CRIME, PUBLIC ORDER AND HUMAN RIGHTS POLICY IMPLICATIONS

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TRANSITIONS, PUBLIC SECURITY AND REFORM

1. In <u>war-to-peace transitions</u>, the reform of existing security forces or even creation of new police is necessary for the demilitarization of internal security, to provide safeguards for demobilisation and reintegration of former combatants and an environment for democratization. As a result, major – "holistic" – police reforms have been undertaken in post-conflict settings. Central American reforms endowed the new police with important political support. However, they have struggled to contain rapidly rising rates of common crime and social violence and rapidly lost operational credibility. In response, governments maintained or reintroduced a military role in policing, undermining the peace processes' commitment to demilitarise internal security. Other responses – increasing police powers and increasing penalties – threaten to erode still-fragile human rights guarantees. These trends are facilitated by the absence of pro-reform constituencies. In countries with long histories of militarized and repressive policing, few people are protecting the gains of police reforms; there is little civilian expertise in public security matters and alternative models either in government, academia and civil society (Neild).

2. <u>Political transitions to democracy</u> vary in their focus on public security reforms. In South Africa, the police were the primary enforcers of apartheid and an immediate focus of transitional reform efforts (albeit with the scope of reform limited by the negotiations). In some cases, pacted transitions leave the military (or other elite sectors) in control of security forces (Chile). In others, like Argentina, where the military were disgraced, the post-transitional focus of new civilian authorities and human rights groups was on regaining civilian control over the military and seeking accountability for past violations, not police reform. In some cases, new political authorities may seek to assert their own political control over military and police.

3. Crime was not immediately a major issue in many South American transitions. Only later did increasing crime and increasing police brutality in response create pressure for reform. In South America as in Central America, initial responses often reintroduced the military to policing tasks or initiated "war on crime" (*mano dura*) measures, increasing penalties and police powers. These

measures did not reduce crime, but tended to increase abuse and further reduce confidence in the rule of law. During the 1990s, a series of police reforms were launched in South America. Some were initiated by the government or police themselves and generally focused on improving effectiveness or confronting the legitimacy crises of the police. Other politically negotiated reform initiatives reflect civil society pressures to curb police abuse and include greater focus on accountability (Mesquita). Increasingly, variations on community policing models are being looked to as a way to address both accountability and effectiveness.

4. <u>Private responses to crime</u> and the loss of confidence in the police and courts are producing an explosive expansion of private security, with private guards often outnumbering the police. While there are resource-rich areas in some African nations effectively under the control of private firms protecting corporate interests, in Latin American and most other countries, it is not apparent that private security poses a direct threat to the state. However, state regulation and oversight of private security tends to be minimal or non-existent. A number of dangers are clear. Private security personnel have carried out contract-style and social-cleansing killings. These firms are a prime source of employment for demobilised military and former police, raising concerns about accountability and ongoing criminal activities. Even where private security is not controversial, it cannot be understood as a complement to the inadequacies of public security institutions as private companies protect their clients interests and these may be at odds with broader public interests. On the other hand, private security may alleviate the pressure of demand on limited states services. The privatization of security does exacerbate social inequalities as the wealthy retreat to gated communities and shopping malls, while the poor remain considered as a dangerous class and policed accordingly. In this context, the increase in "popular justice" and lynching can be understood as another form of privatization in the face of the state's failure to provide security.

POLICY OPTIONS AND POLICE REFORM

5. There are increasing efforts to improve crime prevention. As well as some national actors, some international development agencies are trying to focus resources on social prevention of violence and crime. It is vital to understand the root causes of crime and emphasize a preventive approach that confronts issues of poverty and exclusion. It is also clear that the criminal justice system and police have little or no effect on root causes of crime. Prevention programs with a development perspective are vitally important. However, social prevention is a long-term solution to an immediate problem of public order. Also, many governments in developing countries have little comprehension of or trust in prevention programs and approaches, especially in cultures still marked by social and political authoritarianism. They are seeking short-term responses that can have a demonstrable impact within their term in office. Furthermore, the focus on repressive responses at state and social levels combined with human rights concerns about police abuse tend to concentrate significant attention on police reforms.

Post-Conflict Institutional Reforms

6. Major post-conflict institutional police reforms have addressed police recruitment, training, disciplinary systems, leadership development, operations, resource provision, management and administrative systems, information systems, technical skills development, budget and resource management, and administrative structures. Many lessons are being drawn from these experiences, especially by international actors. However, for the military actors who dominate peacekeeping, success is defined in terms of the sustainability of the peace and possibility of a timely withdrawal of peacekeepers – not on the sustainability of democratic, rights-respecting policing or the new police's effectiveness in containing common crime. Among the key lessons

drawn from these processes are that political will and the quality of police leadership are key; that a parallel judicial reform is needed in post-conflict settings; and that expediency is a common flaw as international actors take short cuts in order to move the process along. A conceptual problem of these reform processes is that they view the reform in terms of skills transfer from international professionals to the national police, and do not reach beyond the institution to build capacity in the state and encourage the development or consolidation of pro-reform public constituencies.

