# Public Enemy Number Two?: Rising Crime and Human Rights Advocacy in Transitional Societies

James Cavallaro*
Mohammad-Mahmoud Ould Mohamedou**

On March 5, 2002, a special division of the São Paulo military police in Brazil positioned several vehicles with heavily armed officers on a highway near Campinas. The police sought to intercept and ambush a truck transporting twelve suspects that their intelligence services had indicated was on its way to participate in an armed robbery. When the suspects' vehicle came into their sights, the police opened fire, spraying hundreds of rounds of machine gunfire at the truck, killing all twelve men. No police were injured. It is unlikely that there was any return fire at all, given the sudden intensity of the police attack.[1] Authorities reported, later that day, that a dozen drug traffickers had been killed in a shootout with police forces on the highway. The state governor hailed the killings as a "dream police" operation.[2]

Rights activists and policing experts in Brazil know that authorities routinely contend that the police have killed in shootouts to paper over what are in fact summary executions.[3] They also recognized that it was highly unlikely, in this case, that a gun battle would leave twelve civilians dead and no police killed or wounded. Yet, remarkably, in the immediate aftermath of the incident, no rights

1. *See* THE GLOBAL JUSTICE CTR., HUMAN RIGHTS IN BRAZIL 2002 51–52, *available at* http://www.global.org.br/english/arquivos/annual_report.pdf (last visited Feb. 26, 2005).

2. *Id.*

3. *See, e.g.*, HUMAN RIGHTS WATCH, POLICE BRUTALITY IN URBAN BRAZIL (1997) (documenting numerous instances in which police reported that instances of unjustified killings were legitimate "shootouts"); *see also* HUMAN RIGHTS WATCH & AMERICAS WATCH, URBAN POLICE VIOLENCE IN BRAZIL: TORTURE AND POLICE KILLINGS IN SÃO PAULO AND RIO DE JANEIRO AFTER FIVE YEARS (1993). See PAUL CHEVIGNY, EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS (1995) for a critique of the nature of this practice throughout the Americas.

groups stepped forward to challenge the official version.[4] Individually or through consultation, these rights defenders seemingly concluded that challenging the official version would be counterproductive. Because there was little doubt that those killed were tied to a dangerous criminal enterprise, rights groups feared—and rightly so—that denouncing police excesses would be unpopular.

## INTRODUCTION

Crime and street violence are seemingly the most visible aspects of crises in present age urban centers. Crime crosses borders, ideologies, classes, ages, and gender. In many societies, ordinary crime and victimization have come to be perceived as more than a high-priority problem requiring greater law enforcement resources.[5] Increasingly, a new discourse has emerged that emphasizes crime as a threat to public security and a potential source of state instability. In addition, where crime is a problem, authorities turn easily to hardline law and order policies that attract public support. With greater frequency, civilian governments and their security forces propose and implement punitive and authoritarian methods of control and punishment with little public opposition.

This Article considers problems posed by surges in criminality on the provision of security and, in particular, the safeguard of human rights. While the perspective and responses of authorities are considered, the focus is on the role of civil society groups and the particular issues faced by them as a result of this environment. The varied responses of the state—from collaborative efforts with civil society to attacks on rights groups and tolerance of police abuse—shape the context in which rights groups maneuver. Our main concern is to assess the challenges that human rights groups must address in the context of rising crime.

The Article draws on research conducted in seven countries in transition: Argentina, Brazil, Nigeria, Peru, Russia, South Africa, and Ukraine.[6] Argen-

---

4. The lone critique, and this several days after the massacre, came from Hélio Bicudo, former prosecutor and member of the Inter-American Commission on Human Rights and vice mayor of the city of São Paulo. Bicudo, not formally tied to any NGO, enjoyed far less susceptibility to the kinds of attacks described in this Article than activists routinely face.

5. In this Article, we focus on urban street crime given the relationship between this type of criminality and the constraints on human rights defense that we consider. In so doing, we do not consider certain types of criminality, such as domestic violence, for which we lack relevant data linking increased indices with subsequent public outcry.

6. This analysis draws on research conducted by a team of researchers led and coordinated by the authors. In addition to the papers cited in subsequent footnotes, the authors benefited in their analysis from a paper framing the issues. *See* Clifford Shearing & Janet McCarthy, *Crime, Rights, and Order: Reflections on an Analytical Framework* (International Council on Human Rights Policy Working Paper, part of the *Crime, Public Order and Human Rights Project*, presented at the *Carnegie Council on Ethics and International Affairs* (Oct. 21–22, 2002), *available at* http://www.ichrp.org [hereinafter *Crime Project* Working Paper 2002]). In addition to the research for the working papers, James Cavallaro researched crime and human rights in Brazil, Peru, Nigeria, and Ukraine.

tina and Brazil began the process of transition from authoritarian military rule toward democratic rule nearly two decades ago. More recent are Nigeria's transition from military rule and South Africa's transition from repressive and racially exclusive civilian rule. Ukraine and Russia began the process of transition from totalitarian communism around 1990. Peru began its transition relatively recently and will feature somewhat less in this analysis. There are many differences among these countries; of interest here is that all share strong perceptions relating to the growing seriousness of crime. These perceptions operate against a backdrop of significant political transformation.

The Article examines the constraints that rising criminality places on the defense of human rights. The problem is one of increasing importance to rights defenders throughout the world, though its impact is particularly keen in developing states undergoing transitions from authoritarian or totalitarian rule to more democratic forms of governance. We argue that there are factors inherent in the transitional process that aggravate the already precarious situation of rights defenders working in urban contexts. These include the trend toward increased criminal violence touched off by social dislocation and the accompanying inability of policing authorities to respond quickly to the demands placed on them in more democratic societies. These factors combine with the media's propensity to highlight crime and criminality, emphasizing, almost to the exclusion of all else, the most horrendous crimes and criminals. This media focus facilitates the popular belief that all criminals and criminal suspects are highly dangerous and undeserving of basic rights. By extension, public opinion in these societies tends to dismiss rights defenders as apologists for criminality. At the same time, transitional governments often provide new avenues for collaborative efforts between state agents and civil society. The confluence of these factors places rights defenders in a nearly impossible bind, often requiring that they make two choices: first between the principled defense of criminal suspects or popular acceptance, and second between collaborating with the state or remaining fully independent of it.

This Article postulates that, while the problem of rising crime and its constraining impact on rights defense in transitional societies is one of great consequence and one that practitioners address on a daily basis, little structured thought has been dedicated to the issue. To date, rights activists facing these issues have responded in a variety of ways. These responses have been largely disjointed and reactive, rather than coherent aspects of any planned policy. This Article presents and analyzes the problems faced by rights defenders in transitional societies in which rising crime—and, more importantly, the perception of rising crime—have radically changed the terms of public debate and limited the range of action for rights defense. It sets out the ways in which rights groups, thus far tentatively, have addressed these issues and sought to maintain both their commitment to rights defense and their relevance to the public debate.

Part I offers an overview of international human rights standards that apply in the context of public security. Next, in Part II, real and perceived surges

in crime in transitional societies are presented and analyzed. Part III considers the role of the media in structuring the debate on public security. Part IV then examines state responses to this situation—from the promotion of anti-human rights attacks and the irresponsible discourse and policies that foster police violence at one extreme, to joint programs with civil society groups at the other. The analysis then turns, in Part V, to the defense of human rights in periods of change and public insecurity. Of particular concern is how the public responds to issues of insecurity and what we term the "dynamics of public outrage." This naturally leads to a look at private contract security and vigilantism. Lastly, Part VI considers concrete examples of how rights communities have sought to respond to these challenges. We do not claim to evaluate systematically the similarities and differences in the measures adopted by the rights communities in different countries. Rather, our aim is to foster critical inquiry into the problems that rising crime creates for rights defense in transitional societies. In so doing, we hope to contribute critical thinking on these issues and thus to the development of effective rights defense strategies for coping with hostile environments.

