

INTERNATIONAL SEMINAR ON INDICATORS AND
DIAGNOSIS ON HUMAN RIGHTS

The Case of Torture in Mexico



COMISIÓN NACIONAL DE LOS
DERECHOS HUMANOS
M E X I C O

NATIONAL COMMISSION FOR HUMAN RIGHTS

International Seminar on Indicators
and Diagnosis on Human Rights:
The Case of Torture in Mexico

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INAUGURATION

WELCOME SPEECH

*José Luis Soberanes Fernández**

Honorable Marcus Kaiser
Ambassador of Switzerland in Mexico.

Distinguished Mr. Raúl Suárez de Miguel
Swiss Federal Office of Statistics

Distinguished Experts and Colleagues that honor us with their presence:

Allow me to welcome you all to this International Seminar on Indicators and Diagnosis for Human Rights, where we will exchange experiences and points of view about methods used to incorporate a statistical analysis in the assessment of the Human Rights status. Within in a global context, where it is impossible to talk about development without referring to the condition of basic rights in any region, the National Commission of Human Rights has intended to bring about the opportunity to offer its perspective on manners to reflect this international tendency within the national context.

Although we will explain this perspective throughout the length of this series of events, at this moment, I would like to point out the main characteristics of the National Commission's current project, which I am honored to have

* Words of Dr. José Luis Soberanes Fernández, President Of The National Commission Of Human Rights On Occasion Of The Inauguration Of The "International Seminar On Indicators And Diagnosis For Human Rights: The Case Of Torture In Mexico" (Merida, Yucatan, April 3-5, 2002).

presided over since the first days of my administration. The development of a methodology for the use of indicators and the creation of a human rights diagnosis is an evolutionary, long-term process seeking to provide elements that will help consolidate a State policy for Human Rights.

As a State policy project, this plan is, by definition, comprehensive. If this proposal hopes to be successful, it cannot be carried out by a sector that is isolated from society, from government or from the non-jurisdictional system of human rights promotion and protection. All State components must be incorporated, in the most extensive sense possible.

As an evolutionary process, this project will be developed in a progressive manner, following a concentric pattern, with the double purpose of creating, first, a solid core which will be used as the foundation for public discussions and, second, to ensure a steady, gradual and organized incorporation of a higher amount of actors.

Its comprehensive nature, by definition, does not oppose those projects developed by different State agencies. On the contrary, it seeks to provide congruency and a method for all different tasks in order to achieve the total fulfillment of Human Rights in Mexico. The purpose of introducing congruency is to also attain clarity. In this sense, we would all be subject to scrutiny and public analysis. If this comes to pass, the current process of political accessibility will be strengthened.

Maintaining unity and coherence at the core of such an ambitious project, which deals with one of the main areas of Mexico's democratic consolidation, entails a better and more positive understanding of Mexico abroad. For the same reason, recognizing the new context of integration and globalization, this project has not focused exclusively in national circumstances. We wish to seek more foreign tools, improved tools, in order to carry out in a more efficient manner our Human Rights promotion and protection efforts. Therefore, a basic component of this project is the incorporation of adequate standards, recognized internationally for this purpose.

Due to these matters, I wish to reiterate my appreciation for your presence in this Seminar. We also hope to count on your active participation as well as valuable comments and observations in order to make this project a success. Again, this is everyone's project.

I would also like to express particular gratitude to the Swiss government for their collaboration and support. Through the Swiss Statistic Agency and the

Swiss Embassy in Mexico, it has provided valuable assets for the development of this first phase of the project and generously, it has also made possible today's assembly. My appreciation also goes to the French Embassy in Mexico for their support.

Finally, I am certain that this International Seminar will be an enriching experience for all our participants.

Thank you very much.

MAGISTERIAL REPORT

*José Luis Soberanes Fernández**

Distinguished colleagues:

The National Commission considers that the development of a diagnosis on the situation of Human Rights in Mexico based on scientific analysis –quantitative and qualitative- is a necessary and important complement to the efforts currently undertaken by different sectors of the Mexican state (society, government and independent constitutional bodies, mainly) in order to enforce the total compliance with Human Rights in our country. Several elements have led us to this conclusion:

- First of all, one might state the absence of a comprehensive national report regarding the subject. Ordinarily, anyone interested in understanding the human rights situation in our country is faced with the need to apply to several sources, in other words, the CNDH report, reports by Human Rights State Commissions, National and International government organization's informs, dedicated to the pursuit of mexican issues, reports by special rapporteur presented within the framework of the United Nations system, or those created in the environment of the Inter-American System.
- In second place, one may point out, considering the diverse sources, *a lack of a homogenous method or reference method* during the development of said reports, which can have two consequences. First, if one does

* President of the National Commission of Human Rights.

not resort to quantitative methods in order to produce reports related to the issue of Human Rights and, on the contrary, random or “second hand” information, certain reports might contain prejudiced information and conclusions, without a methodological or analytical backup. Second, when one resorts to quantitative methods that are not based on scientific standards, there is a risk of falling in the “war of the numbers”. In fact, we might face the danger of diminishing the complexity of an issue such as Human Rights in Mexico and link it to the lack of emotion provided by numbers. Currently, we can infer the reality of the Human Rights situation in Mexico, however, there is no tool available that encompasses others and registers this scenario in a methodological, systematic and objective manner.

While supporting the importance given to the development of a human rights diagnosis by the National Commission, we must consider a third factor. Currently, the international inclination is to consider respect for human rights as a variable factor within the development assessment performed by countries. Enforcement of these rights is an intrinsic part of a sustainable human development, of democracy and stability. World Summits organized by the United Nations during the 90s are clear evidence of the development achieved in rights-based development. More recently, the United Nations Program for Development (UNPD) has included an analysis of the basic rights situation while creating its annual report on human rights. The task of the CNDH, specifically regarding the current Human Rights diagnosis project, could be viewed as one of the tools used to achieve the general objective.

While tracking and analyzing this tendency, the CNDH has decided to participate actively in what was come to be known as the “Montreaux Process”, launched by the International Conference on Statistics, Development and Human Rights (Montreaux, Switzerland, September 2000). This forum featured the participation of governments, official statistics agencies, investigation institutes, international bodies, non-government organizations, and national institutions for the advancement and protection of human rights. Once again, participants emphasized the importance of including the issue of basic rights within economic development. For this purpose, and in order to facilitate this process, the development and application of tools such as statistics and indicators was pinpointed as a critical step.

Based on this premise, the National Commission of Human Rights, as an independent constitutional body, seeks to assist the State, in other words, society and government, acting as a link between international tendencies in human rights and the national setting, where these rights must be protected and promoted.

In conclusion, it could be argued that the development of a consistent diagnosis on the situation of human rights in Mexico, using a methodological coherence, statistical methods and indicators based on internationally accepted standards, offers the following advantages:

1. Reports developed will exhibit a larger representation at a national level and will be based on objective information.
2. Information attained in this manner may be easily verified.
3. The information acquired will contribute to the encouragement of transparency and the responsible use of public information.
4. All previous points will reinforce the country's current political accessibility.
5. Will also consolidate the independence of the CNDH and of the Human Rights State Commissions, since the method used to create the diagnosis would be certified by work standards established by international bodies, as well as other institutions, both private and public, dedicated to the protection and promotion of human rights.
6. Will reinforce the value of the non-judicial system for the promotion and defense of human rights as a reference point, especially in processes of political change.
7. Mexico will be included in international tendencies regarding human rights.

The main objective of this project is to use data and statistical indicators as a "tool" to assess the progress achieved regarding human rights in Mexico.

The purpose of this project is to assess in a quantitative and qualitative manner, through tools such as statistics, the degree of compliance and respect exhibited by government agencies towards different human rights acknowledged by Mexican law.

Results obtained by specific measures or activities taken by the state with the purpose of enforcing human rights can be measured, at first, by the degree in which the state assists or has assisted, within a certain period of time, those groups which have previously not enjoyed those rights.

This assessment requires the development of several standards for each established right in regards to the different resources or social/developmental contexts. For this process, the collaboration of different political and civilian actors is required in order to achieve the unification of concepts and achievements for each assessment.

The assessment of human rights requires a wide range of disaggregated data due to the existence of a great amount of variables, such as gender, race, religion, social level, etc. In order to achieve a accurate monitoring system, it is necessary to obtain access to adequate and high-quality statistical data in terms of desegregations.

A human rights diagnosis in Mexico, created using statistical data and indicators, is an instrument with several specific objectives:

- a) To develop and maintain a permanent information system, which will be endorsed and applied by the different bodies in Mexico and abroad.
- b) To carry out quantitative and qualitative assessments focused on priority issues (torture and ill-treatment, enforcement of justice, indigenous people, immigrants, etc.)
- c) To determine the degree in which the State has fulfilled its obligations regarding the issue at hand.
- d) To publish periodical reports about selected issues.
- e) To strengthen the institutional capacity of the CNDH in order to assess fulfillment of human rights in our country, meanwhile acquiring experience and assessment tools.
- f) To develop an innovative information management system. It will not only compile information but, rather will also offer the useful tools to carry out the analysis. Everything will be to the reach of the society, the government and the instances that integrate the non jurisdictional system for protection and promotion of human rights.
- g) To establish trends, underscore political priorities and their application.
- h) To reinforce institutional capacity in terms of national leadership within the human rights arena.
- i) To interact in the international process in order to facilitate the reproduction of an experience and build a reference (pilot activities and publication of a manual of policy-oriented conclusions).

As a first step in the initial phase of the diagnosis development project, the CNDH has decided to carry out a seminar on Human Rights indicators in order to strengthen scientific methods and measure tools for a national diagnosis.

The seminar provides an opportunity to carry out a multidisciplinary exchange of ideas among CNDH experts, other national actors and foreign experts regarding experiences and technical progress achieved in this arena. The CNDH will present a practical case about torture which will be the focal point of the Seminar. This compilation of information will contribute to the design of further activities by the CNDH in regards to this issue.

In addition, this Seminar will contribute towards the establishment of similar activities in other countries. Foreign expertise will be mobilized through the network established since the Montreaux Process. The implementation of the diagnosis will serve as a pilot exercise that will benefit similar initiatives throughout the world.

