

Policing activity and human rights

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Introducing Human Rights and the Police

In 1956 when I first joined the British Colonial Police in East Africa and later in 1962 when I entered the Metropolitan Police in London I received initial training in which there was no mention of human rights as such. We were told that there was a legal requirement to inform a person who was arrested, of the reason for his arrest and his right to remain silent. The link was not made between the legal requirement and the human rights aspect. I believe that this is important because it tends to establish why a police officer acts in the way that he does, that is to say in application of the law rather than in consideration of human rights and I shall return to this later. In 1948, the Universal Declaration of Human Rights was established as the primary global expression of rights to which all human beings are inherently entitled, asserting the recognition of human dignity of all people as the foundation of justice and peace in the world.

It was the first time in history that the international community embraced a document considered to have universal value, "a common standard of achievement for all peoples and all nations". Its Preamble acknowledges the importance of a human rights legal framework to maintaining international peace and security, stating that recognition of the inherent dignity and equal and inalienable rights of all individuals is the foundation of freedom, justice and peace in the world.

Specifically relating to the police is the 1979 UN Code of conduct for Law enforcement officials, which states that police officers will respect and protect human dignity and maintain and uphold the human rights of all persons, and that the use of force should be used only when strictly necessary and to the extent required for the performance of their duty.

The Council of Europe within its human rights division has greatly contributed to the establishment and recognition of human rights in general and particularly to the role of police as a pivotal point in the judicial system of a state which aspires or claims to be, a democracy. In 1997 it launched a programme "Police and Human Rights 1997-2000". Because the police conducts enquiries into suspected crimes and in certain circumstances executes judicial sanctions which bring it into constant contact with the citizens of its country's police behaviour should symbolise the respect of human rights and their protection on its territory. The way in which police organisations carry out their duties represents an infallible indicator of the level of quality of a democratic society and the way in which the state of law is respected. The continuity of the programme was assured by the creation of a new programme "Police and Human Rights Beyond 2000" whose aim was to train police officers in standards of human rights and instill in them the knowledge which would permit them to apply the standards in their daily work.

In April 2005 the Council organised a conference of Police and Human Rights Co-ordinators in Strasbourg and without going into the detail of the proceedings, some of its conclusions, amongst others, are worthy of note.

Protecting human rights is the core function of policing

It is of paramount importance to foster a culture in police organisations for protecting and respecting human rights. The organisational culture has to be grounded on human rights standards as fundamental value. Human rights components have to be an integral part of police training, both theoretical and practical.

In September 2001 the European Committee of Ministers adopted the Code of Police Ethics which contains a number of important provisions of application of human rights principles to which I would draw your attention but which I do not propose to enlarge upon today

These different initiatives, and there are many others, often inspired by the action of non-governmental organisations, show that the issue of human rights has now become an inevitable part of our societal way of life and that we have a responsibility to ensure that the Universal Declaration of Human Rights is truly Universal.

I am told that the recent space shuttle carried on board a copy of the Universal Declaration and that one member on board cynically said to another - "Perhaps before we take this we should ensure that it is applied as it should be on earth"

So much for the essentially police aspects but there are others no less important.

The broader context

However, the police are only one aspect of a broader public security context, focusing on the police and human rights may blinker the human rights discourse from wider human rights abuses which arise from a lack of security

For this purpose I should like to use as a basis recent experience I have had in working on a benevolent basis for a nongovernmental organisation, the International Council on Security and Development formerly known as the Senlis Council.. The Council has worked on drug, policy issues, opium cultivation in Afghanistan and public security policy in Brazil.

When it comes to both Afghanistan and Brazil, I think Europe has an important role to play in sharing the expertise and knowledge it has build up over the past decades in terms of the best practices of policing and how they relate to public security and human rights.

Within the framework of the European Union we are already implementing programmes that try to tackle the problem of public security in Afghanistan and Brazil through collaborative projects focusing on technical assistance and sharing of best practices. For Brazil and the wider Latin American region, the European Commission has developed the EU Instrument for Stability, which to a large extent focuses on public security and how regional and trans-regional collaboration can be established between different police forces. I will come back to the specific case of Brazil a bit later.

In Afghanistan, as you probably know, the European Union has launched an EU Police mission (EUPOL) in Afghanistan in June 2007, which combines the knowledge of a great number of European countries in terms of policing.

