Crime, Public Order and Human Rights

Summary
THE ISSUES

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? How have human rights workers dealt with these issues conceptually, 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?

These are the starting points of a report by the International Council, summarised here. It discusses the new discourse that has developed, emphasising crime as a threat to individual personal security and a potential source of state instability. The main aim of the study is to analyse the challenges that human rights groups must address in the context of rising crime. The report examines five case studies of countries that have experienced serious problems of crime — Argentina, Brazil, Nigeria, South Africa and Ukraine — considering these societies at different phases in a transition process, and seeking to draw different lessons from each.

Where crime is a problem, a pattern has indeed often 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. The report, thus, 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 report also probes into the sense of insecurity triggered by enhanced fear of criminal violence to examine how it is produced, fostered and, hopefully, controlled or limited. It seeks to understand what constraints these perceptions impose on rights activists and how they have responded. The report argues that, 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 to collaborative efforts to provide security services jointly with state authorities, to the development of novel forms of public discourse that de-emphasise human rights and address security in broader terms.

The report includes recommendations that are reproduced here.
RESEARCH PROCESS

The report summarised here is the result of a research project that began in June 2002 to examine problems that arise for human rights organisations when surges of criminality occur in countries that are emerging from periods of violence, and identify responses to those problems. Initial consultations and preparatory work took place in 2001, with a focus meeting held in November 2001 in Geneva with a small group of international experts. Between June and November 2002, the principal researcher conducted research and interviews with human rights activists and officials in Brazil, Nigeria, Peru, South Africa, Ukraine and the United States.

In parallel, teams of researchers based in Argentina, Brazil, Nigeria, South Africa and Ukraine prepared reports on how the issues of crime, societal change and the responses of human rights organisations have been playing out in their respective countries. The two tracks of research were reviewed at an international seminar organised in co-operation with the Carnegie Council on Ethics and International affairs on October 21-22, 2002 in New York at which the research team was assembled and joined by several other specialists.

Following that seminar, a draft report was sent out for comment internationally in March-May 2003 to over four hundred organisations and individuals. As part of that consultation, meetings were held in Kiev, with the International Renaissance Foundation, and in Pretoria, to discuss the issues with human rights organisations, officials and scholars. The comments received during the consultation phase were woven into the final report, which was edited between July and October 2003.

A five-member Advisory Group provided guidance and direction to the research. The group held periodic consultations to review progress of the research and advise on its direction.
ACKNOWLEDGEMENTS

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Meetings were held in New York, Geneva, Kiev and Pretoria at which the following people provided input and discussed the research: Robert Archer, Joanne Bauer, Oleksandr Betsa, Tatiana Bukalova, Markian Duleba, Fairouz El Tom, Ayesha Imam, Adam Isacson, Tatiana Khmyz, Liudmila Klochko, Anatoli Kostruba, Marcia Kran, Roman Kuibida, Fiona MacAulay, Taras Malyschko, Jess Messer, Michael Ratner, Dennis Rodgers, Roman Romanov, Joe Saunders, Wilfred Schärer, Maryna Selivanova, Halyna Senyk, Oleksander Shvaliuk, Zenovij Siryk, Valentyna Telychenko, Tatiana Yablonska and Vlodymyr Yavorivsky.

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FINDINGS

Definitions and standards

The report focuses on public perceptions of violent crime that occur in city streets, alleyways, roads, highways and other public areas. This definition excludes important types of crime, including domestic violence, organised crime and white-collar crime. These crimes are clearly important in transitional and non-transitional societies. We focus on public crime because it is this form of crime that shapes public attitudes to criminality and insecurity. These attitudes, as the report illustrates, are at the heart of the environment in which rights groups must work.

The struggle against domestic violence often requires activists to press police authorities to intervene in contexts where they are unused to doing so. By contrast, the battle against crime often requires activists, in ways they are not used to doing, to call for intervention by the police. Classically, human rights activists monitored police behaviour to prevent abuse of civil and detainees’ rights. Sharp increases in crime tend to make the discourse of rights defence less popular, and trigger the set of difficulties analysed in this study.