## I. Rights and Standards

Over the half-century since the adoption of the Universal Declaration of Human Rights,[7] international standards relating to public security have become more detailed and specific. Several aspects of the norms that relate specifically to policing, crime, and public order, warrant mention here. The fundamental rights at stake when state agents seek to enforce the law are primarily those guaranteeing (i) the life and physical integrity of suspects,[8] and (ii) the right to privacy (that is, to be free from arbitrary searches and seizures).[9] When defendants enter into contact with authorities responsible for detention and prosecution, other protections may come into play, such as (iii) relevant judicial guarantees, and (iv) the right to humane conditions of detention. These rights are recognized in the Universal Declaration of Human Rights and enshrined, in broad terms, in the International Covenant on Civil and Political Rights[10] and many regional human rights treaties.

Specific treaties and special mechanisms established by the U.N. Commission on Human Rights have developed these rights further, setting out the 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, for

---

7. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., at 71, U.N. Doc. A/810 (1948).

8. *Id.* art. 3: "Everyone has the right to life, liberty and security of person"; art. 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

9. *Id*. art. 9: "No one shall be subjected to arbitrary arrest, detention or exile."

10. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

example, defines torture broadly to be any act causing physical or mental suffering committed by "state agents" or persons in a position of authority or by persons who act at the behest of public officials.[11] Another such example is article 9 of the U.N.'s Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[12] which limits the use of firearms by police officials except in self-defense, or defense of others, against the imminent threat of death or serious injury. A 1957 U.N. document entitled Standard Minimum Rules for the Treatment of Prisoners[13] ensures that, once deprived of liberty, suspects are entitled to humane conditions of detention. Prior to that situation, and according to article 11 of the Universal Declaration of Human Rights (as well as numerous other international covenants, conventions, and charters), persons detained by law enforcement agents must be presumed innocent until proven guilty. Presumption of innocence means that the burden of proof of the charge is on the prosecution and the case must be proved beyond a reasonable doubt. International human rights treaties also guarantee a range of public fair trial and due process rights to criminal defendants.[14] Interpretations of these standards by international bodies charged with their application have refined these general principles to assure defendants relatively speedy trials.

This rapid survey of international rights standards delineates the problem for rights activists: 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. Similarly, if providing security and addressing crime go hand-in-hand, they also require effective dispensation across the justice sector as a whole. In this respect, the rule of law, and *a fortiori* human rights law, is fundamentally concerned with the protection of victims and victims' rights. This places human rights activists on the horns of a dilemma. On the one hand, they are to guard against, through the processes of accurate investigative research and reporting, official and unofficial human rights violations by persons and institutions

---

11. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, 1465 U.N.T.S. 85.

12. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Aug. 27–Sept. 7, 1990, at 112, U.N. Doc. A/CONF.144/28/Rev.1 (1990).

13. United Nations Standard Minimum Rules for the Treatment of Prisoners, *adopted* Aug. 30, 1955 by the First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/6/1, annex I, A (1956), *approved* July 31, 1957, E.S.C. Res. 663(c), 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), *amended* May 13, 1977, E.S.C. Res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

14. *See, e.g.*, ICCPR, *supra* note 10, art. 9 (freedom from arbitrary detention), art. 14 (rights of criminal defendants), art. 15 (prohibition of ex post facto laws); European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 221. See in particular *id*. art. 5 (right to liberty and security, prohibition on arbitrary detention), art. 6 (right to a fair trial), art. 7 (no punishment without law). *See also* African [Banjul] Charter on Human and Peoples' Rights, *adopted* June 27, 1981, O.A.U. Doc. CAB/LEG/67/3/Rev. 5 (1981) (entered into force Oct. 21, 1986), *reprinted in* 21 I.L.M. 58 (1982). See in particular *id*. art. 6 (prohibition on arbitrary detention), art. 7 (presumption of innocence, prohibition of ex post facto laws).

with access to the means of organized violence. On the other, rights activists must also promote the social conditions of security and freedom from harm that human rights presuppose. In other words, rights activist must strive to maintain policing within the parameters established by human rights standards while still ensuring police intervention in all instances in which individual and collective human rights are in jeopardy.

## II. Crime and Transition

Available data indicate that, over the course of the last quarter of the twentieth century, criminal violence has increased around the world.[15] In the countries considered here, we found consensus among people interviewed and in the available official statistics on the correlation between transition and surges in violent crime. Thus, Argentina began its transitional period in 1983 and crime started rising sharply within the next decade. According to the Argentinean National Ministry of Justice, Security and Human Rights, 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.[16] Intentional homicides committed in the Province of Buenos Aires rose from 1114 in 1990 to 1160 in 1996 and to 1632 in 2001.[17] In Brazil, transition to democratic rule began with the 1985 indirect election of a civilian president. Figures on the homicide rate in both Rio de Janeiro and São Paulo show a threefold increase from 1980 to 1994.[18] According to anthropologist and 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 deaths per 100,000 residents.[19]

Nigeria's experience in its first three years of transitional democracy followed 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 remained extremely high. The then-Minister for Police Affairs, General David Jemibewon, admitted so in a paper delivered on his behalf at a seminar on crime and policing held in South Africa in 2001, which stated in part: "Our newfound democracy has, to some extent, become a source of insecurity and lawlessness . . . . The past year under this

---

15. *See, e.g.*, World Health Org., World Report on Violence and Health 26–27 (2002) (reporting that, between 1985 and 1994, in a study of sixty-six countries, youth homicide rates increased from fewer than ten to over twenty per 100,000).

16. *See* Gustavo F. Palmieri & Cecilia L. Ales, *Crime and Human Rights in Argentina* 6 (*Crime Project* Working Paper 2002, *supra* note 6).

17. *Id.*

18. Human Rights Watch, Human Rights Watch Short Report, Fighting Violence with Violence (1996).

19. Alba Zaluar, *Violence Related to Illegal Drugs, Youth and Masculinity Ethos* (presented at the University of Texas at Austin in *Final Synthesis/Memoria: Rising Violence and the Criminal Justice Response in Latin America—Toward an Agenda for Collaborative Research in the Twenty-First Century* (May 6–9, 1999)) (on file with authors), summary *available at* http://lanic.utexas.edu/project/etext/violence/memoria/session_3.html.

administration has therefore seen an increase in crime waves in various parts of the country."[20]

In Russia, the total number of registered crimes has increased steadily. Figures for reported crimes hovered around 1.2 million per year in 1987 and 1988 and reached 3 million by 1999. Homicides over the same period soared from approximately 10,000 to over 30,000 by the late 1990s. Closer examination of the available statistics shows a sharp spike in homicides during the first years of transition, from roughly 16,000 in 1991 to 32,000 in 1994.[21]

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. To the extent that it is not merely a misperception,[22] such "control" is achieved at a high cost to individual rights and the rule of law. Prior to transition, crime control in all the states considered here focused on repressive and frequently brutal methods, including systematic torture and summary execution of suspects.