Effectiveness reforms

7. I will not discuss "negative reforms" that increase the repressive power of the police, except to note that the use of undercover techniques and improvements to police intelligence are probably necessary, particularly to confront organized crime, but clearly raise serious concerns about abuse and politicisation. Many police reform initiatives are focusing on improving the use of information, crime mapping and directed patrol. Some reforms review personnel assignations; some have decentralized policing and tried to increase the role of local authorities and communities (sometimes leading to problems of politicisation). Many effectiveness reforms are undertaken without adequate consideration of the need for accountability. In examining these reforms it is important to be clear that greater professionalization does not necessarily make police more respectful and accountable, it may simply make them more centralized, hierarchical and opaque.

Accountability reforms

8. Accountability reforms focus on reducing police abuse and broadening participation in policy-making and police oversight. They include the creation of civilian review or police auditors; the creation of public security advisory councils with civil society participation; strengthening internal disciplinary mechanisms; human rights training; and efforts to address police torture of detainees through changes in rules of evidence and strengthening judicial oversight. Some civil society engagement has also suffered from problems of capacity and weak follow-through on reform initiatives. Police accountability can clearly be improved, but it is not clear that gains can be sustained if effectiveness is not improved, as accountability may become associated with weakness. This makes strict accountability reforms politically vulnerable.

Overlapping Strategies

9. Purges of corrupt and abusive elements are often undertaken at the start of reform processes – indeed many "reforms" do not go beyond a purge designed to impact public opinion. Purges have little or no lasting effect unless accompanied by efforts to reshape institutional culture and incentive structures that tolerate or reward misconduct (e.g. policies and practices governing assignments, promotions and retirement).

10. Increasingly, community policing is being looked to as a reform strategy that brings together effectiveness and accountability concerns. There have been a number of serious community policing efforts, with results including improvements in community perceptions of security, increased police legitimacy and, in at least one experience in Brazil, a problem-solving model has had significant impact on specific targeted crimes. However, the prominence of community policing also leads to many poorly conceived initiatives, or to projects being described as community policing that bear little relation to the general approach. It is also not clear that community policing necessarily helps to reduce police abuse.

SUCCESSES, FAILURES AND LESSONS

11. Judging the success of post-conflict police reforms has been relatively easier, in part because of the clear framework established by peace processes or interventions and the relatively limited definitions of success initially being used. As the discussion here makes clear, however, over the longer term, the sustainability of these reforms is coming into question. In other transitional or "post-transitional" settings, police reforms rarely enjoy the degree of political space for reconceptualisation and redesign and resource levels available in post-conflict settings and reforms tend to be partial, in contrast to holistic post-conflict reforms. They also tend to be politically contingent; dependent on the government in power at the time and often undone by their successor.

12. Many reforms suffer from poor policymaking and implementation. Few governments in the region have clear public security policies and need to build policymaking capacity (this can also make it hard for countries to negotiate between competing donor models for coherent international assistance). Sometimes there is good policy making capacity, but policy implementation capacity in weak institutions and marginalized communities is very weak, and capacity building is required at those levels in order to develop partners or create a more propitious environment for reforms.

13. Many reformers are desperate for quick results, and some international actors have very short-term interests; yet reforms can take considerable time to implement and show results. Changing bureaucratic cultures is difficult and takes committed leadership – from political and police authorities. On the whole, reforms that reflect some institutional interests of the police, or of pro-reform sectors within the police have a better chance of success.

14. There are country-specific successes and failures, but it remains difficult to draw solid comparative conclusions. There are at least two key difficulties in measuring outcomes better:

    - Many reform initiatives are undertaken without establishing processes for evaluation. The data on crime and impacts of criminal justice reforms are extremely weak and susceptible to political manipulation in many countries.

    - Reforms are not always clear about the impacts sought, or whether a strategy is likely to produce the stated policy objective. Community policing is probably one of the most complex reform strategies as stated objectives often include improving police legitimacy, police service provision and community relations, and reducing crime rates and/or improving people's perception of security.

15. Recent studies have explored the outcomes and dynamics of reforms, and sought to define the parameters of "democratic policing" (Bayley). Human rights concerns are prominent in some, but not all of these studies. Given that human rights concerns enter into the larger framework of concern with effective crime fighting and institutional legitimacy, it becomes critical to examine the dynamics of reform processes and reform strategies for their ability to provide policing that is both effective and respectful. This concern with the relation between accountability and effectiveness lies at the core of the new human rights engagement with public security and the rule of law. Given the historic lack of democratic models and good practice in many transitional countries, international and comparative experiences are enormously valuable to inform reform proposals. Specific reform initiatives, however, have to address the dynamics of accountability/effectiveness in the local context, based in a close understanding of local realities.

