

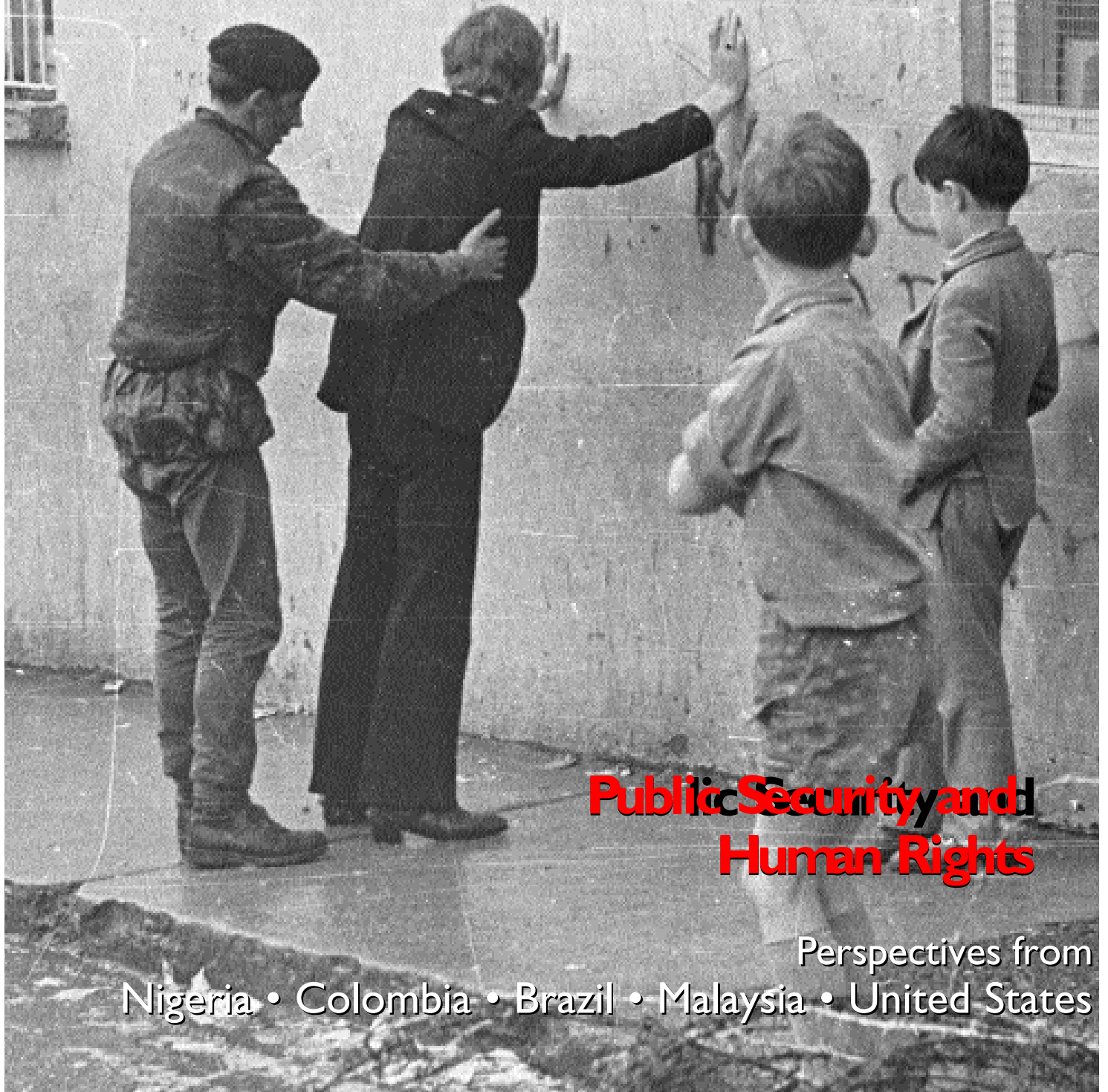
# human rights

an international forum for debating human rights

  
Carnegie Council  
ON ETHICS AND  
INTERNATIONAL AFFAIRS

# dialogue

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## Public Security and Human Rights

Perspectives from  
Nigeria • Colombia • Brazil • Malaysia • United States

*this issue*

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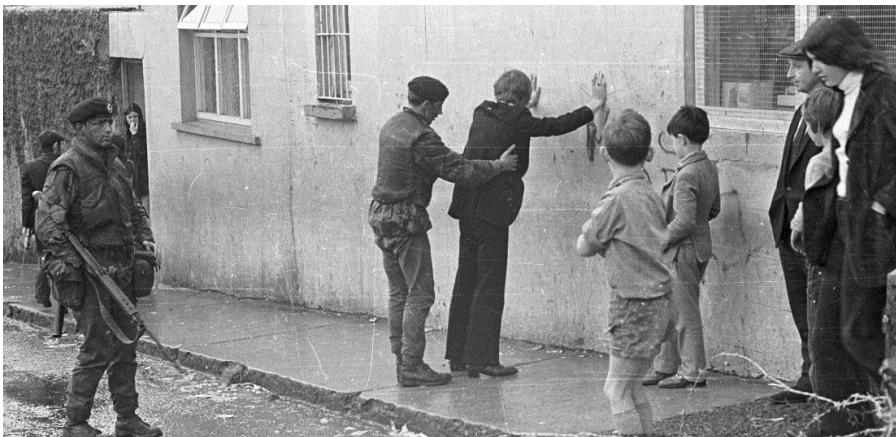
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Photo by Eamon Melaugh



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### Cover Photo:

A member of the public is stopped and searched on the streets of Derry.

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## INTRODUCTION

In February 2000, a public poll in Argentina revealed an alarming trend: when asked to chose between public order and freedom, nearly half the respondents said they favored combating crime with a strong hand, even though this might entail abuses against suspected criminals.\* This is a surprising fact, especially in a country that has a history of abuse and brutality. It is a reflection, however, of a growing trend worldwide: people are placing their security above all else, protection of human rights included. In the wake of the September 11 terrorist attacks, citizens in countries as diverse as France, South Africa, Colombia, and the United States have indicated a similar willingness to trade rights for enhanced security. In this issue of *Dialogue*, we explore the ways in which public tolerance for suspending civil rights in the face of threats to public security—both criminal threats to personal security and terrorist threats to national security—has created new challenges for the human rights community.

Public fear is the common link between these security threats, resulting in increased support for a strong hand and falling trust in the rights perspective both in societies with a long rights tradition and in societies for whom rights are newly won. Critics say that the most pressing social agenda for activists is no longer advocacy on behalf of political prisoners and defense of political openness, but fighting for fairer rules and institutions that can ensure that people who happen to be born in poorer, weaker states are not thereby cut off from economic opportunities and political power—factors that breed crime and terror. Conventional tools of human rights organizations may not address these salient issues, nor bring about improvement in the daily lives of the citizens they strive to protect. But is it the role of the human rights organization to create a secure and stable society, or is it to point out injustice and hold perpetrators accountable?

Contributors to this issue of *Dialogue* address the tensions between the public's demand for security and the priorities of the local human rights communities, providing insight into the innovative ways human rights advocates have adapted their traditional strategies to address what has become for some groups a crisis of public legitimacy. **Rachel Neild** leads off the issue by explaining the complex phenomenon of rising crime worldwide. Neild pays particular attention to newly democratic societies, where the collapse of authoritarianism, which had guaranteed public order through repression, has left a void of responsibility.

The lag in human rights activists' recognition of these problems has generated considerable public criticism that, in their preoccupation with the rights of per-

perpetrators, they have ignored the rights of victims or potential future victims and are thus failing to advance social justice. **Martin Schönteich** provides a case study from South Africa, a country with a frighteningly high crime rate, on its “right to shoot” legislation. Despite the fact that much of the population experienced firsthand the military police’s brutality under apartheid, the public has been reluctant to place limits on the police’s right to fire upon any fleeing suspect. Schönteich’s colleague at the Pretoria-based Institute for Security Studies, **Makubetse Sekhonyane**, presents the results of their study of police in South Africa, which points to ways of reducing police vulnerability on the streets.

In some countries, fearful publics have taken the law into their own hands—with dangerous consequences. As **Innocent Chukwuma** writes, vigilantism has become widespread in Nigeria, leading activists like him to teach neighborhood vigilante groups how to fight crime in a way that is consonant with human rights. In other contexts, groups have held their ground against public criticism and continue to act as thorns in the sides of governments. Such is the case with human rights groups in Colombia, reports **Adam Isacson**, where the collapse of the peace process has opened the way for a war-weary populace to turn to a heavy-handed new president for hope. Activist **Jorge Rojas** argues that human rights groups need to stay the course.

This issue of *Dialogue* includes contributions from two Latin American activists-turned-government-officials—a sign of the changing times. **Paulo Sérgio Pinheiro**, co-founder of the Center for the Study of Violence in São Paulo and also Brazil’s secretary of state for human rights, and **Carlos Basombrío**, Peru’s vice minister of the interior, are among the first human rights advocates to take on the problem of crime. In an interview with *Dialogue*, Pinheiro describes the contribution that his university-based research center was able to make to Brazil’s crime policy while simultaneously criticizing the government for rights violations. **Fiona Macaulay** reports that in Brazil the number of university-based centers has grown, supplying the government with much needed expertise in criminology and human rights, while **Andressa Caldas**, **Sandra Carvalho**, and **James Cavallaro** present a more sanguine view of the results of engagement with the government. Basombrío reflects upon an essay about the crime challenge in Latin America that he penned for *Dialogue* back in 2000 ([www.carnegiecouncil.org/themes/hrdwinter1999.html](http://www.carnegiecouncil.org/themes/hrdwinter1999.html)) when he was deputy director of the Institute for Legal Defense in Lima, and reports on his new insights on the problem “from the inside.”

There has been much discussion of how the world has changed post-September 11. In the United States, the fear felt in the wake of the attacks has resulted in widespread public support for repressive government tactics such as increased censorship, wiretapping, military tribunals, indefinite detentions, and even the viability of torture as a means of obtaining “good information”—policies that the United States has long criticized in less-developed countries as violations of basic human rights. **Michael Ratner**, **Jamie Fellner**, and **Elisa Massimino** join *Dialogue* in a discussion of how their respective New York-based groups—the Center for Constitutional Rights, Human Rights Watch, and the Lawyers Committee for Human Rights are dealing with this new environment. **Kit Gage** of the National Committee against Repressive Legislation explains how groups from the left, right, and center came together in the immediate aftermath of September 11 to warn Congress against taking extreme measures that would compromise fundamental rights.

Many observers have noted that advances made by human rights activists are among the casualties of the worldwide campaign against terrorism. Malaysian human rights activist **Elizabeth K.P. Wong** describes how the campaign has buttressed Prime Minister Mahathir Mohammad’s longstanding support for the country’s Internal Security Act, a focal point of Malaysian activism since 1960. Wong is especially concerned that some of her activist colleagues are now cowering to a new, government-led rhetoric of security in calling for a revised law, when in her view any such law puts human rights in danger. To Malaysian journalist and opinion-maker **Karim Raslan**, who was personally shaken by the terrorist bombing in Bali in October of this year, a reconsideration of security needs is justifiable.

While the rise in crime and the U.S. war on terrorism have brought the question of public security to the fore, it is by no means a new issue. In conflict zones like India, Pakistan, Ireland, the Philippines, and Israel where cross-border or internal conflict has been looming for decades, human rights activists have cut their teeth in the struggle to protect human rights before a public that has run scared. In the case of Israel, writes Rabbi **Jeremy Milgrom** of Rabbis for Human Rights, the level of public fear is so high that its human rights culture has eroded, a fact that is highlighted by widespread support—both from the public and from Israeli human rights groups—for his government’s policy of targeted killing. **hrd**

*\*For more details on this poll and other public opinion polls revealing this trend, see the special resources features of our on-line version at [www.carnegiecouncil.org](http://www.carnegiecouncil.org)*

# The New Face of Impunity

*Rachel Neild*

The end of the twentieth century witnessed historic transitions to peace and democracy—albeit often tentative and partial—in Latin America, Eastern Europe, Africa, and Asia. For the global human rights movement, it might have been a time for ushering in a new era focused on securing the national and international mechanisms of accountability that would be the foundation for a new culture of rights within and across borders. Yet, in many countries, human rights groups barely had time to draw breath before finding themselves facing a new set of threats to human rights in the growth of common crime and social violence, and, in particular, in the public and political reactions to these crime waves.