This EUPOL mission aims to help Afghanistan establish sustainable and effective civilian policing arrangements under Afghan ownership and in accordance with the best international policing practices and international human rights standards. The project builds on experiences elsewhere such as the European Union police missions in the Palestinian Territories and in

Congo. Progress of course takes time, but in Afghanistan there is already more attention for human rights within the work of the police.

A small concrete example is the way the Afghan police is stopping cars. They are more friendly towards drivers when talking to them and asking them about searching the car and seeing their driving license. However, at the institutional level, a lot remains to be done, as there are a lot of uncertainties about the lack of control the Karzai administration has over the police force. In addition, corruption is rife because of the relatively low salaries the police officers receive. Sometimes, the uniformed police themselves commit crimes.

As a result, now and again local communities have chosen to support the Taliban as an alternative to the corrupt police force which continues to carry out arbitrary arrests and demand bribes. It shows that training the police on human rights and best international policing practices can become an empty shell if the security and development parameters of the country are highly problematic.

The same holds for Brazil although the security and development parameters are of course rather different.

Today I will use the example of Rio de Janeiro, famous for summary executions, police corruption and ruthless drug trafficking gangs as a way to explore the subject of human rights and policing, a subject which is of a somewhat different perception sitting here comfortably in Barcelona compared to conditions where our notion of democracy seems difficult in its application.

The example of Rio de Janeiro – the Public Security / Human Rights Impasse

In Rio, the police have developed a culture which may be described as - hate human rights. During protests it is not uncommon for police to pose with baseball bats with '*direitos humanos*' scrawled down the side of them. The Police simplistically associate the concept of human rights with the action of antagonistic NGO's which seem to protect criminals, giving them impunity to commit criminal acts, while punishing hard working police officers who put their lives on the line for society.

At the same time Human Rights NGOs, and the UN Human Rights commission denounces the police of Rio de Janeiro for committing human rights abuses *en masse* to the urban poor through its belligerent public safety policies. Executions and corruption are rife, and the police contribute significantly to the cities high murder rate. How can we understand this antagonism between the police and human rights?

Politics and the Human Rights Discourse in Rio

This resistance to and political polarisation of the human rights is a result of the way the discourse has been employed historically in Rio over the last thirty years as a political instrument, which strongly influenced public security policies.

Towards the end of the period of 'Military Rule' (or 'Dictatorship') in 1978, Pro-Democracy groups employed an antagonistic human rights agenda as a central component of the pro-democracy reform platform.

In the immediate post-Military Regime period of the early 1980s, The police, stigmatised as oppressive remnants of the Dictatorship were given restrictions in what they were allowed to do in carrying out their normal duties. It is clear that this was a reaction to the brutality of the police during the period of military rule. Newspaper reports from the time openly admit the use of torture as an investigative technique, for example, in one article, a policeman explained with pride that he had already extracted 15 confessions from one suspect, and thought that he could get at least five more confessions with another hour or two of beating, comparing the suspect to a squeezed orange, that there is always a last drop to be squeezed out if one works hard enough.

Also, the police's form of operating in the poor urban areas was of a complete lack of respect for individual rights, a *foot in the door* policy was employed in poor areas, with police kicking down doors, and demanding work registration documents.

In this situation, the police were fully associated with the most repressive aspects of military rule, and the new democracy felt it a priority to curb the actions of the police force. During the eighties, Public Security policy was marginalised in favour of human rights based measures. New rules were brought in which forbade the police to enter into the favelas, ostensibly as a way of preventing the police from committing human rights abuses on the urban poor.

However, this lack of police presence created a vacuum and allowed criminality and alternative power structures to develop within these areas, contributing to the territorial dominance of criminal groups, instead of the state. This was a result of policy makers' lack of attention to public security policy, but rather a political rather than functional understanding of the police. It is also a fact that the democratisation in Brazil in 1978 was accompanied by a rise in criminality, especially of homicides among young men.

In interviews with both Rio's police and Public Security experts, there is a consensus of opinion that this historical turning point is one of the main reasons for the entrenchment of drug trafficking gangs in Rio's favelas.

This history also goes some way to situating Rio Police's disparaging attitude towards human rights. They perceive that the human rights arguments give criminals impunity and enabled them to dominate wide areas of the city.

Introducing Rio's security context

I will briefly explain some of the security dynamics at play in Rio in order to give some context to contemporary Public Security issues in Rio de Janeiro

Drug retailing gangs are locked into a brutal market competition with each other for control of strategic locations from which to sell drugs. Factional competition led to the necessity for weapons with which to defend and acquire strategic locations from rivals and state authorities.