In brief, the National Commission for Human Rights hopes to achieve the following objectives:

1. To provide a launching pad for a *national dialogue* on national human rights matters, under the leadership of the Mexican CNDH;
2. To contribute towards the definition of the *scope* of the national human rights diagnosis in terms of the concepts that will be applied (segmentation dimension) and will establish priorities for this first activity;
3. To explore the feasibility of the diagnosis in terms applied *quantitative methodology*;
4. To contribute towards an *international viewpoint exchange* regarding similar initiatives that are currently carried out or are under consideration (comparative dimension);
5. To establish a *basis for international technical support* in order to develop the following stages of the project;
6. To consider the *replication effect*, at a national and international level, influencing indicator development in Human Rights;
7. To establish a *program and resources* required to implement the project's ensuing stages.

Thank you very much.

SPEECH OF THE OPENING SESSION

*Dr. Marcus Kaiser**

Mr. President.
Ladies and Gentlemen,

It is an honor for me, Mr. President, to have the chance to say a few words during the opening session of the “International Seminar on Indicators for Human Rights”. Allow me to congratulate both you and the Commission for holding this Seminar, organized so meticulously in collaboration with international bodies and foreign agencies. I accepted this invitation with great pleasure and a keen interest, since, the reason that we are gathered today in the beautiful city of Merida —advancing and monitoring the cause of human rights—, represents one of my country’s main concerns regarding internal policy as well as external policy issues.

HUMAN RIGHTS UNIVERSALITY AND INTERDEPENDENCE

As all of you might recall, the debates which occurred during the World Conference on Human Rights, held in Vienna in 1993, revealed the remarkable differences that existed at the time between industrialized and Southern countries.

Although these disparities are still notorious in certain regions of the world, it is also true that, as a result of the Vienna Declaration, the international community, as a whole, has managed to strengthen the authority of the “Universal

* Ambassador of Switzerland in Mexico.

Declaration of Human Rights” and establish a solid agreement regarding the universality and interdependence of these rights. Since Vienna, it has been clearly established that ”all human rights are universal, enduring, interdependent and closely connected amongst each other”. In addition, Vienna brought about the acknowledgment of the entitlement to development as a basic right. The final Declaration emphasizes the fact that poverty is a hindrance for the respect towards human rights, but it also states that “insufficient development cannot be used as a justification for a limitation of human rights which have been acknowledged at an international level”.

During the past few years, a series of World Summits and World Conferences (from Cairo, to Peking, and Rio de Janeiro to Copenhagen) have witnessed the international community’s determined steps towards a process of analysis and specification in regards to the conceptualization of human rights, originally created in Vienna.

SWITZERLAND’S COMMITMENT TOWARDS THE ADVANCEMENT OF HUMAN RIGHTS

For my country, the participation in the Conference as well as the following World Summits and Conferences has involved a solid and constant commitment, not only regarding internal policies, but also in regards to political and cooperative relations with other countries. Therefore, since the beginning of the 90s, the advancement of human rights, of democracy and the rule of law has been one of the main five main priorities of Switzerland’s foreign policy.

Specifically, all political dialogue between Switzerland and other countries includes a conversation regarding the human rights situation, in which international commitments that have been agreed upon are brought forth and important aspects of the national program for the advancement of human rights are discussed. In fact, on occasion, even certain cases and troubling issues are brought up. In addition, within the framework of cooperation for development and humanitarian assistance policies, Switzerland provides technical and financial help for specific projects destined to promote the respect towards human rights and an internal political dialogue.

Considering the issue that brings us here today, I find it appropriate to briefly outline a few basic aspects behind the commitment towards the advancement

of Human Rights, which we established in Switzerland. As you well know, today it is believed that the respect towards human rights, democracy and development are three interdependent concepts that are mutually reinforced. To us, this means that:

- in the first place, the application of human rights must be an objective of the development process;
- in second place, the minimum respect for basic liberties and rights is both an indispensable element as well as a factor of encouragement of the development process;
- and, in third place, development can contribute in a substantial manner towards the respect of human rights.

It is also appropriate to point out that, according to our definition, human rights are based on the inherent dignity of all people and are inalienable. Therefore, it is our understanding that “human rights” are a group of rights that, through public recognition and respect, will allow each person to achieve his or her fulfillment as a human being. This concept not only includes civil and political rights, but also economic, social and cultural rights, as well. In our point of view, although economic and social development promotes and increases the respect for human rights, it is also true that a dynamic development cannot occur when human rights are systematically ignored.

FROM MONTREUX TO MERIDA: A CONCRETE WORK PROCESS

Switzerland’s concept and commitment largely explain the fact that two government institutions, the Swiss Agency for Development and Cooperation, the COSUDE and the Federal Office of Statistics, made the effort to jointly organize an international Conference on “Statistics, Development and Human Rights”, held in the city of Montreaux in September, 2000. The innovative aspect of this conference was the fact that, for the first time, specialists from different scientific areas, diverse environments, and institutional structures gathered in order to assess a crucial aspect within the advancement of human rights: monitoring methods. Specifically, the objective of the conference was

to examine the chances of an increase in statistical methods and an improved combination of quantitative and qualitative methods.

A year and a half later, I consider it appropriate to mention that the success of the Montreaux Conference doesn't lie so much in the fact that there was a gathering of 740 participants representing 123 countries, nor the quality of the 300 submitted texts, nor the intellectual richness of the debates. No, in fact, the real success of the conference was that it sponsored a specific work process and allowed for the creation of a global web of institutions and experts who, since then, have continued exchanging ideas and experiences oriented towards the development and application of new measuring and monitoring instruments for the fulfillment of Human Rights.

This is the true success of Montreaux: concrete follow-up measures based on Conference conclusions. After the initial exchange of ideas, today, throughout the five continents, serious efforts are being carried out in order to achieve material results. And this is exactly what the organizers wanted: to avoid having people consider Montreaux as a Swiss project, and more as the beginning of an internationally shared process, appropriate at a national level, specifically in countries where we find both the possibility as well as the usefulness of developing a more systematic monitoring system for human rights.

During the past few months, two important projects have offered us a clue in terms of the commitments and activities required to carry the Montreaux process to its highest degree of achievement. The first one was carried out by the European Commission, which organized a high-level international seminar regarding "intervention in democracy and government," that took place in the city of Munich in January, 2002. At that time there was an evaluation of a series of follow-up works based on the conclusions reached in Montreaux and carried out specifically in countries in the Southern Hemisphere. I understand that this seminar's results are so promising that an ambitious work program has been designed in order to have it implemented by an international consortium of government, no-government and academic organizations.

The second plan is Mexican: it is a project that you, Mr. President, will outline for us this morning: the establishment of a national diagnosis regarding human rights, for which it is necessary to select reliable indicators and to identify methods of quantitative and qualitative analysis. The development of this project and all of its features will be assessed by international experts who you have invited to this seminar. Although this isn't my area of expertise, I would like to point out the exemplary nature of this project.

In the first place, the National Commission of Human Rights undertaking, structured through dialogue with national and international experts, materialized in the form of a pilot project. In second place, I believe it is important to understand the magnitude of the dialogue and the involvement process required by this project, specifically regarding academic circles and Mexican non-government institutions. In third place, we should point out the formality required to create a tool used as a scientific auxiliary and international complement of the project. Well, it's important to emphasize the intention of collaborating with international experts and applying the lessons derived from this pilot project, a human rights diagnosis model that could be applied in other countries by other institutions similar to the National Commission of Human Rights.

Evidently, the task will not be easy. The issue selected as a starting point for this activity –torture and ill-treatment- is extremely sensitive and it undoubtedly implies huge measuring complexities. However, I believe that the formality of the work carried out by the Commission during these past years, as well as the commitment by experts and institutions participating in this Seminar are strong enough motives to trust this project and support it decisively.

Therefore, the two institutions that laid the foundation for the Montreaux Process, the Swiss Agency for Development and Cooperation, and the Federal Office of Statistics, have decided to provide, each one resorting to the means of their respective bodies, a financial contribution destined to support the participation of international experts, as well as technical and scientific counselors for the development and organization of the Seminar. In the case of COSUDE, it is the amount of 80,000 francs, about 45,000 dollars, in order to cover the travel expenses of 21 international experts and, in this manner, demonstrate Switzerland's concrete interest and solidarity towards this important project. This support, offered with friendship and conviction, is a gesture of trust both in the relevance of the Commission's project as well as in the success of this Seminar.

All that is left is to wish you, esteemed Mr. President and distinguished participants, a pleasant, stimulating and rewarding Seminar.

INTRODUCTION “BACKGROUND AND PERSPECTIVES
OF THE SEMINAR IN THE SETTING OF
THE MONTREUX PROCESS”

*Lic. Raúl Suárez de Miguel**

The Montreux Conference was defined by Mrs. Mary Robinson as an attempt to set the bases for a science of human dignity through concrete actions. I would like to point out that the spirit of the conference has been maintained through a series of activities in the last few months and that it is important to remember this spirit and to keep it alive.

The Montreux Conference and the process which resulted from it seek to face the challenge of the poor monitoring methods that fail to define tendencies, establish estimates of the magnitude of human rights violations, or understand the real situation of realization or non-realization in space and time.

The Montreux proposal is to strengthen statistical methods, quantitative analysis and the generation of indicators; it is, thus, an initiative that is oriented towards the political aspects of the national and international agendas in terms of human rights. The Montreux Conference and the events that followed the conference constitute a learning process through concrete work and a dialogue among experts from different specialties. This process is characterized by a strong participation from two countries from the South, and for the first time we are attending international conferences, seminars, and work projects where more than half the work done comes from southern countries—a great novelty in the dialogue of the international community.

This process is characterized by two aspects:

* Secretary of the International Liaison Group for Follow-up of the Montreux and Munich Process, Swiss Federal Statistical Office.

1. A multidisciplinary dialogue in which specialists in the human sciences, statistics, human rights and development matters must try to establish a common work arena.

2. Trans-institutional dialogue, a process in which rationality and transparency join quality and coherence of a project that can result only from the contribution of different institutional actors: national administrations, government authorities, non-government organizations that are essential to the process, and the witnesses of the will, the desires and expectations of civil society, national human rights commissions, universities, research centers, and international organizations. I believe that if we consider the results of the conference, we must insist on the fact that we are in the middle of a process in which, for the first time, we are aware of the projects that are being developed around the world in terms of monitoring, that are using quantitative methods, experts who until the year 2000 had worked for years in this direction and did not know their colleagues in other continents but have formed a network, a scientific community that is studying the possibility of obtaining concrete results.

The most important thing is that the process is oriented towards doing concrete work within a given calendar and this is the commitment that all the participants in the process have made around an established agenda, with which we are working in this seminar.