It is 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 frequent but only now reported? Or have such crimes actually become more frequent? Added to the above is the issue of displacement of criminal activity. Has that activity migrated from poor to rich neighborhoods, or from one part of the country to another? What role do the media play in the reporting of these issues? In Nigeria, a series of high-profile killings and robbings of the homes of influential people followed the inauguration of the Obasanjo government in 1999.[23] The local media provided extensive coverage of these incidents, fueling the belief that crime rates were rising dramatically. Rights activists in Brazil report that similar phenomena occur when high-profile incidents of crime victimize upper-middle-class or upper-class residents in São Paulo or Rio de Janeiro. These crimes are followed by a barrage of reports about "crimewaves" often built up from single, high-profile incidents.[24]

---

20. Kole Shettima & Innocent Chukwuma, *Crime and Human Rights in Nigeria* 2 (*Crime Project* Working Paper 2002, *supra* note 6); INT'L COUNCIL ON HUMAN RIGHTS POLICY, CRIME, PUBLIC ORDER, AND HUMAN RIGHTS 25 & 25 n.36 (2003).

21. Yuri Andrienko, Centre for Economic and Financial Research, *Explaining Crime Growth in Russia During Transition: Economic and Criminometric Approach* (Feb. 2001), *at* http://ideas.repec.org/p/cfr/cefirw/pub003.html.

22. *See generally* Maria Łoś, *Post-Communist Fear of Crime and the Commercialization of Security*, 6 THEORETICAL CRIMINOLOGY 165 (2002) (arguing, inter alia, that in post-communist transitional societies, greater media freedom has led to greater reporting of crime, previously systematically under- and misreported by totalitarian authorities).

23. Shettima & Chukwuma, *supra* note 20, at 7. *See generally* KARL MAIER, THIS HOUSE HAS FALLEN: NIGERIA IN CRISIS (2001); HOWARD W. FRENCH, A CONTINENT FOR THE TAKING: THE TRAGEDY AND HOPE OF AFRICA (2004).

24. The case of Tim Lopes, an award-winning reporter killed in June 2, 2002, while researching drug trafficking in a Rio de Janeiro shantytown, unleashed weeks of intensive media coverage on criminality, particularly that involving narcotics traffickers. *See, e.g.*, Larry Rohter, *At Your Great Peril, Defy the Lords of the Slums*, N.Y. TIMES, June 28, 2002, at A4 (on the killing of Tim Lopes and the reaction it provoked); Larry Rohter, *Journalist's Remains Recovered*, N.Y. TIMES, July 6, 2002, at A5 (referring to the national

For these reasons and others, it is difficult to reach definitive conclusions on the phenomenon of rising crime subsequent to political transition.

The transition from military rule to civilian rule in Nigeria provides a case in point. According to Major General David Jemibewon, former Nigerian Minister of Police Affairs, the transition from the long years of military rule to democracy was monumentally difficult. The Nigerian Police Force suffered from a lack of regulatory institutions and focus, and was inadequately prepared for the expressions of violence and disorder that accompanied the country's democratic rebirth.[25] A difficult aspect of crime associated with periods of transition is the demobilization or reform of security apparati (used by the previous repressive government to control political dissent and crime) and their replacement by formal agencies. These bodies often lack the capacity to cope with security issues due to neglect of the ousted government. The space that is created between the legitimate effort to reform and the capacity to cope in the new situation is often occupied by criminal elements. Other factors come into play as well. For example, armed quasi-governmental groups, or elements thereof, may themselves be transformed into criminal gangs.

One of the first acts of new governments is often to dismantle the old security apparatus, often leading to a security vacuum.[26] This gap leads to widespread appeals for more effective order maintenance, especially by people who have been victimized and who attribute their victimization to this vacuum. This attribution may or may not be accurate. However, when it becomes obvious that a security vacuum exists, this attribution is likely to occur. Such collective anger shapes the nature of the request for more effective order maintenance, frequently through increased demands for retributive justice.[27] Demands that the security vacuum be filled and that retribution be meted out may come from both state actors (such as police) and non-state actors (such as businesses and residential communities). In either case, these demands result in the mobilization of repressive responses, that is, measures designed to crack down on crime through police sweeps, raids, and similar tactics. Authorities often opt for such repressive responses because they are relatively easy to mobilize quickly (as opposed to enhancing the investigative capacity of law en-

---

outcry caused by Lopes' death). Other high-profile killings have provoked similar media and societal responses, including the August 11, 1996 murder of two middle-class professionals in an upscale neighborhood in São Paulo. *See* Human Rights Watch, *supra* note 3. Human Rights Watch reported that:

> [I]n the weeks following the [Bodega] killings, the Brazilian media provided ample coverage to the outraged reaction of city residents. In response to the Bodega killing, influential sectors of São Paulo society joined to form "React São Paulo" (*Reage São Paulo*), a civic organization modeled on "React Rio," a group founded in 1995 in response to three highly publicized kidnappings. At the same time, the São Paulo and national media gave extended coverage to an unfortunate aspect of the public reaction to the Bodega incident, namely the hostility of many crime victims toward human rights and their defense.

*Id.*

25. Int'l Council on Human Rights Policy, *supra* note 20, at 25 & 25 n.36.

26. Shearing & McCarthy, *supra* note 6, at 2.

27. Arie Freiberg, *Affective Versus Effective Justice*, 3 Punishment & Soc'y 265, 265–78 (2001).

forcement agents) and because they resonate with the anger that the security vacuum has generated.[28] Such responses may well be less effective than ones that mobilize a variety of non-repressive tactics, especially over the longer term. However, the latter take longer to implement and they channel popular sentiments differently.

In the context of a security vacuum, state policymakers in transitional societies are charged with the difficult task of assuring citizen safety while not allowing police and other security forces to revert to abusive practices characteristic of the pre-transitional society. This is a challenge that is seldom met. In many circumstances, authorities turn a blind eye to continued abusive practices. In other instances, they may encourage police to continue to crack down on crime, knowing that in practice this will entail serious rights abuse.[29]

## III. The Role of the Media in Security and Human Rights

Unfortunately, many media sources focus urban reporting on the most gruesome and sensationalist crime stories, particularly in papers directed at lower-income audiences.[30] Poorly informed, often uneducated potential victims of crime have little tolerance for those who defend the rights of criminal suspects. These same potential victims are often equally incensed about the corruption and inefficiency of the police. When criminality spreads, people of all segments feel more insecure, particularly vulnerable groups (women, the elderly, the sick, and the poor). It is entirely possible that the perception of insecurity does not track a corresponding increase in crime. Public perceptions may be created or manipulated through intentional or unintentional processes. Politicians may seize on public security as an issue to be exploited for political gain. In this context, reasoned discussion about public security may be stifled by inflammatory "law and order" rhetoric.[31] As a result of media, political, and other pressures, public opinion may come to regard the defense of human rights as equivalent to the defense of criminals and criminality. Alternatively, people may become overloaded with information about public security issues to the point of losing interest or becoming disillusioned and cynical. Rights activists seek an active engagement with the media, yet they do so under conditions not of their own choosing.

---

28. Shearing & McCarthy, *supra* note 6, at 2–3.

29. *See, e.g.*, Sandra Carvalho & Andressa Caldas, *Crime and Human Rights in Brazil* (*Crime Project* Working Paper 2002, *supra* note 6) (discussing abusive state police in Brazil); Narandran Kollapen & Makubetse Sekhonyane, *Combating Crime and Respecting Human Rights: An Illusive Balance or the Search for a Durable Solution* (*Crime Project* Working Paper 2002, *supra* note 6) (discussing abusive state police in Nigeria).

30. Joseph Kennedy analyzes the increasing tendency in the United States to employ linguistic categories that describe crime and criminals in the most extreme terms. Thus, as he remarks, while most violent crimes qualify only as battery, violent crime triggers thoughts of a vicious assault, if not a rape or robbery involving a weapon. The media emphasizes this tendency by providing disproportionate space to particularly horrible, violent offenses. *See* Joseph E. Kennedy, *Monstrous Offenders and the Search for Solidarity Through Modern Punishment*, 51 Hastings L.J. 829 (2000).

