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**HUMAN RIGHTS AND THE PROLIFERATION OF CRIME:
THE PERCEPTION OF HUMAN RIGHTS AND ITS EFFECTS ON RIGHTS
DEFENCE IN BRAZIL**

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1. What issues does the proliferation of crime raise in relation to human rights? How does the proliferation of crime affect the perception of human rights defence? What other factors should be analyzed? How does (street) crime and its perception by the public and the media affect the work of human rights organizations? What specific factors exacerbate the problem?
2. The following discussion paper seeks to address factors that may explain the relationship among violent crime, popular and media perceptions of crime and of the defence of human rights, and the work of human rights organizations themselves. The paper sets out several working theses – labelled as such – and proposes further research.

INTRODUCTION

3. The defence of human rights is not ordinarily an easy task. One may anticipate that the defence of rights – which necessarily implies oversight and questioning of the role of authorities – will prompt adverse response from these authorities themselves. Official responses may range from courteous, well-guised contempt and the low end of the intensity spectrum to legal obstacles to operation and outright acts of intimidation, harassment and physical violence. Unfortunately, difficulties with authorities may not be the only (or even the most important) opposition faced by human rights groups, particularly in the context of rising crime. Increasingly, as the defence of human rights focuses on policing in non-political urban contexts, those who defend human rights are viewed as allies of criminals and criminality. This vision, when widely held, constitutes a serious impediment to the work of human rights defenders.
4. How is this view constructed? When is it exacerbated or mitigated? How can human rights groups better understand the nature of popular sentiment regarding their work and – ideally –

how can they influence these sentiments to promote public support for their vital task in the midst of high urban crime rates? This paper proposes to set forth, if not the answers, at least the questions to be asked to arrive at conclusions about these issues. The focus of this study is Brazil, and in particular, its major urban centres, over the past twenty years. Brazil provides an excellent case study for a number of reasons: first, crime rates in Brazil are significantly higher than almost anywhere in the Americas and have been for many years. Thus, the public understanding of human rights defence has developed in a context of high criminal indices for a significant period of time. Second, Brazilian rights groups have been subjected to relatively few restrictions for much of this same period, thus allowing them to work freely, which in turn, facilitates evaluation of their efforts and context in which they labour. Third, the issues of crime and human rights have been priorities in the national debate in Brazil for a number of years. As a result, virtually everyone in Brazil has opinions about human rights defence in Brazil (whether well-founded or not).

WORKING PREMISES/THESES

5. The following constitute the working premises of this paper. While I provide some initial support for these premises, further research on each will be necessary.
6. Criminal violence and support for human rights are inversely related; to the extent that a particular society or subsection thereof is exposed to criminal violence, it will be less likely to express concern for the human rights of criminal suspects.
7. The popular vision of human rights defence is largely a function of the historical context in which human rights defence emerges. Thus, where human rights defence is associated with a positive transition to democracy, public opinion will be supportive. By contrast, where human rights defence is associated with a rise in criminality, public opinion will be critical. (The degree of support for human rights defence will correlate with educational levels within a given society and among societies. Thus, the sectors of society with greatest access to education will be most likely to support the idea of human rights while those least educated will be least likely to defend rights defence. While I do not discuss this thesis in this paper, I believe that it warrants further investigation in the Latin American context.)
8. Insofar as they determine the levels of support for human rights defence, these first two factors – the level of crime rates, and the historical context within which human rights defence emerges – are filtered through the media. Thus, more important than the actual crime rates or the historical context itself will be the vision of these events as socially constructed, principally by the media.

CRIMINAL VIOLENCE AND HUMAN RIGHTS: OVERVIEW

9. It is reasonable to assume that popular concern for the human rights of criminal defendants in general decreases inversely with the increase (real or perceived) in violent crime. This assumption is likely to be found true both within and across societies. Thus, in periods of rising criminal violence as in societies afflicted by chronically high levels of criminal violence, one may expect to find less support for human rights ideals than in times of lesser violence and in less violent societies. As this relationship constitutes the main focus of the seminar and proposed project, I do not seek to exhaust the relationship, but rather to posit an inherent tension between crime rates (and, in particular, public perception of those rates) and the defence of human rights in urban centres. These issues are addressed in detail in the remainder of this paper.