Crime and violence appear to be rising in a wide range of countries. In its examination of available data, the World Health Organization found a staggering 50 percent increase in homicides around the world between 1985 and 1994. Regionally, Africa and Latin America vie for first place with the highest homicide rates in the world. The growth in violence crosses all regions, but while industrialized countries saw a 15 percent increase, the jump was more than 80 percent in Latin America and 112 percent in the Arab world.

Overall, low- and middle-income countries have homicide rates more than double those of high-income countries. Such data hide tremendous variations among gender and age cohorts, urban and rural or rich and poor communities, and ethnic and racial groups. While poverty does not necessarily correlate with high crime, many demographic, economic, and social trends are feeding real increases in crime rates. The youth factor is particularly clear (globally, violence is the cause of 14 percent of male deaths between the ages of 15 and 44) and deeply troubling for the many developing countries with “youth bubbles” and few youth employment oppor-

tunities. Other studies indicate that rapid and high-density urbanization cultivate violence, while a World Bank study of fifty countries found a clear relationship between inequality and increasing homicide rates. Expanding global trade in arms and drugs also creates opportunity and means for violent crime.

In transitional contexts, specific political factors also come into play. Armed groups can metamorphose into criminal gangs. Criminal justice systems molded by authoritarian regimes for the purposes of social control and regime protection are poorly equipped to tackle crime. Efforts by police and politicians to confront crime often lead to proposals that undermine rights, such as the expansion of police powers, a tolerance of torture, and the increasing of penalties—including reintroducing the death penalty. Even as the state again resorts to repression, private responses may erode the state’s sphere of influence. The boom of private security companies and, in some cases, the appearance or expansion of vigilantism and lynching are outgrowths of state incapacity to deal with crime.

Some analyses posit a continuum of violence from authoritarianism through the transition to democracy, with state violence replaced by private violence. State impunity for political crimes undergoes a perverse metamorphosis into criminal impunity. In developing countries already struggling with economic, social, and political challenges, crime and the ineffective and authoritarian responses to it further reduce the expected “democracy dividend.” This dynamic has a profoundly negative impact on public support for human rights. Surveys sometimes show massive support for abusive responses to crime, even among the poor who bear the brunt of both crime and police abuse. In some cases, people’s support for democracy itself has eroded.

For human rights organizations, the obvious strategy might be a relatively straightforward effort to stand up against policies that violate human rights norms and to take up the banner for due process rights and an end to police violence. In many transitions, however, human rights groups have not immediately recognized the challenges crime waves and abusive state responses pose, perhaps expecting or hoping that democratic governments would rein in violent police and improve the courts. Often, groups were fighting other authoritarian legacies, or moving on to confront underlying socioeconomic injustice. As a result, in many coun-

tries, rights organizations have stopped systematically documenting individual cases of police violations.

The new victims of police abuse are common criminals—both perpetrators and victims of crime—in contrast to the past when the people whom human rights organizations defended were victims of state repression. It is clear that the idea of defending the new “guilty victims” is increasingly discomfiting to them. This is another reason why human rights organizations are moving away from their role as police watchdogs. They face denunciation by politicians for coddling criminals and must contend with the argument that tough-on-crime policies entail a necessary trade-off in the abrogation of some rights. In transitional societies, where rights are fragile in both public consciousness and political discourse, this hard-line appeal threatens a loss of public support for hard-won rights values.

When human rights groups do resume the watchdog role, security information tends to be classified and inaccessible. Human rights groups must then develop new strategies to obtain information on the full range of victims of police abuse. Rights groups in Argentina have used *leyes de amparo*—a kind of habeas corpus instrument—to obtain data from the police. In Brazil, groups have mapped police abuse. In both countries, groups have analyzed patterns of abusive police practice by using press accounts to build databases of police abuse. Other organizations have chosen to work on miscarriages of justice in which the defendants are clearly wrongly accused. The cases of the new innocent victims of the war on crime generally have far greater media and political resonance.

At the same time, human rights activists have come to understand that denouncing only the criminal justice system ignores the very real suffering of crime victims and other citizens whose lives are ever more constrained by both real and perceived threats of crime. One important strategy for rights organizations reflects a lesson learned earlier in struggles for transitional justice. Just as early truth commissions were criticized for their focus on offenders and neglect of the reparative needs of the victims, criminal justice systems also often pay little heed to the needs and rights of crime victims. Rights groups, for their part, have also sometimes focused on violations of due process without sufficiently recognizing the plight of crime victims. Many victims and witnesses refuse to cooperate with criminal proceedings because, at best, it

is time consuming, frustrating, expensive, and often leads to nothing; at worst, cooperation with unsympathetic or hostile officials can be psychologically traumatic (particularly in cases of violence against women) or even dangerous when there is no protection against violent reprisals. Some organizations are starting to examine the treatment of crime victims and advocate for more attention and sensitivity to their needs, particularly the very poor whose livelihoods are desperately fragile. Others seek to increase access to justice through legal aid and other mechanisms. Through this work, advocates confront the remoteness, lack of consideration, and irrelevance of formal justice to the lives of the poor.

Another fundamental challenge—and perhaps the area in which most work remains to be done—lies with

### **In many countries, human rights groups barely had time to draw breath before facing threats of common crime and social violence.**

the police. The abysmal lack of public trust in and cooperation with the police has been well documented across Africa, Asia, and Latin America. Human rights activists have far more experience with the workings of the courts than with the closed, sometimes military-dominated, and often-hostile police forces. Yet the police are on the frontline of crime fighting, and, despite research indicating that abusive and discriminatory policing reduces effectiveness, efforts to introduce community policing and other responsive and prevention-oriented approaches often collapse, criticized as being “soft on crime.” The challenge of crafting reforms that can address both police accountability and effectiveness lies at the heart of human rights engagement with the need to confront both crime and ongoing state violence.

Few criminal justice policies are made on the basis of consultation or debate with broad sectors of society, and few are informed by solid data and analysis. All too often, perceptions and emotions dictate policies. Human rights groups can and should play a role in shaping the tone and content of policy debates, shifting the model of criminal justice from the retributive to the restorative and engaging with institutional reform processes. Without intervention by the human rights community, it is more likely that policy responses will undermine rights and perpetuate injustice. **hrd**

# Restricting the Right to Shoot

*Martin Schönteich*

By global standards, South Africa has extraordinarily high levels of violent crime. According to data for approximately 100 countries collected by Interpol, South Africa has the highest per capita rates of murder and rape and the second highest rate of robbery and violent theft. In 2000—the last year for which figures have been released—an average of sixty people were murdered every day.

Unsurprisingly, respect for the rights of criminals in the country is low. In 1998 a parliamentary move to restrict the right of police to shoot at fleeing crime suspects (Judicial Matters Second Amendment Act no. 122) was condemned by the public and blocked by the Ministry of Justice. Three-and-a-half years after that move, and with a record of nearly 2,000 suspects having died at the hands of the police, the Constitutional Court limited the right to shoot this past May.

In its 2000 annual report, the Independent Complaints Directorate (ICD)—a statutory body with the responsibility for investigating police conduct and offenses committed by members of the police service—described a “dramatic” hardening of public attitudes toward the rights of criminals. “There seems to be a growing popular perception that the constitutional rights of criminals are being protected above those of their victims,” the directorate reported. It is not uncommon that crime suspects are killed by members of the public, as a result of either vigilante activity or citizen action to bring about an arrest.

There are no available figures on the extent of such killings, but ICD does record the number of crime suspects killed by members of the South African Police Service (SAPS), and it is worryingly high. According to ICD, between April 1997 and March 2001, 1,980 people were killed as a result of police action in South Africa—an average of 500 per year. Of these, almost 90 percent died from gunshot wounds, half of which were inflicted in the course of an arrest. The numbers are comparable to the Brazilian city of São Paulo, where police killed 481 civilians in 2001. By comparison, some thirty to forty civilians are fatally shot every year by members of the New York Police Department—down from more than sixty in the 1970s. The high fatality figures in South Africa drew the attention of human rights organizations to the laws that permitted the use of force to bring about an arrest.

According to the original “right to shoot” law (Section 49, Criminal Procedure Act no. 51 of 1977), if a police officer is unable to effect an arrest or prevent a suspect from fleeing by means other than killing, the killing is “justifiable homicide” in either of two situations: if a person is being arrested for a listed offense, or if an arrestor has reasonable grounds to suspect that such an offense had been committed. Listed offenses include serious violent crimes, but also cover malicious damage to property, fraud, and theft. This means, for example, that a police officer is legally



Photo by PictureNet-Africa

Murder, rape, armed robbery, and assault are just some of the scenes the South African Police Service are called to every minute of every day.

entitled to kill a shoplifting suspect who could outrun him or her.

When in 1998 the Department of Safety and Security within the Ministry of Justice opposed the amendment passed by parliament to limit the right of the police to use lethal force to arrest a suspect, then-Safety and Security Minister Steve Tshwete commented,

We are dealing with criminals who are motivated by the understanding that human rights laws are tilted in their favor. If you say to the police they must not take their guns from their holsters until they're threatened, by that time, in some instances, they are already down.

The national police commissioner concurred that high crime levels, considerations of public safety, and the many police officers killed—some 200 a year—warranted the retention of the pre-1998 law that gave officers the right to shoot. He further argued that the violent nature of South African criminal activity undeniably brings police officers into situations in which lethal force is necessary.

In blocking the amendment, the Department of Safety and Security also argued that 25 percent of SAPS officers are “functionally illiterate” and are

therefore unable to determine whether a suspect poses danger. SAPS, an amalgamation of the former South African Police and the police forces of the apartheid-created black homelands, inherited the under-qualified officers in its ranks. As a matter of policy, SAPS is supposed to administer training courses in human rights to new recruits. Since 1994, however, there has been a hiring freeze within SAPS that was only recently lifted. Thus, in reality there has been almost no human rights training.

In response, two Johannesburg-based NGOs—the Centre for the Study of Violence and Reconciliation (CSVR) and the Institute for Human Rights and Criminal Justice Studies (which is affiliated with Technikon South Africa, a college that offers training to police officers)—are assisting SAPS in providing human

**There is a growing popular perception that the constitutional rights of criminals are protected above those of their victims.**

rights training for police officers. Yet it is not easy to reach these officers. According to David Bruce, a senior CSVR researcher, CSVR's emphasis on human rights and its criticism of the high number of fatalities at the hands of the police have not always endeared it to street-level officers.

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## **Makubetse Sekhon**    **yané on the Police in Post-Apartheid South Africa**

IN MAY 1996 THE CONSTITUTION of South Africa was enshrined as the highest law of the land, guaranteeing human rights to all people of South Africa for the first time. Since then one of the barriers to the realization of those rights has been the police.

Under apartheid millions of South Africans experienced violence at the hands of the police; brutality, detention without trial, and forcibly extracted confessions were characteristic practices. With the ushering in of the new era, South Africans wanted police reform. The 1998 amendment of the Criminal Procedure Act limiting the police's right to shoot represented a significant step forward in the transition of the South African Police Service (SAPS) from an occupational army to a democratic police organization. Unfortunately, with the rampant rise in crime the public did not view the amendment in this light; instead, it was fearful that it would mean a less effective police force to protect it.

What is needed is a balanced policy approach to criminal justice that addresses public calls for greater security and that avoids draconian measures that infringe upon civil liberties and human rights in general. To provide the government with the information to achieve this, during 2001–2002 the Institute for Security Studies, in collaboration with SAPS, initiated a study at selected sentinel sites around Johannesburg. The study clearly shows that members of the police service are vulnerable to violence, and their legitimate fear goes a long way in explaining why South Africa has such high rates of police killings.