31. *See generally* Rachel Neild, *The New Face of Impunity*, 2 Hum. Rts. Dialogue 6 (2002).

A 2002 report by the International Council on Human Rights Policy[32] examined the role of the media in reporting on human rights, analyzing the treatment afforded these issues by journalists at the local, regional, and international level. One example concerns media accounts that may routinely omit legally and factually qualifying terms in reporting crimes. Yevgeniy Zakharov of the Kharkiv Group for Human Rights Protection reported that, for instance, Ukrainian journalists rarely use the term "allegedly," thus accepting at face value official accounts of criminal incidents.[33] Zakharov explained that his group trains journalists to report on incidents affecting human rights, emphasizing the need to respect the presumption of innocence.[34] That presumption is particularly critical in cases in which police are accused of rights abuses directed against criminal suspects. In practice, Zakharov noted, 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, "if people believe that the victim is or might be innocent, then they condemn police [brutality]."[35] Another example comes from Brazil, where it is not uncommon for public security officials to release news toward the end of the afternoon, effectively eliminating the possibility that reporters will be able to seek alternative views of the matter prior to submission of copy for the morning papers. Once reported, the story is likely to be retransmitted (sometimes globally), often without questioning the sourcing or veracity of the original reports.[36]

Another problem 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 develop, inevitably, close personal contacts with the police who, in turn, guarantee their access to information that is at times not available to all members of the media. Reporters that benefit from such privileged relationships with police sources are often reluctant to file stories that are critical of the police. This problem is exacerbated by the trend toward simplified and entertaining news stories. Such "infotainment" has become common at all levels (international, regional, and local), taking on particularly troublesome characteristics in the public security context. Uncharacteristically gruesome crimes or extremely violent episodes are good raw material for massive, repetitive coverage that may well foster a rising sense of insecurity. Simplified reporting reduces criminals and victims to caricatures, thereby facilitating the "hardening of justice." Media tend to portray poor communities as the breeding grounds of criminality and the drug-trafficker and thief become lightening rods justifying brutal police incursions into such places. According to Brazilian professor

---

32. Int'l Council on Human Rights Policy, Journalism, Media and the Challenge of Human Rights Reporting (2002).

33. Interview with Yevgeniy Zakhariv, Member, Kharkiv Group, in Kiev, Ukr. (Oct. 31, 2002).

34. *Id.*

35. *Id.*

36. Int'l Council on Human Rights Policy, *supra* note 20, at 46.

Cecília Coimbra, after the Brazilian transition to civil rule, media treatment turned criminals into the new enemies of the state.[37] The media fomented the image of the poor as enemies of the state in the same way that previous enemies of the state—armed guerrillas, student activists, union leaders and others suspected of opposing military rule—had been characterized in the 1960s and 1970s.[38] Once they become characterized as enemies of the state, criminal suspects may be eliminated without significant public outcry. The consequences of media simplification are of critical importance for rights defenders, who must cut through the misperceptions about crime held by members of the public if they are to defend successfully the rights of criminal suspects.

## IV.  Official Responses to High Crime Levels

### A.  Collaborative Efforts

Official responses to and policies toward rising crime levels may be divided into two broad categories. A first group of reactions includes a range of collaborative efforts, either initiated by state authorities or jointly with state authorities and civil society groups. Collaboration between state agents and civil society groups marks a clear departure from the pre-transitional period in each country under study, when interaction between these two parties was almost exclusively confrontational. A range of programs that may be included in this group is discussed below. While collaborative efforts encompass a variety of formats, we may divide them into three broad subcategories.[39]

### 1.  Community Policing

While the term "community policing" is broad enough to encompass a wide range of law enforcement approaches, the defining element in each is the engagement of the affected community in determining and implementing public security practices. Over the past decade, there has been a remarkable boom in community policing. Its advocates attribute reductions in the rate of violent crime in New York City to the adoption of community-friendly policing techniques.[40]

---

37.  Cecília Coimbra, Operação Rio: O Mito Das Classes Perigosas (2001).

38.  *Id.*

39.  *Compare* Int'l Council on Human Rights Policy, *supra* note 20, which includes a fourth category: witness protection programs. Because such programs are not nearly as universal as the three that we cite below, we have opted to exclude them from consideration here.

40.  There is hardly universal consensus on this point or almost anything related to community policing. Other analysts attribute declines in violent criminality in New York to demographics or to zero tolerance policies. *See* Int'l Council on Human Rights Policy, *supra* note 20, at 28–29.

*2.  Police Training*

Given the disdain the pre-transition law enforcement authorities in the countries considered had for human rights issues and their advocates, it should come as no surprise that repressive regimes provide their public security employees with little or no training in human rights standards or policing methods. In most transitional societies, human rights training often appears on the scene as an initial and relatively non-controversial method of improving respect for human rights by police forces. The record of these training programs, however, is at best mixed.

*3.  External Oversight Mechanisms*

An important collaborative trend in transitional societies are joint efforts to establish and support the work of external oversight bodies. While the name—ombudsman, civilian review board, *defensoría*—may vary, these bodies share essential characteristics, such as their relative autonomy from police forces and their competence to review allegations of abuse committed by law enforcement agents. While these bodies are generally regulated and financed by the state, they are usually the product of campaigns led by civil society, and their staff often come from the ranks of leading human rights groups.

*B.  Hardline Reactions*

A second group of responses may be termed hardline reactions to criminality—policies adopted without collaboration or consultation with human rights groups, which, by and large, oppose such measures. However, some civil society groups, such as those operating under the heading of victims' rights, sometimes support hardline approaches to criminality. These approaches include increasing the severity of punishment, imposing mandatory sentences, attacking rights defense and defenders (in the media and elsewhere), and, in the most extreme cases, may even involve policies that foster police violence and summary executions.[41]

Hardline approaches may be divided into three subcategories: those that focus on severe and mandatory prison sentences, those that attack rights defenders, and those that foster police brutality.

*1.  Mandatory and Minimum Sentencing*

States often respond to popular pressure to get tough on crime by increasing the severity of sentences or by requiring mandatory prison terms for par-

---

41. Such policies were, for instance, implemented in the state of Rio de Janeiro from 1995 to 1998. During that period, state law enforcement officials authorized pay raises and promotions for police officers involved in "acts of bravery." In practice, as Human Rights Watch documented, police officials authorized these promotions and raises for those officers who had killed suspects, regardless of the circumstances. *See* Human Rights Watch, *supra* note 3, at 2, 10, 19–22.

ticular 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 several crimes and removing the possibility of parole for such offences.[42] Similarly, mirroring the maximum security prison model of the United States, the South African government adopted harsh sentencing guidelines and other policies designed to restrict the availability of bail in order to demonstrate its commitment to reducing crime.[43] It imposed minimum sentences for serious offenses and restricted judicial discretion in the sentencing process. The legislature also passed amendments to the Criminal Procedure Act that provided greater leeway to courts to refuse bail. These amendments allowed courts to consider factors such as the sense of "community outrage" in setting bail.[44]

### 2. Attacks on Rights Defenders and Rights Themselves

Where public outrage against crime leads to the demand for harsh justice, those who defend rights and criticize the retributive model on that basis become themselves open to attack. Such attacks frequently are leveled not only by police officers and victims' rights groups, but also by 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 justice. For example, in Rio de Janeiro, the State Secretary of Public Security from 1995 to 1998 referred repeatedly to one international human rights activist as an "*alienígena*" or "space alien" and attacked the idea of human rights as concerned only with the protection of criminals.[45] In Argentina, pro-police forces have organized massive rallies in defense of police and against rights defenders.[46] In South Africa, verbal attacks on the idea of constitutional rights are commonplace among the public and policymakers.[47]

### 3. Policies that Foster Police Violence

Public authorities may also 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 repeatedly called on police in public statements to shoot first in encounters with criminals.[48] In São Paulo,

---

42. Lei No. 8.072, de 25 de julho de 1990.

43. For a broader discussion of these measures, including the pressures leading to their enactment, see Kollapen & Sekhonyane, *supra* note 29, at 5–8.

