estudios Legales y Sociales (CELS), Buenos Aires

Ana Chávez, lawyer, Fundación Servicio Paz y Justicia (SERPAJ), Buenos Aires

Sergio Di Gioia, member, Presidential Council-lawyer, Asamblea Permanente por los Derechos Humanos, Buenos Aires

Enrique A. Font, Co-ordinator and Researcher, Section on Criminology and Criminal Policy, Centro de Estudios e Investigaciones en Derechos Humanos (CEIDH), Faculty of Law, Universidad Nacional de Rosario, Rosario

Carmen Maidagan, lawyer, Coordinadora de Trabajo Carcelario (CTC), Rosario

Rubén Naranjo, member, Foro Memoria y Sociedad, Rosario

Alicia B. Pierini, legislator, City of Buenos Aires; Member, Commission on Human Rights, Guarantees and Non-discrimination, Justice and Health, Buenos Aires

María Teresa Schnack Schiavini, President, Comisión de Familiares de Víctimas Indefensas de la Violencia Social, Buenos Aires

Catalina Smulovitz, Professor, Universidad Torcuato Di Tella, Buenos Aires

Sergio Sorín, President, Amnesty International Argentine Section, Buenos Aires

Sofía Tiscornia, Director, Research Area, Office of the Ombudsman of the City of Buenos Aires, Buenos Aires

María del Carmen Verdú, lawyer, Coordinadora contra la Represión Policial e Institucional, Buenos Aires

### **Brazil**

#### *Personal interviews*

Ignácio Cano, Researcher, Instituto de Estudos da Religião (ISER); Professor of Research Methodology, State University of Rio de Janeiro, Rio de Janeiro

Cecília Coimbra, Professor of Psychology, Federal University of Rio de Janeiro; Vice President, Torture Never Again Group, Rio de Janeiro

Fernino Fecho, Ombudsman, São Paulo Police, São Paulo

Roberto Monte, President, Center for Popular Memory and Human Rights,  
Natal, Rio Grande do Norte State

Ricardo Rezende, Pastoral Land Commission, Rio de Janeiro

Renato Simões, President, Human Rights Commission, São Paulo State  
Legislative Assembly, São Paulo

Pedro Strozenberg, Co-ordinator, "Rights Stand" Project, Viva Rio, Rio de  
Janeiro

Amélia Telles, President, Commission of Relatives of Politically Killed or  
Disappeared, São Paulo

Oscar Vilhena Vieira, Professor of Law, Catholic University of São Paulo;  
Director, CONECTAS, São Paulo

#### *NGOs interviewed*

ABONG – Associação Brasileira de ONGs, [www.abong.org.br](http://www.abong.org.br)

Centro de Justiça Global, [www.global.org.br](http://www.global.org.br)

CIMI – Conselho Indigenista Missionário, [www.cimi.org.br](http://www.cimi.org.br)

Conjuntura Criminal, [www.conjunturacriminal.com.br](http://www.conjunturacriminal.com.br)

CPT – Comissão Pastoral da Terra, [www.cptnac.com.br](http://www.cptnac.com.br)

DHNET – Rede de Direitos e Cultura, [www.dhnet.org.br](http://www.dhnet.org.br)

FASE – Fundação de Análises Sociais e Econômicas, [www.fase.org.br](http://www.fase.org.br)

IBASE – Instituto Brasileiro de Análises Sociais e Econômicas,  
[www.ibase.org.br](http://www.ibase.org.br)

ILANUD – Instituto Latino Americano das Nações Unidas para Prevenção do  
Delito e Tratamento do Delinquente, [www.ilanud.org.br](http://www.ilanud.org.br)

INESC – Instituto de Estudos Socioeconômicos, [www.inesc.org.br](http://www.inesc.org.br)

ISER – Instituto de Estudos da Religião, [www.iser.org.br](http://www.iser.org.br)

MST – Movimento dos Trabalhadores Rurais Sem Terra, [www.mst.org.br](http://www.mst.org.br)

Ouidoria de Polícia de São Paulo, [www.ouvidoria-policia.sp.gov.br](http://www.ouvidoria-policia.sp.gov.br)

POLIS – Instituto de Estudos, Formação e Assessoria em Políticas Sociais,  
[www.polis.org.br](http://www.polis.org.br)

## **Nigeria**

Hussain Abdu, Lecturer, Department of Political Affairs, Nigerian Defence Academy, Abuja