Martin Schönteich explains that the police lack training in a number of areas, particularly in conducting searches, entering premises, and stopping vehicles. The study also finds that police have few alternatives to lethal force at their disposal, making their jobs even more dangerous. In the period

In February of this year, the parliament announced that the amendment to the “right to shoot” law would finally come into effect. However, this decision was once again overruled—this time by

tion. “Any significant limitation of any of these rights would for its justification demand a very compelling countervailing public interest,” the court concluded.

## If you tell police they cannot take their guns from their holsters until they’re threatened, by that time, they may already be down.

President Thabo Mbeki, who asserted that further debate was needed. The impasse was resolved by the Constitutional Court, which decided unanimously in favor of the parliament and the amendment.

The court ruled that the use of potentially deadly force to bring about an arrest should be limited to cases in which a suspect either poses a violent threat to persons at the scene of the arrest or is reasonably suspected of having committed a crime involving the infliction or the threat of infliction of serious bodily harm. The court agreed with the Department of Safety and Security argument that it is unfair to expect police officers to determine whether a suspect poses a serious future physical threat, but interpreted this as proof of the need to limit, rather than to extend, the right to shoot to under-trained and overtaxed police officers. Further, the court argued that the rights to life, human dignity, and bodily integrity are essential to the value system prescribed by the constitu-

The court stressed that its ruling did not limit the right to self-defense. Nevertheless, the front-page headline of the *Citizen*, one of the country’s largest circulating dailies, announced: “Police Blast Shooting Ban.” The article quoted an unnamed senior police officer: “Why are they [the Constitutional Court justices] protecting the rights of criminals? I think the court has no idea what it is doing. Maybe they should come and work as policemen for a while—then they will sing a different tune.” The same report quoted the official opposition Democratic Alliance stating that the safety and security minister “must not allow the Constitution to be a suicide note for the SAPS.”

Six months after the Constitutional Court’s ruling, much public misunderstanding persists. SAPS is developing an internal campaign to inform its officers of their rights and obligations when using force to apprehend crime suspects. And for its part, CSVR and Technikon South Africa are planning similar public education campaigns that will serve the private security industry. These steps cannot assuage the public’s fear of violent crime, which still urgently needs to be addressed. But they are at least steps in the right direction. [hrd](#)

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before the transition to democracy, South African police had access to sufficient nonlethal equipment, including nightsticks, tear gas canisters, and back-up guns. Today they carry only their work-issued pistol—a change that reflects, in part, the desire to project an image of a shift from a military-type police force to a civilian-type one in which the police are part of the community.

Police also lack proper protective equipment. The vests they are given are outdated, designed to stop bullets from AK-47s, not close-range 9mm pistols that a criminal would typically use. They are also heavy and uncomfortable, especially in hot weather—as a result, officers tend not to wear them. Members of the police told us they were reluctant to investigate crimes in progress in which firearms were used and that they often do not have handcuffs or the hand-held radios needed to call for back-up.

The problem is further exacerbated by the absence of clear policy guidelines regarding the use of force. As part

of the study, we interviewed a number of police officers in the Crime Prevention Unit. They complained that new laws are not adequately explained to them. Moreover, they do not have a working knowledge of the constitution nor, most critically, Section 49 on the use of force. The officers worried about how they would carry out their duties if the law restricted their right to shoot.

In the face of escalating crime, citizens, like the police, are beginning to see human rights standards as impeding police work and protecting criminals. There is a disjuncture between what the law says and what the police do. To prevent the undermining of a rights culture, SAPS needs training in matters of human rights. Officers should know the new legislation and receive instructions on how to adhere to it.

For more information on this study and the Institute for Security Studies’ work with the police, visit the Criminal Justice Monitor online at [www.iss.co.za](http://www.iss.co.za) [hrd](#)

# Responding to Vigilantism

## *Innocent Chukwuma*

The transition from military dictatorship to elected civilian government in Nigeria has brought in its wake a surge in crime and disorder that threatens to undercut public support for democracy. Since the inauguration of the Obasanjo government on May 29, 1999, safety and security have become scarce commodities.

In spite of the government's promises to tackle crime, Nigeria continues to have high rates of armed robbery, political assassinations, ethno-religious killings, and other forms of violent crime. From the Niger Delta, where restive youths fighting environmental despoliation and decades of neglect had perfected the act of abduction and hostage-taking of oil company workers, to the southwest, where ethnic militia from the Odua Peoples Congress swore to defend Obasanjo (whom they did not elect), the common language was violence in its goriest form. In the northern and eastern parts of the country, Sharia violence in Kaduna and its reprisals in Aba and Umuahia have left hundreds, if not thousands, dead. Furthermore, violent robbery and rampant theft have left Nigerians in every community feeling unsafe.

Frustrated by the inability of the police to respond adequately to their safety and security needs, citizens have resorted to self-help measures. The most controversial of these is the formation of militant vigilante groups—some of which have made lynching and torturing criminal suspects their stock in trade.

Public opinion of vigilante groups is divided. A part of the public argues that vigilante activities should be regulated and closely supervised by the national

police. Another part calls for outright disbandment of vigilante groups and trial of their operatives, who take delight in judging potential offenders without trial and in administering brutal punishment—and who are undermining our progress toward democracy.

I am sympathetic with this view. Yet it is also a fact that the police alone cannot adequately protect citizens' safety and security without the involvement of neighborhood watches, community guards (*ndinche*), or even vigilante groups. Furthermore, it is doubtful that the Nigeria Police Force and justice system as presently constituted could fully enforce the disbandment of every vigilante group in the thirty-six states of Nigeria and bring their operatives to trial. Even if the police were able to outlaw vigilantism, it would be tantamount to telling inner-city communities and rural areas, often not protected by police patrols, that they have no right to organize and protect themselves against criminal attacks.

Human rights groups and policymakers must find a way to ensure both that due process is protected and that the rights of communities to organize and protect themselves are respected. The first step is to differentiate between vigilante groups that employ "mob justice" in their operations—whose modus operandi cannot be tolerated in a democratic society and which should be disbanded—and those whose activities are amenable to the rule of law and due process and that could work (and do work) under close police supervision.

Many groups that promote racial discrimination, religious persecution, and state-sponsored violence operate under the guise of vigilantism. These groups not only offend sensibilities, but also violate every human rights treaty that Nigeria has ratified. One of the most enduring examples of these kinds of groups is the "Bakassi Boys," active in the three eastern states of Abia, Anambra, and Imo. They began as an initiative of traders in Aba, but were later hijacked by state governments, which added partisan political ends to their objectives and armed them with dangerous weapons (including firearms) without police checks. The Bakassi Boys make rou-



Bands of this volunteer army, known as the Zamfara State Vigilante Group, patrol the streets, arresting anyone suspected of committing offenses.

Photo by Rena Singer

tine public spectacles of some of the criminal suspects they capture, often parading them naked through the streets, chopping body parts into pieces, and later burning them to the cheering of crowds. These kinds of groups cannot be tolerated, and human rights groups should advocate forcefully for their disbandment.

The largest share of vigilantism in Nigeria in terms of both numbers and reach is not of this type. It is instead made up of neighborhood vigilante groups, a strong and popular force in community security, with one group on virtually every street corner in lower-income neighborhoods and rural communities throughout the country. These are the groups with which both the government and human rights groups need to engage.

The Centre for Law Enforcement Education (CLEEN) in Lagos has begun to take up the challenge. In 1999, as part of our work to promote respect for human rights and cooperation among civil society and law enforcement agencies, CLEEN began a police-community partnership program. The program, modeled after the South African Community Policing Forums, seeks to incorporate community concerns in the determination of policing priorities in Nigeria

## **Outlawing vigilantism would be tantamount to telling inner-city communities and rural areas that they have no right to organize and protect themselves against criminal attacks**

through police-community interactive forums set up to discuss common crime and disorder problems and encourage joint problem-solving approaches. The forums involve all community stakeholders, including elected councilors, divisional police and crime officers, religious leaders, district heads, women's groups, development unions, civic associations, and other relevant interest groups.

Through this consultative process, communities in the localities where the demonstration programs are being executed have come to appreciate better the functions of the police and the limits of the powers of citizen initiatives in crime prevention and control. Before we started the program, neighborhood vigilante groups used to take crime into their own hands, brutalizing and sometimes lynching crime suspects rather than handing them over to the police. Now, with the advent

of the community policing forum program, it has become routine for communities to hand suspects over to the police for investigation and prosecution. Some community members are unhappy when the police grant bail to suspects they arrest. The community policing forums can address these concerns by serving as platforms for community education on why suspects of minor offenses are released on police bail prior to arraignment in courts and, more important, by making sure the community understands that granting of bail does not mean that the suspects have been let off the hook. Furthermore, the program appears to have been a factor in the declining crime rates in the nine local government council regions in which it is operating.

To make sure vigilante groups are obeying due process procedures and the rule of law, CLEEN has proposed a process of registering them with both the local police division and the local authorities. In the process of registration, the police would screen their members to prevent criminal elements from infiltrating their ranks and would issue clear regulations to guide their involvement in crime prevention and control. The local authorities should provide those who play by the rules with such items as flashlights and batteries, raincoats, and boots. Human rights groups, for their part, would include them in their training programs.

One organization alone cannot do the job of reconnecting the police with their communities throughout Nigeria. To strengthen the effort, in 2000 CLEEN facilitated the establishment of the Network on Police Reform in Nigeria, a coalition of twenty-two organizations working on issues of police reform and crime prevention. Because of the effort of the network, this past March the new chief of police in Nigeria, Tafa Balogun, included community policing as part of his eight-point strategy of transforming the Nigeria Police Force, which the Nigerian public welcomed.

We are still in the early stages of our work and have no guarantee that there will not be a relapse—as there was in South Africa. Still, the communities that have participated in the program now know that the civil society groups of this network care about their daily confrontation with crime and fear and are working with them to develop lawful ways of channeling community energy against crime—instead of resorting to either mob justice vigilantism or armchair criticism. **hrd**

For more on the challenges for human rights activists and peace workers operating in the fragile democracy in Nigeria, see "Taking the Reconciliatory Route" by Ivana Vuco in the peace work issue of *Human Rights Dialogue*. On-line at [www.carnegiecouncil.org/themes/hrdwinter2002.html](http://www.carnegiecouncil.org/themes/hrdwinter2002.html).

# “Firm Hand, Large Heart”

*Adam Isacson*

This year has been a difficult one for activists working to improve U.S. policy toward Colombia. My organization, the Washington-based Center for International Policy, has seen its advocacy of nonmilitary alternatives lose ground in the wake of the September 11 attacks. The Bush administration has made counterterrorism a paramount goal in Colombia, increasing assistance to Colombia's troubled security forces to complement its failing drug war.

Our Colombian colleagues and counterparts, however, face much greater challenges. Following the February collapse of peace talks between the Bogotá government and the country's largest guerrilla group, Colombia's decades-old conflict—which kills more than four thousand people a year—has degraded further. Fighting is intensifying among two leftist insurgencies founded in the mid-1960s—the Colombian Revolutionary Armed Forces (FARC) and the National Liberation Army (ELN)—a growing network of rightist anti-guerrilla paramilitaries known as the United Self-Defense Forces of Colombia, and government forces. The paramilitaries, which are responsible for about 80 percent of noncombatant killings, continue to benefit from local-level military support and collaboration.

Though it is the site of the hemisphere's bloodiest conflict, Colombia also hosts one of the most sophisticated communities of human rights defenders. Their work entails publicly denouncing abuses, monitoring and reporting on national and local human rights situations, issuing early warnings and urgent actions, offering legal assistance to victims and whistle-blowers, initiating cases against abusers, supporting official investigations, and working with UN and Organization of American States human rights institutions.

In a country where more than 95 percent of crimes go unpunished and the powerful go to great lengths to protect their impunity, this is challenging and often dangerous work. A human rights defender is assassinated about once every month. Dozens of the country's most effective activists and experts have been forced into exile in recent years. Threats and targeted violence

have forced out human rights workers from some of the country's most brutal conflict zones, making them virtual black holes of information about abuses.