If some of you wish to become acquainted with the aggregate of documents that were presented this time and those that will be presented subsequently, in other seminars, you will find all this material in our webpage. We have uploaded the 300 written collaborations from Montreux, as well as other contributions.

What lessons can we derive from Montreux for successive concrete action? In the first place, Montreux has demonstrated that there is an urgent need to strengthen professional methods and techniques for monitoring human rights. Those who are familiar with the history of human rights monitoring know that particularly non-governmental organizations have provided themselves with computer specialists, medical experts, and geographers in order to be able to produce more precise, more realistic information and analyses. Unfortunately, when it comes to estimates of a certain magnitude, there is a lack of professionalism and Montreux has demonstrated that there is an opportunity to transform the current monitoring and information systems into something much more systematic, much more powerful and useful that will allow us to measure the

evolution of tendencies. Today, it is not enough to point to a specific case of torture or violation in a country. What is useful and important in evaluating the responsibilities of the states is to be able to measure the evolution of the situation in terms of human rights, to be able to produce indicators that can be informative and efficient in helping us convince authorities and inform society on the real status of the situation.

Montreux has had a series of lines of action that have conditioned a series of concrete actions. For example: since the end of the Montreux Conference certain initiatives have traced a path for the whole process. First of all, I would like to point out the development of a survey on social awareness in terms of human rights, a pilot project that is being developed in Angola, which we will be discussing in this seminar. I would also like to point out that, after the Montreux Conference, European and African experts have been able to carry out a series of surveys seeking to measure democratization, governability and respect for human rights. These surveys today constitute the most advanced technical instrument in the world for the identification of the situation of families in these countries based on survey data.

A high scientific research project has also been developed on the possibility of crossing information. The current situation is that there are many sources of information and degrees of reliability, however, adequate mathematical and statistical methods can be crossed in order to obtain clearer and more complete information on the situation.

The creation of national action platforms where National Human Rights Commissions that are analogous to the Mexican Commission are working with non-governmental organizations and statistical institutes, particularly in the Philippines, Kosovo and South Africa. Some of these experiences are also being presented in this seminar. I would not like to pass over an experience that I consider exemplary and from whose result there can come about some international scientific cooperation; this is an exercise that has been conducted by experts from the American Association for the Advancement of Science, who promised to prepare a report on crimes of war against humanity committed in Kosovo under the political authority of former president Slobodan Milosevic. The report was presented as a charge in the process against Milosevic and was discussed on January 12; it is the result of the serious work of American scientists.

A group of experts has been asked to function as a group of critical accompaniment in every phase of preparation of the report. It is currently available

in the webpage on the Internet, as are the presentation and discussion between the person responsible for the project and the defendant, Mr. Milosevic. This is a unique document on the usefulness of statistical and monitoring methods in creating real testimony in a human rights violation situation. The initiative of the European Community on the measurement of democracy and governability has given rise to the creation of an international consortium and a program that is currently being prepared and for which the seminar in Merida is essential. We hope this seminar will allow us to prepare a model for a pilot project under the leadership of the Mexican Human Rights Commission which, in collaboration with the structure of scientific accompaniment, can be followed as a model for the elaboration of similar experiences in other countries.

We are currently assisting a process of operation of the Montreux and Munich process that essentially consists of the consolidation of the network of institutions and experts that was created in Montreux, which has continued growing and will continue to do so thanks to this seminar, taking root in Mexico and other parts of the world. I wish to insist on the particular character of this work method and on the network that presides over this initiative.

We are interested in bringing together institutions of different configurations and vocations, such as national statistics institutes—in Mexico it would be the INEGI (the National Institute of Statistics)—, universities, research centers, non-governmental organizations, ministries and organizations in charge of social development, and national human rights commissions. The latter are, as Dr. Soberanes reminds us, in 32 countries of the world autonomous constitutional organizations that do not belong to the government, but that do not have the same vocation as a non-governmental organization. These organizations must learn to communicate and work together both nationally and internationally. I insist on the fact that the vocations are different, the missions are very different, but the competencies and the type of work each of these institutions does is complementary and can be collected in a joint effort. I believe that the examples I have mentioned are eloquent testimony of this possibility and I insist that this must come into being at a national level. This process must grow and develop based on national needs before it can be integrated into the international plane.

Experts who attend this seminar hope to be able to contribute to a dialogue with Mexican experts in the preparation of a concrete project. Let this not be merely an academic discussion, but truly the preparation for concrete work, for

a dialogue and mutual error correction among international and national experts. We hope, Mr. President, that with this seminar we are launching a process for institutional dialogue in Mexico among non-governmental organizations, academic organizations, government organizations and Human Rights Commission.

We hope to be able to continue, after this seminar, with the concrete steps for the realization of this pilot project that will receive and benefit from international support and orientation for the formulation of a model. We also hope and trust, Mr. President, to have a great capacity for programming and action after this seminar, as we shall have a series of concrete steps to take, with a great deal of participation and dialogue, but also a great deal of work.

FIRST SESSION

COMPARING THE REQUIREMENTS FOR DEVELOPING INDICATORS FOR CIVIL AND POLITICAL AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS

*Audrey R. Chapman, Ph. D.**

INTRODUCTION

There has been increasing awareness in recent years that the ability to undertake systematic monitoring of the major international human rights instruments is central to the achievement of a meaningful international human rights system. Otherwise, countries cannot assess their own performance in promoting meaningful realization of the enumerated rights. Furthermore, without effective monitoring, states cannot be held accountable for implementation of, or be made liable for violations of, these rights. Monitoring state compliance with international human rights standards, however, is an exacting process with numerous political and methodological requirements.

The development of indicators is central to this process of developing the capacity for measuring the implementation of both the rights categorized as civil and political rights and those characterized as economic, social, and cultural human rights. As the *Human Development Report 2000* states, "Information and statistics are a powerful tool for creating a culture of accountability and for realizing human rights."¹

Indicators may be defined as a set of information standards for systematically assessing the status of implementation of a particular right. They provide

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¹ United Nations Development Programme, *Human Development Report 2000* (New York and Oxford: Oxford University Press, 2000), p. 10.

an instrument or tool for evaluation, a yardstick to measure results and to assess realization of desired levels of performance in a sustained and objective way.² Another way to view human rights indicator is as “a piece of information used in measuring the extent to which a legal right is being fulfilled or enjoyed in a given situation.”³ Indicators may be based on quantitative or qualitative information.

TRADITIONAL DISTINCTIONS MADE BETWEEN THE TWO CATEGORIES OF RIGHTS

Indicators measure the performance of particular rights. Therefore the conceptualization of the nature, scope, contents of the particular right for which indicators are being developed is a prerequisite for developing all indicators and monitoring strategies. It is also important to anticipate the most common violations and develop indicators to monitor such.

Historically, human rights analysts conceptualized civil and political rights and economic, social, and cultural rights as fundamentally different in character. By implication, it was assumed that the two types of rights would therefore require different approaches to developing indicators.

Some of the salient differences between the two categories of rights claimed in the classical literature on human rights include the following:

- Typically, civil and political rights were categorized as negative rights, that is, rights primarily requiring only forbearance on the part of others. In contrast, economic, social, and cultural rights were seen as positive rights imposing a series of duties on the state. It was therefore assumed that civil and political rights were virtually free of cost and hence affordable for all countries whatever their level of economic development. However, because economic, social, and cultural rights required the ex-

² This definition is adapted from Ilan Kapoor, “Indicators for Programming in Human Rights and Democratic Development: A Preliminary Study,” Political and Social Policies Division, Policy Branch, Canadian International Development Agency, July 1996.

³ Maria Green, “When We Talk about When We Talk about Indicators: Current Approaches to Human Rights Measurement,” *Human Rights Quarterly* 23 (2001): 1065.

penditure of considerable resources, many analysts assumed that only more affluent countries had the means to provide economic, social, and cultural rights.

- Civil and political rights were considered to be immediately binding in full on all states parties, that is the states which had ratified or adopted the relevant instrument. Article 2 of the International Covenant on Civil and Political Rights, for example, specifies that states parties have an immediate obligation to respect and ensure all enumerated rights.⁴ In contrast, economic, social, and cultural rights were subject to the standard of progressive realization whereby a state could gradually implement the rights over time. Article 2(1) of the Covenant on Economic, Social and Cultural Rights mandates states parties “to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”⁵
- These assumptions meant that the two categories of rights would require different evaluation standards. Monitoring civil and political rights required ascertaining whether or not they were being implemented; it was all or nothing. Evaluating the implementation of economic, social, and cultural rights according to the standard of progressive realization within the context of “the maximum of available resources” was considerably more complex.⁶ Firstly, the progressive realization benchmark assumes that valid expectations and concomitant obligations of state parties are not uniform or universal, but instead relative to levels of development and available resources. This necessitates the development of a multiplicity

⁴ International Covenant on Civil and Political Rights, adopted 16 December 1966, 99 U.N.T.S. 171 (entered into force 23 March 1976), G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).

⁵ International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976), G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), Art. 2 (1).

⁶ For a fuller discussion, see Audrey R. Chapman, “A ‘Violations Approach’ for Monitoring the International Covenant on Economic, Social and Cultural Rights,” *Human Rights Quarterly* 18 (1996): 29-36.

of performance standards for each enumerated right in relationship to the varied social developmental, and resource contexts of specific countries. Secondly, measuring progressive realization not only requires an assessment of current performance, but also a determination of whether a state is moving expeditiously and effectively towards the goal of full implementation. In principle, this requires time series data, perhaps at five-year intervals, collected in a uniform manner and preferably disaggregated for specific societal groups. This is a formidable task.

- Another misconception was that measuring violations was relevant primary or only to civil and political rights. It was assumed that the “progressive realization” standard for economic, social and cultural rights precluded identifying clear-cut violations of these rights.

CHALLENGING THESE STEREOTYPES

Recent work based on a more sophisticated conceptualization of these two categories of rights, however, has challenged these characterizations and the assumptions on which it is based.

- It has become recognized that all human rights require both restraint and positive action on the part of the state. The right to protection against torture, for example, was frequently advanced as the archetypal negative right requiring “nothing more” than the state to refrain from incursions on personal liberty and bodily integrity. Now it is now realized that effectively guaranteeing this right as a practical matter in almost all cases requires significant policy initiatives, such as, the appropriate training, supervision, and control of the police and security forces.⁷ The balance between the negative and positive elements depend on the nature of the specific right and historically contingent circumstances.⁸ Guaranteeing the right to education, for example, imposes very different requirements where there is already a system of universal education in place and coun-

⁷ Jack Donnelly, *Universal Human Rights in Theory & Practice* (Ithaca and London: Cornell University Press, 1989), p. 33.