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 and enshrined, in broad terms, in the International Covenant on Civil and Political Rights (ICCPR). Regional human rights treaties from the European, Inter-American and African systems protect these same rights in comparable language.

At the same time, states have a duty to protect the security of citizens. International treaties and other instruments, and the special mechanisms established by the Commission on Human Rights and other United Nations bodies have developed these rights further. As they move from operating in authoritarian environments where police powers were used to suppress legitimate dissent, the need to address detainees’ rights in the larger context becomes apparent, setting new challenges for human rights defenders.
Change and rising crime

Data from a number of countries demonstrate a correlation between the process of transition and rises in measured rates of criminal violence. In this project, information was mainly collected from several Latin American and Sub-saharan African nations and former Soviet states over the period 1980-2000.

Unable to rely on repressive policing methods and lacking security institutions that have the skills to operate within the constraints of democratic government, transitional regimes frequently fail to control crime. This 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. Where countries have a past history of authoritarian rule, the problems associated with crime are likely to be heightened.

In such countries, the authorities are more easily tempted to revert to authoritarian solutions, for which elements of public opinion will be nostalgic. Cultures of violence are likely to be prevalent within police forces and communities. Former armed groups may become active in criminal networks or repressive private security apparatuses. Other exacerbating factors include chaotic urbanisation, the precariousness of major city services, sustained disparities between rich and poor, 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. Where, in addition, public institutions are illegitimate and governments have traditionally ruled by force rather than by consent these problems are compounded.

At the same time, the problems that crime creates for human rights organisations vary considerably in different societies. This is because relatively stable governments of all colours — democratic and authoritarian — develop arrangements for maintaining law and order in which the state provides policing and justice services and accepts its duty to uphold 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. And some levels of disorder — varying from place to place — within countries is regarded as normal. This comes 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 criminality as well as dissent, and they are widely perceived to be 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. The report’s case studies show that police in all the states examined used repressive and frequently brutal methods, including torture and summary execution of suspects.

The reform or abolition of old security structures can create a security vacuum. When, as a result, crime rises, many people demand more effective policing. There is often considerable anger among those who have been victimised as they blame the authorities or the reform processes for their suffering. They may or may not be justified in doing so, but such collective anger shapes the demand for more effective law and order. One common way in which it does this is through a demand for retribution.
The dynamics of public outrage

The problem of addressing crime in a human rights context is rendered more difficult 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. The absence of effective policing and law enforcement, combined with public frustration, can trigger the emergence of vigilantism.

Faced with rising crime (or the perception that crime is rising), people who believe themselves to be at risk seek simplistic, often harsh solutions. In this context, those who defend the rights of criminals — or who approach punishment from a non-retributive perspective (that is, one not driven by the desire for vengeance) — may be considered to be sympathetic to criminals. As the desire for revenge intensifies (either due to increased frequency of criminal acts or the gruesome nature of particular crimes), so does the animosity directed at rights defenders and others who oppose retribution. Three factors influence the extent to which these perceptions constrain 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.

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.
Hardline policies. Governments often respond to crime by introducing policies that offend human rights principles and put civil liberties at risk. In Nigeria, for example, 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. Those whose rights are most immediately endangered when such measures 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. Authorities usually adopt these policies without collaboration or consultation with human rights groups, who, by and large, oppose such measures. It should be noted that some civil society groups, such as some victims’ rights groups, support hardline approaches to criminality. These advocate mandatory sentences and increasing the severity of punishment. They may criticise rights defence and defenders (in the media and elsewhere). In extreme cases, there may be approval of police violence and even summary executions of suspects.

