

Human Rights

and the Police in Transitional Countries

Edited by Lone Lindholt, Paulo de Mesquita Neto,
Danny Titus and Etannibi E. Alemika



The Danish Institute for Human Rights

Kluwer Law International

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Preface

The idea of publishing a book about Human Rights and the Police in Transitional Countries has been long underway. Since the mid-1990s, the Danish Centre for Human Rights (DCHR) has been involved in activities in relation to policing in various ways, not just by training police recruits in Denmark in human rights, and by coaching local partners in 15 countries in the development of tailor-made manuals for the police in human rights and police behaviour, but also by assisting key ministries - in partnership with Bent Stig Vase Aps - with programmes focusing on justice sector reform and the police. The Danish Centre for Human Rights has also contributed to a manual on indicators, published by the Austrian government and the Council of Europe, that make it possible to monitor improvements in police performance measured against human rights standards.

The activities serve the same aim: To ensure that the police in any country of the world promote and protect human rights. In a well-established democracy the police are perceived to perform a public service and to ensure that each and every citizen, alien and refugee will be protected against any abuse prescribed by national and international law, and by human rights standards. Unfortunately, the police in authoritarian regimes often serve the contrary role as being the main abusers of human rights, for instance by illegally arresting political opponents, by using corporal punishment to extract confessions, and in general by using unnecessary force. Or, the human rights of the police force itself may be abused, with poor salaries and living conditions etc. Adding lack of external control mechanisms, the end result may be corruption. In short, the police may be involved in criminal acts instead of preventing crimes.

The crucial issue is how to transform a police force into a police service? How to transform an unstable, unpredictable political, economic and normative situation where there may be political will to change but where the government has no experience in how to promote and ensure transparent and democratic policing? Violations of political rights may have come to an end, but the problems are the same: The police are organised along the same lines as in the old authoritarian system and share characteristics of a military organisation rather than a public service. There is a lack of professional skills, particularly in relation to the ability to present objective evidence, lack of sufficient resources, lack of education and in-service training, lack of access to information and legislation, and no tradition of informing the press about acts of the police and listening to civilians.

As police organisations are very different in terms of their specific structure and organization, reforms must be tailor-made locally. Therefore, before reforms can be initiated, problems, challenges and needs must be

analysed and defined. Existing models and positive and negative experiences with police reforms may serve as examples for reforms. These are the core issues of the present book. We hope that it may serve as a source of inspiration for reformers and practitioners, and that interested readers of the book will contribute to our continuing work in this field.

Many thanks should be extended to the Danish Ministry of Foreign Affairs (Danida and the Democracy Fund) and to the Ford Foundation for financial support, to the editors of the book, to the DCHR working group and particularly to the coordinator Anne-Marie Garrido, who ensured that partners and experts in the field were identified, to Martyn Bone and Benita Bertram who did the proofreading, to Simon de Tusch-Lec, Anne-Catherine Legendre and Christine Lindrum Iversen for typesetting and corrections - and, not least, to the DCHR partners and researchers contributing to this book, without whom the project would not have materialised.

Birgit Lindsnæs

Director of the International Department
The Danish Centre for Human Rights
(as of 1st January 2003, The Institute for Human Rights
under The Centre for International Studies and Human Rights)

Contributors

Etannibi Alemika

B.Sc.Sociology, University of Ibadan, Nigeria, Ph.D. in Criminology, University of Pennsylvania, Philadelphia, USA. Currently Professor of Criminology and Sociology of Law, University of Jos, Nigeria. Researching and teaching in the areas of philosophy and social theory of law, police and policing; criminal policy; philosophy and management of prisons; human rights and rule of law in criminal justice and law enforcement; and drug control laws and policies. Has published in these areas as book chapters, monographs and in several journals. Former consultant for the United Nations Drug Control Programme and the Organisation of African Unity on drug issues. Consultant on police programs to the non-governmental organisation Centre for Law Enforcement Education in Nigeria.

Budimir Babovic

Ph.D. in Political Science, University of Belgrade. Currently working as a police researcher. Author of several books, studies and analysis related to police matters, in particular international police relations, Interpol, and police in Serbia. Chairman of the Advisory board (of the Minister of Interior) in charge of Police reform in Serbia. Former Vice-President of Interpol and former head of Yugoslav bureau of Interpol.

Basil Fernando

LL.B University of Ceylon. Presently the Executive Director of The Asian Human Rights Commission and The Asian Legal Research Centre. An attorney of law of the Supreme Court of Sri Lanka. Has practised law in Sri Lanka, and has been a senior UN officer in Cambodia. Author of several books and articles, and an editor of the monthly publication Human Rights SOLIDARITY. Was awarded the Kwangju Human Rights Prize, 2001.