44. *Id.* at 8.

45. *See* Diana Jean Schemo, *New Video in Brazil Captures Police Brutality; 6 Are Arrested*, N.Y. TIMES, Apr. 9, 1997, at A13. *See also* HUMAN RIGHTS WATCH & AMERICAS WATCH, *supra* note 3, at 2, 22 (reporting that "[f]aced with criticism from nongovernmental organizations, Secretary of Public Security Gen. Nilton Cerqueira has assailed his detractors as fronts for drug traffickers").

46. *See* Palmieri & Ales, *supra* note 16, at 7.

47. *See* Kollapen & Sekhonyane, *supra* note 29, at 3, 7.

48. *See* AMNESTY INT'L, FEAR FOR SAFETY/MEDICAL CONCERN 2, AI Index AMR 19/03/98 (1998),

Brazil, in 2002, authorities widely praised police after an incident in which twelve suspects were killed, despite evidence (later confirmed) that the victims had been executed.[49] Similarly, the Rio de Janeiro authorities have promoted brutality in their rhetoric and in their policies. For example, from 1995 to 1998, they increased the salaries of and promoted officers engaged in acts of "bravery" (which often involved killing of suspects), and allowed police to carry additional weapons (a practice that facilitated covering up summary executions by enabling police to plant their second weapons on dead victims).[50] In Nigeria, official response to crime has prioritized militarized 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.[51] The expressed aim was to stop rising crime and armed banditry, but such militarized sweeps have produced high numbers of civilian casualties.

## V. Defending Human Rights in Periods of Change

### A. *Human Rights NGOs and the State: Oversight or Engagement?*

Dealing with crime presents human rights organizations with difficult challenges. To understand these challenges it is important to recall the historical development of human rights work. Virtually without exception, in authoritarian states, the main focus of rights organizations has been egregious violations of the rights to life, physical integrity, and due process committed by officials with the active participation or complicity of high-level authorities. Focusing on these abuses is important for two reasons: domestically, these abuses are understood to be one of the symptoms of what is wrong with the government in power and thus tend to strike a chord of empathy with large segments of the population; and internationally, situations of civil and political rights abuse directed, or acquiesced in, by the state have been widely recognized as instances of human rights abuse. This history reveals three important elements 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 relatively recently);

---

*available at* http://www2.amnesty.se/uaonnet.nsf/0/140230fab1e96b19c1256672003e2499?OpenDocument (noting in an Urgent Action that "[a]ccording to a recent study, in the last two years, the average number of deaths resulting from police actions has doubled as a result of the 'shoot first, ask questions later' policies of the current [Rio de Janeiro] state government").

49. *See* The Global Justice Ctr., *supra* note 1.
50. *See* Human Rights Watch, *supra* note 3, at 20–23.
51. *See* Shettima & Chukwuma, *supra* note 20, at 7.

- the practice of human rights has been to hold authorities accountable for abuses and their failure to carry out their responsibilities; and

- affirmative abuses are more clearly identified and censured under human rights law than ineffectiveness (i.e., torture or illegal arrest are explicit violations; low arrest rates or slow justice systems are less likely to be seen as such).

In authoritarian systems, impunity for abuse is central. Re-establishing accountability through rule of law is a vital precondition of reform. In a more democratic environment, issues of effectiveness (arrest/crime/victimization rates, policing competence, and so forth) become issues that must be addressed to promote human rights.

The fundamental challenge for human rights organizations becomes whether to remain critics of state violence or to help affirmatively the democratic or democratizing state remedy its areas of incompetence. In democracies, or societies that are reforming toward democracy, the former position can become unsustainable. Often, the challenge is not whether to collaborate in the state's reform processes, but how to collaborate without losing the ability to condemn abuses when officials commit them—in other words, how not to be co-opted. Rights groups that focused on abuses during pre-transition periods tend to be poorly prepared to address the rights violations that occur in post-transition periods, particularly those associated with the ordinary criminal process. During the period of repressive rule, rights groups generally focus on politically motivated acts of repression by the state. This work generally requires relatively little specific appreciation of the operation of the criminal justice system and is consistent with an external oversight approach. It is ordinarily enough to know that a particular dissident, student organizer, or union leader faces charges or has been arrested or imprisoned to understand that a wrong has been committed, that the state and its agents are responsible, and that a pro-human rights position requires a direct challenge to state action. These clear lines blur when the victim of state abuse is not a political opponent but rather an ordinary criminal suspect.

The pre-transition work of rights groups often focuses on documentation and denunciation, skills that may be relevant in the post-transitional context, at least to the extent that rights activists engage in oversight of public officials. However, one critical change concerns the identity of the victims of rights abuse. Rather than political opponents, dissidents, students, labor leaders, or members of armed opposition groups, the targets of abuse in the transitional period and beyond are more often "ordinary" criminal suspects. Juan Méndez has shown how the targets of state violence have shifted from relatively well-known political prisoners to "young persons from a poor district whose victimization hardly merits a newspaper story."[52]

---

52. Juan E. Méndez, *Problems of Lawless Violence: Introduction*, *in* THE (UN)RULE OF LAW AND THE UN-

Such change is significant for the work of rights groups. In many cases, they must choose whether to cooperate with authorities, not only due to the potential ethical issues this may raise for organizations and individuals historically dedicated exclusively to oversight, but also for strategic and practical reasons. In most transitional contexts, the majority of 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 because the key issues were impunity and abuse of political rights), following reform, this is no longer the case. 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 drives NGOs to engage in the reform of state criminal justice institutions.

In a number of countries, rights activists have entered positions within government.[53] This, in itself, can weaken civil society as many talented professionals transfer out of the NGO sector. Other, more complicated issues arise out of the overlapping roles of government and civil society, issues that 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 make decisions about the conditions under which they will engage with the government. How far and under what conditions should a human rights organization 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? Can civil society oversee state behavior and engage effectively with authorities?

Innocent Chukwuma, Executive Director of the Centre for Law Enforcement Education, a leading Nigerian NGO that has pioneered democratic police training in that country, has raised questions surrounding the potential incompatibility of working with the police *and* maintaining a watchdog role vis-à-vis its operations. Because of the rejection by police of non-governmental organizations dedicated to such oversight, Chukwuma has explained publicly that his group and others have been 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."[54] Rather, it is more efficient "to address different issues and to maintain an exchange of informa-

DERPRIVILEGED IN LATIN AMERICA 19, 20 (Juan E. Méndez et al. eds., 1999).

53. On October 15–17, 2004, the Harvard Human Rights Program, as part of its Twentieth Anniversary Celebration, hosted a panel discussion on this issue at Harvard Law School entitled *What Happens When We Win?: Problems Confronted by Human Rights Advocates Who Become Part of Reform Governments*, *available at* http://www.law.harvard.edu/programs/hrp/20th_program.htm.

54. INT'L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 20, at 40 & 40 n.54.

tion among rights groups."[55] Rights groups in Brazil and elsewhere have found themselves subject to similar constraints. Those that have worked collaboratively with the police, for example, have avoided denouncing police abuses, or have suffered pressures from their official partners when they have criticized abuses by authorities. In practice, sacrificing or limiting one's oversight role often becomes the price of maintaining open and mutually trusting relationships with the police.