The political climate in Colombia has compounded these difficulties. Government attempts to negotiate with both the FARC and the ELN ended bitterly this year. As the guerrillas, apparently unconcerned with their public image, increased their actions against the civilian population, mainstream Colombia became increasingly angry and frustrated. A majority of Colombians came to embrace a harder line, supporting a greater military role and reductions in civil liberties to restore law and order. Many came to view human rights groups—with their attempts to punish military excesses, their opposition to



United States Defense Forces of Colombia paramilitaries control this village and patrol openly with automatic weapons, like in this pool hall.

militaristic solutions, and their constant appeals to constitutionality and international law—to be a nuisance, or even a support to the guerrillas.

The main beneficiary of this new public mood is Álvaro Uribe Vélez, the overwhelming winner of the presidential elections in May. Uribe, a former governor of the populous Antioquia province, had been relegated to the country's right-wing political fringe as recently as 2000. At that time, he was remembered as a sponsor of a disastrous attempt to organize legal civilian vigilance groups in Antioquia (which ended up committing dozens

Photo by Teun Voeten

of abuses) and was viewed mainly as a ferocious critic of government attempts to negotiate with the insurgents. By 2002, however, Uribe—with the campaign slogan of “firm hand, large heart” and promising a frontal assault on armed groups—was able to win the presidency easily.

Upon assuming power in early August, Uribe energetically launched several security initiatives that—while popular with Colombia’s polarized and war-weary population—have alarmed the country’s human rights community. The new president inaugurated what he hopes will be a network of a million civilian informants, some of them possibly armed, passing information about potentially subversive activity to the military in exchange for small payments. Uribe declared a “state of internal commotion,” the closest thing to a state of emergency allowable under Colombia’s 1991 constitution, under which he has decreed eased rules for wiretapping, “preventive” detentions, searches of homes, restrictions on travel, and some censorship of news reporting. The interior and justice minister, Fernando Londoño, has expressed a desire to revive the “state of siege,” a mechanism outlawed by the 1991 constitution, which would allow the armed forces to interrogate civilians and try them in military courts. In special “rehabilitation zones” incor-

## Colombian human rights groups are facing their most difficult period in years.

porating several municipalities each, powers to search and arrest without a warrant are even greater, citizens’ movements are monitored and restricted, and the military has some judicial police powers. A proposal to create a force of “peasant soldiers” would train and equip at least 10,000 recruits to supplement police in rural areas; when off duty, these individuals (and possibly their weapons) would return to their homes.

Opposition to these measures has become a central aspect of several human rights groups’ work. Citing a lack of transparency in their implementation and the weakness of the judicial system and other nonmilitary institutions, critics expect several of Uribe’s strategies to lead directly to a dramatic increase in abuses with impunity. Colombia’s human rights defenders worry that, as has happened in the past, peaceful dissenters—not the guerrillas and paramilitaries—will end up being the main targets. The

Colombian Commission of Jurists points out that arrests without warrants cannot be aimed at the guerrillas, whose leaders already have arrest warrants outstanding: they are “directed above all against the civilian population, hence the obsession with arresting them without a judicial order.” The armed groups, the commission notes, “must be dying of laughter” in the face of Uribe’s security measures. The network of informants and the “citizen soldiers,” many argue, will blur the line between combatants and civilians in a way that plainly violates Colombia’s international human rights commitments.

With renewed negotiations far-off and guerrilla outrages multiplying, mainstream Colombian opinion sees no short-term alternatives to the Uribe government’s policies. As of this writing (November 2002), support for the new president and the Colombian military is remarkably high, nearing a 70 percent favorable rating in opinion polls. Meanwhile, esteem for human rights groups is low. Hampered by factional divisions and lacking proposals to end the violence, Colombian human rights groups are facing their most difficult period in years.

So far, several groups have been quick to react to Uribe’s policies. “Uribe will bring us back to the dark ages, to a true dirty war,” a leading Colombian rights activist told me recently. “Of course we have to respond.” With each new official decree, the Colombian Commission of Jurists has issued a statement explaining why, in its view, the measure in question is a bad idea. Groups such as the Association for Alternative Social Advancement and Consultancy for Human Rights and Displacement are making an effort to monitor excesses in implementation of the state of emergency and “rehabilitation zone” decrees. Many groups are engaging the UN High Commissioner for Human Rights’ field office in Bogotá, which has offered several cogent reflections and analyses—in letters, press conferences, and a section of its Web site—critiquing the new government’s initiatives from the perspective of international human rights and humanitarian law.

Beyond these actions, the country’s human rights community has not shown any evidence, so far at least, that a major change in strategy is underway. It is hard to say, however, that human rights groups are missing opportunities for more effective action, since few opportunities are presenting themselves. The chief obstacle most groups face is their surprisingly low standing in mainstream public opinion. A long-standing perception that human

rights NGOs are “soft on the guerrillas”—or at least using human rights advocacy to advance a far-left political agenda—has fed public mistrust and damaged groups’ credibility. This is highly debilitating. Popular distrust and disdain limit groups’ ability to mobilize support, block their access to the media, and reduce political space available for their activities. While an unpopular human rights group can still be very effective, a distrusted human rights group can hope to accomplish little.

The current political climate, along with the guerrillas’ increased attacks on poor civilian populations, has kindled greater debate on the need to address guerrilla violations, and on how to influence unaccountable groups that routinely ignore political pressure. While human rights groups may see the government’s actions as the chief underlying cause of the violence, they must denounce abuses against the establishment in order to avoid the appearance of being less partial, and without alienating their base on the political left. But unpopular and under threat, human rights groups have been unable to reach out to new constituencies, forge new alliances, or mobilize public opinion in a high-profile way. This is unfortunate, since by casting doubts and

selling alternatives, the human rights community could serve as one of the only counterweights to the popular new president and his security agenda.

Colombian human rights groups need to develop “road maps” to a way out of the present violence. With the peace process extinguished, human rights groups lack proposals for guaranteeing the population’s security in the short term. While they condemn the Uribe government’s proposals and the U.S.–funded Plan Colombia as dangerous and overly militaristic, they offer nothing in their place for Colombians who are deeply afraid for their safety. Calls for renewed peace talks, broad-based social justice reforms, and free exercise of rights are important, but the promise of a state of siege may do more to assuage the fears of the average Colombian.

As this article is being written, the Uribe government is only three months old. It is too early to tell whether the new hard line in Bogotá will force a major shift in human rights groups’ strategies, or whether the Uribe administration will amount to only another swing in the pendulum, a bump in NGOs’ already difficult road. The Bush administration’s worldwide campaign against terrorism, however, may foster a climate in which the Uribe model of security thrives for some time. [hrd](#)

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## A Firsthand Account      Jorge Rojas Responds

AS ADAM ISACSONEXPLAINED, the situation in Colombia today places human rights activists in a very tough spot. The current hard-line policies that are rolling back civil liberties and other fundamental rights are supported by the public, which joins military officials and politicians in accusing us of being on the wrong side of the struggle. Particularly humiliating was a recent comment by the Portuguese ambassador, who called NGOs the “political wing” of the guerrilla movement.

The Uribe government has taken concrete action to limit the work of human rights activists. The new president has insisted that human rights groups align themselves with his policy of “Democratic Security.” This policy has been used to justify illegitimate investigatory practices and the prosecution of activists and civilians. Uribe has put a bill before congress that, if passed, will set up a system to monitor, control, and restrict the autonomy of NGOs. The government has also obstructed international organizations that support the work of Colombian NGOs; for example, the government recently deported visiting representatives of international organizations on the grounds that they were “participating in public demonstrations.” To further restrict international NGOs, the government has increased the bureaucratic procedures and requirements needed to obtain visas.

Colombian human rights groups do not always agree on how to cope with this new situation, but we do agree on one fundamental strategy: in order to achieve security in Colombia, we must continue to focus on the implementation of human rights. We need to continue to pressure the government to recognize

and ratify international laws, push for an end to the government’s military intervention, and demand a structural solution to the problem of illegal land use that will provide crop development alternatives to lucrative coca production. And, because the legitimacy of our work depends on public opinion, we must also inform people about their rights. We must make the public understand that failing to implement human rights will only lead to more insecurity.

Ultimately, security can only come from reconciliation, and the government has failed thus far in meeting its responsibility. The international community, and especially domestic institutions such as the Colombian Office of the High Commissioner for Human Rights, must play a more active role in discussions involving the government and civil society organizations in Colombia. And the international community needs to get serious about making changes to the international institutions that perpetuate inequality and poverty, which are the root causes of Colombia’s security problem. [hrd](#)

*This article has been translated from Spanish by Ludmila Palazzo and Marina Oyuela.*



# Bridging Activism and Policymaking

## *An Interview with Paulo Sérgio Pinheiro*

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The indirect election of Tancredo Neves that marked the advent of democracy in Brazil in 1985 may have ended twenty-one years of military dictatorship, but it did not bring an end to state-sponsored violence. In its responses to common crime, conflicts over land, and other threats to public security, the government has used strong-arm tactics that are brutal—and sometimes even fatal. These are human rights violations that differ from those of the military period and have forced Brazilian human rights organizations to find new ways of conceptualizing rights, developing appropriate strategies for their protection, and engaging effectively with state agencies.

To its credit, the federal government has recently begun to build mechanisms of accountability for human rights abuses. But in many instances, rather than safeguarding the rule of law, the state has contributed to its subversion through the support of torture, summary execution, vigilantism, death squads, and justiceiros (gunmen who kill criminal suspects and “undesirables” like street children). Compared

with other democratic countries—excluding those experiencing internal warfare—Brazil has the highest rate of lethal police violence.

The Center for the Study of Violence (NEV) at the University of São Paulo has been at the forefront of efforts to place Brazil’s violence problem within a human rights framework. The first academic program linking human rights research and activism, the center was founded in 1987 with a focus on the concrete problems facing Brazil’s new democracy: the absence of the rule of law; the inaccessibility of the justice system for nonelites; institutionalized racism and discrimination; and the lack of accountability for government officials complicit in human rights abuses and other crimes.

*Human Rights Dialogue* talked with NEV’s founder, Paulo Sérgio Pinheiro, who was recently appointed secretary of state for human rights in the government of outgoing-President Fernando Henrique Cardoso, to discuss his organization’s work. *Dialogue* then asked Brazil watchers what they think.

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*Dialogue:* What are NEV’s greatest achievements?

*Pinheiro:* What is unusual about NEV is our ability to solve the tension between scholarship and commitment. In a country like Brazil that has so many social problems, the academic community must be committed to engaging with empirical realities. As violence has become a more important part of the political agenda, NEV’s research has become more complex.

Initially, NEV’s most significant impact was within Brazilian academia itself, where, previously, neither violence nor human rights had been important fields of social science inquiry. NEV addresses that gap by recruiting and training young researchers, offering them fellowships and integrat-

ing them into different research programs in a way that encourages the merging of research and human rights activism. One of the first examples of this is NEV’s work on police killings. Through rigorous research, we raised awareness of the systematic killing of criminal suspects and the accountability of the state. Our approach helped to build a solid network of next-generation researchers sensitized to human rights concerns. More recently, the center has expanded its research to examine ways of improving access to institutions of justice and eliminating violence against children.

*Dialogue:* What about NEV’s cooperation with the government? Do you consider this another sign of success?

**Pinheiro:** Yes. Because of NEV's prestige as an academic center and its influence within civil society, the Brazilian government asked us to facilitate the cooperation of academics and activists in preparing a draft document for a National Human Rights Plan of Action in September 1995. We enthusiastically accepted this offer. Most of NEV's proposals were implemented into the plan, which was enacted in 1996.

The plan made Brazil one of the first countries to adopt Human Rights Plans of Action, a provision (article 71) of the 1993 Vienna Declaration. It contained a mechanism for civil society input, so when President Cardoso ordered phase two of the plan, he again asked NEV to coordinate the input of NGOs throughout Brazil.

**Dialogue:** Yet I suspect that your relationship with the government is also controversial.

**Pinheiro:** We would never collaborate with a dictatorship, but since the transition to democracy there has been no reason in principle not to collaborate with the government. We are able to maintain our credibility with other groups because we have always kept our autonomy.

