

The Police and Human Rights in Transitional Countries: ***A Legal Analysis***

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"Unfortunately even though human rights are protected by law, and any limitations which can be placed on rights and freedoms are set in law, police officials, who are described as law enforcement officials, break the law designed to protect human rights when enforcing other law.

This is something of a paradox, because when they act in this way, police are not reducing criminality and disorder, they are adding to it."

Crawshaw/Devlin/Williamson 1998, p. 23

INTRODUCTION

This paper is based upon the fact that, in the process of international human rights and development co-operation, we often find the policing institution to be a significant factor – in most cases, unfortunately, in the negative sense, when we identify police officers as key actors in human rights violation such as torture, arbitrary arrest and detention. This is obviously something that, from a human rights point of view, needs to be addressed. However, simply to condemn the police force in question is not enough – not because critique is unnecessary, but because it needs to be accompanied by an understanding of the background and reasons for such a situation.

This is particularly the case when the country in question is what we may call "in transition", i.e., undergoing significant political and other societal changes: the fall or gradual democratisation of a totalitarian regime, the conclusion of a civil war, or other types of violent crisis. In order to assist such countries – which in most cases are faced not only with the challenge of profound change, but also with a crippling lack of human and material resources – one needs to identify and understand these mechanisms, and

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how they impact on human rights performance within the justice sector, including the police.

For a start, we need to analyse the general role of the police in society. This will give an indication of what activities we should and should not expect the police engage in – prevention and detection of crime, law enforcement etc. Thus, looking at these functions in relation to human rights, a qualitative aspect is added: a belief that the police should be democratic, accountable, responsive and representative and a service rather than a force. While these ideals are of unquestionable value, such ideas do not take into consideration the harsh realities of societies which are not (yet, fully, or even in the process of becoming) democratic. These 'transitional' countries are still undergoing a process of political transformation; they are still struggling with old legacies and beliefs in an oppressive police culture. Furthermore, while reform and training initiatives may have been initiated in a number of these countries, insufficient human and material resources often seem to frustrate such efforts, so that evidence of a positive approach to human rights within a police force may not be immediately recognisable.

Given this background, the two primary objectives of this analysis are:

- to analyse the theoretically founded principles and definitions of the role of the police in society, and, to the extent that these ideals are valid, to outline the particular challenges confronting their implementation in countries under transition;
- to analyse the relation between policing and human rights by outlining the obligations and standards which are directly impacted by police performance.

THE SOCIETAL CONTEXT-TRANSITIONAL AND DEVELOPMENT

In order to establish a basis for discussion, the concept of "transition" needs to be clarified.

A regime transition may be defined as "a shift from one set of political procedures from an old pattern of rule to a new one. It is an interval of intense political uncertainty – a struggle between competing political forces over the rules of the political game and for the resources with which the

game is played".¹ It may take the form of a short, sharp transformation: for instance, through the collapse of a coercive autocracy and its replacement by an elected democracy. It may also unfold incrementally; for instance, in a situation where a dictatorial regime gradually relaxes control of the opposition and allows for softer, more liberalised forms of rule which may yet remain authoritarian. Finally, it should be noted that the transition may also move in a negative direction, and may be reversible, but where political innovations fail to take root and materialise.

It should be noted that the whole concept of transition seems to be inextricably linked to the concept of development. Transition and development may produce similar results in the sense that a country undergoing political transition may suffer from some of the same problems as a country in the early stages of a developmental process. These similar problems may include as absence of a clear basis for legislation, a lack of political accountability and transparency, an absence of adequate resource allocation and first and foremost an absence of a stable and unquestionable set of values and directions for police work. It is clear that not all countries in transition also suffer from a general lack of development and adequate resources; in principle, a poor country still may have a stable and/or democratic political system. However, in practice, the link to be one of most countries suffering from deep-rooted political change while simultaneously battling (to a greater or lesser extent) with a lack of allocated resources and clear directions for policing institutions.