### B.  The Dynamics of Public Outrage

Some analysts have argued that in light of the increase in crime across a variety of countries in transition and the fear it produces, the resulting groundswell of popular sentiment in favor of authoritarian "get tough" responses is understandable.[56] Survey research indicates that, indeed, even among the dispossessed underclass of such countries, there is tolerance for abusive crime-control practices that weaken democratic expectations.[57] This was perhaps most evident in the breakdown of the Soviet Union.[58] Faced with rising crime (or at least the perception thereof), people tend to seek simplistic, harsh solutions. David Garland observed that criminal acts violate sentiments and emotions that are deeply ingrained in most members of society. These acts call forth strong psychological reactions, provoking a sense of outrage, anger, fear, indignation, and a passionate desire for vengeance.[59] As the demand for hardline justice increases, the animosity directed at rights defenders and others who oppose the retributive model also intensifies. The problem for human rights organizations, therefore, extends beyond abuse of criminals by the state. Ultimately, human rights groups must be equally concerned with states' general failure to provide security and justice according to the rule of law and in line with international human rights standards. If NGOs focus solely on the former issue, they open themselves up to accusations, e.g., that they are defending the criminals. Maintaining a state-centric approach may be defensible as an ethical matter, but its efficacy in practical terms has proven to be increasingly limited.

### C.  The Surge of Private Security and Vigilantism

In many societies, public dissatisfaction with state efforts to deal with rising crime has gone hand-in-hand with increased tolerance for repressive approaches to crime control, and, in extreme cases, resort to self-help measures

---

55. *Id.*

56. Rachel Neild, Int'l Ctr. for Human Rights and Democratic Dev., *From National Security to Citizen Security* (1999), *at* http://www.wola.org/publications/pub_security_civil_society_national_sec_to_citizen _sec.pdf (last visited Feb. 27, 2005).

57. Neild, *supra* note 31.

58. Peter H. Solomon, Jr., *Reforming Criminal Law Under Gorbachev*, *in* TOWARD THE "RULE OF LAW" IN RUSSIA? 235 (Donald D. Barry ed., 1992).

59. DAVID GARLAND, PUNISHMENT AND MODERN SOCIETY 20–21 (1990).

that frequently violate basic human rights.[60] In the absence of a capable state, citizens seek alternative forms of protection such as vigilantism and, for the wealthy (including the business sector), privatized policing.[61]

In many transitional states, 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. In countries in transition, even where they are formally legal, private security firms often operate at the margin of the law, engaging in practices that differ only minimally from those of vigilante groups. Teresa Caldeira, for example, has documented the relationship between the Brazilian illegal market in security service and uniformed security guards in private condominiums, where policemen or ex-policemen (who have their own guns) are paid to "clean up any major problem." This market interacts with many of the same personnel who act as *justiceiros* (literally "justice makers"), but who are more accurately described as death squads engaged in summary executions.[62]

In Nigeria, rising crime has led to an explosion in the private security industry. Such is the demand for private guards there that businesses requiring private security forces have hired men directly from the streets and posted them as uniformed security personnel the next day.[63] There, too, vigilante groups have surfaced. These include groups such as the O'dua People's Congress ("OPC") in the Southwest and the Bakassi Boys in the Southeast, as well as smaller, less conspicuous groups. The Bakassi Boys are known globally for their brutal methods (e.g., hacking suspected criminals to death) due to vast international media coverage. The record of these groups has become well known to human rights activists well beyond Nigeria's borders, even as, in a number of places in Nigeria, vigilante groups have been legalized and are supported by the government.

In such a context, the fundamental challenge for human rights activists is the nature (and logic) of public attitudes toward such groups. The combination of fear, despair, and helplessness, years of violent crime, abuses by the security forces, and government inaction often leads people to tolerate vigilantism. In such situations, rights groups face the dilemma of how plausibly to call on the state to do its job, rather than allowing vigilante groups to do the dirty work. At the same time, rights activists face the risk of widescale public rejection if they fail to recognize the benefits that private security and vigilante groups provide in responding to crime. What, then, can constitute an effective human rights strategy in such a context?

---

60. INT'L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 20, at 40 & 40 n.52.
61. *Id.* at 22 & 22 n.30.
62. TERESA P. R. CALDEIRA, CITY OF WALLS: CRIME, SEGREGATION AND CITIZENSHIP IN SÃO PAULO 205–06 (2001).
63. *See* Shettima & Chukwuma, *supra* note 20.

## VI. Responses of Human Rights Groups

Faced with the challenges posed by rising crime and the public's increased feeling of insecurity, rights groups have responded in a variety of ways. The responses described to us are conditioned primarily by the context in which organizations work. While Nigerian rights groups face challenges to the very idea of 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.[64] 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 not just criminals but criminality itself.[65]

In all these societies, human rights activists must consider how best to deal with state authorities, both on an individual and institutional basis. The predicament is essentially twofold. One dimension concerns balancing the need to engage processes of reform with the need to remain independent. A second dimension concerns the tension between the defense of human rights principles and efforts to build public support for human rights. These dilemmas cut across all contexts, shaping the responses of rights organizations and the perceptions of peer organizations, the government, and the public at large. Further, they are manifest in uniquely different circumstances that depend on cultural and geographic—i.e., specific—locations. In presenting some of the salient responses of rights groups here, we hope to foster a more conscious reflection of these issues.

### A. Advocacy and Oversight Activity

Oversight includes a number of strategies, from legal approaches at the domestic level, to advocacy of human rights to multiple constituencies, to the traditional function of documenting and reporting rights abuses (again, to a variety of audiences). Faced with rising crime, some groups have multiplied their use of advocacy and oversight. There are several aspects to this role.

### 1. Advocacy Focus on Innocents

In the face of public hostility or indifference to abuse by law enforcement agents, NGOs are often forced to rethink their advocacy strategies. In practice, advocacy strategies are not always structured coherently and constitute, instead, ad hoc responses to contingencies. One relatively widespread and easy to employ strategy focuses on abuses involving clearly innocent people. Across the countries studied in the International Council study, researchers consis-

---

64. *See* Halyna Senyk, *Crime and Public Order in Ukraine* (*Crime Project* Working Paper 2002, *supra* note 6).

65. *See* Palmieri & Ales, *supra* note 16; Shettima & Chukwuma, *supra* note 20; Carvalho & Caldas, *supra* note 29.

tently found that the general public and the media were more sympathetic to such cases.[66] Amateur videotape evidence of police extorting, beating, torturing, and even murdering passengers in randomly stopped vehicles, as aired on March 31, 1997 on Brazil's leading station TV Globo, produced an unprecedented wave of protest and resulted in some change to the law.[67] Many groups expressly limit their mandate to "innocent" people, but this involves a matter of choice. In Peru, a leading human rights activist, Francisco Soberón, head of the Coordinadora Nacional de Derechos Humanos, explained the dilemma of Peruvian rights groups operating under the Fujimori regime.[68] According to Soberón, faced with a popular yet authoritarian government and a violent terrorist resistance movement (Shining Path), NGOs needed to distance themselves from those identified with the extremists in order to survive to defend human rights principles.[69] As Carlos Basombrío, then-head of Peru's Legal Defense Institute (Instituto de Defensa Legal), explained, 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.[70]

### 2. *Personalization of Criminal Suspects and Offenders*

Some organizations have sought to humanize those involved in institutional violence in their public discourse. The Memory and Society Forum (Foro Memoria y Sociedad or "Foro") presents criminal behavior as a consequence of the criminals' socioeconomic and cultural conditions.[71] In focusing on their stories, Foro is able to establish a link between criminal behavior and structural social conditions, thereby undermining the idea that poor people are criminals and enemies of the middle class.[72] The Anti-Police Repression Coordinator (Coordinadora Contra la Represión Policial e Institucional or "CORREPI"), another Argentine NGO, works to distinguish criminality (traditionally associated with poverty) from organized crime, and thus promote greater empathy for ordinary criminal offenders. CORREPI also works to portray ordinary criminals as victims of professional criminals—who often have institutional connections to the police—for whom they are forced to work.[73] Through their work, both Foro and CORREPI are able to transcend a narrow human rights focus and enter into the broader public security debate

---

66. A strong argument may be made, however, that emphasizing cases involving innocent victims serves to reinforce the popular belief that only the innocent deserve the protection of human rights.