Etannibi Alemika, Professor of Criminology, University of Jos, Jos

Alex Amadi, Deputy Commissioner of Police, Ebonyi State Police Command, State Headquarters, Abakaliki

Stella Amadi, Programmes Co-ordinator, Institute for Human Rights and Humanitarian law, Port Harcourt

Centre for Law Enforcement Education, Lagos

Josephine Effah-Chukwuma, Executive Director, Project Alert, Ikeja

Rebecca Sako John, Executive Director, League of Democratic Women (League Nigeria), Kaduna

Ibrahim Mohammed Kanoma, Chairman, Nigeria Union of Journalists, Nigerian Labour Congress, Gusau

Bari-Ara Kpalap, Information Officer, Movement for the Survival of Ogoni People (MOSOP), Port Harcourt

Hajiya Lubabatu Lawal Ammani, Teacher and Co-ordinator, Child Foundation Organisation, Zamfara

Okechukwu Nwanguma, Zonal Co-ordinator, Civil Liberties Organisation (CLO), Enugu Area Office

Titi Ogunye, Human Rights lawyer, Ikeja

Festun Okoye, Executive Director, *Human Rights Monitor*, Kaduna

Eze Onyekpere, Executive Director, Shelter Rights Initiative, Surulere

Abdul Oroh, Executive Director, Civil Liberties Organisation (CLO), Lagos

Legborsi Pyagbara, Desk Officer for Environment, Movement for the Survival of Ogoni People (MOSOP), Port Harcourt

Chima Ubani, Head, Democracy and Governance Project, Civil Liberties Organisation (CLO), Ikeja

Mallam Zakari Ya'u, President, Community Action for Popular Participation (CAPP), Abuja

## **South Africa**

David Bruce, Researcher, Center for the Study of Violence and Reconciliation, Braamfontein

Vinodh Jaichand, Director, Lawyers for Human Rights, Pretoria

Duxita Mistry, Senior Researcher, Institute for Human Rights and Criminal Justice Studies, Technikon South Africa, Johannesburg

M. C. Moodliar, Head, Legal Services, South African Human Rights Commission, Johannesburg

Ann Skelton, Head, Child Justice Unit, Department of Justice and Constitutional Development, Pretoria

Abbey Witbooi, General-Secretary, Police and Prisons Civil Rights Union (POPCRU), Braamfontein

## **Ukraine**

Mykhailo Bardyn, Head of the Executive Committee, Podilsky Centre for Human Rights, Vinnytsia

Oleksandr Betsa, Law Programme Manager, International Renaissance Foundation, Kiev

Viktor Bondarenko, Deputy Director, National Institute for Strategic Studies, Kiev

Oleksandr Bukalov, Director, Donetsk Memorial, Donetsk

Semen Hluzman, Director, Ukrainian-American Bureau on Human Rights, Kiev

Nina Karpachova, Ombudsman, Verhovna Rada of Ukraine, Kiev

Yaroslav Kondratiev, Rector, Academy of Internal Affairs, Kiev

Oleksandr Kovalenko, Chief, Department of International Relations, Public Prosecutor's Office, Kiev

Yurij Murashov, Co-chairman, Ukrainian Committee, Kiev

Oleksander Ptashynski, Deputy Chair, Department of Execution of Punishment, Kiev

Petro Rabinovych, Director, L'viv Laboratory of Human Rights, L'viv

Roman Romanov, Rule of Law Programme Manager, International Renaissance Foundation, Kiev



Serhij Rybalko, Co-ordinator, Crimean Human Rights Co-ordination Centre, Simferopol

Oleksander Shevchenko, Co-chair, Helsinki-90, Kiev

Zenovij Siryk, President, Democracy and Law Foundation, L'viv

Andrij Sukhorukov, Vice President, International Human Rights Society, Kiev

Oleksij Tarasov, Head, Chernihiv Public Committee of Human Rights Protection, Chernihiv

Tatiana Yablonska, Vice Director, Ukrainian-American Bureau on Human Rights, Kiev

Yevgeny Zakharov, Head, Kharkiv Human Rights Protection Group, Kharkiv

Vasyl Zherdiak, Head, Vinnytsia Committee on Human Rights, Vinnytsia



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The Centre for Legal and Social Studies fosters and protects human rights and strengthens the democratic system and the rule of law in Argentina.

### **[www.cleen.kabissa.org](http://www.cleen.kabissa.org)**

The Centre for Law Enforcement Education promotes respect for human rights and co-operation between civil society and law enforcement agencies, through research and publications, human rights education and community empowerment programmes.