In section 3.1, I will analyse further the factors that impact upon police performance at the societal, institutional and individual levels.

POLICE ROLES AND FUNCTIONS

It is possible to define the role and/or functions of police in society using different criteria. One approach is simply to look at what the police are actually doing, or should be doing, from the perspective of any particular individual. This may be described as adopting a "norm- derivative manner", and will usually be highly subjective, depending on the person defining it.²

However, the role of the police may also be defined by four functions: prevention of crime; detection of crime; providing emergency assistance to

¹ Bratton and van de Walle 1997, p. 10

² Klockars 1985, pp.6ff.

the public when necessary; and maintaining – and, when necessary, restoring order.³

With respect to the first function, prevention of crime, it has been maintained that, in fact, the police have a very limited effect.⁴ Empirical evidence for this view might be found, for instance, in the conspicuous lack of correlation between increase in the strength of police forces, and decreases in crime rates. That crime continues to rise despite increase in police manpower leads one to note the fact that crime is caused and affected by a number of societal factors other than those related to police presence and performance.⁵ The second and third functions, detection of crime and provision of emergency assistance to the public, are indisputably police functions. Yet they also involve other professional groups, particularly private guards and ambulance companies. Furthermore, the increasing specialisation of police investigation requires other professional qualifications and skills, such as laboratory and computer expertise, dispute and conflict handling, etc. The fourth and final function, maintaining and restoring societal order, will be discussed in greater detail below, since it is closely related to the exercise of power and use of force, and is therefore the function most closely touched upon by human rights concerns.

One future aspect of the role of the police that needs more in- depth discussion is the concept of "law enforcement". The term is defined in the 1979 UN Code of Conduct for Law Enforcement Officials. The preamble to this document affirms the function stated above, firstly by referring to "the functions of law enforcement in the defence of public order", and secondly by reaffirming that "every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime". The Code defines law enforcement officials as including "all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention". The intention of such a broad definition was to include not only the civilian police, but also the military (whether uniformed or not),as well as definition of "officers of the law" goes beyond the ordinary civilian police. In Article 1, it was stated that the role of law enforcement officials should be, at all and by protecting all persons against illegal acts". The concept of community service should be understood to include, in particular, the rendering of assistance to those

³ Ibid.

⁴ Ibid.

⁵ Bayley 1994, pp.2ff.

members of society who " by reason of personal, economic, social or other emergencies are in need of immediate aid".⁶

All in all, this definition covers the police functions discussed above (crime prevention and detection, provision of assistance, and the maintenance and restoring of order), but it is not a separate function in itself. Therefore, "law enforcement" may be viewed as an unsatisfactory term for officers carrying out a whole range of policing functions.⁷ More implicitly, it stresses the aspect of rule of law, in the sense that, according to Article 1, the mandate of law enforcement officials is that which is established by law and their duty to prevent crime is based on law. Again , this means that (only) acts that are illegal should be prevented, extending to "the full range of prohibitions under penal statutes."⁸ Law enforcement may thus be viewed as a means to fulfill the main police functions, rather than as a purpose in itself; and even then, its limitations should be acknowledged.⁹

Another way of defining the role of the police is by analysing the means that the police have provided with to perform their functions. Here, the obvious distinction is that, in a given society, the state handed the police the general (and in many cases, exclusive) right to use coercive force within the state's domestic territory.¹⁰ This arrangement affirms the status of police officers as "instrument s of the legal coercive power of the state to produce effects intended by the legislature".¹¹

However it should be stressed that all of these definitions more or less implicitly presume the existence of a democratic society governed by rule of law. In an authoritarian state ,the definition of the police will read more narrowly as " instrument of coercive power" to be used by the state or individual ruler, bound only by the ruler's personal whims or political considerations, in any given form. In fact, in a given society, laws may be adopted in a manner that respects the formal requirements of rule of law, even though the qualitative aspect of the concept, entailing notions of democracy and respect for human rights, may be violated. In such a context, the police may be obligated to actively enforce (with virtually unrestrained

⁶ Annex to General Assembly Resolution 34/169, 17 December 1979, Commentary to article 1 in UN Manual pp.175ff.