67. On April 7, 1997, only seven days after the televised images of these police abuses aired, the Brazilian Congress passed Law No. 9.455, which rendered torture a criminal act. Brazil had been under an obligation to pass such legislation since its ratification of the Convention Against Torture in September 1989.

68. Interview with Francisco Soberón, in Lima, Peru (May 31, 2002).

69. *Id.*

70. Interview with Carlos Basombrío, in Lima, Peru (May 27, 2002).

71. *See* Palmieri & Ales, *supra* note 16, at 12.

72. *Id.*

73. *Id.*

with the position that criminal activity will not decrease until society addresses its root causes.[74]

### 3. Publicizing Statistics on Rights Abuse

Argentine organizations also publicize the number of civilians killed in confrontations with security officers. CORREPI, Foro, the Human Rights Research and Studies Center (Centro de Estudios e Investigaciones en Derechos Humanos), and the Legal and Social Studies Center (Centro de Estudios Legales y Sociales) all regularly prepare and publicize reports of this kind.[75] By means of this systematic documentation and reporting, apparently isolated episodes acquire impact and can be viewed as part of a widespread practice. In Rio de Janeiro and São Paulo, where figures are available, rights groups and ombudsmen offices regularly release statistics on police killings of civilians.[76] Rights groups working in other countries and internationally have also used this technique to focus attention on police abuse.

### 4. 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 at all—was designed primarily to address abuses planned, coordinated, and carried out by state security forces, ordinarily targeting dissidents, guerrillas, or others tied to opposition movements. This model works differently when the target of the state stands accused of criminal behavior. International advocacy has, nevertheless, proved to be an effective strategy. In places distant from national or regional capitals, rights groups encounter significant problems in placing abuses committed by the police against criminal suspects or detainees on the public agenda. It can be useful to file petitions before international bodies such as the Inter-American Commission on Human Rights of the Organization of American States, human rights treaty bodies of the U.N., the U.N.'s special mechanisms; or to release reports abroad, sometimes in conjunction with international NGOs. While the fact of the abuse itself as committed against a criminal suspect may not evoke broad popular sympathy or official reaction, the possibility of international condemnation may produce this latter result.

---

74. *Id.*

75. *See id.*

76. *See, e.g.*, THE GLOBAL JUSTICE CTR., HUMAN RIGHTS IN BRAZIL 2003 39–44, *available at* http://www.global.org.br/english/arquivos/JGAR2003English.pdf; HUMAN RIGHTS WATCH, WORLD REPORT 2003, *available at* http://www.hrw.org/wr2k3/americas2.html. *See also* Ouvidoria da Polícia do Estado de São Paulo [Reports of the Ombudsman for the São Paulo Police], *available at* http://www.ouvidoria-policia.sp.gov.br.

### B. *Collaborative Efforts with Public Authorities*

Collaborative strategies with governmental agencies may be advanced in a number of ways. While rights groups have achieved some success in working with authorities, they have often found engagement with state officials to be something of a minefield. Addressing human rights issues from the perspective of the state is new terrain for rights groups who have had their share of difficulties in adjusting to this paradigm shift. To complicate matters, partnerships between civil society and the state are rarely undertaken on fully equal terms. And often, engagement with state actors may cost rights groups as much legitimacy with their peers as it gains them with the general public. Using concrete examples, we draw attention to several aspects of collaborative efforts below.

### 1. *Direct Provision of Services: Community Conflict Resolution*

In 1997, the Rio de Janeiro-based NGO Viva Rio formed the Rights Stand (Balcão de Direitos) program to help victims of violence in urban slums seek justice. During the program's first year, lawyers and law students working with a citizen agent provided direct legal advice and services in six *favelas*, or shantytowns.[77] 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.[78] According to Pedro 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 program.[79] The Rights Stand hoped to restore law and order by bringing the state to the *favelas*. After the program's first year, staff members realized that legal services alone would not bring justice to victims of violence. For justice to be realized, structural reform of Brazil's legal system was necessary. The judiciary was slow and inefficient and its language was inaccessible to most *favela*-dwellers. Moreover, many individuals did not want the kind of justice that the state could provide. Many sought alternative solutions to their problems, including avenues of initiating dialogue with their assailants.

In light of its experience with local communities, Viva Rio began to consider informal legal codes and norms that differed significantly from institutionalized laws. It expanded its work to include a civics and citizenship program designed to increase the political awareness of community leaders. In this way, the idea of "bringing the state to the *favelas*" was turned inside out: Viva Rio "brought the *favelas* to the state."[80] In seeking to fill gaps left by

---

77. James Cavallaro & Adrian Alvarez, *The Urban Poor: Problems of Access to Human Rights* (International Council on Human Rights Policy Working Paper, presented at the *International Meeting on Access to Human Rights* (Jan. 17–18, 2003). *See also* Marguerite Garling, Enhancing Access to Human Rights (Mohammad-Mahmoud Ould Mohamedou ed., 2004).

78. *Id.*

79. *Id.*

80. *Id.*

the state, Viva Rio came to see that, to provide legal access to abandoned communities, these communities needed to be able to monitor critically the state's behavior and performance.

### 2. Community Policing

As stated above, community policing refers to security arrangements that offer a significant policing role to the community.[81] Several of the countries studied have such community policing projects, often spearheaded by local NGOs. Such projects routinely require NGOs to work with local communities as well as public security authorities. While rights groups, university-based criminologists, funders, and others have devoted a great deal of attention to community policing and its perceived benefits, there is still no clear consensus as to its actual effectiveness. A rich ongoing debate among scholars and activists in this field has sought to isolate those factors most likely to result in successful community policing.

The Institute for Democracy in South Africa ("IDASA") provides a good example of a civil society organization that has sought to work with the community. After the 1994 presidential elections, IDASA attempted to bring the community and South African Police Services ("SAPS") together to restore credibility to the policing system and foster transition from a hostile to a collaborative relationship between local communities and SAPS.[82] IDASA asked communities to cease thinking of SAPS as the "enemy" and encouraged the formation of a Community Policing Forum where community members could actually play a part in upholding law and order.[83]

In 1998, IDASA played an active role in developing a National Crime Prevention Strategy that attempted to shift the public debate away from stricter policing and to discourage arbitrary detention and brutal crime prevention tactics.[84] Meanwhile, community police fora—often facilitated by such NGOs as IDASA, the Centre for the Study of Violence and Reconciliation, and U Managing Conflict—worked to ensure that police and communities pooled their resources and worked together in combating crime.[85] The model of community police fora yielded mixed results but in many instances highlighted for communities the benefits of approaching security issues within the law.