THE CONSTRUCTION OF A SOCIETY'S VIEW OF HUMAN RIGHTS DEFENSE

10. The vision that society holds of human rights activists depends on a series of factors. Among these, one must consider the historical context in which the defence of human rights develops, and in particular, the extent to which human rights activists are credited with – or held responsible for particular desirable or undesirable outcomes. The historicity of the struggle for human rights in a given society will have significant import in the determination of the common view of human rights themselves as well as those who defend them.¹
11. As I explain below, the defence of human rights developed within the context of a gradual transition from military to civilian rule; human rights defence was not credited for the transition itself. At the same time, however, the partial transition to civilian rule – particularly in the state of Rio de Janeiro and, to a lesser extent, São Paulo, accompanied the onset of decade of stagnation and soaring crime rates. The pro-human rights policies of newly-elected civilian leaders came to be associated with the failure to control crime.²

THE HISTORICAL CONTEXT AND THE SOCIAL CONSTRUCTION OF HUMAN RIGHTS DEFENCE

12. On March 31, 1964, a military coup put an end to the civilian rule of President João Goulart and the grass-roots 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. Indeed, it was only after the adoption of Institutional Act No. 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, etc.).
13. By the late 1970s, the worst abuses subsided significantly; the military had eliminated (brutally) the vast majority of groups advocating or practicing armed opposition. A gradual opening began in this period, leading to the 1979 Amnesty Law which pardoned those responsible for rights abuse and permitted the return of political exiles. During the late 1970s, the defence of human rights was widely viewed as related to the pro-amnesty campaign. The political opening continued into the early 1980s, leading to the registration of political parties and the elections for

¹ Other factors must be considered as well, such as the society's capacity to appreciate the importance of the ideas and principles defended by rights activists. In other words, the ability to appreciate the defence of principles even in the face of potentially adverse consequences from the implementation of such principles will determine the degree of acceptance/support for human rights defence. For example, the degree of acceptance for the rule that a known murderer should or should not be tortured in order to extract a confession (and thus not be released possibly to commit further crimes) will depend on an individual or society's ability to appreciate abstract principles. This, in turn, will depend largely on an individual's ability to reason abstractly, which may well depend in turn on her or his level of education.

² It may be interesting in future research to compare the perception of human rights defence in Brazil with that in its southern cone neighbours. In Argentina, Uruguay and Chile, military governments continued to rule throughout the onset of the economic crisis of the 1980s and as such were largely associated with the stagnation of that period. Another important difference between Brazil and its neighbours concerns the number of persons victimized by the military regime. The Argentine military forces disappeared between 9,000 and 30,000 during the dirty war there; the Pinochet dictatorship disappeared at least 3,000 and possibly as many as 10,000; another million Chileans fled into exile. The Uruguayan dictatorship jailed one of every fifty citizens. In Brazil, a nation more than twice the size of its southern cone neighbours, military and police forces disappeared and/or killed for political motives fewer than 500 persons. One of the results of the massive levels of rights abuse in Brazil's neighbours was the creation of a massive human rights movement, composed largely of family members of victims of the most serious forms of abuse.

state governors in 1982. Thus, while the military continued to control the federal government (at least until 1985, the year of the first indirect elections for president, and arguably until 1989, the year of the first direct elections for president), at the state level, relatively free elections were being held. What is critical from the perspective of human rights defence is that in the principal 1982 campaigns in Rio de Janeiro and São Paulo states, the successful opposition candidates emphasized human rights in their campaigns and government programs.