⁷ Crawshaw, Devlin and Williamson 1998,p.18.

⁸ General Assembly Resolution 34/169,ibid.

⁹ Bayley 1994,p.143. According to Bayley, the view of law enforcement as the primary solution to crime(thereby ensuring public safety) is misguided.

¹⁰ Klockars, op.cit.,p.12

¹¹ Alderson 1997,p.11.

powers) draconian laws; for instance, relating to racial segregation and state security, as in South Africa under apartheid.

All in all, it is indisputable that, in a democratic society, the police belong to the executive arm of government. The legislative function, on the other hand, is that which is mainly carried out by parliament or, in a common law system, the courts. Finally, the courts and other similar bodies enact judicial power (including the interpretation of the laws). According to the principle of separation of powers, the police should therefore simply enforce the laws adopted by society. In a society founded on democratic principles respecting the rule of law and human rights, this should (at least in theory) not cause any conflict with respect to the legitimacy of such laws. However, this presumption may in fact fail; for instance, in a country undergoing political transition that is still far from fulfilling the ideals of democracy, rule of law and human rights. As a consequence , there may be a conflict between the conduct required by the police in relation to law enforcement, and the requirements of human rights ; for instance, between draconian security legislation and the principles established in the UN Code of Conduct (or other human rights principles).

The fundamental issue that may arise here is whether or not the police shall enforce the law as the y stand, or engage in a process of interpretation -- in other words, should the police follow the law, or the standards relating to human rights and policing? Clearly, a situation where an individual police officer is given liberal allowance to question the existing law, and to choose which of them he wants to enforce, is intolerable. Such a situation would endanger the principle of rule of law in any society because it would introduce a margin of uncertainty with respect to the law and its application, and consequently, introduce the danger of arbitrariness. On the other hand, there might be a real moral and ethical dilemma for the individual officer in a given situation. Moreover, it should be taken into account that the police officers are already given a wide margin of discretion in exercising its functions, which include the application of the law to the concrete context of time, place and parties involved. Ultimately, the dilemma probably cannot be solved in the abstract, and will come down to the specific situation. Nonetheless, one guiding principle will have to stand: it must be the police force's chain of command that adopts the policy to be followed, and not the individual officer.

In some cases, looking at the issues from a legal angle may solve the conflict; for instance, if a new Constitutional Bill of Rights has been adopted that will stand above an older statute law; the presumption must be that the new Bill of Rights should be adhered to. However, the conflict may also lie between, on the one hand, a coherent domestic legal framework, and, on the other hand, international human rights instruments, all or some of which may be non-legally binding soft law declarations or principles (including the Code of Conduct). In this case, the police force may have to respect first and foremost the domestic law of the society of which it is part and whose interests it is bound to protect, even if it does not fulfill modern international human rights standards.

An understanding of the complexities of this issue may be gained from viewing the functions of the police in what has been described as a "triangle of tension" between society, its laws and the police. Within this triangle, the law may be viewed as a set of rules to change society -- the law determines society. Conversely, the rules of society prescribe the legislative process -- society determines the law. The police become a means for enforcing the law legally. Thus, the police must enforce the law as it stands, not as they would wish it, and they may use only the powers granted to them under the law. Yet these powers are discretionary, and the exercise of these powers is not mandatory, in the sense that police officers are given a measure of discretion with respect to the use of their powers in each concrete situation.¹²

In a democratic state, this co-determinacy between society and its laws lend credibility to the exercise of power, and, although the potential for conflict between the two is significant in a society which is both "rights-driven and rule governed"¹³, the triangle remains intact. In this way, the law lacks power if it does not have the general backing of the public; in general, the police will use their law-enforcing powers more effectively with public support, and less effectively without it.¹⁴

Consequently, in a state which, for whatever reason, does not exhibit these characteristics of a society under democracy or rule of law, the role of the police may be viewed simply as an instrument of the ruler's power -- an instrument to be feared, without credibility or trust among the population.