You see, working with the government does not stop us from collaborating with activist organizations. NEV maintains a collaborative relationship with Comissão Teotônio Vilela Direitos Humanos (CTV), a human rights organization founded in 1983 by Senator Severo Gomes—an extraordinary humanist and defender of the rights of the Yanomami people. After a series of police killings, we joined with CTV as co-authors of the first complaint against the Brazilian state to the Inter-American Commission on Human Rights. In the report, we denounced the massacre at the Carandiru Prison, where 111 inmates were killed by the police in 1992. We were criticizing the state at the same time that we were preparing the plan in cooperation with the state.

**Dialogue:** How has NEV been able to walk this line where others have failed?

**Pinheiro:** The center has successfully gone beyond shaming as the sole strategy for changing state human rights practices. We learned to work with state agencies and institutions to propose alternative policies and strategies for the protection and promotion of human rights while refusing to stop denouncing the government and the dominant class when they violate those rights.

**Dialogue:** What setbacks has NEV faced?

**Pinheiro:** We have not been very successful in monitoring the National Human Rights Plan of Action even though we conducted nine regional seminars for the evaluation of the first plan. We have also failed so far to bring about much-needed constitutional reform of our criminal justice institutions and to make the federal government accountable for gross human rights violations. The primary mission of the center today is to determine how to establish more democratic state practices and accountability for state actions while simultaneously abiding by international policing standards and controlling violence in the population.

**Dialogue:** What do you see as the means to turn these institutions around to make them accountable?

**Pinheiro:** We need an authentic human rights commission. We currently have the National Council for the Protection of the Rights of the Person, which was

## The center has successfully gone beyond shaming as the sole strategy for changing human rights practices.

established 1964. In my new post as secretary of state for human rights, I have created special commissions on torture and slave labor. But these institutions are no substitute for a truly autonomous national commission for human rights that can serve as ombudsman.

**Dialogue:** Where does the public stand today on these issues?

**Pinheiro:** According to a 1999 survey that the NEV carried out in ten major cities throughout the country, Brazilians prefer the law to vigilante justice and the majority oppose torture and police brutality. The majority also accept the legitimacy of strikes and peaceful social protest. These results suggest that, despite the authoritarian legacies inherited from our past, there is a democratic sensibility within the population. Even more surprisingly, 58 percent of those surveyed were aware of the National Human Rights Plan of Action, and most understood that its goal was to protect the rights of the people. In the midst of the profound inequality and endemic violence that continue to plague our country, these are hopeful signs. **hrd**

## NEV is No Longer Alone      Fiona Macaulay Responds

ONE OF THE CHALLENGES for human rights groups faced with a context of rising crime and violence is to determine the boundaries of their various activities. The Center for the Study of Violence (NEV) at the University of São Paulo has had to negotiate its own multiple—and potentially conflicting—roles since its inception in 1987. On the one hand, it is an impartial university research institution dedicated to producing high-quality data and analyses. On the other, it also shelters a human rights NGO, the Teotônio Vilela Commission (CTV), composed of eminent members of the São Paulo community, which has periodically mobilized to investigate, bear witness to, and make formal complaints to the authorities about egregious cases of institutional violence. NEV's third role has been that of consultant to the government, assisting it with the writing and monitoring of the national human rights program and with the drafting of periodic implementation reports pursuant to a number of United Nations Conventions.

NEV has taken on all of these roles at different moments out of practical necessity: for many years, it was the only university institution researching in this area. The connection with the prestigious University of São Paulo gave it and CTV credibility and protection from attack by the outgoing military regime during the 1980s.

The weakness of the federal government's own capacity in the area of justice meant that NEV could provide crucial intellectual resources as well as credible interface with organized civil society. Combining these roles has probably never been easy or comfortable.

Paulo Sérgio Pinheiro is right to point to an increased consensus on both the positive value of human rights and the need to reform the institutions that deal with crime and violence. But the federal government has not put institutional reform of police and courts high enough on the political agenda, a situation that even Pinheiro operating from within government has been unable to alter. And because of two deficits Brazil's well-organized and

networked human rights organizations have not been able to contribute concrete proposals to reform. First, Latin American academe has no tradition of criminology, by which I mean an interdisciplinary approach to understanding crime, social disorder, and the institutions of the criminal justice system. This has ensured that the formalistic and legalistic vision of jurists has dominated all debate on rights, crime, and punishment. Second, the federal government does not have adequate research, policy, and planning capacity within a specialized unit—which requires appropriately trained personnel.

But this is changing. A number of criminology institutes have been set up in major Brazilian universities in the past few years that have staff and intellectual output to rival NEV's. This expansion is very welcome given that NEV, with the best will in the world, could not on its own produce the volume and variety of analyses of contemporary criminal justice institutions and criminality required to feed effectively into government policy. The new criminology departments will begin to supply highly competent graduates just as economics departments produced the country's technocrats in the past.

NEV is no longer alone. Indeed its efforts have partly stimulated the plethora of new initiatives and players. Over the last seventeen years human rights groups have proliferated both outside of and within the

**The complex mosaic of human rights actors fortifies the case for groups to specialize, rather than diversify, their functions.**

government, with a presence of human rights committees in the national congress, state and municipal legislatures, and the judiciary. Both the federal and the twenty-seven state-level governments are increasingly persuaded of the need for institutional reform to strengthen the protection of human rights and tackle crime effectively. With such a perceptible expansion on the "demand side," the "supply side" will need to rethink how it might best meet this demand. The complex mosaic of actors in human rights and crime policy tends, to my mind, to fortify the case for human rights groups to specialize, rather than diversify, their functions, while also maintaining coalitions to maximize efforts on key issues. [hrd](#)

## Cardoso's Record is Poor

### Andressa Caldas, Sandra Carvalho, and James Cavallaro Respond

PAULO SÉRGIO PINHEIRO paints a rather bright picture of the progress on human rights in Brazil. And, by this account, Pinheiro himself deserves much of the credit. His vast experience as a scholar and human rights activist won him a receptive audience in Brazilian civil society. Indeed, well before joining the National Human Rights Secretariat, for many years Pinheiro advised the Cardoso government as head of the Center for the Study of Violence, helping to draft official responses to the UN's conventional committees—the expert bodies that oversee compliance with human rights treaties—and pressing the government to adopt a more transparent human rights policy.

It is true that in its eight years the Cardoso government emphasized transparency and dialogue in its relations with the human rights movement at home and abroad: a key advance. But Cardoso's record on implementing the reforms necessary to improve the human rights situation in the country is poor. One of the prime indicators is the level of police violence. While Cardoso was in office, there was little or no decline in the number of arbitrary arrests and the number of civilians killed by police. From May to September this year, official figures demonstrate that police in Rio de Janeiro killed an average of just over 55 people per month, more than three times the 16 killed per month registered in early 1995, the first year of Cardoso's administration. Figures for São Paulo demonstrate a decrease and leveling off in police killings in the mid-1990s, but then a gradual increase over the past two to three years.

Also under the Cardoso government, there was a practice of targeted killings to silence opposition in rural areas. While the killers were not usually state agents, the government's record on investigating and prosecuting these cases is dismal. More worrisome still was the Cardoso government's approach to land disputes. Rather than address these conflicts as social problems that require policy solutions, the Cardoso government focused on repressive use of police to quash landless people's demonstrations and land occupations. In 2000 the federal police went so far as to

revive a national security law passed during the dictatorship to hold and charge rural leaders involved in land disputes.

The Cardoso government also failed to implement its own human rights plan. Brazilian and international civil society embraced the National Human Rights Plan of Action (PNDH) with open arms when it was published in 1996. The plan, however, turned out to be empty words.

Global Justice's forthcoming annual report for 2002 shows that the overwhelming majority of the plan's proposals—even those classified as “short term”—have yet to be enacted more than six years after the PNDH's release. The few measures that have been implemented have all been responses to high-profile

cases: for example, the April 1997 Torture Act came on the heels of a national scandal provoked by widely viewed amateur videos of police torture in Diadema, São Paulo state. At the same time, critical measures such as the unification of the police, the federalization of human rights crimes, and thorough external control of the police have yet to be adopted.

As Pinheiro notes, in May 2002 the feder-

al government issued a second edition of the PNDH to mark the sixth anniversary of the first plan's release. This second plan focuses on economic, social, and cultural rights. While it is an important symbolic gesture to recognize the indivisible nature of civil, political and economic, social, and cultural rights, the second plan, much like the first, contains no timetables and no allocated resources that a government plan must have to be taken seriously. Like the first plan, it may well have been intended more to address the public perception of government inaction on human rights than to take tough measures to deal with difficult problems.

There can be little doubt that Brazil continues to be plagued by serious rights abuses. Official recognition of the gravity of these problems is probably the greatest single human rights achievement of the outgoing Cardoso administration. But that is far from enough. [hrd](#)



A view from within Rocinha Favela in Rio de Janeiro

Photo by Christian Barry

# A View from the Inside

*Carlos Basombrío*

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In the Winter 2000 issue of *Human Rights Dialogue*, Carlos Basombrío, then deputy director of the Institute for Legal Defense in Lima, Peru, wrote about the human rights challenge of dealing with crime in Latin America. ([www.carnegiecouncil.org/themes/hrdwinter1999.html](http://www.carnegiecouncil.org/themes/hrdwinter1999.html)) Since then he has continued to be at the forefront of developing ways to address this challenge. As a sign of the changing times in Peru, in January Basombrío became vice minister of the Ministry of the Interior.

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**M**y country, Peru, is the only example in Latin America of a failed democracy. Alberto Fujimori—who as president from 1990 to 2001 was, next to Fidel Castro, the longest-ruling head of state in Latin America—led a regime that intentionally used the public's fear of crime as an instrument to remain in power. More than in any other country in the region, crime was a legitimating argument for authoritarian measures and a sure way to gain the support of the people.

Yet Peru has seen dramatic changes in the last two years. With the fall of Fujimori, the justice system is prosecuting those responsible for the worst human rights crimes and instances of corruption, including important members of the previous regime. A new opportunity for democratic government is in place.

One of the changes is the appointment of a group of human rights people to the Ministry of the Interior, myself included. This ministry is in charge of citizen security, public order, and anti-drug and antiterrorist efforts. We are

**To gain the trust of the general population human rights organizations must address the security concerns of the public.**

also responsible for fighting crime, which means we are in charge of the police. We veteran human rights activists are thus on the other side of the fence, trying to put into practice what we have been preaching all of these years.

My time at the ministry has confirmed the perception my colleagues and I had of the police force before joining the government. The Peruvian police are not by any means

the most repressive in Latin America—the Brazilian, Venezuelan, Argentinean, and Colombian forces have worse records in human rights terms. Yet police officials in Peru—even those who say they respect human rights—believe that those rights are a major obstacle to their ability to deal effectively with crime. Looking at the situation now through a government lens I see that the pressure to put into practice measures that violate human rights comes not only from the police, but also from the people. In fact, poor people are the ones who demand the harshest measures against crime, as they are most frequently its victims. And since they cannot afford private security, they depend more than other groups on the police to ensure their safety.

Within the Ministry of the Interior, we are developing police reforms to address this perceived tension between respecting human rights and keeping Peruvians safe from crime. Some of our ideas include demilitarizing the police force—affirming its civilian identity by distinguishing it from the army—and changing the mission of the police to protecting the rights of citizens rather than making the state “secure.” It may take decades for these ideas to take root both institutionally and among individual officers.

Over the years, I have learned three valuable lessons about how to address the crime challenge. First, in politics, it is important to win the center, and thus avoid the risk of marginalization. Human rights organizations should do more than just protect the rights of criminals; they must also find a way to address security concerns of the public. This is critical to gain the trust of the general population.

Second, it is also important to win the hearts of the police. Human rights organizations rarely publish statements when the rights of the police are abused, or when members of the force are killed or treated unfairly. This omission is devastating for the police perception of human rights organizations. We need to remember that they are the brothers and sisters of the victims of abuse, the cousins of the human rights activists. At the ministry we are addressing this problem through a newly established special office devoted to human rights abuses within the police force.