⁸ *Ibid.*

tries where there is not. Similarly, assuring the right to food security in an affluent country with an abundance of food available is a fairly minimal task, mainly requiring the government from implementing problematic policies that reduce access to food, compared with the duties in a poor country with major problems of malnutrition.

- It follows from this analysis that implementation of all human rights imply expenditures on the part of government. Some civil and political rights require major investments of funds, such as establishing and maintaining a judicial system capable of ensuring the right to a fair trial. A few economic and social rights, for example ensuring the rights to organize trade unions and to strike, may be relatively inexpensive for the state to oversee.
- Even the dichotomy between immediate (civil and political rights) as compared with gradual implementation requirements (economic, social, and cultural rights) has been rethought. Research on many civil and political rights has shown that full implementation is a complex and gradual process. It is therefore important to develop indicators to measure the extent of realization. On the other side, the evolving jurisprudence on economic, social, and cultural rights recognizes that elements of these rights create an immediate duty on the part of the state and therefore are not subject to the progressive realization standard. Just as under civil and political rights, states parties have the immediate obligation to ensure nondiscrimination and the equal enjoyment of a right.⁹ The U.N. Committee on Economic, Social and Cultural Rights has also established that there is a “minimum core content” with regard to each economic, social, and cultural right that all states parties are obligated to fulfill. In its third General Comment, the Committee declared itself to be “of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every state party.”¹⁰ It also emphasized that “ the obligations to monitor the

⁹ Obligations under articles 2(2) and (3) state that nondiscrimination is not subject to progressive realization.

¹⁰ Committee on Economic, Social and Cultural Rights, “General Comment 3: The Nature of States Parties Obligations (Art. 2(1),” Fifth Session , reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* , UN Doc. HRI/GEN1, 1992, par. 10.

extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints.”¹¹ In its recent substantive general comments it has begun to set forth the content of this minimum core content or core obligation. In some cases, such as its general comment on the right to health, these obligations are quite extensive.

- Current monitoring of both categories of rights tends to focus on identifying violations. Few monitoring bodies, including the Committee on Economic, Social and Cultural Rights, attempt the arduous task of attempting to assess progressive realization of specific rights. The 1986 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, formulated by a group of distinguished experts in international law, defined a violation as a failure by a state party to comply with an obligation contained in this instrument.¹² It recognized that these failures might be acts of either commission or omission. On the tenth anniversary of the Limburg Principles, a second group of international experts (including this author) met in Maastricht (formerly Limburg) in the Netherlands to develop guidelines regarding the nature and scope of violations of economic, social and cultural rights and identify appropriate responses and remedies. Building on the Limburg Principles, the Maastricht Guidelines affirm that “As in the case of civil and political rights, the failure by a State Party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty.”¹³ To determine whether an action

¹¹ *Ibid.*, par. 11.

¹² The principles and a series of related papers are found in “The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights,” *Human Rights Quarterly* 9 (1987): pp. 121 – 135. The remainder of the issue is devoted to a commentary and working papers from experts who participated in the meeting.

¹³ Par. 5, The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, formulated in Maastricht from 22-26 January 1997 by a group of more than thirty experts convened by the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute of Human Rights (Cincinnati, Ohio), and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands), hereinafter the Maastricht Guidelines. The Maastricht Guidelines are reprinted in *Economic, Social and Cultural Rights: A Compilation of Essential Documents* (Geneva: International Commission of Jurists, 1997), pp. 81-91.

or omission amounts to a violation of a right, the Maastricht Guidelines distinguish between the inability and unwillingness of a state to comply with its treaty obligations. Nevertheless, the Guidelines place on the state the burden of proving that it is unable to carry out its obligation.¹⁴

DIMENSIONS OF BOTH CATEGORIES OF RIGHTS

Recently, it has become established that all human rights have three dimensions or kinds of duties—to respect, protect, and fulfill. This triad is more typically referred to in the context of economic, social, and cultural rights, but it also applies to civil and political rights. Systematic monitoring of a specific right requires developing indicators for each of these three elements. The literature on human rights delineates these duties as follows:¹⁵

- The duty to respect is to not deprive people of a guaranteed right. Another way to put this is that states are under the obligation to refrain from directly or indirectly interfering with the enjoyment of a right by denying or limiting access, blocking equal treatment for all people, or enforcing discriminatory practices. For example, respecting a person's right not to be tortured is linked with policies that refrain from the use of torture. Similarly, a government respects the right to health by abstaining from enforcing discriminatory practices as a state policy that would deny or limit equal access for all persons to curative and palliative health services, including prisoners or detainees, minorities, asylum seekers, and illegal immigrants.
- The duty to protect is the state's obligation to not allow others deprive people of the guaranteed right. For example, a government has a duty to

¹⁴ *Ibid.*, par. 13, p. 85.

¹⁵ For a discussion of these elements see the Maastricht Guidelines. The U.N. Committee on Economic, Social and Cultural Rights has used this classification in writing its most recent general comments. See, for example, General Comment No. 14: The right to the highest attainable standard of health (art.12), Committee on Economic, Social and Cultural Rights, Twenty-second session, 25 April- 12 May 2000, E/C.12/2000/4.

prevent any groups in society, whether renegade units of the security forces, paramilitary forces, or corporations from interfering with the right of the liberty or security of persons. Similarly, the government has a responsibility to prevent others within their jurisdictions from infringements of the right to health, for example the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.

- The duty to fulfill is to work actively to implement the requirements of a right. This requires a government to establish the political infrastructure and policies that provide access to the guaranteed right for all members of the population. For example, fulfillment of the right to free elections depends on the establishment of electoral infrastructure and provision of the right to education imposes a duty for the government to see that a school system providing free and compulsory primary education is in place.

One implication of this conceptual approach to human rights is the need to develop indicators both to measure obligations of conduct (inputs) and obligations of result (the extent to which specific societal groups are enjoying specific rights). Indicators to evaluate obligations of conduct would likely be both qualitative in nature, assessing the existence of types of policies and laws, and quantitative, for example measuring financial expenditures. Indicators related to obligations of result are more likely to be primarily statistical in nature.

STATISTICAL AND QUALITATIVE INDICATORS

There are two kinds of frequent misconceptions related to statistical indicators. Many experts and scholars, even those working in the human rights field, assume that the term indicator refers primarily or exclusively to statistical information. For example, Danilo Türk, the U.N. Special Rapporteur on the Realization of Economic, Social and Cultural Rights, defined the word indicator as referring “to statistical data which attempt to provide or ‘indicate’” (usually based on some form of numerical quantifications) the prevailing circumstances at a given place at a given point in time.” He went on that “An indicator is not

just a statistical series but a statistical series plus a set of assumptions.”¹⁶ Similarly, the report of a 1998 U.N. workshop on “Benchmarks for the Realization of Economic, Social and Cultural Rights,” describes indicators as essential statistical in nature, with subject matter that must be potentially quantifiable in both a technical sense and in practical terms as well.¹⁷

A second misconception is that statistical indicators are relevant only to evaluating economic, social, and cultural rights. It is commonly assumed that civil and political rights use “thematic” or qualitative indicators. In fact, as noted above, the process of monitoring both categories of rights requires the use of qualitative and quantitative indicators.

A recent review of the literature and actual procedures in place done by Maria Green at the request of the United Nations Development Programme shows that in practice bodies dealing with civil and political rights often make considerable use of statistical information.¹⁸ The U.N. Committee on Civil and Political Rights, for example, frequently requests statistical data of various kinds from states parties on such matters as the state of prisons; complaints filed, prosecutions, convictions, and sentences of members of the political and security forces for abuse of power; the participation of women in the conduct of public affairs.¹⁹ The U.N. Committee Against Torture uses statistical data as well. In providing instructions to states parties on reporting requirements, this Committee specifies that its report should provide any information on concrete cases and situations where measures giving effect to those provisions have been enforced including any relevant statistical data.”²⁰ In addition, the Committee on the Rights of the Child makes extensive use of statistical

¹⁶ Danilo Türk, “The New International Economic Order and the Promotion of Human Rights”, Progress report prepared by Mr. Danilo Türk, Special Rapporteur, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 6-32 August 1990,E/CN.4/Sub.2-1990/19. par. 4.

¹⁷ Philip Alston, “Concluding Observations, in Benchmarks for the Realization of Economic, Social and Cultural Rights”, a Round-Table Discussion Organized by the High Commissioner for Human Rights, Geneva, 25 March 1998.

¹⁸ Green, “What We Talk About When We Talk About Indicators,” pp. 1091-2.

¹⁹ *Ibid.*, p. 1092.

²⁰ Joseph Voyame, “The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” *Manual on Human Rights Reporting* (New York: United Nations, 1991), p. 178.

information, including data relevant to the civil and political rights that fall under its jurisdiction.²¹

Conversely, bodies overseeing economic, social and cultural rights often rely on qualitative information. The reporting requirements for the Committee on Economic, Social and Cultural Rights include extensive information about public policies and measures taken to implement each enumerated right. The Committee also requests detailed information about legislation affecting the realization of specific rights.²²

It is also relevant to note the manner in which truth commission processes may affect the use of indicators in the civil and political rights field. Typically, truth commissions have a mandate to study gross abuses of select civil and political rights over a period of years in order to ascertain their magnitude, the groups affected, and patterns over time in order to be able to draw conclusions about causes and perpetrators. These efforts require vast data collection efforts based on standardized instruments, complex information management systems, and sophisticated statistical analyses of the data. Every stage of this undertaking would be facilitated if informed by the development of appropriate indicators. To date, though, this has rarely occurred.

UTILIZING INDICATORS FOR HUMAN RIGHTS MEASUREMENT

Development and application of indicators should be viewed in the context of the requirements for systematic monitoring of human rights. Systematic monitoring of both categories of rights has five preconditions:

- 1) full conceptualization of the specific components of each enumerated right and the concomitant obligations of states parties;
- 2) delineation of performance standards related to each of these components in the form of indicators making it possible to assess realization of specific rights, particularly to identify problems and potential major violations;

²¹ Green, "What We Talk About When We Talk About Indicators," p. 1093.

²² Philip Alston, "The International Covenant on Economic, Social and Cultural Rights," in *Manual on Human Rights Reporting*, pp. 39-77.

- 3) collection of relevant, reliable, and valid data, appropriately disaggregated by sex and a variety of other variables, in a consistent format over time, making it possible to evaluate trends;
- 4) development of an information management system for these data to facilitate analysis of trends over time and comparisons of the status of groups within a country;
- 5) the ability to analyze these data utilizing appropriate methodologies.