Guns easily find their way into the city, given the Brazil's porous border with Paraguay for example, where guns can be bought and sold in illegal street markets.

This situation has led to a virtual territorial stale-mate in the city, where entrenched drug trafficking gangs have full domination over almost all of the 700 favelas in the region, and public security forces do not have the resources to reclaim this territory. State forces conduct sporadic military style mega-operations designed to capture specific individuals, or

operations to reduce drug trafficking organisations' arsenals of drugs and guns within favelas. However, these operations are incursions into foreign territory, and do not have the aim of bringing this area under state jurisdiction, as this would require resources that are not available. It has been argued that the high level of killing by the police is in fact symptomatic of a state that never achieved a full monopoly of violence.

Police relationships with drug factions are characterized by extreme violence. Police and Drug Factions confront each other using war grade weaponry, employing calibres such as 7.62, 556, or bigger, as well as grenades and mounted machine guns. The police also use armoured cars in operations so as to transport police safely from one area to another, and helicopters to provide covering fire. These operations often result in the death or arrest of faction members and the police, as well as the apprehension of weapons and drugs.

These confrontations take place in Rio's favelas, areas of high population densities and weak housing structure and a history of the criminalisation of the poor. Often innocent people get caught in the cross fire, as high calibre bullets easily pass through the thin walls of favela residencies.

The Criminal Justice System:

The Criminal Justice system is an important factor to understanding human rights and the police in Rio. Inefficiencies in the criminal justice system have a perverse effect on both the ways the police and criminal factions operate. Both the gangs and the police operate brutally because of certain aspects of the way the Justice System functions. They are frustrated and have the feeling that they are not part of a structured judicial system and, in fact, have the impression that they are the only force of intervention which can protect the citizen

The effect of the Justice System on the Drug Factions

The shortcomings of the criminal justice system act as perverse incentive for members of criminal gangs towards brutality, and ruthlessness

Given the prevalence of corruption, and loopholes in the law, the more the individual demonstrates his worth to the faction, the more likely the organisation is to either:

- (a) Upon Arrest, pay the bribe to arresting officers to let the captured individual go free, or
- (b) At trial, employ a good lawyer to defend the individual. Loopholes in the criminal justice system mean that the individual has a relatively high chance of acquittal with the defence of an experienced lawyer.

The prosecution system is also very inefficient and fosters a climate of impunity and incentive to commit crime. For example, one study show that in the mid nineties in Rio de Janeiro of 4,227 records of homicide occurrences registered with the Civil Police, only 4.6% of them had the perpetrator and motive established. Another study found that 92% of homicide cases presented by the police, were dismissed for lack of sufficient proof to go to trial.

In addition, The Statute of The Child and The Adolescent states that under 18 year olds cannot be tried for adult crimes, and must be sent to juvenile rehabilitation centres. This means that even for crime such as murder, minors will only serve until 18, then be released,

and have their criminal records erased. The perverse effect of this legislation is that criminal factions are encouraged to recruit minors, as they can act with a higher level of impunity.

The weakness of the justice system thus encourages impunity, the recruitment of children in criminal factions, and a culture of brutality within criminal factions.

The Police Perspective

Mirroring the brutalising effect of the justice system on criminal factions, it also exercises a perverse effect on the way the police engage with drug trafficking gangs. Police officers do not have confidence in the criminal justice system, and are revolted by the apparent impunity which the weakness of the justice system confers to criminal factions.

As mentioned previously, Police Officers know that once arrested there are many instances where drug faction members can escape the full application of the law:

- Arresting officers may release them in return for a bribe,
- A lawyer exploits loopholes in the law, leading to a short sentence or acquittal
- Once in prison early release could be petitioned by lawyers
- As mentioned above, homicides are rarely investigated thoroughly, or rarely reach trial.
- Minors will serve up to the age of 18 only

Police are almost given the incentive to kill drug faction combatants because they are aware of the slim chance that the Justice system will yield 'justice'. This is a matter of brutal pragmatism for the police engaged in guerrilla warfare with the drug factions. From a militaristic perspective, they know that if they do not kill the individual when they have the opportunity, they face the risk of being shot at by the individual at a later date.