14. This fact, in turn, is important for the development of public opinion regarding human rights in Brazil's two largest urban centres. To begin with, one must analyze the political context within which this pro-human rights discourse emerged, both in terms of the structure of Brazilian institutions, as well as in broader terms. From the latter perspective, the pro-human rights discourse was widely viewed as associated with the demands for redemocratization of the country, though not necessarily responsible for the transition itself, which was handled on a top-down basis. The broader economic and political context, however, is of significant interest in the development of the public perception of human rights.
15. In 1982, the Mexican government's failure to meet its debt payments touched off the Latin American debt crisis and a decade of stagnation. In this context, unemployment soared, particularly in larger cities that continued to serve as a magnet for rural poor. These factors, in turn, led to massive increases in the rate of violent crime in both Rio de Janeiro and São Paulo. According to anthropologist and noted researcher on urban violence Alba Zaluar, from 1983 to 1990, the homicide rate in Rio de Janeiro soared from 23 deaths per 100,000 residents to 63.03 per 100,000 residents, a three-fold increase.³
16. It is in this context and facing the resistance of a federal government still controlled by the military, that opposition leaders take power of state governments in Rio de Janeiro and São Paulo in 1983 after year-end elections in 1982. In Rio de Janeiro, Leonel Brizola, recently returned from exile, made public security a key element of his campaign. In the words of Sento-Sé, a Brazilian political scientist, "Brizola chose the issue of public security as a preferential matter in debates, levelling harsh criticism on the action of police who, in his view, expressed the exclusive nature of the Brazilian socio-economic model."⁴ Sento-Sé continues, emphasising that the nature of those to be protected by human rights discourse and practice shifted from the worst years of the dictatorship to this period of transition. The human rights movement of the 1970s involved civil society groups such as the Bar Association, the National Press Association, the National Conference of Bishops and the Church and largely defended the rights of political prisoners of middle and upper class backgrounds. By contrast, Brizola's discourse, both before and after assuming the office of governor, emphasized the need to extend human rights to "protect poorer persons from the arbitrary and violent action of the institutions of public security."⁵
17. Brizola sought to implement a series of reforms in the police with limited success. He did succeed, however, in limiting abusive raids by police into the *favelas* or shantytowns of Rio de Janeiro, provoking a virulent response from police officers who believed that Brizola's human rights policies hamstrung their legitimate battle against crime. To some extent, police obeyed the directive prohibiting violent entries into poor communities. One particularly visible manifestation of this directive played itself out in the context of land occupations by homeless squatters. The governor ordered that the police not forcibly evict the squatters in a number of incidents. This behaviour "created the impression, in the minds of a large segment of the population, of

³ Alba Zaluar, "Violence Related to Illegal Drugs, Youth and Masculinity Ethos," (summary by Corinne Davis), in Department of Sociology, University of Texas at Austin, *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.

⁴ J. Trajano Sento-Sé, "Imagens da Ordem, Verigens do Caos – O Debate sobre as Políticas de Segurança Pública no Rio de Janeiro, nos Anos 80 e 90," in *Arbe*, Vol. VII, no. 19, Rio de Janeiro, 1998, p. 54.

⁵ *Ibid.*, p. 56.

complicity with the squatters, generating dissatisfaction” among the more affluent sectors of society.⁶ This tendency, in conjunction with rising crime rates, fostered an increasing sense that Brizola’s human rights policies were leading to the deterioration for the respect for law and safety of honest citizens. Increasingly, residents of Rio de Janeiro (called *cariocas* in Portuguese) came to understand public security through the prism of a false, though widely disseminated dichotomy: one must choose between aggressive law enforcement (with the concomitant abuses of fundamental rights) or police inaction and submission to criminality (with respect for human rights). Renowned police district chief Hélio Vígio summarized police opposition to Brizola’s human rights policies as follows:

18. The only thing criminals respect is repression. They want to turn police officers into social workers. How much longer will [Brizola] fool the people with these fairytales? We can’t work in the *favelas*; they’re his area. . . . We’ve lived through other regimes but never before have we been so disrespected.⁷
19. To a large extent, while the dichotomy may be false in terms of possible approaches to crime, it accurately describes the reality of Brazilian police and policing, who rarely go beyond either of the two poles (abusive policing at one extreme, and inaction on the other). In a landmark study of violence, popular attitudes, police and the media, University of São Paulo professor Maria Victoria Benevides cites several interviews with police investigators who confirm their use of torture as the only possible means of investigation. The common practice in Brazil, as explained by police to Benevides, is to begin with the criminal, and through “questioning” arrive at the crime or crimes, and not vice versa. As one police district chief stated in an interview:

“There’s no way, there’s no other way. It’s only in exceptional cases that we can start from the investigation [of the crime] and arrive at the criminal... how am I supposed to find someone in the City of São Paulo who entered your house at midnight and robbed everything you own there?... Is there another way? No.”⁸

20. The result, as the officer continues, is investigation through torture. As the officer tells the interviewer:

“There’s a gang in detention here with me, one of the biggest in the past few years. These individuals confessed fifty or so crimes . . . I don’t have a crystal ball, we squeeze them, like fruit. You squeeze out the juice, all the juice, but you never know what’s still there. You see the peel, but there’s always some juice left, right? That’s what the criminal takes to his grave.”⁹