¹² Edwards 1999, pp.6ff.

¹³ Ibid., p.9.

¹⁴ Alderson, op.cit.

At the very least, the police may be perceived as incapable of maintaining order or showing respect for all individuals on an equal basis. When a process of political transition is under way, the police may be one of the most conservative areas in society and the last to change -- not only because of how it views itself, but also because of how it is viewed by society. At the same time, however -- and as the following sections of this essay will illustrate -- it is during such a process of societal change that human rights standards and principles may serve as the one stable legitimising framework on which the police can base its legitimacy.

CRITERIA FOR DEMOCRATIC POLICING

Three main criteria have been established¹⁵ which comprise the concept of "democratic policing": the police should be a) representative, b) responsive and c) accountable. On the one hand, the requirements of these criteria may seem barely within reach in a non-democratic society with problems relating to crime and violence, and without sufficient resources. However, it should be kept in mind that, while they are ideal, they also serve as goals, and they may at least provide a sense of direction for reform processes. As will be discussed below; this is an ongoing and increasing challenge for any policing institution: not just in a democracy, but all the more so in a society undergoing transition.

A. REPRESENTATIVENESS

As an institution, the police force must be representative of the community that it serves. As such, minority groups should be not only represented, but also ensured fair treatment; for example, non-discriminatory recruitment procedures and career opportunities.

In a perceived homogenous society (if such a society still can be claimed to exist anywhere in the world today), it may seem that this requirement is automatically fulfilled. Hence, it will take extra efforts even to raise representativeness as an issue for debate. However, even if there is a fair representation of (for example) women and marginalised groups (e.g.,

¹⁵ Code of Conduct for Law Enforcement Officials, UN General Assembly resolution 34/169, 17 December 1997, the Preamble.

persons with disabilities, or gays and lesbians) in the police force¹⁶, they may not enjoy career opportunities equivalent to other colleagues who are male and "normal". Therefore, this requirement may be very hard to comply with, even in a people from significantly different backgrounds – different cultures, social, conditions, ethnic groups, languages, etc. – may be faced with the challenge of ensuring that police forces mirror the complex profile of society. This could be achieved in various ways: thorough quota systems of recruitment, active enrolment of officers from various groups whom otherwise would not be inclined to join (for instance, immigrants or people from groups which have suffered collective human rights abuses). This is particularly difficult when such social stratification falls along the same lines as those of power. Yet at the same time, the advantage of such a situation is that the issue is openly apparent, thus making the problem both obvious and pressing to the internal and external community.

B. RESPONSIVENESS

The police should be aware of and responsive to public needs and expectations: not only in general, but also with respect to the public's demands for lawful and humane behavior, and more specific needs of a community at a particularly time or in a given context. In light of the discussions above, identifying the population's needs and interests is easier the more peaceful and homogenous the society is. A democratically elected government may be in a legitimate positions to represent and formulate such needs.

However, this form of responsiveness must not be confused with responsiveness to the individual needs and desires of the head of state, in which case the police becomes an instrument of power to be (an)used in political games. In short, the basis for policing activity is the rule of law and end of justice (for instance, as laid down by a constitution), rather than the political desire of any particular government or regime¹⁷.

At the same time, "responsiveness" does not imply that the police should follow the "mood swings" of the population. This could occur where a more or less rational feeling in a population (for instance, increasing dislike

¹⁶ For instance, in Canada, a police training college has included a number of deaf recruits for training (reported by Randall Garrison, a facilitator in Vancouver, during a discussion with the author).

¹⁷ For

of foreigners, immigrants and refugees) is reflected in sudden, increased demands for public action that go beyond the scope of the law, and disregard basic respect for human rights and the democratic process. For instance, if such a case were to result in spontaneous riots or lynching, the police would have to priorities law and order above responsiveness – or rather, they would have to respond to a larger social perspective, with due consideration for all stakeholders' interests.