Hugo Frühling

University of Chile, LL.M Law Harvard, S.J.D, Harvard. Currently professor at the Institute of Public Affairs of the University of Chile and Director of the University's Center for Citizen's Security. Visiting professor at the Woodrow Wilson School of Public Affairs Princeton University, Harvard Law School and Ottawa University. Was adviser to the Minister of the Interior 1992-1995.

Lone Lindholt

Ph.D and LL.M Law, University of Copenhagen. Currently senior legal analyst at the Danish Centre for Human Rights, responsible for projects relating to academic cooperation, and working in areas addressing human rights in the processes of development and transition. Author and editor of several books and

articles in the field of human rights, consultant and lecturer in human rights education programmes in Europe, Africa and Asia.

Paulo de Mesquita Neto

Ph.D. in Political Science, Columbia University. Currently a Senior Researcher at the Center for the Study of Violence, University of São Paulo. Executive Secretary at the Institute São Paulo Against Violence. Co-author of the First National Report on Human Rights in Brazil Rapporteur, Brazil's National Program for Human Rights.

Rachel Neild

Currently working as a Public Security Reform Program Director at the Washington Office on Latin America. Has written extensively on issues of human rights, police reform, public security and civil society, and has been a consultant on these issues to the IDB, OECD, Center for Rights and Democracy and the Open Society Institute.

Yubaraj Sangroula

Advocate and the coordinator of the Center for Legal Research and Resource Development (CeLRRd) in Nepal. Was engaged as an UNOHCHR consultant during the preparation of the Nepalese human rights training manual Criminal Procedural Guidelines. Has also been actively involved in the National Police Academy as a legal resource person.

Divya Singh

Professor. BA(Law); LL.B; LL.M – currently completing her Ph.D on violence against women. Executive Director of Police Practice – Technikon, Southern Africa. Advocate of the High Court of South Africa. Served as a consultant to the SA Law Commission drafting the Domestic Violence Act. Board member and legal advisor to the Advice Desk for the Abused – a Non-Governmental Organisation in South Africa providing assistance to victims and survivors of intimate abuse. Recognised by the Ministry of Social Development and Welfare to provide training, on a national level, on the application and implementation of domestic violence laws in South Africa.

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Lone Lindholt
Editor-in-chief

INTRODUCTION

BACKGROUND

In the field of development co-operation, the role of the police has attracted increasing attention in recent years. A primary cause of this attention is the growing number of programmes developed under the rubric of human rights and democratisation that target government representatives through technical assistance, capacity building, education and sensitisation. Furthermore, analyses of human rights situations often reveal that a number of violations -- including deprivation of the right to life, torture, unfair trials, detention without trial, discrimination, and interference with freedom of speech, organisation and assembly -- can be attributed to representatives of the executive, including the police.

Nevertheless, it would be wrong to view the police only as an obstacle to the promotion and protection of human rights. The police are, and should be viewed as, an important target group for improvement, in the sense that efforts invested in this area may effect a direct positive change in the human rights situation. In this way, the police may become a constructive force in the process towards democratisation and respect for human rights.

However, it should be kept in mind that, as with all other types of development co-operation, the uncritical application of experience from affluent societies, where democracy and respect for human rights may be fully entrenched, will often prove to be less than effective. While there are several theories on the role of the police in a democratic society, relatively few debate the role of the police in societies which are not - yet, fully or even in the process of becoming - democratic, and which may therefore be described as "transitional."¹

¹For a definition of the concept, see the article by Lindholt below.

An important element to take into consideration is the relationship between the police and the society in which they operate. It should be recognised that the juxtaposition of “human rights” and “police” in the same sentence evokes different feelings and reactions among different people. For the law-enforcing police officer, working hard for low pay and struggling with crime in his local precinct, the very term “human rights” may seem to be a synonym for “soft treatment” of criminals. In its practical, applied form, human rights might appear to the officer as little more than a tool used by subversive activists to prevent him from doing his work properly. Conversely, to the victim of torture and other human rights violations committed by the police and security forces, “human rights” and “police” may be irreconcilable terms and concepts.

A hard truth is that human rights violations very often feature the police as a key actor. This picture is only too clear when one looks at the reports of international organisations such as the United Nations Human Rights Commission and treaty monitoring bodies, as well as non-governmental organisations like Amnesty International and Human Rights Watch. In addition, domestic human rights organisations and institutions in all regions of the world will confirm that such violations are very often related to some form of policing activity.