Attacks on rights defenders. Where public outrage against crime leads to the demand for harsh retributive justice, those who defend rights and the rule of law (implying fair trial and imprisonment, not revenge) become vulnerable to attack, 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 rapid justice. In Brazil, for instance, the state secretary of public security from 1995-1998 referred repeatedly to international rights groups as “alienígenas” or “space aliens” and claimed human rights were only concerned with protection of criminals. Similarly, massive rallies were organised in Argentina in defence of police (and against rights defenders), and South African human rights defenders are often depicted as ‘advocates of criminality’.

Negative media portrayal. Journalists and media institutions frequently disregard human rights standards, both in the way they present the facts and in the way they understand and frame issues. This is especially relevant in relation to crime because many popular media outlets devote disproportionate attention to public crimes. In doing so, they frequently distort the legal and moral issues that crime generates, deepen the sense of public insecurity (whether or not crime is in fact increasing) and promote irresponsible or simplistic policy solutions for dealing with the problem.
The role of the state

States have human rights obligations to people under their jurisdiction. These include the obligation to protect their security and provide services that prevent crime and violence against the person, including abuse of the rights of detainees. On this issue, therefore, the role of the state is crucial because governments police crime and provide justice. The core issue in countries that are experiencing important societal transformation is the state’s failure or inability to protect its citizens and provide an effective justice system, including efficient and legitimate policing, rapid and accessible legal recourse, and appropriate protection and compensation for people injured by crime.

Our research demonstrates that government policies in the transitional period do play a critical role in the exacerbation or suppression of crime, and strongly influence public perception of security and human rights. Not addressing these issues carefully has led many governments to fail in areas vital to the success of any democratic transition. Thoughtful policies both help to control criminal violence and maintain public respect for human rights.

If the state is a potential abuser of the rights of people who are falsely or properly 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 and require effective governance across the justice sector as a whole. Yet, as noted, governments that emerge after periods of authoritarian rule are weak precisely in these areas of governance. The police service may be violent, inefficient and unaccountable; the judiciary may be weak or corrupt; the prison system is likely to be overcrowded and brutal; and public attitudes to these institutions mistrustful.

In the societies studied, many human rights organisations have therefore had to consider whether, in the context of a reforming state, they should continue to focus on critically monitoring the state for abuses, or should participate in helping the state to reform itself. The predicament is about addressing the state’s function as well as its behaviour. 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? These are among the questions that NGOs must pose themselves as they strategise their responses.
Responses of human rights groups

What lessons can be learned for rights defenders who may encounter situations of the kind described here? As one project interviewee noted, “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”.

Faced with the challenges posed by rising crime and increased public sentiment of insecurity, rights groups have responded in a variety of ways. Their responses are conditioned primarily by the context in which organisations work. While, for instance, 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, rights groups must also cope with indifference and vigilantism, but in addition they have to deal with media-fanned perceptions that they are defenders of criminality.

In all these societies, human rights activists must consider how best to deal with state authorities, both on an individual and institutional basis. In considering what level of engagement with police and other criminal justice system actors is appropriate, they must manage two key dimensions that cut across all contexts:

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

These dilemmas shape the responses of rights organisations — but also the perceptions of peer organisations, government and the public at large. Responses can be divided into three broad categories:

- **Oversight activity** covering legal approaches at domestic level, advocacy (with different audiences), documentation and reporting. Within these broad watchdog functions, a number of strategies and responses enhance the effectiveness of techniques that denounce abuse by state agents. The principal approaches include the *multiplication of oversight capacity* (for example, training programmes that enable communities to denounce instances of police abuse); the *advocacy focus on innocents* (many organisations expressly limit their mandate to ‘innocent’ people because the general public and the media are more sympathetic to such cases); the *personalisation of victims* (to establish a link between delinquency and structural conditions in order to improve understanding and undermine the idea that specific groups are enemies of society); *publicising statistics on rights abuse* (by means of systematic documentation, apparently isolated episodes acquire impact and can be viewed as part of a widespread practice); and conducting *advocacy at the international level* (particularly when national and local authorities are indifferent or hostile to suspects’, defendants’ and prisoners’ rights and the media identify with these positions, rather than those advocated by rights groups).
Collaborative efforts with public authorities. This refers to a range of activities, initiated by state authorities or by civil society groups, that involve 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. Such cooperation usually marks a clear departure from the pre-reform period, which was normally characterised by an exclusively confrontational relationship between state agents and civil society groups.