Another potentially problematic form of responsiveness may arise where a society is gripped by a "circle of violence" caused by a combination of factors, such as huge socio-economic disparities, weak or non-existent civil government, and macro-level social capital. Examples hereof include Russia, India and Indonesia, as well as a number of Latin American countries including Brazil, Colombia, Guatemala, Haiti and Venezuela¹⁸. In these societies, the police act as a form of violent, often increasingly militarized, control over segments of society – often the poor and marginalized, who are considered by the affluent and influential as a threat to society and, therefore, as legitimate subjects of summary justice and violence. Even democratic societies throughout Europe and North America, and in South Africa, the demands for protection of private property and general maintenance of order by the more privileged segments of society may result in a demand for harsh action against criminals by the police and the justice system. Criminals often belong to marginalized segments of society, who will then respond with hate and frustration leading to increased violence, and which in turn engenders the need for harsher, more brutal police action.

Finally, in particular situations – such as the overthrow of Slobodan Milosevic in Serbia in October 2000 – the police respond by actively choosing to join the popular uprising against the elite power structure. In such a situation, police support for the general population can even reach the point of defying existing laws – thereby departing from the very foundation on which their own outlined above, this situation has the promotion of democratization and rule of law as its ultimate goal. This should be kept in mind and determine the course of action by the police in such a situation. I will discuss this issue further below in terms of my belief that, in countries undergoing the more chaotic forms of transition (where laws and structures are displaced), the only form of guidance available to the

¹⁸ The World Bank and Chevigny, quoted by Mendes in eds Mendes et al. 1999, pp.

police may be respect for, and the protection and fulfillment of, human rights standards.

C. ACCOUNTABILITY

The police must be accountable legally, politically and economically: in other words, they must be accountable to the law, to democratic institutions of governance, and to the taxpayers. They should also be accountable through informal methods at the local levels; for instance, in the form of direct contact with the citizens, which also facilitates responsiveness.

Accountability may be understood narrowly as “rule-based compliance” and in terms of “process whereby the behavior of police is brought into conformity with the requirements of the encapsulating society¹⁹”. However, accountability also needs to be distinguished from the concept of responsibility, which may be understood first and foremost as answerability for one’s personal and individual behavior and, by way of implication, also for that of others. Accountability, on the other hand, means that one primarily answers for an agency of organization where one holds a position of power, in addition to answering for one’s own actions as a consequence of the position of power held. It also implies a measure of externality, a duty imposed from outside to account for somebody else, either within the same organization/institution (ie., internally) or outside it (ie., externally, and the “truest” form or accountability²⁰).

One way of facilitating this link between civil society and the police is through mechanisms of civilian oversight, the key feature of which is “the involvement of non-police personnel in the reception, investigation and determination of citizens’ complaints about police conduct”²¹. Such mechanisms may serve different purposes, from serving as a channel of communication facilitation police awareness and responsiveness to community needs, to acting as a direct guarantee of individuals’ human rights by providing a process for the pursuit of the right to redress for violations committed by the police (see further below). From the point of view of the police itself, such a mechanism may also be useful as a way of providing organizational feedback on police behavior, by serving as a focal

¹⁹ Light (1993) and Bayley (1985) quoted by Brodeur in eds Mendes et al. 1999, p.25. The article gives a detailed theoretical analysis of the concept of accountability versus the concept of responsibility.

²⁰ Ibid., pp. 153ff.

²¹ Goldsmith in ed. Mendes et al. 1999, p. 36.

point for collection of information from citizens about overall performance, as well as in relation to more systematic problems²². Particularly in transitional countries, such feedback may be extremely valuable because it bolsters a reform process by highlighting issues which may be remedied through legal, educational and other mechanisms to be included in that process. In a functioning democracy, such critiques will have to be recognized as a fundamental mechanism. But in general, the ability of the police – be it in a democratic or non-democratic context – to handle criticism constructively, and to act appropriately such criticism, is a significant indicator of the police’s openness and commitment to human rights.