The primary human rights standards relating to policing include freedom from arbitrary arrest and detention; freedom from torture and cruel, inhuman or degrading punishment and treatment; and, to some extent, the right to a fair trial. Moreover, police forces acting as agents of the hegemonic power structure often perpetrate violations of freedom of assembly, organisation, or discrimination.

Looking at these main human rights standards - standards universally recognised at the global, regional and (in most cases) national levels² - one notes that they do not mention directly the police or its role. However, over the last few decades, a number of instruments have been adopted that address policing in the context of human rights. Although most of them fall within the category of “soft law” that is not legally binding, they touch upon issues of practical importance. These issues include the combating of corruption; the use of force and firearms; the prevention of disappearances; extra-legal executions; and minimum standards relating to juveniles, detainees and victims of abuse.³

²International Covenant on Civil and Political Rights (1966), European Convention on Human Rights and Fundamental Freedoms (1953), American Convention on Human Rights (1978), and the African Charter on Human and People’s Rights (1981).

³Code of Conduct for Law Enforcement Officials (1979), Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (1989), Declaration on the Protection of All Persons from Enforced Disappearance (1992), Standard Minimum Rules for the Treatment of Prisoners (1955), Standard Minimum Rules for the

All of this indicates that the nexus of human rights and policing needs to be addressed constructively. The role of the police officer in relation to general human rights, as well as to specific standards in his or her society, should be discussed soberly, in a manner that generates understanding and empowers constructive action. An indicator of the effectiveness of such dialogue is the extent to which it reduces the number of violations of particular human rights standards, such as freedom from torture and cruel, inhuman or degrading punishment and treatment; arbitrary arrest and detention; and rights relating to fair trial (for example, defence and presentation of evidence).

Considering the more theoretical and scholarly aspects of the issue, it is apparent that there is a need for increased and continuous reflection and analysis: not for the purpose of hiding or excusing reality, but for understanding its deeper causes. Such research, taking its starting point in the experienced reality of police as well as of victims of abuse and the human rights community, could be of real benefit to those working within or outside police systems (for instance, in relation to reform processes). This includes taking into account the particular needs and challenges; for example, with respect to political direction and the availability of human and material resources. In order to create an atmosphere of mutual trust and confidence based on awareness of each others priorities and concerns, it is also essential to strike a balance between, on the one hand, acknowledging difficulties, and on the other, simultaneously and continuously challenging and supporting the partner or institution. In order to achieve this, project oriented work should ideally be research-based, or at least take its point of departure in some form of analytical activity that fuses theoretical reflection with empirical experience. It is to this purpose that we hope to contribute with this publication.

THE WORKSHOP

As an institution working in such different fields as research, capacity building, training, reform, and strategic planning relating to human rights, the Danish Centre for Human Rights (DCHR) has in recent years increasingly become aware of the need to address the issue of human rights and policing in the context of development and transition. This publication is the concrete result of a workshop arranged by the DCHR that took place in Hillerød, Denmark, in March 2001. Collaborating partners were the Asian Human Rights Commission, Hong Kong, and other contacts in the various regions. Funding was provided by the Danish Ministry of Foreign Affairs and Development.

Administration of Juvenile Justice (1985), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

The workshop was initiated on the basis of the institution's work (as outlined above), recognising our need for a broader conceptual basis which would include both theoretical aspects and practical angles. It was therefore decided to convene a group of resource persons, key individuals or representatives of institutions focusing on human rights and the police. The group was intended to represent main regions (Europe, Africa, Asia and the Americas). All members of the group had extensive practical and/or theoretical knowledge of the role and function of the police in transitional countries, i.e. in the form of involvement in concrete reform initiatives, training, or academic work. A screening process based on individual applications ensured a broad scope of approaches; at the same time, the number of participants was limited to a maximum of 50, in order to ensure a forum for informal and effective discussion.

The overall objective of the workshop was to develop an analytical framework for the facilitation and improvement of reform processes, with a focus on ensuring that the police in transitional countries play a constructive role in promoting the respect, protection and fulfilment of human rights. In order to cover the full scope of the problems involved, the approach has entailed focusing not only on formal and legal procedures, but also on informal and unofficial mechanisms. In this way, the functions and potential of the police were looked at in relation to other state institutions, to civil society, and to the broader cultural and political context.