### **[www.crime-prevention-intl.org](http://www.crime-prevention-intl.org)**

The International Centre for the Prevention of Crime assists cities and countries to reduce delinquency, violent crime and insecurity and bridges the gaps between decision-makers, practitioners and researchers.

### **[www.criminology.utoronto.ca](http://www.criminology.utoronto.ca)**

The Centre of Criminology at the University of Toronto is a research and teaching unit where crime, order and security are studied from a variety of disciplinary perspectives and theoretical approaches.

### **[www.csvr.org.za](http://www.csvr.org.za)**

The Centre for the Study of Violence and Reconciliation is a multi-disciplinary South African non-governmental organisation which is dedicated to making a meaningful contribution to peaceful and fundamental transformation in South Africa, and in the Southern African region.

### **[www.global.org.br](http://www.global.org.br)**

The Global Justice Centre promotes social justice and human rights in Brazil through rigorous documentation and distribution of reports on rights abuse, as well as through the use of international mechanisms for the protection of human rights.

### **[www.heuni.fi](http://www.heuni.fi)**

The European Institute for Crime Prevention and Control is the European link in the network of institutes operating within the framework of the United Nations Crime Prevention and Criminal Justice Programme.

**[www.icclr.law.ubc.ca](http://www.icclr.law.ubc.ca)**

The International Centre for Criminal Law Reform and Criminal Justice Policy contributes to international criminal justice policy development through analysis, research and consultation, and provides technical assistance to implement international policy and standards.

**[www.iss.co.za](http://www.iss.co.za)**

The Institute for Security Studies conceptualises, informs and enhances the security debate in Africa by conducting independent applied research and analysis; facilitating and supporting policy formulation; raising awareness of decision-makers and the public; monitoring trends and policy implementation; collecting, interpreting and disseminating information; national, regional and international networking; and capacity-building.

**[www.jjay.cuny.edu](http://www.jjay.cuny.edu)**

The Centre on International Human Rights at John Jay College of Criminal Justice in New York.

**[www.unafri.or.ug](http://www.unafri.or.ug)**

The United Nations African Institute for the Prevention of Crime and Treatment of Offenders.

**[www.unicri.it/index.htm](http://www.unicri.it/index.htm)**

The United Nations Interregional Crime and Justice Research Institute aims to strengthen the United Nations actions in the prevention and control of both juvenile delinquency and adult criminality.

**[www.unodc.org/unodc/en/crime\\_cicp.html](http://www.unodc.org/unodc/en/crime_cicp.html)**

The United Nations Office on Drugs and Crime – Crime Programme which is responsible for crime prevention, criminal justice and criminal law reform.

**[www.unodc.org/unodc/uncjin.html](http://www.unodc.org/unodc/uncjin.html)**

The United Nations Crime and Justice Information Network – a substantial database of links to criminal justice related sites.

## **ABOUT THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY**

The International Council on Human Rights Policy was established in 1998 following an international consultation that started after the 1993 World Conference on Human Rights in Vienna.

The Council's Mission Statement reads:

The International Council on Human Rights Policy will provide a forum for applied research, reflection and forward thinking on matters of international human rights policy. In a complex world in which interests and priorities compete across the globe, the Council will identify issues that impede efforts to protect and promote human rights and propose approaches and strategies that will advance that purpose.

The Council will stimulate co-operation and exchange across the non-governmental, governmental and intergovernmental sectors, and strive to mediate between competing perspectives. It will bring together human rights practitioners, scholars and policy-makers, along with those from related disciplines and fields whose knowledge and analysis can inform discussion of human rights policy.

It will produce research reports and briefing papers with policy recommendations. These will be brought to the attention of policy-makers, within international and regional organisations, in governments and intergovernmental agencies and in voluntary organisations of all kinds.

In all its efforts, the Council will be global in perspective, inclusive and participatory in agenda-setting and collaborative in method.

The Council starts from the principle that successful policy approaches will accommodate the diversity of human experience. It co-operates with all that share its human rights objectives, including voluntary and private bodies, national governments and international agencies.

The International Council meets annually to set the direction of the Council's programme. It ensures that the Council's agenda and research draw widely on experience from around the world. Members help to ensure that the Council's programme reflects the diversity of disciplines, regional perspectives, country expertise and specialisations that are essential to maintain the quality of its research.

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