At the more concrete level, a viable agency should be established with a view to ensuring the effectiveness of the process of civilian oversight. In particular, such an agency should consider the difficulties inherent in transplanting such a type of institution from one social-political setting to another, especially the problem of cultural unfamiliarity faced by such an institution when it begins promoting democratic values within a setting that exhibits very different realities. First and foremost, the institution’s independence should be ensured, with respect to its examinations of allegations and its ability to communicate its findings to parliament. The institution must enjoy financial independence, and at the same time be able to find support, especially in civil society. Such support can only be gained if the institutions is socially accessibly and visible, and can provide reassurance and protection to complainants when necessary.²³ Similarly criteria have been formulated in the so-called “Paris Principles”²⁴ Governing the establishment and functioning of national institutions for the promotion and protection of human rights. These institutions may in fact be vested with the functioning of civilian oversight over the police. In any case, the Paris principles may serve as useful guidelines for the establishment of the specialized institutions too.²⁵

²² Ibid., p.37.

²³ Goldsmith in ed. Mendes et al. 1999, pp.54ff.

²⁴ UN Human Rights Commission Resolution 1992/54, 3 March 1992. See also Lindsnaes and Lindholt in eds Stokke and Tostensen, 1998.

²⁵ An in-depth analysis of various aspects relating to the national human rights institutions may be found in ed. Lindsnaes, Lindholt and Yigen, 2000

ELEMENTS IMPACTING ON POLICE PERFORMANCE

With respect to methodology relating to the analysis of police performance, Seven vital components have been identified recently in the European context, and singled out for further study at the conceptual, strategic and tactical levels. They are : 1) basic values, i.e., the police service should work on the basis of a service ethic promoting rule of law, be limited by legislation, and be negotiated by stakeholders and partners, 2) Staff, professional and voluntarily recruited officers representing a broad segment of society 3) training helping officers to provide an efficient, effective, ethical and economic police service to their communities, 4) management, embodying awareness of a s well as reflecting human rights practices, supportive to the police officer as well as open to scrutiny by the public 5) operations, which comply with the basic values of the service and, in particular, human rights and rule of law, 6) structure, which supports the objectives in the fields of management and personnel, encourages good police practice, is an executive of government and a professional agency, and incorporates checks and balances, and finally 7) accountability, transparency and openness to review of police practices.²⁶

It should be noted that the seven areas listed above are not formulated as goals, but as themes, areas and entrance points that might serve as a basis for the development of performance indicators. In this way, they provide a framework for analysis applicable to most societies, covering important aspects that may need to be viewed separately in order to determine needs and constraints. As such, they form the basis for capacity-building efforts targeted specifically at the context in question. However, they operate on many different levels simultaneously, addressing a multitude of actors and forms of intervention, and this may make them less applicable as a framework for a more basic and clear analysis.

A simpler method is to look at factors impacting at three levels societal, institutional and personal. All of them are influenced by the general state in which a given society finds itself, but all of them to a large extent have a direct impact on police performance, both with respect to the individual officer and so the organization as a whole.

²⁶ Informal working Group on police and Human Rights, paper, presented at the second working conference " Human Rights and the Police- Empowering by co-operation and Exchange", Council of Europe, Strasbourg, 8 September 1999.

At the societal level, some of the elements also found at the institutional and personal levels can be found here, albeit on a larger scale. One element to be considered is whether or not a given society is peaceful or dominated by violence, for instance, stemming from a history of internal or external war. Another element relates to political governance, i.e., whether or not the given society is a stable democracy, in the process of transition from, or still under, authoritarian rule. A third element relates to rule of law, and whether or not there is impurity for a crime and for human rights violations. Finally, a fourth element is the level of development, i.e. whether or not the society is dominated by widespread poverty to the extent that the basic needs of the majority of the population are not fulfilled, and there are insufficient resources to fund an effective government administration.