These requirements have important implications for the development and use of indicators. Development of valid and useful indicators depends on having a full conceptualization of the right being evaluated. While this may seem obvious, in the history of human rights work some experts have assumed that the reverse might be possible: that the development of indicators might serve as a short cut to achieving a better understanding of the right in question.²³

There is frequently a trade-off between simplifying the process of measurement by using as few indicators as possible and developing a fuller set of indicators to measure all major components of the right being considered. Obviously, a more comprehensive set of indicators usually offers a more accurate assessment of the status of the right. On the other hand, a greater number of indicators increases the task of obtaining and analyzing relevant data. Making the requirements for undertaking data collection and trend analysis more complex, may also deter many nongovernmental actors and human rights treaty making bodies from attempting to use indicators.

No matter how good the indicators, human rights measurement is completely dependent on the availability of good quality, appropriate data. This suggests that there may be a kind of dialectical relationship between the development of indicators and the reform of data collection efforts. In some cases it may be necessary to match the development of indicators to existing data. In many instances, though, it will be preferable to use the indicators as a basis for reforming and improving statistical and other data collection systems.

²³ One of the main recommendations of Danilo Türk was to develop indicators for social, economic, and cultural rights in order to stimulate clearer conceptualization. An expert working group convened to do so concluded that conceptualization was a precondition to developing indicators. See Report on the Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights, UN Doc. A/CONF.157/PC/73 (1993).

It is difficult to overestimate the importance of conducting human rights analyses on the basis of appropriately disaggregated data, and indicators should therefore be developed that lend themselves to such analysis. National averages reveal little about the situation of specific groups and communities within a country. To be meaningful in human rights terms, measurement needs to be highly disaggregated into relevant categories, including gender, race, region, socioeconomic group, linguistic group, and geographic area, and be able to analyze the status of vulnerable and disadvantaged communities.

Finally, developing valid indicators and collecting appropriate data is but a prelude to processing and analyzing this information. While this may seem obvious, this is often the most problematic stage of the process of human rights monitoring. For example, many human rights commissions breakdown precisely at this point.

CONCLUSION

So is there a distinction in kind between appropriate indicators used for civil and political rights and economic, social and cultural rights? This review has emphasized similarities in the requirements for valid indicators to measure the two categories of rights. Others have come to similar conclusions.²⁴

²⁴ Green, "What We Talk About When We Talk About Indicators," p. 1097.

HUMAN RIGHTS PERSPECTIVE ON DEVELOPMENT INDICATORS

Areli Sandoval Terán *

The purpose of this paper is to offer to the *International Seminar on Statistics and Indicators for a National Human Rights Diagnosis*, the indicators developed and used by the Social Watch International Network for monitoring and follow-up the Copenhagen commitments agreed by governments since 1995 during the World Summit on Social Development. The description of the methodology is based on the section dedicated to this purpose in the Social Watch Report number 4 published in the year 2000.¹

SOCIAL WATCH, AN INITIATIVE DESTINED TO MONITOR
AND OFFER FOLLOW-UP REGARDING SOCIAL DEVELOPMENT MATTERS

Social Watch defines itself as a gathering point for civil organizations committed either to promote development or to defense human rights, which are concerned about social development, gender discrimination and occupied in monitoring public policies that have a direct effect on inequality and people who live in poverty.

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Equipo Pueblo, a non-governmental organization for the promotion of development since 1977, is the Social Watch focal point in Mexico. Website: www.equipopueblo.org.mx.

¹ 2000 Social Watch Report, pages 13 to 19. To see the annual reports and more information of the Social Watch Network, please visit: www.socialwatch.org.

The idea of starting a citizen monitoring process of social development policies began during informal consultations among participants of the development caucus held during the World Summit on Social Development (WSSD) which took place in March, 1995 in Copenhagen, Denmark, and the topic was addressed once more in September during the Fourth World Conference on Women, held in Beijing, China, as well as during a workshop sponsored by Novib in The Netherlands, from November 14 -16 of the same year.²

During the following years, the Social Watch initiative promoted the creation of a network of citizens and organizations throughout the planet mainly in order to supervise the fulfillment of responsibilities acquired by governments after the WSSD. Results of this supervision have been compiled in annual international reports since 1996 to this date. These reports have been made possible thanks to research and advocacy of several civil and social organizations from various South and North countries and to a wide variety of tables, charts, “chronometers”, graphs, and maps designed by the Third World Institute in Uruguay—where the Secretariat of the Network is based—, which, put together, depict the degree of progress or setback in regards to development goals.

Social Watch reports not only have been distributed at a national level, but have also been presented within the framework of the follow-up process of the Copenhagen Summit at the United Nations. For example, the Report for the year 2000 was launched during the Geneva 2000 Summit, also known as Copenhagen +5, and the 2002 Social Watch Report has recently been presented during the International Conference on Financing for Development held in Monterrey, Mexico from March 18 - 22.

Currently, the Social Watch international network has expanded throughout every continent in the world and it is present in 60 countries through its national coalitions.

INTERNATIONAL REPORTS OF SOCIAL WATCH AS A TOOL FOR DIAGNOSIS, ASSESSMENT AND ADVOCACY

Social Watch international reports are divided in three sections and a separate poster:

² Social Watch Report number 0: The Starting Point.

- an analysis section about topics such as: the foreign debt crisis, structural adjustment programs and their social repercussion, income concentration in certain areas in the world, etc. according to issue priorities defined by the network and which are addressed by specialists of the same civil organizations belonging to the network or other institutions with a similar goal as Social Watch.
- a section of national reports elaborated by civil organizations from each of the countries that are members of Social Watch; reports based on some editorial guidelines prepared by the secretariat of the network that offer methodological assistance, but allow each national coalition to determine issue priority that best reflect the country's level of progress. Beside the charts and graphics presented by the authors of the national reports, the editorial team in Uruguay can introduce a common graphic in each national chapter. For instance, in the 2000 Social Watch Report, national reports were accompanied by a "diamond" graphic which reflects the situation regarding four indicators: death rate among children below the age of 5, literacy, Gini Rate and Development Rate related to Gender (IDG) of the United Nations Development Program (UNDP). The number allows us to compare a "diamond" developed upon the basis of corresponding average data of the region's countries (or the economic group it belongs to) with another graphic designed through indicators of the relevant country. In each point, if the country's value is farther apart from the center than the value of the region or group, this means a better situation than the neighboring countries' average (or those belonging to the same economic group), if it's closer it indicates the contrary. In brief, the larger the country diamond, better its the measured situation compared to the region's one.
- a section with tables, charts, maps and other graphs that illustrate degree of progress, of setback and even of political willingness of governments towards social development and gender equality commitments. This part is elaborated by the secretariat of the network, which, throughout the years, has developed a measuring methodology with indicators based on government commitments and goals.
- and a separate poster with some tables, charts, maps and/ or other graphs selected from the previous section.

THE BASIS OF THE HUMAN RIGHTS PERSPECTIVE IN SOCIAL WATCH WORK

The basis of the human rights perspective in Social Watch work is the recognition of the direct relation between social development and economic, social and cultural rights.

As was emphasized in the Social Watch 1996 Report, the main commitment in Copenhagen was towards poverty eradication, not only its reduction, thus the political relevance of commitments made by world governments. Social Watch's human rights perspective manifests itself through the fact that it doesn't consider people who live under poverty conditions simply as "people who need help" but as "citizens who universally deserve development as a human right and, thus, to civil, political, economic, social and cultural rights." In this sense, development indicators used by Social Watch also reflect the degree of deterioration or realization of human rights in different parts of the world. Since then, Social Watch is also committed "to join efforts with human rights NGOs and other interested groups in promoting the fulfillment of economic, social and cultural rights."³

Some of the Social Watch focal points in many countries, like Mexico, follow-up governmental development commitments from an economic, social and cultural human rights perspective.

REGARDING SOCIAL WATCH'S METHODOLOGY

The development indicators used by Social Watch are divided into those related directly to the goals established in Copenhagen (Table 1) and those that respond to a series of categories related to development (Table 2)⁴

³ 1996 Social Watch Report, page 28.

⁴ More information at www.socialwatch.org

Table 1. Indicators based on some commitments from the World Summit on Social Development

<i>Commitments established in Copenhagen</i>	<i>Examples of Indicator</i>
Enable environment	Gross domestic product per capita and its growth, foreign debt, foreign debt per capita.
Poverty eradication	Percentage of population under the international and national poverty lines, rural poverty, urban poverty income concentration per household, childhood malnutrition, drinking water, low weight in newborns
Full employment	Economically active population, male and female employment, unemployment, unemployment benefit expenses, illiteracy
Gender equality	Life expectancy, births, birth control methods, illiteracy, school enrollment (all classified by gender and age) maternal death rate, female employment
Africa and less developed countries	Direct foreign investment, foreign investment as a percentage of the GDP, HIV/AIDS, deforestation
Reform structural adjustment	GINI index, income distribution: between the 20% of the richest and 20% of the poorest in each nation
Increase resources	Distribution of public budget / expenditure, growth of social expenses, exportation and importation level, official development assistance (ODA) as a percentage of the GDP percentage, military expenditure and its growth.

Table 2. Indicators based on categories related to development

<i>Categories</i>	<i>Examples of indicators</i>
Communications	Radios, telephones, televisions
Human rights treaties	International Covenant on Economic, Social and Cultural Rights, CEDAW, etc.
Demographics	Life expectancy, total population, both rural and urban
Education	Illiteracy, male and female education level, number of teachers per student in rural and urban areas, public budget destined towards education
Environment	Deforested area
Health	Life expectancy, child death rate, doctors per 100 000 inhabitants, public budget destined towards health
Reproductive health	Use of birth control methods, pregnant women who have received medical attention, women who breast-feed, fertility
Nutrition	Calories, low weight in newborns, child malnutrition
Public budget/expenditure	Social budget, military budget, health budget, health, employment

Here begins the description of the methodology used in the 2000 Social Watch report⁵, which reviewed, after five years, the Copenhagen Summit and Beijing Conference and, therefore, is a more relevant contribution towards this Seminar on Statistics and Indicators for a National Human Rights Diagnosis.

⁵ Based on 2000 Social Watch Report, pages 13 to 17.