A crucial point of the workshop was to draw on experience already gained from the substantial number of projects established by local and international organisations and institutions relating to police training and reform. Participants were requested to share lessons learned with a view to presenting a broad picture that would include countries where the democratisation process has not yet taken hold or materialised successfully. In order to benefit fully from the expertise of the participants, keynote speeches interchanged with plenary and group discussions cutting across the various themes. Participants were asked to bring copies of relevant materials from their own countries.

This material from all of the participants provided invaluable input to the discussions, and ideally it could all have been printed in one volume. However, the editorial group decided on a course of action that would hopefully capture the main points by means of a distinction between the "key papers" and the "discussion papers" that the participants were asked to prepare for the workshop. The key papers are longer academic papers that address general issues along the main workshop themes (see below) and provide the theoretical foundation. These key papers are printed in full length. The discussion papers are shorter and based on concrete experience and examples, providing the more practical perspective that should not only make the publication relevant to a broader

audience, but also indicate the broad scope of the various themes. These discussion papers are summarised within each of the four sections. In order to make available to a wider audience the rich and detailed material that is only briefly mentioned in the publication, especially in the summaries of discussion papers, they will to some extent be posted on the website www.law-enforcement-forum.dk, which was created in conjunction with the workshop.

THEMES AND CONTRIBUTIONS

The workshop and the publication are based upon four themes:

- I: The Transitional Context, Governance and Rule of Law
- II: Police and Civil Society
- III: Education and Training
- IV: Police Organisation and Reform, International Intervention and Aid

Theme I, The Transitional Context, Governance and Rule of Law, contains four key papers, in addition to a summary of four discussion papers.

Theme I begins with an introductory article by Lone Lindholt that analyses the theoretically founded principles and definitions of the role of the police in society, and defines its functions. Criteria for democratic policing, i.e., that it must be responsible, responsive and accountable, are discussed in light of the transitional context. The paper analyses the relation between policing and human rights by outlining the obligations and standards that are directly impacted by police performance. Factors impacting on police performance at the societal, institutional and personal level are identified, and the paper concludes by looking at particular challenges for the implementation of human rights principles for policing and in transitional countries.

Lindholt's article is followed by Basil Fernando's contribution, which takes its starting point in a realistic approach to rule of law and policing. Among other issues, Fernando's paper draws the distinction between "order enforcement officers", most common in Asia, and "law enforcement officers." The latter term presupposes the development of domestic laws conducive to the protection and promotion of human rights that are adversely affected by various factors dominating the region. The article proceeds to discuss actions taken to monitor police behaviour, addressing not only the roles of the prosecutors and the judiciary, but also various types of civilian oversight mechanisms (commissions, NGOs, etc.). Finally, Fernando discusses the inability of Asian states to comply with Article 2 of the International Covenant on Civil and Political Rights, which requires an effective remedy for the violation of rights, notwithstanding that the violation has been committed by persons acting in an official capacity.

The third article in this section is by Budimir Babovic, and focuses on the issue of democratic control as the key issue in protecting the police against undue interference in their work. Babovic analyses various aspects relating to the role and control of the police, addressing their important role in supporting political power, maintaining public order, crime control, preventing offences, and bringing perpetrators to justice. More specifically, within the context of societies under democratic transition, Babovic points out that the police may play a noteworthy and relatively autonomous role in political processes in transitional countries, but that the role of the police in societal and political processes diminishes proportionally to the entrenchment of democracy. In particular, two aspects present a problem: constitutional and legal provisions that in various ways are subject to interpretation, and the lack of recognition of the human rights of police officers, including freedom of organisation. Accountability is at the core of any democratic process, a concept to be viewed as being qualitatively different from control. The tendency to use the two concepts interchangeably and to put both of them on the political agenda at the same time, as is often the case in most countries under transition, makes it more difficult to achieve both. Babovic concludes by calling for the formalisation of international norms, e.g., an international police law in the form of a convention which could address all of these issues, and act as a "referential support for those forces fighting for democratic reconstruction" in their respective countries.

The fourth and last of the articles in this section is by Etannibi E. O. Alemika and addresses the issue of police, policing and rule of law in transitional countries. A broad outline of the political and economic structures of transitional African countries is given. The majority of these countries are in transition from one-party civil regimes to multi-party liberal democratic forms of government, or from military rule to civil, liberal politics. That these countries are suffering from the erosion of their rulers' legitimacy is largely attributable to the failure of neo-colonial economy to guarantee democracy and economic development. Important definitions are given in the paper; for instance, the features of authoritarian polity are illustrated and the concept of rule of law is analysed, with Alemika pointing out that it may also be found in non-democratic systems. Alemika discusses the relationship between the police and the public as an important indicator of respect for human rights in society. Taking Nigeria as an example, he illustrates the numerous forms of police repression that result in human rights violations. In this respect, Alemika rightly points out that these violations should be seen as parts of a wider political, juridical and socio-economic framework of repression that, in totalitarian states, is manifested as a component of state policy, not just as police vigilantism. In his conclusion, Alemika calls for a comprehensive and contextually appropriate approach to police reform, including, for example, the restructuring of transitional economies, thorough legal reform, and the re-conception of civil society as an agent of national development.