The final lesson: while working toward these goals, it is important to continue the classic human rights work we have been doing all along. In Peru the fear of being accused of abuse by the human rights community does more to stop police officers from committing human rights violations than fear of the law. While stressing innovation and engaging creatively with new actors, it is important to continue using our tried-and-true approach of holding violators accountable. **hrd**

# U.S. Civil Liberties in September 11's Wake

*A roundtable discussion with*  
**Jamie Fellner**  
**Elisa Massimino**  
**Michael Ratner**

*Dialogue:* Let's start with the situation immediately following the September 11 attacks. It was a frightening time—all the more so here in New York. People who had never really thought about patriotism were breaking out flags, bumper stickers, and pins to demonstrate their support. How did you as human rights activists make sense of your roles?

*Michael Ratner:* One of the hardest things for us to do in that first six months after the attacks was to argue for the government to analyze critically what had happened and why. People who suggested in the first few weeks after the attacks that the United States should examine its foreign policy in the Middle East were attacked by the administration, the media, and the public. I definitely was not as direct in my criticisms as I am today. Instead, I addressed other areas of concern—ones that were not as contentious, such as pushing the government to launch an investigation of intelligence failures before passing new laws.

*Elisa Massimino:* We knew from the beginning that we would have to join forces and build a coalition. Two days after the attacks, we all participated in a coalition meeting, dubbed "In Defense of Freedom," with representatives from more than 100 groups representing a broad spectrum of groups that disagreed on an enormous number of issues. But we agreed on the fundamentals.

*Dialogue:* What were those fundamentals?

*Massimino:* We agreed that it is wrong for the government to target people based on their race, religion, national origin, or immigrant status. We agreed that security could be ensured without abridging the Constitution. We rejected the assertion that proposals put forward as "antiterrorist"

necessarily bring greater security. We believed that it was important to reaffirm the right of peaceful dissent. We worked together and drafted a statement by the end of the meeting. The understanding we forged that day has made us more effective in addressing the challenges that have emerged over the last year.

*Jamie Fellner:* This coalition was unprecedented. I have never seen anything like it in all my years of human rights work.

*Ratner:* I recently talked to one of the organizers, Kit Gage, and she was still amazed that everybody was able to pull this group together so quickly in light of the shock of September 11. It was remarkable.

*Dialogue:* Did you have any models to fall back on?

*Ratner:* This environment was not totally unprecedented. We saw some parallels with the 1980s when a similar group was in the Pentagon and the State Department under Reagan. The government launched a big program to spy on Central American activists. There are also historical parallels with the McCarthy era, but nothing quite like this.

*Fellner:* Going back to your earlier question, I want to say that all three of us are Americans. We live in this country. We work for organizations that are predicated on internationalist ideals. The United States was a primary force behind codifying those ideals in treaties. So when our home was attacked, it was not as though any of us did not feel it. But I am worried about the repercussions of the policies developed in response to September 11. I don't feel that by criticizing I am unpatriotic—I consider it deeply patriotic to ask the United States to live up to the finest ideals in its tradition.

We do what we do because it is both the right thing and because there is a strain in United States history and culture that affirms values to which we are all personally and professionally committed.



**Human rights activists are not absolutist.**

—Jamie Fellner

*Dialogue:* As more time passed, how did your groups address the U.S. public's willingness to trade civil rights for increased security?

*Fellner:* In the months following the attacks, our concerns for the protection of civil rights were not shared by the public. That's nothing new: we are often on the wrong side of these issues from the public's perspective.

Elisa, Michael, and I all work for organizations whose efforts on human rights abuses taking place in the United States are often not well received. Even some Human Rights Watch supporters in the United States who are concerned about what happens to Chinese dissidents have a different criterion when it comes to abuses at home. Although the post-September 11

policies, such as extreme cases of government secrecy, repressive legislation, and denial of free speech and due process are not something we have had to confront in the U.S. in recent years, dealing with them is not so different from the work the organization has been doing in other countries. We are doing what we always do. However,

I never thought I would be writing up an informational pamphlet for distribution in the United States about why torture is unacceptable.

*Dialogue:* Have you put extra emphasis on your public education campaigns?

*Ratner:* The Center for Constitutional Rights is primarily a litigation organization, but after September 11, we realized that litigation is limited without the support of the public. Therefore, we have been trying to do more



public education and outreach—everything from printing “Know Your Rights” pamphlets to participating in more radio and television interviews. We have circulated briefing papers with stories more personal in approach. We have published books about the USA PATRIOT Act and the military tribunals.

*Massimino:* Explaining things to a broader public is much more important now. For the past year, all three of us have been doing talk shows and call-in radio shows, and we understand that the public is afraid. At the Lawyers Committee, we have redoubled our efforts in public education. I have spent far more time talking to people outside Washington and New York than I ever have before. While direct input to policymakers is critical, it would have been a mistake to invest all of our attention there. Policymakers will not take up these difficult civil liberties issues unless they believe there is a constituency that cares about them. Winning the support of the public is imperative.

*Dialogue:* Give us some of the details on your approach.

*Massimino:* We found it extremely useful to talk about trade-offs. But if people believe that the choice between liberty and security is a zero-sum game, if they are presented with the choice abstractly, liberty loses every time in this environment. When we started asking which measures would actually make people safer and which specific liberties people were willing to give up, we found more common ground, and the hysteria began to evaporate. I have done my own ad hoc polling on the military

**Winning the support of the public is imperative.**

—Elisa Massimino

## Kit Ga ge on In Defense of F reedom

IMMEDIATELY FOLLOWING THE September 11 attacks many of us in the civil liberties community who had been through previous terrorism crises could see what was coming. There would be enormous pressure on Congress to pass a bill—one that would most likely trade civil liberties for a quick security response. We knew that in order to secure the protection of civil liberties we would have to unite. A coalition like the National Coalition to Protect Political Freedom, organized in 1997 following the passage of the 1996 Antiterrorism Act, had proven to be an effective way to educate the public and the government, as well as to put pressure on Congress.

A small group of activists moved quickly to form In Defense of Freedom, a politically diverse aggregate of civil liberties groups, human, civil, and ethnic rights groups, and members of the religious, legal, scientific, and medical com-

munities. On September 14, 2001, more than 100 activists of all political stripes came together at the Washington office of the American Civil Liberties Union to discuss potential threats to civil liberties. Our task was to craft a statement that would encourage Congress to respond carefully: on the one hand, protections against attacks on civil liberties must be kept, but, on the other, these must be balanced against the requirements of prosecuting terrorists. By proceeding cautiously and thoughtfully, these two needs could be met in a way that would not challenge fundamental constitutional guarantees.

The group was an extraordinary assembly of activists and representatives of national NGOs from the left, right, and center. We were able to cast such a wide net by using any and all contacts we had made over the years. In the end, 162

commissions by surveying cab drivers. I started by questioning the basic idea of military tribunals, and people would say, "You just don't trust the military." Then when I asked more detailed questions—Is it okay if the trials are held in secret? Is it okay if the detainee does not have a lawyer?—the responses changed to, "Oh, that's not really what I think of when I think of this country," or "That wouldn't be fair."

When framed in specific terms, people are at least willing to ask the questions and respond to the equation a little bit differently. But to get there you have to engage with people and start from where they are mentally—and right now they are extremely nervous and anxious for the government to protect them. The need for public education is still very great.

**Ratner:** Let me just add that I think public education is crucial, but as long as people do not feel safe in this country, it can only go so far. If people believe there is going to be another al-Qaeda attack, it will be incredibly difficult to roll back the repressive measures that Congress has enacted. This climate will persist for a while.

I am not pessimistic, however. We must continue fighting these measures because we can make some small in-roads. We were able to limit military tribunals to some extent, and we may be able to open immigration hearings.

It is worth the fight to educate the public, but the fear is very real. If you were to ask New Yorkers whether they would support some measure that would make their family more secure in the face of an immi-



### The fear is very real.

—Michael Ratner

nent terrorist attack, most would say yes. Even I would. That is a serious problem.

**Dialogue:** Do you feel that human rights organizations should do anything to address that public fear, and if so, can they?

**Massimino:** We all recognize the government's responsibility to increase security.

**Fellner:** Being a human rights activist does not mean wanting to be insecure. When it comes to trading civil

liberties for more security, human rights activists are not absolutists. For example, I do not have a problem if every single person in the airport has to be patted down. It is an infringement of my liberty. It is a hassle. But I have no problem sacrificing my liberty for security in this case. Where I do have a problem is if the government is searching people on an irrational and discriminatory basis. I want to ask: Is the measure justified? Is it tailored? Is it proportionate? Is it nondiscriminatory? People like to think that rights activists are absolutist. There are very few absolute rights. Torture is intolerable—freedom from it is an absolute right. But in terms of liberty there is room for trade-offs.

**Massimino:** I think it is important to support an affirmative agenda on security. But there are limits to how specific human rights groups can get in promoting security measures; that is not our area of expertise. My organization has focused on fostering discussion about these proposals and encouraging people to ask questions about how they will make us safer, in addition to how

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organizations signed on to the "In Defense of Freedom" statement. In all my years of activism, this was the largest and broadest group I had worked with, most likely because the post-September 11 political situation represented the greatest potential threat to civil liberties the United States has ever seen.

In just one day, this odd-fellows collection drafted a unified statement to Congress. It did not take a position on any specific piece of legislation, but rather was purposefully broad in order to keep the coalition intact and appeal more effectively to all members of Congress while avoiding a public backlash. The statement's basic demands—for example, that politicians proceed by "considering proposals calmly and deliberately with a determination not to erode liberties and freedoms" and "resisting efforts to target people because of their

race, religion, ethnic background, or appearance"—were difficult to contest.

Because of the size and diversity of the group and the urgency of its mission, discussion was limited to specific wording. Two contentious issues were the death penalty and the advisability of the use of torture as a mechanism of interrogation. Members of the group discussed whether to call for using the criminal justice system to execute the accused terrorists, or rather to take alternative methods to inflict the most pain before death, outside of the legal process. In the final statement, the decision was made to avoid specific references to the criminal justice system and to torture.

We released the statement at a press conference on September 20, 2001, the same day that the USA PATRIOT bill was announced. The statement and press conference helped mobilize

they will affect people's rights. I think that posing questions like these is a stronger way to shift the debate—and one that brings us into common cause with everybody.

**Ratner:** A hallmark of the new security measures is that they stand outside the system of checks and balances. There is no way to check what the executive is doing with the Guantánamo detainees or with surveillance techniques like wiretapping. This is not smart government, and it does not make us more secure.

**Massimino:** Pushing the idea of smart government is an important strategy in this environment. There is a lot of clear evidence of government failures prior to September 11, such as failures of intelligence agencies to talk to one another or to follow up on tips, failure to allocate money to the right places and to use money wisely, and basic failures of security in the airports. The public has this sense that the government has not kept them safe, and yet there is also a competing, deep desire to believe that the government knows what is best and will be able to protect us.

So the message that we have found resonates with people is the idea of checks and balances. Our system of checks and balances not only keeps one branch of government from overreaching, but ultimately makes for better policy. We have found we can garner public support by showing people that checks and balances actually lead to higher security. When you have a USA PATRIOT Act and there is no debate in Congress, what you get are old proposals that were floated and rejected in the past when they were evaluated on their merits. But these proposals gain new life when people think policymakers and the public won't look at them too closely. Checks and balances force government to adopt more effective security policies.

**Dialogue:** *Is it possible that recent public debate on civil liberties and the stepped-up work your groups have done in public education have helped raise awareness of human rights in the United States?*

public pressure on members of the House of Representatives Judiciary Committee to develop detailed amendments to the bill. That bipartisan effort was later short-circuited by House leadership, however, and the original bill was passed unanimously in the House. In the Senate, Judiciary Committee Chair Patrick Leahy (D-VT), without hearings, quietly negotiated a few changes with a small group from Justice Department. He was assisted by a few civil liberties and immigration advocates from our coalition, who sparred over every word.