Three sets of charts were created for the 2000 Social Watch Report and they have been the basis for the supervision of indicators regarding commitments undertaken by all governments attending the World Summit on Social Development in Copenhagen, and the IV World Conference about Women, in Beijing. The first set provide follow-up to each goal established during the Copenhagen Summit, commitment by commitment. There is a summary table which corresponds to this group; it has been organized alphabetically and both progresses as well as setbacks are classified into six areas.

A second group of tables is composed by those who measure progresses and setbacks regarding objectives established for gender inequality, increase in social budget, reduction of the defense budget, increase in assistance, information availability and ratification of key agreements. Finally, a third group of tables organizes countries according to their situation and according to progresses and setbacks experienced in terms of selected indicators for that period.

Regarding sources:

- Although difficulties encountered from the beginning in order to obtain and manage data still prevail, adopted criteria have been maintained. Therefore, we continued to use the most recent source provided by any of the most renowned international bodies, and their data were assumed to be reliable, disregarding modifications which might have seemed surprising and which could lead to different interpretations or could be caused by several factors.
- considering the existence of alternative sources, we selected the one that possessed greater recognition of knowledge on the issue pertaining the relevant data;
- in the case of more recent data, they were not found in such sources, therefore, we opted for alternatives, in this case, “secondary” sources that would show, for these data, a greater systematic correlation to that which renowned sources had already published;
- when none of the previous criteria could be applied, that which offered a more comprehensive country coverage was selected.

Regarding the management of data for the estimation of progress indicators:

- when available data made reference to a period (for example, 1990-1994) and not to an individual year, the method adopted was to locate the information in the middle of that specific period (in this example, 1992) in order to reach an estimate;
- in those cases where, within the commitment, the goal was not assigned a numeric value, specific criteria explained below was applied accordingly;
- all cases where data and goals resulted in a reduction, were converted into achievements, both the data as well as the goals, although only in order to estimate our rate. This is due to the fact that we have favored a less demanding or more rewarding process when progress is detected, even though it also rebukes setbacks in a higher degree;

Regarding methodology used to generate the charts on the poster “Easier said than done”

- in tables related to “progress” and to “situation” which have been presented in the poster attached to the 2000 Social Watch Report, other evaluation tools for achievements and situations, were applied. These tools favor the indicators’ absolute values detaching them to goals. A ranking criteria which organized countries, not only according to their “situation”, but also their “progresses”, considering the average value of their own classifications, was adopted for these tables

GOALS AND FOLLOW-UP

Both the goals adopted by governments, as well as progresses or setbacks experienced in their regard, are evaluated in the 2000 Social Watch Report from the same perspective used in previous reports, this means goal by goal.

Indicators are based on the development goals, which are considered quantifiable:

- *Goal 1a*: By the year 2000, to achieve the completion basic education by a minimum of 80% of school-age children.
- *Goal 1b*: By the year 2000, provide universal access to basic education for school-age children.
- *Goal 2*: By the year 2000, increase life expectancy to over 60 years old.
- *Goal 3a*: Reduce death rate rates for children below one year of age to one third of its 1990 level or by 50 of every 1000 children born alive if this number is lower.
- *Goal 3b*: Reduce death rate rates for children below the age of 5 to one third of its 1990 level or by 70 for every 1000 children born alive if this number is lower.
- *Goal 4*: By the year 2000, reduce maternal death rate to half the level in 1990
- *Goal 5*: Achieve food security.
- *Goal 6*: By the year 2000, reduce severe and moderate malnourishment of children below the age of 5 to half the value obtained in 1990
- *Goal 7*: By the year 2000, achieve health service acces for all people.
- *Goal 8a*: Make reproductive health services available to all people (Assisted pregnancies for every 1000 infants born alive)
- *Goal 8b*: Make reproductive health services available to all people (Percentage of assisted deliveries)
- *Goal 9*: By the year 2000, reduce malaria-related death rate and disease by at least 20% of the 1995 levels in at least 75% of the affected countries.
- *Goal 10*: By the year 2000, control, eradicate or eliminate main diseases that represent a health problem at a world level.
- *Goal 11*: Reduce adult illiteracy rates by at least half the level in 1990.
- *Goal 12a*: Provide access to drinking water in adequate quantities and appropriate sanitation services for everyone (Population percentage with access to sewage systems)
- *Goal 12b*: Provided access to drinking water in adequate quantities and sanitation services for all (Percentage population with access to drinking to water)

The goals were based on the following variables

Goal 1a: Percentage of children who reach the 5th grade; Goal 1b: primary school enrolment ratio (net); Goal 2: Life expectancy; Goal 3a: infant mortality rate for children under age 1; Goal 3b: infant mortality rate for children under age 5; Goal 4: maternal mortality rate; Goal 5: amount of daily calories consumed; Goal 6: percentage of children under age 5 with severe and moderate malnutrition; Goal 7: percentage of population with access to health care; Goal 8a: number of pregnancies assisted by health care personnel for every 1000; Goal 8b: percentage of assisted deliveries by health care personnel; Goal 10: Percentage of fully vaccinated children under age 5; Goal 11: literacy rate; Goal 12a: percentage of the population with access to sewerage; Goal 12b: percentage of the population with access to drinking water.

On all the goal tables, the situation in which the country began was taken into consideration (first column dated 1990 or the nearest year); the last fact available provided by the source used (second column); the rhythm of progress according to the established goal (third column of “progresses and setbacks”); and goal established by governments by the year 2000 (in the last column). As was mentioned in previous Social Watch Reports, any progress rate, as established here, implies the acquisition of a regulatory tool, which supervises the way things “should be”, and is the standard for comparison with the registered progress. However, it was explained that each one of the specific indicators may follow different evaluation paths. It was admitted that these references should be provided by specialized bodies or, in lack thereof, inferred through some previous study (for example, an analysis of a temporary series). Consequently, it was specified that, although it was best to apply a comprehensive and accurate system, we found that, for most of the indicators associated with the commitments it was not available. Moreover, since, in many cases, we lacked the amount of observations required to construct more precise development models, the inevitable option was to apply a simple and accessible evaluation method to determine progress made towards goals.

In order to measure progresses and setbacks regarding goals, a simple and uniform reference development model, as least demanding as possible when evaluating changes throughout a period of time, or when comparing these developments among countries, was “imposed” upon the indicators. Under these conditions, results obtained through the methodology adopted in this case

don't mean to be, nor can be, interpreted as thorough or definitive results. In fact, they are really an estimate or indicative guideline. In other words, the rate of progress obtained describes the variable's observed value as advanced, on time, or delayed, regarding its expected value.

In order to provide goals with a follow-up system, this basic process was maintained, since it provides an achievement rate which seeks to reflect the degree of progress made by all countries in regards to the fulfillment of the proposed goal. These rates have been re-organized by segments (progress rates were converted to a reference scale of 1 to 5), which was illustrated on the tables, in a column entitled "Progresses and Setbacks", through a group of symbols reflecting the modification, so as to simplify and eliminate the false idea of precision suggested by a numerical progress grading system.

The re-organization of scales was completed by translating the numerical values in categories which, according to the degree of progress, suggested the following:

1. Experiencing major setbacks
2. Experiencing a few setbacks
3. Standing still
4. Is progressing, but not enough
5. Is progressing quickly or has reached the goal.

"Is progressing quickly or has reached the goal" is applied to all those countries that had achieved the goal in 1990, to those that reached it later on and those that, by maintaining their rhythm, would reach it on time or ahead of time.

"Is progressing, but not enough" applies to all of those that possess positive, although lower rate which would allow them to reach it on time.

"Stagnant" applies to countries that have not experienced changes in their indicator (or have had changes, but they are considered to be insignificant)

"Experiencing a few setbacks", refers to countries that exhibit a negative value, below the one they should have reached.

Those who found themselves in a more severe state of retreat were classified in the "Experiencing major setbacks category".

All those countries that exhibited information in the goal tables related to less than four of the previously mentioned indicators were excluded from this particular table. In addition, and in relevant cases, through icons in column

“Progresses or setbacks” information has been provided regarding the countries that had reached the goal since 1990, dividing them into three groups: goal reached in 1990, countries that reached the goal in 1990 and are progressing, countries that reached the goal in 1990 are experiencing setbacks.

Also, we decided to maintain the criteria of specifying on the table the value that indicators should have in the year 2000 or the “recommended value” for this year. This way, when more recent information is available, and following established methodological standards, it is possible for a specific country, if it is interested in carrying out follow-up procedures for an indicator, to undertake comparisons and evaluations in order to determine if the rhythm of its progress will allow it to reach the goal in 2000.

For the “Progresses and setbacks while fulfilling the Copenhagen goals” table, the indicators were organized as follows:

- Goals 1a, 1b y 11 in the column entitled basic education
- Goals 3a, 3b y 10 in the column entitled children’s health
- Goals 5 y 6 in the column entitled food security and child nutrition
- Goals 8a y 8b in the column entitled reproductive health.
- Goals 2 y 7 in the column entitled health and life expectancy
- Goals 12a y 12b in the column entitled access to drinking water and sewage systems

ASSESSMENT OF THE FULFILLMENT OF DEVELOPMENT GOALS AROUND THE WORLD

After explaining the methodology, this paper finalizes by reviewing the diagnosis or assessment presented in the 2000 Social Watch Report regarding goals’ fulfillment, as the outcome of the methodology applied:

Goals related to *universal and completion of basic education* exhibit different levels of achievement. Regarding the first issue, setbacks in certain areas were found in 11 countries, and significant setbacks were found in at least 8. Fast progress, very close to the fulfillment of the goal in 2000, was found in a group of 12 countries.

As for completion of basic education, this was achieved by a very large group of countries during the 90s, including countries from Europe, Latin

America and Southeast Asia. Currently we observe progress towards near attainment of the goal in another group of Asian, African, and Latin American countries. However, we've also detected significant setbacks in at least 9 countries, including several that had fulfilled the goal in 1990 (Botswana, Djibouti, Eritrea, Gambia, Kiribati, United Arab Emirates, Sri Lanka, Solomon Islands, Zimbabwe)

Data regarding *life expectancy* exhibit more auspicious results: however, one should consider that the goal of 60 years old is "low" for a group of countries, a fact that can be verified through the large amount of countries that had reached it by 1990. Even Bolivia, Comoros, Ghana, India, Myanmar, Pakistan, Swaziland, in the midst of very severe conditions, have been able to progress steadily in order to reach the goal of 60 years old. However, the amount of countries that experience considerable setbacks is alarming, showing, in fact, very low life expectancy averages: such is the case of Botswana, Republic of Central Africa, Côte d'Ivoire, Kenya, Tanzania, Togo, Uganda, Zambia and Zimbabwe. In 1997, a group of at least 80 countries already had a life expectancy over 70 years old.