The overall discussions outlined in these four key papers are further illustrated in the discussion papers by Chris Maina Peter, Ralph Kasambara, Samuel Tindifa, and Gordon Kalajdziev, who take their respective points of departure in the contexts of Tanzania, Malawi, Uganda and the Balkans. This theme includes a legal analysis of the police and human rights in transitional countries, an Asian perspective of the rule of law, an insight into the African paradigm of transition, and a perspective from the former Yugoslavia. What clearly comes to the fore is the crucial role of policing in transitional societies, the different complexions of transitions and, more particularly, the normative role of human rights and the rule of law in these transitional contexts.

In this section, as we summarise and analyse further presentations, the theme of the transitional context, governance and the rule of law is confronted with very clear challenges emerging from the experiences of each country. These challenges range across the different stages of transition. In the African context, for example, transition encompasses numerous stages including the colonial period, the post-independence period, dictatorships, and the current trends of transition towards democracy.

The four main aspects under consideration here are the issue of law; factors other than laws that impact on police performance; the conflict between maintaining law and order in society, and respecting human rights; and the relationship between national human rights institutions and the police.

Theme II, Police and Civil Society, contains three key papers together with a summary of four discussion papers.

The first of the key papers in Theme II is by Hugo Frühling. Frühling addresses the issue of police and society in transitional countries, with specific reference to the case of Latin America. The first part of the paper focuses on the relationship between crime and the police in the region during recent years. Crime and violence are among the most pressing social and economic problems in Latin America, and there is generally very little confidence in the justice and police systems. The second part of the paper moves on to describe and analyse the New Policing Model, which may include community policing, democratic monitoring and control mechanisms. Various challenges that confront implementation of the Model are identified, including decisions as to who is going to set the goals of policing; the need for complete re-training of the police force in order to enable it to function in community building; and the need for community engagement to identify problems, devise remedies and evaluate the effectiveness of these solutions. Finally, the paper discusses concrete reform efforts in relation to these issues from Argentina, Brazil and Chile. Frühling concludes that, when done in the right way, the implementation of new policing

strategies that bring the police closer to the people could result in positive changes in the police as an institution and in a reduction of violence.

The second key paper in the section, by Divya Singh, addresses the relations between policing and vulnerable groups, with specific focus on the gender dimension. Taking her starting point in the context of South Africa, Singh emphasises the prevalence of human rights abuses committed against women in societies everywhere by other members of society, not least the immediate members of their families. Furthermore, she outlines a special approach that is taken by the police in responding to domestic violence, and that is based on a combination of recognised critical factors such as gender, race and economic status. The legislative and institutional framework may be in place, as well as large scale training schemes, but the implementation may be difficult - especially in a heterogeneous society with a multilingual police service, the large part of which may be described as functionally illiterate. Similarly, such issues as rape, obstacles relating to social agendas, logistics at the police stations, difficulties in relation to language and communication, traditional power relations - in short, deeply ingrained racial, sexist and cultural stereotypes - continue to pose a serious challenge.

The third key paper in this section, by Yubaraj Sangroula, addresses the relations between police and civil society with a focus on the attitudes in civil society towards the police and vice versa, with a special reference to the context of Nepal. To begin with, the paper draws a brief picture of the historical development of the policing system in Nepal. The paper also deals with the concept of community policing as an instrument for developing mutual trust and cooperation between civil society and the police. Finally, the author discusses some reformative initiatives undertaken to introduce a community policing system in Nepal.

As in the previous section, the theoretical reflections are illustrated through the discussion papers by Nana Devdariani, Alice Mabota and Reda Sirgediene, from the perspectives of Georgia, Mozambique and Lithuania respectively, as well as those of the Ombudsman institution, human rights organisations and the police service itself.

Civil society constitutes the context within which the police operate. While the relationship with society in general is usually one of conflict, the police themselves have increasingly accepted civil society's role in providing direction and monitoring. Issues discussed in particular are the norms relating to democratic policing and their implementation and the impact of civil society involvement.