THE SOCIAL CONSTRUCTION OF CRIMINALITY AND THE DEFENCE OF HUMAN RIGHTS

21. In assessing the nature of public perceptions of criminality and human rights defence it is essential to recognize that these perceptions may not (in fact, I would assert, ordinarily do not) reflect actual levels of crime, nor the real work of human rights defence. The perceptions, instead, are social constructions which depend, in turn, on a series of factors. A recent study of the characterization of violence, police activity and, to a lesser extent, human rights defence in Rio de Janeiro by Prof. Cecília Coimbra demonstrates the subjective nature of the construction of public perceptions on these issues.¹⁰ Coimbra traces the construction of the vision of “dangerous classes” in Brazil from the mid-19th Century, highlighting the manipulation of reality by the mass media to promote policies of interest to a small class of privileged *cariocas*. Coimbra’s

⁶ Ibid., p. 57.

⁷ Comments of Police District Chief Hélio Vígio in the *Jornal do Brasil* (Rio de Janeiro), November 11, 1986, cited in Sento-Sé, op. cit., p. 63.

⁸ Maria Victoria Benevides, *Violência, Povo e Polícia*, (São Paulo: Braziliense), 1983, pp. 81-82.

⁹ Ibid., p. 81.

¹⁰ Cecília Coimbra, *Operação Rio: O Mito das Classes Perigosas*, Editora Oficina do Autor/Intertexto (November 2001).

study focuses on the mid-1990s, a period in which wealthy *cariocas* promoted federal military intervention in the city to control criminality associated with drug trafficking. Coimbra demonstrates how Rio de Janeiro media promoted an image of uncontrolled, soaring crime rates over the period of less than a year by highlighting individual, high profile cases of violence (and police incompetence). This manipulation occurred despite statistical evidence indicating that most crime rates in the city had reached a plateau; the indices for some crimes even fell during the period studied, yet Rio de Janeiro newspapers maintained a campaign which eventually led to the federal military intervention sought (Operation Rio).

THE EFFECT OF THE POPULAR PERCEPTION OF HUMAN RIGHTS ON HUMAN RIGHTS DEFENCE

22. There can be little doubt that the environment in which human rights defenders perform their work affects their efforts in a number of ways. In summary terms, I would highlight the following impacts:

- choice of focus/case selection by rights groups,
- ability to mobilize media support for rights defence,
- ability to mobilize mass support for rights defence, and
- ability to press authorities successfully for change

CHOICE OF FOCUS/CASE SELECTION

23. Literature on the relationship between popular perceptions of crime and rights defence and the ability of individuals and groups to defend human rights is scarce. Nonetheless, based on personal and institutional experience, as well as discussions with colleagues, anecdotal and impressionistic evidence allows for a series of tentative conclusions.

24. Regarding the choice of focus and issue selection, a strong case may be made that the disposition of groups to defend the rights of persons suspected of criminal violence wanes in the face of anti-crime (and anti-human rights) sentiment. One concrete example may help to explain this. In October 1994 and again in November 1995, police entered the Nova Brasília favela (an area largely dominated by drug traffickers) and killed twenty-seven residents (thirteen in one incident and fourteen in the other). In both cases, there was vast evidence that the police had summarily executed the majority of the victims. While the media provided vast coverage of the incidents, the Rio de Janeiro press largely accepted the official “shootout” versions, particularly in the May 1995 killings. Human Rights Watch and CEJIL researched the two cases and decided to file petitions on the matters to the Inter-American Commission on Human Rights. While the practice of these two international NGOs had always been to file petitions jointly with local, Brazilian rights groups, this was not possible in these instances: no group wished to be associated with the defence of victims largely viewed as drug traffickers, even if evidence demonstrated that many had been summarily executed.¹¹

¹¹ At the time, I represented both Human Rights Watch and CEJIL in Brazil and drafted the petitions filed with the Inter-American Commission on Human Rights. For more information on the factual background and the Commission’s processing of these matters see *Favela Nova Brasília, Brazil*, Case No. 11.566 (Report on Admissibility No. 78/98, September 25, 1998) and *Evandro de Oliveira and others, Brazil*, Case No. 11.694 (Report on Admissibility No. 36/01, February 22, 2001)