In Defense of Freedom did little as a group beyond this statement, although most of its members have remained active

**Massimino:** Jamie, what you folks at Human Rights Watch have done with your Opportunism Watch program has done a lot to raise awareness of human rights in the United States. The program makes comparisons between human rights abuses that have occurred in the United States after September 11 and human rights abuses of governments in other countries. When you point out the similarities between the military tribunals here and the military tribunals in Indonesia, people realize the gravity of the situation. Showing the American people that abuses now occurring in the United States parallel those seen in Northern Ireland, Turkey, Indonesia, or India is a way to make Americans rethink domestic abuses in human rights terms.

**Ratner:** That is a good point. I have argued we should start to call the USA PATRIOT Act the "United States Internal Security Act." One of the heaviest criticisms of the military tribunals is that the United States condemned such tribunals in Nigeria, Peru, and a number of other countries. Making these connections is a tactic we use all the time.

**Fellner:** While Opportunism Watch does help Americans make those important links, we still have difficulties using human rights language here in the United States. I had a long conversation with a donor concerned about criminal justice issues, which my program at Human Rights Watch has worked on substantially. When I asked her if she would be interested in receiving a grant proposal from us, she replied, "Oh, we don't fund human rights." I thought to myself, this is exactly the dilemma we face. Sometimes we are all forced to downplay human rights language because, while we are trying to educate people about human rights, we are also trying to get a message to resonate with the American people. Often, when we use human rights language in terms of our work in the United States, Americans just stop listening. [hrd](#)

individually. But this immediate reaction—even if its effect on the USA PATRIOT Act was ultimately minor—proved how quickly a diverse group of motivated people can be mobilized in a time of need. Groups representing almost every sector of the population spoke out that day to caution the government. We undoubtedly have not seen the end of this, and we will unite again in different and creative ways until the government hears our message.

To view the full text of the "In Defense of Freedom" statement, visit [www.indefenseoffreedom.org](http://www.indefenseoffreedom.org). [hrd](#)



signing the Malaysian Election Appeal. Among the many demands was the repeal or at least the review of the ISA. When ten opposition and pro-reform activists were arrested under the ISA in the months of April and May 2001, there was once again mass support for release of the prisoners and for the abolition of the ISA.

Yet, in the aftermath of September 11, public and political support for the repeal of the ISA has waned, overshadowed by a global fixation with Islamic “terrorism.” There are now some seventy people detained without trial or charge under the ISA—alleged members of shadowy Islamic groups with interchangeable names and linkages, like the Malaysian Mujahideen group, Jemaah Islamiah, and even al-Qaeda, depending on which politician speaks on what day—on sweeping claims that they are extremists or “militant” Islamists bent on destroying Malaysia and rebuilding the remains into an Islamic state. Since the Bali bombing, another five men have been detained. The Mahathir government has seized every opportunity to declare national security paramount and the ISA an indispensable weapon against terrorism.

All this has made the work of human rights advocates increasingly difficult, especially in the face of the government’s massive propaganda machine that exploits the public’s worst fears. Even then-chairman of the National Human Rights Commission, former Deputy Prime Minister Tan Sri Musa Hitam, was quoted a month after September 11 calling for democracy and human rights to take a back seat and to allow the government to deal with the threat of possible terrorist activities in the country. The path has been opened for

## **The ISA does not discriminate with regard to religion, political beliefs, class, or gender—and neither should human rights activism.**

blanket laws masked as safeguards for public safety and the utilization of a discourse that generates fear.

There are democracy and rights advocates who continue to seek the repeal of the ISA but who at the same time call for a substitute “antiterrorism” legislation. Lim Kit Siang, chairman of the Democratic Action Party, former ISA detainee, and one of the more astute rights advocates in the country, released a statement in June calling for a multiparty–NGO consultation to discuss the possibility of enacting an antiterrorism law. Thankfully, this has been shelved, at least for the moment. Rumbblings of the debate remain among the Malaysian NGOs, however, including some from

the Abolish ISA Movement. These arguments range from amending the ISA in accordance with international human rights standards to campaigning for judicial safeguards (as opposed to an outright repeal of the act).

Whereas in the past an ISA arrest could galvanize a number of organizations into action, now there seems to be an overwhelming need to distinguish between “political” detainees and “Islamic” detainees. Pro-reform activists currently incarcerated in an ISA detention camp have asked that their campaign be distinguished from that of the alleged Islamic extremists arrested. International human rights groups have also been relatively hesitant to categorize the alleged Islamic militants as political prisoners. For example, during Mahathir’s visit to the United States this past May, Amnesty International USA released a statement calling on President Bush to pursue the release of six pro-reform detainees, but made no mention of the alleged Islamic extremists.

Activists working in Malaysia who promote such distinctions between Islamic militants and other political prisoners would do well to remember the facts at hand. The existing laws in the Malaysian criminal justice system are more than sufficient to counter or punish any actual acts of terrorism. To this day, the government has shown no evidence of the detainees’ terrorist activities to the Malaysian public—neither in the courts nor in the form of a white paper to the parliament. None of the alleged Islamic extremists has been charged in court.

To derail the propaganda machinery of the state, human rights groups must first debunk the myth that Islamic terrorism exists. They must assert with greater vigor the fundamental rights of alleged Islamic extremists who remain incarcerated under the ISA. They must also publicly defend all individuals. The ISA does not discriminate with regard to religion, political beliefs, class, or gender—and neither should human rights activism.

Calls from certain quarters of the NGO community to bind the act to international human rights standards and judicial safeguards are misplaced: preventive detention is almost always accompanied by torture and unfair trials—the most deliberate of human rights abuses. Throughout Asia governments are using so-called antiterrorism and national security laws to curb political dissent and self-determination movements and are in flagrant violation of international human rights norms. The human rights community must help the public understand that preventive detention of any kind, even with safeguards like judicial review, invite abuse in one way or another by the powers-that-be. The proof lies in the Malaysian government’s record of exploitation of the ISA for the

past four decades. Any substitute legislation will undoubtedly follow the same path.

Two years after the enactment of the ISA R. H. Hickling, its original drafter, reflected:

I must hope that the practice of imprisonment without trial, charge or conviction admitted by the Act 1960 will not be regarded as a permanent feature of the legal and political landscape of Malaya or for that matter of Asia generally.

This hope will dim even further if human rights groups fail to expose the official discourse on terrorism in Malaysia as fraudulent. If the human rights communities in Malaysia and around the world do not speak up in a concerted voice against preventive detention now, the costs will be great; the real terrorism of authoritarianism will be finally normalized. **hrd**

*Since the writing of this essay, there have been a number of developments relating to ISA detentions. The highest court in Malaysia—the Federal Court—ruled in September that the ISA detention of five pro-reform activists arrested on April 10, 2001, was illegal and mala fide. In October the court told the Malaysian parliament that its accusation of bank robbery against the Kumpulan Mujahideen Malaysia was false. In November the Shah Alam High Court ruled the detention of Nasharuddin Nasir, an alleged member of Jemaah Islamiyah, illegal and ordered his immediate release. Upon being freed, Nasharuddin was immediately rearrested with a fresh detention order from the home minister. Since then Prime Minister Mahathir has stated that the ISA will be amended to stop the courts from challenging the police and the government. —E.W.*

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## A Post-Bali Turnaround on Rights Karim Raslan Responds

WHEN SOMETHING (OR SOMEBODY) you know and love is brutalized, you cannot help but feel aggrieved and angry. The bombing on Kuta beach and the murder of more than 180 people feel to me like a terrible personal assault.

The Bali bombers set out to destroy the island's economic livelihood, wreck its precious racial and religious balance, and shatter Indonesia's hopes for a restoration of order and stability. The sheer destructiveness of the crime makes me question the humanity of those involved. What agenda can these murderers hope to realize? They are the merchants of death, horror, and evil. Islam, the Holy Quran, and the Prophet Muhammad have been grossly abused by their act.

It is hard for any of us to control our emotional responses in the immediate aftermath of such a ghastly tragedy. The principles enshrined in the UN Declaration of Human Rights have always underpinned a great deal of what I write. Yet this murderous attack has forced me to reassess my commitment to civil and political liberties as sources of social harmony and stability.

Coming from Malaysia, where the government has scant regard for human rights and civil liberties, I have always prodded the authorities toward an increased understanding of the role of personal freedoms in both human development and nation building. As such, I have repeatedly criticized the government for its use of the Internal Security Act.

In the aftermath of the Bali attack, I am rethinking where I should be drawing the line in the perennial debate over the tension between civil and political liberties and

national security. While the two concerns are not mutually exclusive nor, indeed, necessarily in opposition, I am torn by an emotional—maybe even a primal—need to establish a safety zone around myself. I now feel less sure about my willingness to live with the uncertainties of democracy and unfettered freedoms. This is a terrible admission, but I should be honest about my concerns since I suspect there are many people who would agree with me.

In this respect I am not alone. As Elizabeth Wong notes, even some of Malaysia's most passionate advocates of human rights find themselves deeply troubled—although most have continued to support publicly human rights protections. I think Wong is taking it too far to say that there should be no tightening of restrictions; we need to have some protections against terrorism. Imtiaz Sarwar, a leading constitutional lawyer and human rights activist, argues passionately that “measures can and should be taken,” even as he warns against draconian laws.

A civil society depends on the honest and willing participation of all its members. But how are we to work with people who refuse to agree with an ethos of tolerance and peacefulness? How can we continue to espouse without qualification civil liberties and the due process of the law when there are people for whom such guarantees are anathema? How can we proceed with such a venture when there are forces who would destroy rather than build, murder rather than nurture? I wish I could be as certain as Wong, but I am not. **hrd**

*This response is based on a article that appeared in the Business Times Singapore (October 16, 2002).*

# Israeli Exceptionalism?

*Jeremy Milgrom*

Human rights activists living through a prolonged, bloody, and escalating conflict frequently find themselves on the losing side of an issue they never could have imagined in their worst nightmares. Such is the case in Israel, where the government has committed serious human rights violations against Palestinian civilians. Possibly the most egregious of these violations—which include the demolition of homes of alleged terrorists’ families and the routine torture of those under interrogation—is the targeted killing of senior members of Palestinian resistance organizations. To complete the picture, however, it must be stated that these desperate measures have been taken in an environment of mounting lethal attacks against both Israeli settlers in the West Bank and Gaza and Israelis living within the Green Line—the area assigned to Jewish rule by the UN partition plan of 1947, plus land captured by Israel in the war of 1948.

Public resistance to human rights arguments has tied the hands of the human rights community. For Israelis targeted killing is the necessary response to suicide bombers; it is counterterrorism—*à la guerre, comme à la guerre*, in war as in war. Even among human rights activists, the commitment to human rights is stopped cold by the notion of Israel as a Jewish state, which allows for violations in the service of maintaining a Jewish majority. A case in point is the refusal of liberal Israelis to allow the return of Palestinian refugees. Not only is this a human rights violation, but it is contrary to the basic idea of the right to return of exiles—the very *raison d’être* of the state of Israel. For pacifists like myself, the matter is clear and human rights are absolute: this is not a war of self-defense, but a colonial war for territory and illegal settlements. The occupation must end, and this war should not be fought.

It is distressing to see how insensitive our public is to the policy of the excessive use of force. And yet this

is hardly surprising, given the degree to which violence has characterized the Israeli domination of Palestinians throughout this conflict. When the Israeli media uniformly parrot a statement issued by the Ministry of Defense that the army has killed a Palestinian on his way to perpetrating an atrocity, the public has no way of knowing how plausible this claim is. It is very hard to remind the public that this person is only suspected of bloodshed and has not had an opportunity to prove his innocence. The media, which have willingly sided with the “national interest,” are less inclined than ever to present the story of Palestinian life under occupation. Sisyphean efforts by the human rights community to remind Israelis that more than 99 percent of the Palestinian population consists of noncombatant civilians are eroded each time a bomb explodes with Israeli casualties.