From these brief examples, we can conclude that overhauling the Justice system would have the effect of reducing human rights violations. As the police lack faith in the system they take matters into their own hands, and criminal factions are encouraged in their activity as the justice system seems to allow them to act with impunity.

Under these conditions it is difficult to know where to begin in our exercise to establish and control the application of human rights principles.

The United Nations' Perspective on Human Rights & The Police in Rio

2007 saw the visit to Brazil, and the compiling of a report by UN Human Rights *rapporteur*, Phillip Anston. His report concluded that Rio State frequently violates human rights in the incursions to favelas designed to combat narco-trafficking. In his report Anston notes that Rio's police on average kill three people per day, and are responsible for 18% of the state's murder rate.

The case of Complexo de Alemão

In his report, Anston cites the example of a police 'mega-operation', which took place in June 2007 in which more than 1,000 police officers participated, as an example of Rio Police's Human Rights abuses. The operation, designed to reduce the faction's arsenal, took place at *Complexo Alemão* a huge conjunct of 16 favelas, headquarters of Rio's largest drug faction, *Commando Vermelho*. Anston criticises the operation for putting innocent people's lives at risk, and stopping thousands of local children from going to school. He is also very critical of reported summary executions by the police, presenting data from coroners' reports which

show that of the 26 people killed, 14 were shot in the back, and 6 had point blank entry wounds to the face.

He concludes that:

It appears that if someone is a drug trafficker, then killing him is justifiable, when there is no justification for killing anyone. If a person sells drugs the procedure should be to arrest him...If there is the policeman's life or somebody close to him at risk, this justifies the use of force, but not killing.

From a human rights perspective, there is no doubt that the police are guilty of human rights abuses as well as criminal offences. We encounter a 'Dirty Harry' syndrome reality, where 'dirty' means (i.e. executions) are employed towards a 'clean' end, the ending of the drug faction's tyranny over a community. In effect the police have taken the law into their own hands

However, if we amplify our understanding of the rights discourse, then we can also conclude that the state allowing criminal factions to dominate state territory is also an abuse of a citizen's fundamental human rights.

The Importance of the Right to Security

Security is essential for the successful democratic development of society. A pre-requisite for democratic engagement, economic development and social cohesion. For example:

- In the absence of security, there are no conditions for civil society engagement. Without it civil society organizations cannot flourish, civil leaders do not emerge, and only crime flourishes.
- Security is a pre-requisite for the establishment of economic networks. Without security businesses cannot grow..
- Security is essential for social cohesion, and the teaching of solidarity with society. Without security teachers have to mediate their messages, or put their lives in danger.

From this example, it is clear that without security human rights are also inhibited. If we revisit the previous example of *Complexo de Alemão*, we can see that the lack of security inhibits the human rights of local residents.

In a confidential report from Rio's *Disque Denúncia* (Brazil's Crime Stoppers organisation) for the month prior to the operation in *Complexo Alemão* we can observe the following human rights abuses:

- Faction members in the area obliged residents to give them food, turn their houses into drug selling points or artillery positions, and hide weapons, or face expulsion.
- Faction members shooting residents so as to incriminate the police; and local community leaders delivering false denouncements of human rights abuses & executions by the police to human rights lawyers
- Faction members beating residents, angry with police presence in the area.

- The cutting off of the water supply as an incentive for residents to protest against police presence in the area

From these few examples it is clear that Drug Dealing Factions commit many human rights abuses, and their removal from territorial control of territories is an essential for the guaranteeing of human rights of local residents.

It is the state's lack of control over its territory allows non-state actors to perpetuate human rights abuses, and denies local residents the fundamental right to security.

Therefore the state must re-claim this territory; however, the state must demonstrate a permanent presence in these areas, and not rely on punctual guerilla like incursions. Also, the positive dimension of the state must be demonstrated through social policies, bringing health, education and opportunity to marginalized areas.

Towards Breaching The Impasse

The impasse between an antagonistic, anti police human rights discourse, and repressive police actions needs to be re-addressed. In the case of Rio the basic principles of Human Rights need to be re-established as a constructive bridge building discourse between the police and society.

The police's only notion of human rights is in a negative context, where they are the enemy. This leads to a reactive attitude of disparagement of human rights among the police. For them the human rights discourse only serves to give impunity to bandits, and indict zealous police men defending society.