25. Whether consciously or not, human rights activists often accept the popular view that human rights abuse is more serious when it affects ordinary working people and not criminal suspects. This in turn may lead to a self-censorship of rights groups in addressing (or failing to address) rights abuses committed against criminals and criminal suspects.¹²

ABILITY TO MOBILIZE MEDIA SUPPORT

26. In light of the working thesis that the media play a key role in shaping perceptions of crime and violence, we may also presume that to the extent that media sources maintain a critical view of rights defence, the more difficult it will be to entice them to provide positive coverage to rights defence. The recent study by Professor Coimbra supports the view that media-projected images of violence and rights defence are highly subjectivized and do not necessarily respond to real increases and decreases in the rates of violent crime. Instead, the media often produces perceptions of violence and then, once produced, responds to these perceptions as though they were reality. In this vicious cycle, human rights defenders face a severe challenge when they attempt to attack conventional wisdom regarding a particular issue related to the human rights vs. criminality debate.

ABILITY TO MOBILIZE POPULAR SUPPORT

27. Needless to say, where rights groups are unable to convince other rights groups and the media of the importance of their involvement in particular cases, their chances of convincing the public are usually even more remote. A relatively recent case in São Paulo, recounted in a 1997 Human Rights Watch report, demonstrates how popular sentiment often blames rights defence and fundamental freedoms when high profile crimes are involved. Below, a summary of the incident, taken from *Police Brutality in Urban Brazil*:

In the dawn hours of August 11, 1996, five armed men entered the Bodega bar in the upscale Moema neighbourhood of São Paulo and proceeded to rob the patrons. One young man in the bar, a student named Milton Bertoline Neto, delayed in removing his wristwatch. One of the gunmen shot him in the arm. While the men were robbing the other patrons, a twenty-five year-old dentist, José Renato Tahan, entered the bar. The robbers fired two shots, killing him instantly. The gunmen fled the bar, but not before firing a few shots back through the window. One of these shots fatally wounded Adriana Ciola... In the weeks following the killings, the Brazilian media provided ample coverage to the outraged reaction of city residents.¹³

28. The report continues:

On August 27, 1996, the police arrested nine young men in connection with the crime... State Secretary of Public Security José Afonso da Silva appeared in the 15th precinct to congratulate the police on their speedy work in solving the case... Two months later, however, prosecutor Eduardo Araújo da Silva filed his report on the case, concluding that there was not sufficient evidence to indict any of those detained... Araújo [criticized the lack of evidence and poor quality of the police investigation and] revealed to the press that the detainees had all given credible statements to the judge overseeing the case detailing the abuses, including torture sessions, to which they had been subjected.¹⁴

¹² A similar form of self-censorship affects communities plagued by police violence. Residents in these communities rarely, if ever, report rights abuse when the victim is known by them to be engaged in illegal drug trafficking. Implicitly, they accept that such abuses may legitimately be inflicted on criminals (or, at least, that criminals should accept that risk). When an ordinary citizen not involved in crime is tortured or killed by police, however, the reaction of these same residents is markedly different.

¹³ Human Rights Watch, *Police Brutality in Urban Brazil*, Human Rights Watch, New York, 1997, p. 48.

¹⁴ *Ibid.*, pp. 48-49.

29. The police botch of the case and the release of nine young men, against whom virtually no evidence had been gathered should have shocked public opinion and triggered support for human rights groups and those seeking to reform police investigation. However, *“even after the revelations of how the case was mishandled, including the alleged use of torture, the Association of Police Precinct Chiefs criticized the prosecutor’s decision not to indict the nine detainees, and community leaders honoured the police accused of torture.”*¹⁵

FINAL REMARKS: SOME CONSEQUENCES OF NEGATIVE PERCEPTIONS OF HUMAN RIGHTS DEFENCE

30. To conclude, I would like to address a few of the concrete consequences that defending human rights in an inhospitable environment may prompt:
- Victims self censorship: individual victims may feel that their cases warrant reporting only if they have not themselves engaged in any criminal activity.
 - Rights groups self-censorship: human rights defenders will choose cases with “acceptable” victims as means of gaining space in the public debate.
 - Transfer out of civil rights: rights groups may transfer resources or institutional focus to the defence of less controversial rights.
 - These consequences should be subjected to further.

¹⁵ Ibid., p. 49.