Even if targeted killing were always perfect, meaning that only the combatant actually targeted was killed, it would still represent a grievous deviation from basic standards of justice: a human being executed without the chance to prove himself innocent of suspicions gathered by an intelligence apparatus without passing any form of judicial review. What we are witnessing are extrajudicial killings so horrific that they are virtually indistinguishable from acts of vengeance—taking Israel out of the company of civilized nations. The fact that there is no death penalty in Israel does not resonate, as the public has gotten used to extrajudicial murders. Some of the victims of targeted killing stand accused simply as leaders in Palestinian resistance organizations, and their “elimination” does not seem to present a problem to the Israeli general public, for which all Palestinians are suspect.

In my view, the reason the Israeli government rarely relies on the alternative policy of arresting and trying suspects is because it takes longer to plan and execute the



Palestinian children pasting up a “martyr” poster for Mahmud Abu Helwa, a Hamas fighter who was killed during the Israeli military operation in Jenin.

removal of a suspect from Palestinian territory than it does to simply lob a bomb or shoot a missile at him. It also puts Israeli soldiers at risk. Israel wants to occupy with impunity, and when the occupied population resists violently (which I deplore, but which is its right), Israel's suppression of the violence is unjust. When Israel resorts to excessive force against an entire civilian population, it enters the realm of war crimes. The alleged absence of alternative means of "self defense" doesn't allow murder; it requires ending the occupation.

On issues pertaining to the peace process, especially on the question of borders and settlements, there is a vociferous debate, and we in the human rights community have been out front. But we have done next to nothing in addressing our government's policy of targeted killing. Sadly, we have not only failed to reverse the policy, but we have barely generated a public discussion about it. Appeals, so far unsuccessful, to the High Court of Justice by the Public Committee Against Torture in Israel stand as rare exceptions to our silence on this matter. We have spoken out against the deaths of innocent bystanders in the process of executing a targeted killing—as in the case of a one-ton bomb dropped by the Israeli military on a crowded Palestinian neighborhood last July, killing at least ten children and many adults in addition to the person targeted. Yet we are virtually silent with respect to extrajudicial executions of Palestinian suspects.

How can we explain the silence? I would suggest that human rights activists in Israel work in an environment much different from those of our counterparts around the world. For fifty-four years, Israel has maintained a state of high military readiness. For more than half of those years it was in a state of war with all of its neighbors. The peace treaties that it has signed—with Egypt and Jordan—are considered fragile. All Israelis feel that they are in danger, as civilians have been killed in virtually every Israeli city. We have grown accustomed to living with emergency regulations.

Also atypical is the fact that a good percentage of Israeli human rights activists have been combat sol-

diers, and many of us continue to spend a month or more every year in reserve duty well into middle age. At the very least, almost every Israeli activist has a close relative currently serving in a combat unit; pacifism is, unfortunately, a rare phenomenon in Israel, even within the human rights community.

For much of Israeli society the very concept of human rights resonates poorly. Rabbis for Human Rights tries to remind Israelis of the classical Jewish idea of compassion, in the hope that it might strike a chord among the traditionally minded. Building on our contacts in the field and the cooperation we enjoy with Palestinian NGOs, we try to refute Israelis' belief in an innate Palestinian hostility toward them, and emphasize that human rights violations victimize the civilian population. When theological and legal arguments do not convince, there is the temptation here to speak pragmatically—for example, making the case that collective punishment fosters rather than deters terror—but that is not our strong hand.

Public debate among Israelis used to be about whether the latest security measures would bring "peace" (i.e., a Palestinian surrender) or would lead to further insecurity—for Israelis. Today, the renewal of violence by mainstream Palestinian militants following the failure of the Camp David talks has buttressed the public's conviction that Palestinians have never wanted anything but the destruction of Israel, and the debate has shifted away from prospects for peace. It is my belief, based on twenty years of talking with inspiring international human rights and peace activists, that Israelis and Palestinians need the ongoing presence and support of the international community. At a time when human rights are increasingly threatened by new insecurities, it is even more important that we strengthen our consciousness of the unity of the human race and the blessings of human solidarity. [hrd](#)

## The Public resistance to human rights arguments has tied the hands of the human rights community.

For more on Israeli restrictions on Palestinian mobility and its impact on human rights from the health perspective, see "Restricted Mobility and the Threat to Health" by Stephanie Hansel and Jihad Mashal in the "right to health" issue of *Human Rights Dialogue*, available online at [www.cceia.org/themes/hrd\\_hanselmashal.html](http://www.cceia.org/themes/hrd_hanselmashal.html). For insight into the impact of human rights litigation on the appropriation of Palestinian land see "Resisting Litigation in Umm El-Fahem" by Samera Esmeir and Rina Rosenberg in the litigation issue of *Human Rights Dialogue*, available on-line at [www.carnegiecouncil.org/themes/hrdspring2000.html](http://www.carnegiecouncil.org/themes/hrdspring2000.html).



## An Unavoidable Love–Hate Relationship

The Winter 2002 issue of *Human Rights Dialogue*, “Integrating Human Rights and Peace Work,” has contributed greatly to the debate on the relationship between human rights and conflict resolution. The articles by Ivana Vuco and Ellen Lutz, both from Tufts University’s Center for Human Rights and Conflict Resolution (CHRCR), reflect the new position adopted largely by academics: in order to address successfully the causes of conflict and its resolution, it is imperative to use a multidisciplinary strategy that encompasses human rights and conflict resolution approaches.

Despite Vuco’s account of human rights organizations in Nigeria taking a more conciliatory stance on human rights abuses for the sake of upholding the fragile democracy, not many practitioners operate at the nexus of human rights and peace work. The reasons for this stem from the tensions between the two fields that Vuco and Lutz cite: reconciliation versus justice, advocacy versus neutrality, cooperation versus adversariality, competing analyses of the causes of conflict, etc.

As a conflict resolution professional based in Angola, I would like to support Vuco’s and Lutz’s argument that each field has its own strengths and that victims of conflicts and human rights abuses will be better off if human rights advocates and peace workers join these strengths while keeping their unique identities. In Angola the Center for Common Ground (CCG), an international conflict resolution organization, has been working in the field of peacemaking since 1996. It has become clear for CCG that focusing only on conflict resolution work without addressing human rights violations is an untenable position—and also possibly a hypocritical one. Conflict resolution practitioners in Angola cannot for the sake of neutrality and nonadversariality ignore the fact that the Angolan conflict engenders many gross human rights abuses,

just as human rights violations of a structural nature engender conflicts and violence.

Along with short-term peacemaking activities, it is imperative to focus on long-term peace-building work that strives for social justice and, ultimately, the alleviation of social, economic, and political inequities. With the goal of working toward a more equitable system, the human rights approach is an integral part of peace building and reconciliation.

It is important, however, to adopt a nonthreatening method if the goal is to achieve both justice and reconciliation, and also not to ostracize any of the parties to the conflict—even those responsible for inequities, which are usually the authorities. CCG’s experience with Angolan internally displaced people has shown that disseminating human rights principles is not enough. A more fruitful strategy has proved to be the capacity-building of internally displaced people through the development of conflict resolution skills—such as inclusive dialogue with authorities—in order to help them defend their rights, and request protection of their rights, in a nonadversarial way from the government.

Experiences from Angola, Nigeria, and other places studied by CHRCR demonstrate that the growing relationship between human rights and conflict resolution work is a necessary one.

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## A Skeptical Viewpoint

As Ivana Vuco notes in her essay, “Taking the Reconciliatory Route,” in the Winter 2002 issue of *Human Rights Dialogue*, “Human rights groups [in Nigeria] have been reassessing their mode of operation. They hope to establish themselves as a constructive element in the consolidation of democracy.”

The human rights movement was not enthusiastic about the presidential candidacy of General Obasanjo in late

1998 following the unlamented demise of General Abacha. It was concerned with Obasanjo’s notorious contempt for democracy and his poor human rights record when he ruled Nigeria from 1976–79. However, a number of human rights groups realized that ending military rule should be a priority and thus chose to support the regime as a transitional government that would eventually lead to genuine democracy. Other groups, such as the National Conscience Party/JACON and the Democratic Alternative, rejected the transition program completely and refused to cooperate with either the military regime or the Obasanjo government.

Fierce controversy raged over the question of whether the human rights movement should expose and condemn the human rights violations perpetrated under the new quasi-civilian government. Ultimately, human rights groups agreed to work toward the common goal of democratic consolidation by adopting the individual strategies and tactics of their choice. They established an umbrella coalition called the Transition Monitoring Group (TMG) to coordinate civil society participation in the transition. Within the framework of the TMG, human rights groups organized voter education and electoral observation activities. Following the inauguration of the Obasanjo government, human rights groups tried to work with several government agencies, with varying degrees of success, on issues including electoral, police, legal, and judicial reform and transparency.

As Vuco correctly points out, some human rights groups have tried to apply techniques traditionally associated with the conflict resolution community in their work. In my assessment, the success of these efforts was limited. Conflict resolution techniques cannot be the only solution when the conflicts are driven by Nigeria’s political elite fighting over land and resources, who mobilize the people on the basis of ethnic, religious, and communal affiliations.

Vuco’s observations that conventional approaches of human rights organizations, such as constitutional

litigation, may not immediately address the problem of resolving conflicts is accurate. But other human rights approaches, such as advocacy for legal and judicial reform, can have a positive effect on conflict and need to be pursued. One reason why many communal land disputes degenerate into violent conflict is that the Nigerian people have essentially lost confidence in the formal, Westernized judicial system as a means of dispute resolution. The Obasanjo government must resolve these issues before the human rights community can have a significant impact on the public.

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## Community Advocates and Educators Weigh In

At its third annual peace and human rights summer education program for community advocates and educators in June 2002, the University of Hawaii explored the theme, "Deepening the Discourse of Human Rights: Developing Nonviolent Strategies for Direct Action and Diplomacy." The global, grassroots perspectives from contributors to the Winter 2002 issue of *Human Rights Dialogue*, "Integrating Human Rights and Peace Work," proved to be a valuable tool for the course.

The publication was debated during our class session and also used in our community caucuses, where seminar participants went into local communities to discuss and create plans for com-

munity action. Photocopies of specific articles were circulated to participants from the community, leading to creative conversations that challenged the positions of the *Dialogue* contributors and helped us to formulate peaceful, positive solutions to local conflicts. The mission of the Tufts Center for Human Rights and Conflict Resolution, as described by Ellen Lutz in her article, "Troubleshooting Differences," resonated with the theme of peaceful resistance and compassionate reconciliation of our training course. Participants found Lutz's prescription for better-coordinated action among groups and their respective borrowing of strategies especially insightful. According to Lutz:

Human rights advocates could be more effective if they expanded their tool kits beyond naming, shaming and seeking remedies in judicial forums to include conflict resolvers' broader array of negotiation and diplomatic techniques. Conflict resolvers could better ensure that negotiations lead not just to a cease-fire but to a permanent peace if they were more willing to assert basic norms of international human rights and humanitarian law. (p. 23)

Participants agreed that a holistic perspective is critical if the human rights movement is to guarantee fundamental freedoms. They concluded that a three-part approach of peace, ecology, and human rights could provide the tools necessary for global peace and human security.

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### WHAT DO YOU THINK?

Do you have a response to "Public Security and Human Rights"? Share it with thousands of other *Human Rights Dialogue* readers. Send your comments to Erin Mahoney, Human Rights Initiative, Carnegie Council on Ethics and International Affairs, 170 East 64th Street, New York, NY 10021-7496, USA, fax: (212) 752-2432, e-mail: emahoney@cceia.org. We regret that we will not be able to print every response. Please limit your response to 300 words, and be sure to include your name and contact information. We reserve the right to edit text as necessary.

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### FORTHCOMING PUBLICATIONS

For more debate on Israel's policy of targeted killings, see the journal of *Ethics & International Affairs* 17, no. 1, forthcoming in March 2003. The issue will also feature articles on the ethics of preemptive use of force, U.S. unilateralism and multilateralism, immigration, IMF and World Bank reform, and more. Order on-line at [ww.carnegiecouncil.org](http://ww.carnegiecouncil.org).

The International Council on Human Rights Policy will release a report, *Crime, Public Order and Human Rights*, in fall 2003. A draft report will be available for comment in February 2003 at [www.international-council.org](http://www.international-council.org).

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