### 3. Police Training

Political reform processes ought to encourage state security agents to work collaboratively with civil society representatives. One area of intense collaboration has been police training and instruction in human rights norms, which

---

81. Rachel Neild, Washington Office on Latin America, Community Policing 3 (1998).
82. This summary is taken from Kollapen & Sekhonyane, *supra* note 29, at 10.
83. *Id.*
84. *Id.*
85. *Id.*

has required something more than mere abstract literacy in human rights law. To be successful, police training requires sensitivity to the harsh realities of everyday policing. Reciting articles of international conventions to police officers is utterly ineffective. Law enforcement agents must be convinced of the practical benefits of a police approach based on the rule of law.[86]

The South African Human Rights Commission, Lawyers for Human Rights, and the National Consortium for Refugee Affairs have launched one law enforcement training program that focuses on respecting the rights of refugees, asylum-seekers, and migrants.[87] The object of the training is to assist the police in enforcing legislation relevant to migrants, asylum-seekers, and refugees, while recognizing constitutional rights and human rights norms. Technikon South Africa, one of the largest tertiary institutions in the country, offers a police training course that provides practical guidance on policing in the context of a democratic society.[88] The objective of the training is to demonstrate that police compliance with the law actually advances the prospect of criminal convictions by minimizing challenges to the admissibility of evidence and ensuring procedural fairness.[89] Non-compliance, on the other hand, makes it more likely that technical challenges on the admissibility of evidence will be successful, thereby further undermining credibility and trust in law enforcement.[90]

### 4. Joint Development of Policy 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. In some instances, rights groups have had broad access to policymakers and their voices have been heard and incorporated into the formation of laws, regulations, guidelines, and other policies. South African rights groups, for example, played some 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 favor with authorities, while organizations that propose cooperation with police through community policing or defend victim rights have had more influence.[91]

In other contexts, efforts to work with authorities have been more successful in setting priorities—though less successful in implementing programs.

---

86. As Fiona MacAulay emphasizes, human rights–oriented police training efforts have not been successful when they fail to convince police that methods respecting the rule of law produce better results. She notes that international organizations have moved away from police training programs that focus on black letter human rights law, and are instead embracing training methods that focus on the advantages of law-abiding policing methods. *See* INT'L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 20, at 110.

87. Kollapen & Sekhonyane, *supra* note 29, at 11.

88. *Id.*

89. *Id.*

90. *Id.*

91. Kollapen & Sekhonyane, *supra* note 29, at 8–10.

Brazil's National Human Rights Program (Programa Nacional de Direitos Humanos or "PNDH") is a case in point. The PNDH was created by a participatory process that began in 1995 and that involved the government and human rights groups.[92] (A second version of the PNDH emerged through a similar, collaborative process in May 2002.) The PNDH was driven in large part by sensitivity to international pressure. President Fernando Henrique Cardoso had been the head of the Ministry of Foreign Relations and he placed considerable weight on Brazil's image abroad. Under Cardoso, the federal government maintained a dialogue at home and abroad in which it acknowledged human rights abuses in Brazil. The government's new practice under Cardoso 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 where civil society could propose policies on human rights issues.[93] Unfortunately, in the end, few measures included in the PNDH were enacted into law, and those that were stemmed from 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 being a joint civil society government policy plan, the PNDH, one activist told us, represented a wish list designed for international consumption.[94]

### 5.  *Defending the Rights of Victims and Crime Witnesses*

One recurring problem hindering attempts to reduce crime is the difficulty of prosecuting and removing corrupt and violent police officers, members of organized 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, general lack of faith in the criminal justice system, and distrust of the police. In response to this persistent problem, civil society groups have worked with authorities to develop programs to protect witnesses. The model for such programs was established in the United States and Italy to fight organized crime. What is different about the activities that Human Rights NGOs are interested in nurturing is the degree of civil society involvement in, and even control of, programs. For example, in 1996, in Pernambuco state in northeastern Brazil, the Office of Legal Assistance for Grassroots Organizations (Gabinete de Assessoria Jurídica às Organizações Populares) established a witness protection program in conjunction with state authorities.[95] This program involved provision of services that were entirely coordinated by civil society, yet financed by the state. The program's early success led the federal government to rep-

92. Carvalho & Caldas, *supra* note 29, at 9.

93. *Id.*

94. Interview with Sandra Carvalho, Research and Communications Director, Global Justice Center, in Rio de Janeiro, Braz. (Oct. 22, 2004).

95. *See* Human Rights Watch, *supra* note 3, at 51–53.

licate the model in a number of states and at the national level over the next several years.[96]

Some human rights organizations have sought to resolve the tension between human rights and public insecurity by incorporating the defense of victims' rights into their work. However, in the majority of countries studied here, most human rights groups continue to regard advocates of victims' rights as antagonists. This has been particularly true of South Africa, where, immediately after 1994, little attention was given to the role and position of victims in the justice process. As victims became an increasingly organized and vocal lobby, however, this changed. The main achievement of the victims' movement, later increasingly supported by traditional rights groups, was the Victims' Charter. That document was developed by the South African 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.[97]

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 recognized internationally. The text 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 finalization, and will have an important role to play in monitoring compliance when the Charter becomes operational.

### C.  Broad Engagement in the Security Debate

Ultimately, collaborative efforts may reflect back on and change the nature of advocacy and oversight. There are no neat dividing lines in the strategic response of human rights groups to the present circumstances in transitional societies. Engaging in security debates, whose terms are decided by others, creates a danger that the security concerns of rights organizations will be marginalized. However, not taking part in the crime and security debate may entrench the marginalization of human rights organizations. For most rights activists, therefore, participating in the security debate is not an option, even while it remains a dangerous foray into uncharted territory. Rights organizations must deal with security institutions they mistrust.

Human rights organizations must build capacity in areas in which 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. Where the demand for police effec-

---

96. Regional Action Network on Human Rights Defenders, *Brazil: Protection of Witnesses and Defenders*, 2 On the Front Line 1 (Aug.–Oct. 1998), *available at* http://web.amnesty.org/802568F7005C4453/ 0/331711531AE0FDEF8025690000693115?Open.

97. *See* Kollapen & Sekhonyane, *supra* note 29, at 12.

tiveness is viewed as being at odds with human rights standards and norms, human rights advocates must do more than argue point-for-point why adherence to such standards is a necessary prerequisite for police effectiveness—they must demonstrate this to be the case.

## CONCLUSION

Rights defenders in transitional societies face a range of challenges. Not least among them, as this Article has sought to suggest, are those posed by spiraling urban violence and the concomitant public support for repressive means of crime control. In this context, the defense of human rights is often conflated with the defense of criminality, rendering the task of rights defenders extremely difficult and controversial.

Data from a number of countries indicate the existence of several factors that serve to constrain the options for human rights defense. First, societies in transition tend to experience significant rises in urban criminal violence. Second, transitional law enforcement authorities routinely fail to respond to these changes in criminality in a timely fashion through acceptable, democratic policing techniques. Third, media sources tend to essentialize and sensationalize crime reporting, adding to the public's sense of insecurity. Fourth, while transitional states provide civil society groups with some voice to define the new role of law enforcement policies, many elements of the prior paradigm of distrust and conflict remain.

While human rights activists routinely address these issues, they rarely think about them in a systematic fashion. Our research for this Article indicates that those most directly affected by the constraints on rights defense imposed by rising crime and public insecurity in transitional societies are working in particularly difficult circumstances. Rights defenders in the context of state responses to urban criminal violence face challenges to their legitimacy: pressure from public authorities, the media, public opinion, and law enforcement agents; and critiques from within the NGO movement itself. As a group, their success in responding to the challenges outlined in this Article has been varied, in part due to the lack of systematic reflection, analysis, and exchange of information on these matters. The responses to rising criminality that we have considered here have not been applied uniformly; even when and where applied, their success has been limited and contested. In many contexts in much of the world, the effective defense of human rights may depend in part on this critical reflection of the challenges to rights defense.