16. In thinking about reform strategies and the challenges they face, it can be useful to conceptualise reform at three levels: the government or state; the institutional or departmental; and the social

or community. Stone and Ward discuss a reform matrix with strategies at each level for democratic controls of the police. The same matrix can be useful in thinking about effectiveness issues also. As the discussion here indicates, reforms to public security practices face challenges at each of these levels and policy responses and NGO engagement should take them into consideration.

HUMAN RIGHTS APPROACHES

17. In transitions, human rights workers have pressed for the incorporation of international standards into national law and practice. They have also had to confront the reality of serious institutional weakness and consider how to press for or engage with democratic institution building. In many countries today, confronting the persistent weakness of state institutions and services, human rights workers and political scientists are discussing the limits of democratization and confronting transitions that have changed the political order but not the underlying patterns of social inequality and discrimination. Paulo Sergio Pinheiro notes that police become the key instruments of "socially-rooted authoritarianism" that targets the "dangerous classes." Paul Chevigny argues in the *Edge of the Knife; Police Violence in the Americas* that police work reproduces social order. It is a facet of what political scientists are describing as "low-intensity democracy" or "uncivil democracy" that citizenship rights and benefits are distributed unequally. The wealthy enjoy protection from police, while the poor experience policing primarily in the form of extortion and repression.

18. Despite recognition of the need for democratic institution building, moving from a critique of police institutions to collaboration with authorities on security reforms challenges the historic identity of human rights communities founded in eras when police forces were often central instruments of political repression. Many groups have been reluctant to go beyond their traditional monitoring of police abuse. Sometimes, in transitions, groups cease to monitor police conduct for a range of reasons including: an assumption that the transition reduces the need for monitoring; reluctance to criticize the reinstated or newly-elected government (in some cases, colleagues join the government); a reduction in funding for traditional human rights work; and giving priority to efforts to seek accountability for past abuses.

19. However, given the real economic, social and political costs of increasing crime and violence, and the political costs to human rights values of appearing insensitive to these concerns, traditional concerns with accountability become an inadequate response. A focus on international standards and narrowly defined human rights violations by police and judicial authorities that does not address the failure of post-transitional institutions to deliver basic public security fails to confront the real costs of crime and disorder for social and democratic order. A failure to confront these dynamics threatens to undermine the hard-won gains of political transitions in establishing human rights guarantees and the rule of law. To do so risks succumbing to the perception that human rights are the luxury of developed nations with low crime rates.

20. Important evidence indicates that, to be effective, policing must be open and respectful. Without public trust and cooperation, the police working alone can achieve very little either to prevent or fight crime. This means that respect for rights, good information flows, accountability for performance, and local and community-oriented strategies are core aspects of both democratic policing and effective policing. It implies that only democratic policing in the sense of rights-respectful policing can ultimately be effective. The core of the challenge for human rights organizations is to weave together the strands of effectiveness and accountability.

21. As human rights groups examine work in this area, they confront a range of problems.

22. What are effective strategies to confront public discourse that asserts a necessary trade-off of human rights protections for effective crime fighting?

23. In countries with weak data and limited outside access to official data, monitoring police abuse and police performance presents real challenges. What should be measured and how?

24. Engagement with reforms implies a dual role for human rights workers: documenting and denouncing abuse while advocating for and engaging with reforms. The antagonistic position created by denunciatory work can create serious problems of access and dialogue. On the other hand, in contexts where police and government authorities are reluctant to give civil society a greater role in policy debates, the denunciatory role can create the leverage and thereby the access that is necessary for further engagement with reforms.

25. To engage with reforms, technical expertise must be built into local practices and alternative models. The latter may require alliances outside experts from academia or the international community, but local groups will have the central role in assessing the transferability of models and lessons from other countries.

26. In building expertise, promoting police reform, conducting pilot projects, etc, how far should human rights workers go? At what point does engaging with police reform or social crime prevention cease to be human rights work?

27. In discussing these issues in transitional settings, we should be aware that these dangerous dynamics of crime, public order and the erosion of human rights may not be a temporary state of affairs. It is very possible that this is the shape of democratic policing in many "uncivil democracies" (as has often been the case in the inner cities of wealthy nations). Thus, the mediating and watchdog role of civil society and the human rights perspective is vital to confront high and rising crime rates and fragile and politically-contingent public security reforms in a manner that deepens rather than damages democracy and human rights guarantees.

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