It can be argued that these elements at the societal level, which to a large extent also bear upon the institutional and the personal levels, must be viewed as a whole because they mutually impact upon one another. Examples of such influence include the detrimental effect of widespread poverty on a process of democratization, insufficient funds for government employees' salaries as a cause for corruption authoritarian and oppressive rule adversely affecting attempts at peaceful handling of conflicts, in turn leading to an escalation of violence and poverty leading to an increase in crime, which in turn contributes to a spiral of violence. Another significant factor is impunity, which negatively affects the populations expectations of those acting in the name of the state, and which in turn may engender public reluctance to entrust government officials with responsibility for the punishment of crime. This leads to a further decrease in rule of law, political unrest that discourages foreign investment, and even stagnation or reduction of economic growth.

However, the elements in question here must also be viewed in concrete terms within the specific context of each country or each problem and in order to provide focus to attempts to identify the main causes of problems that relate to policing in society, and the relevant remedies and areas to target. some countries are dominated by certain elements for instance as in the Balkans relative affluence and a high degree of rule of law combined with authoritarian forms of governance and a history of violence and armed conflicts. However, other countries are affected by most or all of the elements mentioned above in Africa, examples include Mozambique and various countries in the Great Lakes region.

With respect to general analysis of the role and function of the police that would place less emphasis on the concrete violations by a particular country's police force, one might consider focusing upon the element of political governance. There are two reasons why this focus is useful. Firstly, the police force is a branch of government, a part of the executive, and therefore more closely affected by political change than the judiciary or civil society, which are distinguished by the presumption of independence. Secondly, the absolute majority of countries that suffers from the impact of other elements (most obviously, underdevelopment), are also, to a greater or lesser extent, subject to some degree of political suppression, transition or uncertainty.²⁷

The third element at the institutional level relates to the sufficiency of resources allocated to the police. This is an obvious problem in most developing countries, and not alleviated by a combination of structural adjustment and donor policies according to which other areas (such as general health, literacy and other social areas) should take precedence in the national budget.

The fourth element at the institutional level is usually less easily defined in the sense that it relates to public expectations of the police, i.e., the image of the police in the eyes of most members of the public. This can be a particularly successive element in a society that is undergoing political transition where the police force has to change to not only its actions, but also its image, from those of an instrument of repression to those of a public service.

The fifth and final element to be considered here is the institutional culture of the police force itself. It is necessary to consider whether excessive use of force amounting to violence is expected, condoned, accepted, or not tolerated, how transgressions of formal or informal norms are dealt with and whether there is openness to democratic control.

Finally, a number of personal factors impact upon an officer's performance, both generally and more specifically in relation to human rights. Firstly, his or her sociological background plays a role—whether or not the officer is recruited from among a political and economic elite or, in contrast, from the poorer sections of society, or from a certain minority or ethnic group.

²⁷ In "Human Rights Indicators 2000", DCHR, the correlation between societal poverty and political transition is illustrated.

Even the distinction between a predominantly urban or rural background can have an effect. Secondly, the educational level of an officer can be relevant. Whether the officer was educated to a primary, secondary or tertiary level has an impact on a number of aspects of police performance: for example, the simple ability to read and write reports, the gathering and analysis of technical evidence, interrogation techniques, and computer literacy. The third personal factor relates to professional background and experience – whether officers are recruited from civilian life or from the military (may be even with a history of participation in armed combat) may play a role, particularly in relation to their use of force and firearms and their approach to conflict handling. Fourthly, an individual's working and social conditions – such as living conditions, separation from one's family, continuous and deliberate transfers aimed at discouraging close community relations as well as high risk of personal injury, stress and poor pay – impact upon professional performance too. Finally, Human rights awareness and knowledge is also a personal factor. It is obviously important if an individual lacks knowledge of the standards and obligations mentioned below (including the definition and prohibition of torture and detention without trial). Recognition of just how important this element is may be illustrated by the numerous organizations and institutions across the world which have, in recent years, invested considerable effort and sums of money in this area.