Infant mortality rate data indicates that a significantly large group experienced progress (some slower, some faster) in comparison to their values in 1990. But setbacks are very significant in 13 countries, many of them African, and less significant, but setbacks nonetheless, among a group of 23 countries. *Infant mortality rate for children under age* have been reduced considerably in most of the countries. But Angola, Armenia, Iraq, Republic of Moldova, Mongolia, Santa Lucia, Turkmenistan y Yemen have experienced a significant increase.

Modifications in measurement techniques of *maternal mortality* rates which have comprised international statistics have not allowed the performance of a progress assessment, since they lack two comparative facts throughout a period of time. Although it should be noted that regional maternal death rate averages vary between 59 per thousand people (for Europe) and 940 (for Africa). Afghanistan, Angola, Bhutan, Chad, Burundi, Eritrea, Ethiopia, Gambia, Guinea, Haiti, Mali, Mozambique, Nepal, Nigeria, Nigeria, Rwanda, Senegal, Sierra Leona, Somalia, Uganda y Yemen exceeded in 1990 the average of 1.000 maternal deaths per 100.000 infants born alive.

The table corresponding to *goal 5* presents daily nutritional values as an indicator of security in food distribution. Although this goal doesn't establish

a determined value to be reached, FAO goals that propose a caloric intake were used, according to starting points possessed by each country since 1990. Again, although many countries have experienced progresses, setbacks have not diminished. Bahamas, Botswana, Cuba, Iraq, Tadhikistan, Turkmenistan, Uzbekistan, are a few of those countries that have managed the most dangerous reductions in their caloric intake.

The table corresponding to *goal 6* reflects changes in malnutrition in children below the age of 5 years old. In 1997, only Burkina Faso, Congo, China, El Salvador, Malaysia, Mauritania, Thailand, Togo y Uruguay, progressed fast enough to reach the 2000 goal. Angola, Democratic Republic of Congo and Myanmar experienced severe setbacks, even more so considering the intense malnutrition they already exhibited in 1990.

Regarding health services, in the table corresponding to *goal 7*, setting aside Cuba, Republic of Korea and Democratic Republic of Korea, Kuwait, Mauricio, New Zealand, Qatar, Western Samoa, Singapore and Tonga, that already benefited from a 100% coverage, those countries that progresses the most and that can reach the goal are Indonesia, Jordan, Nigeria, Oman, Saudi Arabia, Senegal, Arab Republic, Syria and Thailand. On the contrary, Benin, Madagascar, Maldive Islands, Nigeria and Uganda, experienced serious setbacks which prevented more than 50% of the population from receiving health services.

The table corresponding to *goal 8* offers information about reproductive health. Data that measure medical assistance for pregnant women are very scarce and there are no recent numbers available for several countries. Many of them experience severe setbacks: Comoros, Malaysia, Mauritania, Mongolia, Myanmar, Namibia, Nigeria, Pakistan y Saint Tome and Prince. We have had access to a group of the most important data related to the goal of globalizing labor care by health specialists. They have revealed that progresses have been greater than setbacks. Countries such as Barbados, Bahrein, Brazil, Mexico, Dominican Republic, Guyana, Jordan, and New Zealand are at a level of progress near attainment of the goal. In countries such as Bangladesh, Burundi, Tanzania or Zambia, labor care provided by health care professionals is at a severely low level, and, what's worse, there is a tendency towards a greater decline.

Goal 9 refers to cases of malaria. Due to the lack of data the rate has not been estimated. However, the incidence of this disease is extremely high in coun-

tries such as Benin, Burundi, Kenya, Malawi, Namibia, Papua New Guinea, Solomon Islands, Tanzania and Zambia, and it greatly exceeds malaria rates in less developed countries.

The table corresponding to *Goal 10*, related to disease care or control through childhood health services, exhibits a very high vaccination level, which was increased throughout the period in the case of Hungary and Oman. But in others, vaccination administration has reduced considerably: Bangladesh, Belarus, Gabon, Lesotho, Madagascar, Nigeria, Sierra Leone, Papua New Guinea, Togo and Uganda.

As for *Goal 11*, regarding reduction of adult illiteracy by half its value in 1990, all countries have exhibited improvements, although they only show levels close to universal ones (less than 5% of adult illiteracy) Argentina, Bahamas, Belarus, Bulgaria, Croatia, Chile, Cuba, Cyprus, Greece, Guyana, Hungary, Israel, Italia, Republic of Korea, Latvia, Lithuania, Maldives, Republic of Moldova, Poland, Romania, Russian Federation, Slovenia, Spain, Takhikistan, Trinidad and Tobago, Uruguay. The “socialist” legacy of a large amount of these countries seems to explain current literacy levels.

Access to sewerage is a goal which hasn't improved considerably among the group of countries that offer assessable information for the two periods assessed, and according to the data, there is a coverage setback. As the table corresponding to *goal 12^a* shows the average access to sewerage in 1996 was lower (67.7%) to that of 1990 (71.9%). The most notorious setbacks have been those of Comoros, Djibouti, Gambia, Iraq, Kenya, Mauritania, Mozambique, Paraguay and Zambia.

Finally, the *access to drinking water* exhibits great progress: on average, among those countries that possess assessable information, 68.8% had drinking water in 1990 and this percentage increased to 73.1% in 1996. However, the cases of Afghanistan, Chad, Gambia, Micronesia and Papua New Guinea are particularly severe, since their supply, insufficient in 1990, dropped even more in 1996.

In general, it can be said that, as table “*Progresses and setbacks in the fulfillment of goals established Copenhagen*” shows, that the areas in which the indicators were organized, show sufficient progress. In the first place, it can be said that, regarding “Basic Education” there have been more achievements than setbacks (or stagnation) throughout the considered period, for the entire group of countries. The balance for “Childhood health care” is also favorable, only

13 countries experienced setbacks in this sense with the greatest setbacks occurring in the Democratic Republic of Congo and Mauritania. As for “Nutritional Health and Child Nutrition”: general numbers are conflicting: setbacks and progresses have balanced out without real progress.

Certain “key” areas of social development agreed upon in Copenhagen are very difficult to assess due to a lack of information: reproductive health and access to drinking water and sanitation are among them. In both cases, although there have been progresses and setbacks, the amount of countries that, in 1990, had managed to provide universal access to these services is scarce. Improvements in access to reproductive health services are evident in several Arab countries. Finally, the column that displays “health and life expectancy”, is the one that shows greater relative progresses, and it was affected by the fact that many countries had achieved the goal of increased life expectancy in 1990: the weight of life expectancy figures, which brings up the worldwide average, in spite of some extreme low cases, and the lack of enforcement of the goal, may explain these results.

TRENDS IN DEMOCRACY, HUMAN RIGHTS AND DEVELOPMENT INDICATORS BASED ON RIGHTS: CONTEXT AND DEVELOPMENT

*Lic. Ulises Canchola Gutiérrez**

During the last decade, conceptual progress has been registered, particularly in two areas. In the area of human rights, after decades-old discussions, the international community finally acknowledges—at least in the political field—the indivisibility of economic, social and cultural rights, civil and political rights. In second place, the protection of human rights, whose defense started to be a part of the basic components for the evaluation of the development achieved by a state. From the instrumental point of view, two developments stand out: the making of two international instruments and new follow-up and implementation instruments, including the establishment of the Office of the United Nations High Commissioner for Human Rights.

Thus, the international system continued its specialization, which has helped the consolidation of real regimes in diverse topics of the international agenda and of the national agendas in terms of human rights.

Further instrumental progress is precisely the proliferation and recognition of the national institutions for the protection and promotion of human rights, which begin to appear beside both governmental and non-governmental instances as new actors in this international scene.

However, if we have made conceptual and instrumental progress, this poses new challenges at a time when we have not yet resolved some old differences. The indivisibility and unity that has been acknowledged and proclaimed in the international political arena has not yet found an adequate juridical trans-

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lation in international systems. There has been some progress in terms of the acknowledgement of equality of similarities among these two groups of rights, but there is still some difficulty in implementing them in many cases on a national level and this also derives from a strong international influence. I refer the case of the right to nutrition - the only instrument we have in terms of child nutrition since 1959. Its scope has been very limited and, consequently, its implementation at a national level is quite limited as well. At least from the perspective of independent constitutional organizations, as is the case of the National Human Rights Commission, it is a problem we are faced with on a daily basis.

The work that we have yet to complete must be carried out within a context in which the interests of a certain sector of the economy tend to be privileged and, as indicated by experts in globalization, this can imply a risk in the implementation of those collective rights whose acknowledgement was registered after the great social struggles of the last century.

One of the branches of this aspect of the effective implementation of individual or collective rights is the work of reconciling the practice of both in a paradoxical manner, since without actually being antagonistic to each other, in fact, the former are necessary in order to carry out the latter, currently we are observing concrete cases in which situations arise where both arenas seem to compete with each other. The Mexican experience particularly refers to the case of the Indian populations.

We could speak similarly of the case of migration at an international level, in which there is a frontal clash between this idea of the practice of sovereignty through migratory policies and the fundamental rights of a vulnerable group such as migrant populations. In the same manner, respect towards human rights is now part of the development achieved by a state, however, even at this level there is the risk of simply listing the initiatives, without necessarily making a substantive account of the manner in which human rights are being promoted and protected. I believe that a very important aspect is how one can analyze not only the formal sources, that is, the programs adopted by a state, but also the material sources, to what extent they are fulfilling the programs and the laws that have been passed and imposed.

In the arena of instrumental progress, we face a no less serious challenge as well as a paradox. As I have said, in the last ten years the international system, and consequently the national systems, have improved, they have become

consolidated as they have become more specialized. In the juridical arena we know that the more a system specialized, the more it matures, however, in terms of human rights, this specialization has not necessarily led to a maturity of the system.

We observe situations in certain places, particularly the example of the conference on racism, xenophobia and tolerance, where one can clearly see how the international community runs the risk, the more it specializes, of pulverizing the human rights. This happens especially when dealing with the needs of the vulnerable groups. When one established a sort of matrix where, for example, different degrees of vulnerability converge, say in the case of migrants: if the migrant is Indian, a woman, a girl, we can go to extremes, fall into the temptation of designing particular instruments, tailored almost for this subgroup. Far from generating coherence, this introduces a high degree of entropy or disorganization into the system.