In some places, police have embarked on community policing projects, for example, and (though there is no consensus as to the effectiveness of such form of policing) NGOs have often been the driving force behind such initiatives. Many rights groups have also become engaged in police training, usually of two kinds: 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. Some programmes have also focused on instructing officers in how to carry out their duties effectively consistent with their legal and constitutional obligations (law enforcement that respects rights). Other rights groups have developed policy jointly with government authorities. These efforts have met with varying degrees of success. In general, they have been more successful in setting priorities than implementing programmes. Brazil’s National Human Rights Programme (Programa Nacional de Direitos Humanos, PNDH) is a case in point.

Broad engagement in the security debate. For rights activists, participating in the security debate entails a sensitive 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. Engaging in security debates whose terms are decided by government and by those that demand harsh law and order policies also creates the possibility that the security concerns of rights organisations may be marginalised. Despite these pitfalls, some degree of engagement has become increasingly necessary. Mostly, broad debate on public security issues requires not only quantitative and qualitative understanding of what is wrong with current 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.
RECOMMENDATIONS

Advice to the public security human rights community

- **Reflection and self-criticism.** 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 established methods, and consider the pros and cons of other approaches.

- **Create more effective security networks amongst human rights NGOs.** 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 complementary. While groups will wish to retain their independence and the features that make them unique, this does not prevent co-operation.

Advice 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. 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 techniques and data documentation to give reports and petitions credibility. This implies continued work 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.** Rights groups should use media outlets as a platform to inform people of their legal rights and the importance of respecting those rights. Creating close ties with the print and broadcast media will help educate the public on human rights issues, reduce negative media portrayal and enrich debates about human rights and public security.

- **Work closely with allies within the state.** State institutions charged with oversight of the criminal justice system, such as ombudsmán 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 can also prove to be important allies for civil society groups.
Advice 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. 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 public opinion in innovative ways that move beyond conventional means such as report writing and casework. Conventional means of communication are often not sufficient. Rights groups should employ many approaches such as imagery, music and theatre to influence public attitudes to crime and security issues.

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

- **Monitor legislation.** NGOs should develop or strengthen their capacity to monitor the legislative process effectively. Proactive monitoring of legislation helps prevent the promulgation of weak or ill-considered legislation. NGOs might establish parliamentary monitoring bodies to track debates, hold media briefings, collect documentation from parliament and prepare submissions on proposed legislation at an early stage.

Advice 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. Training should be accompanied by programmes to improve service delivery and professionalise the police service.

- **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 members of 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.
ORDER INFORMATION

Main report
Crime, Public Order and Human Rights, 2003
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USEFUL WEBSITES

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

www.cleen.kabissa.org
The Centre for Law Enforcement Education promotes respect for human rights in Nigeria.

www.crime-prevention-intl.org
The International Centre for the Prevention of Crime assists cities and countries to reduce delinquency and insecurity.

www.criminology.utoronto.ca
The Centre of Criminology at the University of Toronto studies crime from a variety of disciplinary perspectives.

www.csvr.org.za
The Centre for the Study of Violence and Reconciliation is a multi-disciplinary South African non-governmental organisation.

www.global.org.br
The Global Justice Centre promotes social justice and human rights in Brazil.

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www.icclrlaw.ubc.ca
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www.unafri.or.ug
What problems arise for civil society when surges of criminality occur, or when crime is perceived to intensify in periods of change? What responses and strategies can be identified?

The report summarised here examines the problems that arise for human rights workers when there is public demand for severe law and order policies to curb crime, and asks what would make their work more legitimate and effective.

Analysing different experiences and offering practical conclusions, the report outlines a human rights approach to the problem of crime that goes beyond traditional concern with police abuse.