The police aim to be rights providers, risking their lives trying to provide the fundamental right of security for society. The importance of Human Rights for the police must be understood from a strategic perspective, in that demonstrating respect for human rights is strategically advantageous. The police must understand that persistent cases of violence and corruption, and the perceived impunity of the police to commit human rights abuses contributes to a lack of confidence in the police. This distances the population from the police, resulting in low levels of public-police collaboration, and the growth of private security initiatives.

The human rights & the police discourse must be amplified to include human rights abuses that are perpetuated because of a lack of police presence. Human rights advocates must forge alliances with the police in order to encourage them to become human rights defenders.

Regarding summary executions, the environment of the justice system must be focus for intervention. Legal loopholes, inefficiencies, and corruption must be addressed from the principle of providing justice, reducing the incentive for police officers to resort to their own interpretations of 'Dirty Harry' style justice.

If I chose the Rio example it is simply because I am now familiar with the situation there despite its complexities but also because it illustrates the difficulties that exist between establishing principles on the one hand and applying them on the other.

My experience tells me that if there is not a strong political will to achieve an objective nothing will be achieved. Fortunately in Brazil the political will seems to have been established and a five-year plan of action has been embarked upon with a multi-faceted approach and with appropriate financial resources so hopefully the future will be optimistic. Much can also be achieved by international co-operation and sharing of experience and I intend to discuss with Marc Pons and the Director of the Institute Mr Carlos González Zorrilla how we might explore some sort of partnership between his Institute of Public Safety and the efforts which are being made in Brazil.

In conclusion I should like to stress the aspect of political will in the sense that it is at the level of government that law is established and that it is impossible to not look at this aspect when one is considering the subject of human rights and the police. The police act in accordance with the law and it is the law which establishes the conditions in which they operate.

I shall perhaps be a little politically incorrect in illustrating my remarks by what I consider to be an appropriate example which is close to home in so far as Spain is concerned. For some time I have been associated with efforts and initiatives which are being made to bring a peaceful solution to the conflictual situation in the Basque country. It is not my intention to enter into the substance of the issue but simply to look at the question of human rights. Those of you who have some knowledge of the situation will be aware that a major issue of contention is that of non-respect of basic human rights in as far as the treatment of suspected persons and prisoners is concerned.

We are fortunate in our democracies and particularly in Europe that we have established internationally applicable principles in relation to human rights but also a control mechanism to enable us to establish that these principles are being applied. In the European context regular visits are made, with the consent of state governments, by representatives of the European Commission on human rights, as well as other professional bodies, who produce reports and recommendations on human rights issues. These recommendations are designed to ensure that the right conditions are created for human rights to be as fully respected as possible. This is important in establishing the conditions in which police are to operate bearing in mind what I said in the beginning of my remarks about police operating within the respect of the law.

The International Commission of Jurists in a report in October 2008 found, for example, that incommunicado detention even where judicially supervised cannot adequately protect the safety of detainees. Further that in order to reliably protect rights the principle of immediate access to a lawyer to consult in confidence is indispensable. Likewise access to information to help in preparing a defence should not be restricted. These are just examples of issues which could easily be resolved by simple changes in legislation and which would go a long way to creating conditions of transparency and clarify and justify police action. I repeat that police take action within the limits which are placed upon them by law, and, as far as the public is concerned justice must be done but also be seen to be done.

Finally, very chauvinistically, I should like to recommend to your attention six principles which were established by the Association of Chief Police Officers of the United Kingdom of which I am a member, after the adoption of the Human Rights Act in October 2000. These principles are applicable to each area of policing to reach compliance with Human Rights -

Legality – is there a legal basis for police actions? Is that legal basis in statute, regulations, case law and is it available to a member of the public?

Proportionality – can the police demonstrate that actions taken were “proportionate” to the threat or problem it sought to prevent,

Relevance/Necessity – was the police action strictly relevant to the particular threat/problem

Subsidiarity – was the police action the best “force/intrusive” available

Equality of Arms – in any trial process did the defendant have the same information and access to information as the police/prosecution?

Remedy – is there an independent public remedy available to the citizen

It was added in conclusion that is hoped that the Act will help to create a society in which the rights and responsibilities of individuals are properly balanced.

We have come a long way since I joined the police service in 1956 but there is still a long way to go before we can assume that the Universal Declaration of Human Rights is universally applied and we must also remember that this is essentially a question of human behaviour which cannot be resolved by legislation alone. Discussions in a forum such as this can only make us better equipped to deal with such a complex issue.