THE POLICE, SOCIETY AND HUMAN RIGHTS – CHALLENGES

The fact police roles are, to a large extent, contextually defined, and that the notion of human rights may seem more or less remote in a given society, adds up to an equation in which the role of the police in relation to human rights may seem either as essential and natural, or as a combination of two distinct modalities. In the first case, in a society where democracy and rule of law are deeply entrenched, the police are viewed as a neutral, even consolidating, factor. But in the second case, in a society under transition from an authoritarian regime where abuse of power by , and mistrust in, government institutions is prevalent, the police are seen as the most common violator of, and as an obstacle to, the realization of human rights.

Specifically, the police and law enforcement agencies may be identified as the main actor in relation to a numerous types of human rights violations.

These violations include, in particular, civil and political rights violations such as disappearances, extra-judicial executions, torture, cruel, inhuman and degrading punishment and treatment, detention without trial or, to some extent, without fair trial. In addition to these violations, which are directly related to how the police exercise their functions, the police are also indirect actors in the violations of such freedoms as association, assembly, expression, privacy, political participation and non-discrimination. All of these freedoms are subjected to a higher degree of political direction. However, while this political interference should be considered before judging police actions, it is not a distinction that is necessarily visible to the ordinary members of the public. Therefore, the police per se may be viewed as, and criticized for, violating the broad scope of civil and political human rights and freedoms.

When attempting to remedy this situation, it should be kept in mind that the police organization in most countries has a long and original history that is a product of the specific context. The role of the police in most countries goes back to a time when human rights was a foreign concept in domestic law and, as such, the police and human rights may be perceived as being in direct conflict. This is especially the case when emphasis is placed on civil and political rights, where the rights of those under been given greater priority than those of the victims. In transitional countries where resources are scarce, both within the public administration and among the population in general, this schism is exemplified by the conflict between the need to fulfill basic human rights standards for detainees, such as adequate living conditions, food, and medical care, and the need to install similarly basic living standards in the village or slum areas outside the prison.

Therefore, in a developing country in transition, it appears that the introduction of human rights concerns in the police force is an expression of "system export" from more affluent and less problem-ridden societies. In other words, these human rights issues are introduced by donors and the international community without basis or legitimacy in the society itself. If human rights are then addressed in a way that touches upon sensitive issues (such as the use of coercion by the police to procure a confession in order to "solve" crime), they may even be viewed as being in direct conflict with demands for effectiveness within the police force. Consequently, human rights requirements will engender resistance – not only from the members of the police force itself, but also from other branches of government, and even from segments of civil society.

The key element to stress in such a situation would be that human rights should be seen as a facilitator of justice, not only in a general and theoretical fashion, but also in relation to the concrete realities of everyday police work. In this way, the individual officer and his superiors must come to recognize that a confession extracted from a suspect through the use of torture will not be recognized by the court, and that the consequence will be either additional work (pertaining to the acquisition of subsequent evidence) or increasing frustration (suspects go free in court because of the manner in which the evidence was obtained). While it must still be recognized that lack of availability of resources (in the form of equipment, training and time) makes a difference, the most important issue is the mentality that permeates the police force, as well as the system administering justice as a whole. This should make human rights a primary concern. As an institution, the police force offers a valuable forum through which to ensure that human rights are given priority – though other institutions provide a similar opportunity including the judiciary, the ministry, defense lawyers, national human rights institutions and, of course, human rights organizations. If and when human rights considerations are implemented, there will be a mutual impact from one actor to another (as exemplified in the courts' critique of illegally obtained evidence). Finally, the role of the legislature is essential, since its task is to provide the formal framework for full rule of law. In this way, the legislature facilitates the role of the police as a force for law enforcement.