The indicators, the statistics will be a very useful tool, but it is not the only tool, it is not a panacea. They are useful in the measure that it allows us to separate the components of concepts of the right we wish to implement, but I believe we must not lose sight of the fact that this work must be accompanied by legislative, political and social work, that we must avoid being tempted by what certain authors such as Ferralloli refer to as legislative inflation, but try to truly carry out a labor of coordination with the varied instruments we have today.

In conclusion, I believe the implicit challenges find a partial solution in the elaboration of indicators and the use of statistics. We need to progress together with the juridical field, especially in order to find a joint solution to this problem.

SECOND SESSION

HUMAN RIGHTS WITH A GENDER PERSPECTIVE: INDICATORS OF VIOLENCE AGAINST WOMEN AND CHILDREN FOR POLICY ANALYSIS AND MONITORING IN THE PHILIPPINES¹

*Leticia D. de León**

1. INTRODUCTION

Human rights, gender and development are inextricably linked. Development will remain a lip service if the rights of the people, specifically the women who play the twin role of agent and beneficiary of development, are violated. Such an environment diminishes the people's capacities to play their role to the fullest. Meanwhile, the overarching goal of sustainable development with equity, which has been the agenda of past development plans, is a manifestation of human rights sensitivity. In realm of statistical data generation, which is a concern of the Philippine Statistical System, the said goal, coupled with concern for human rights, also serves as a call to make available relevant data for planning, policy analysis, decision making, and monitoring.

The 1987 Constitution of the Republic of the Philippines, which enshrines the rights of every Filipino, also provides a basis to the Philippine Statistical System in its data collection programs. Specifically, the Constitution declares that the State values the dignity of every human person and guarantees full respect for human rights and ensures the fundamental equality of women and

¹ A substantial part of this paper was taken from the Final Report on the Development of a Methodology to Generate Statistics on Violence Against Women and children and the Final Report on the Refinement of the Existing GAD Indicators System. Meanwhile, the assistance extended by Director Lina V. Castro, Ms Teresita B. Deveza, Ms. Jessamyn O. Encarnacion, Ms. Eleanor G. Posadas, and Ms. Norma P. Guevarra in the preparation of this paper is acknowledged.

* National Statistical Coordination Board (Philippines).

men before the law. The situation and progress in fulfillment of these rights are best presented using statistical data generated by both government and non-government agencies. Meanwhile, the country's commitment to observance of human rights is also demonstrated by its ratification of major international human rights instruments. Progress in implementations of said instruments is likewise shown by statistical data produced by concerned institutions in the country.

While protection of rights of women and children is upheld, the prevalence of violence inflicted upon them only shows that much work needs to be done. It includes the generation of reliable and relevant data on violence against women and children (VAWC) in order to provide quantifiable bases for policy making and monitoring the progress and impact of laws and other government interventions. To address this concern, the Philippine Statistical System, through the National Statistical Coordination Board,² developed a methodology for generating statistics on VAWC.

The Philippine experiences in coming up with a methodology will be presented in the paper. First, the initiatives on gender and development statistics which included VAWC will be briefly described. This will be followed by a discussion of the methodology developed for generating VAWC statistics and other innovations undertaken. To end the paper, some problems encountered and corresponding recommendations proposed to be addressed by the Philippine Statistical System are presented.

2. OBJECTIVE OF THIS PAPER/PRESENTATION

The objective of this paper and presentation in the seminar is to share with a distinguished group of human rights accountants, who are human rights advocates as well, the experiences of the Philippine Statistical System in drawing up a framework for generating indicators and statistics on VAWC. Gauging from the multi-disciplinary affiliations of experts participating in the seminar and the international nature of the seminar, it is also expected that alternative

² The foremost objective of the National Statistical Coordination Board is to develop an orderly Philippine Statistical System that is capable of providing timely, accurate, relevant and useful data for the government and the public for planning and decision-making.

ways of measuring not only VAWC but human rights in a broader perspective will be learned.

3. IMPETUS ON MEASUREMENT OF VIOLENCE AGAINST WOMEN AND CHILDREN

The measurement of violence against women gained considerable ground as part of the generation of gender statistics in the Philippines.³ Capability building on gender statistics was significantly enhanced through a project of the Philippine National Commission on the Role of Filipino Women entitled “*Improvement of Statistics on Gender Issues*”, with assistance from Canadian International Development Agency. The project had three major components – *Component 1: Development of a Methodology to Generate Statistics on Violence Against Women and Children*. *Component 2: Conduct of a Pilot Time Use Survey in the Philippines Towards the Development of a Framework for Measuring Women’s and Men’s Contribution to the Economy*; and *Component 3: Refinement of Existing Gender and Development (GAD) Indicators System*. The implementation of the project was undertaken by the National Statistical Coordination, the policy-making and coordinating body on statistical matters in the Philippines.

3.1 *The GAD Statistical Framework*⁴

Under Component 3, a data/statistical framework was developed to provide the basis for identifying the GAD indicators. The construction of the GAD statis-

³ The history of gender statistics in the Philippines started in the mid-1980s with the quantification of housework. In 1994, a resolution by the highest policy-making body of the Philippine Statistical System (PSS), the National Statistical Coordination Board, was issued enjoining different agencies to promote gender concerns in the generation of statistics. In 2001, the Core Gender and Development Indicator System was approved as basis for data generation in the PSS.

⁴ A series of inter-agency workshops and user’s fora were conducted in the final review of the framework and to promote public awareness and enlisting comments and support to the generation and dissemination of gender statistics in the country.

tical framework (figure 1) considered the visions and strategies for gender and development espoused in the Philippine Plan for Gender Responsive Development as the reference for identifying the data needed to monitor GAD. Specifically, the visions of gender and development are as follows:

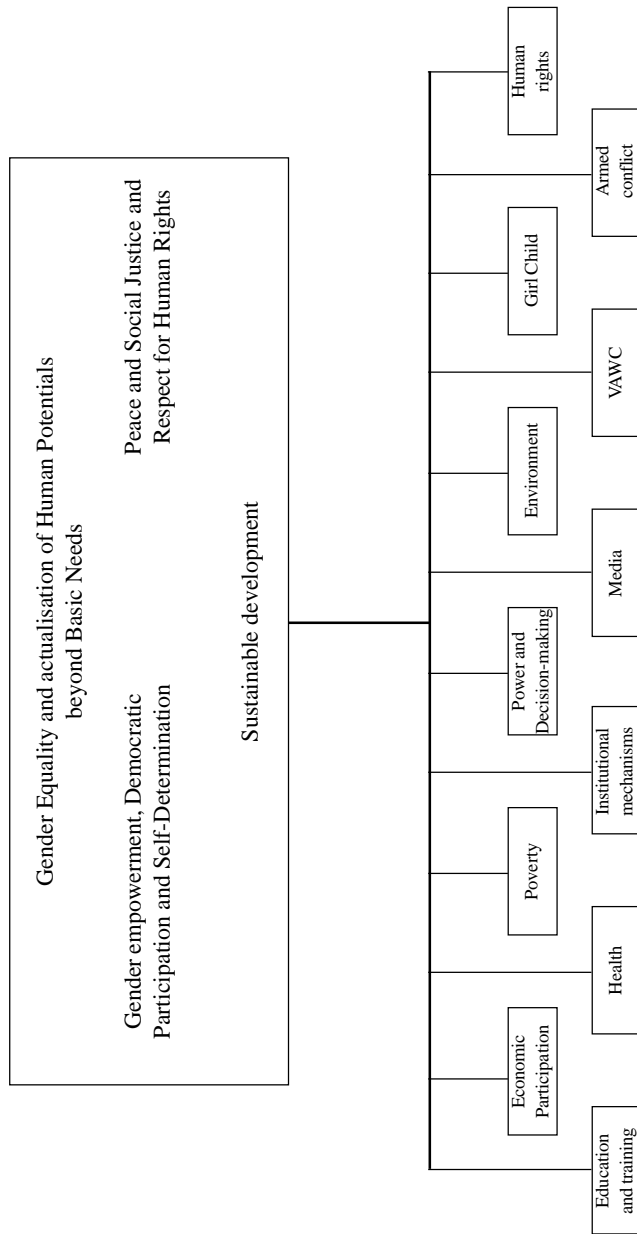
- 1) gender equality and equity and the actualization of human potentials beyond basic needs;
- 2) gender empowerment, democratic participation and self-determination at all levels;
- 3) respect for human rights, peace and social justice; and
- 4) sustainable development.

The visions aim at development that is equitable, sustainable and free from violence, respectful of human rights, supportive of self-determination and the actualization of human potentials, and participatory and empowering. To achieve these and overall GAD vision, the best strategy identified is to address the critical areas of concern of the Beijing Platform for Action (PFA) which is recognized as a powerful agenda for the empowerment of women. The critical areas of concerns of the PFA are:

1. education and training;
2. economic participation;
3. health;
4. Poverty;
5. Institutional Mechanisms;
6. Media;
7. Power and decision-making;
8. Environment;
9. Violence against women;
10. Girl child;
11. Armed conflict and
12. Human rights.

Hence, in the framework the concern on violence against women (see box) already gained considerable attention. It is a reiteration of the provisions of the Declaration on the Elimination of Violence Against Women which state vio-

Figure 1. The Core GAD Indicators Statistical Framework



lence against women impedes achievement of equality, development and peace. It also enjoyment by women of theirs human rights and fundamental freedoms.

DEFINITION OF VIOLENCE AGAINST WOMEN

An act of gender-based violence that result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, wheter occurring in public or private life. It encompasses all forms of violation of women's rights, including threats and reprisals, exploitation, harassment, and other forms of control.

3.2 Core GAD Indicators in Violence Against Women and Children

The framework was used in identifying the core indicators on violence against women. It is also envisioned as a guide to government agencies, which have the responsibility of protecting and promoting women's and children's rights, and non-government organizations in formulating indicators to monitor and assess the outputs and impact of their GAD activities.⁵ Apart from the framework, however, several standards were also adopted in selecting the final core indicators. These are:

1. measures broad GAD concerns as defined in the core GAD statistical framework;
2. relatively small in number (10-20);
3. measurable using available and obtainable data;
4. easily understandable;
5. reliable and consistent;
6. implies specific interventions or actions and policies on GAD; and
7. outcome oriented.

⁵ A resolution by the National Statistical Coordination Board, the policy making and coordinating body of the Philippine Statistical System, was issued approving the statistical framework of the GAD Indicators System, was issued approving the statistical framework of the GAD Indicators System and directing all concerned government agencies to adopt the framework in the generation and analysis of gender and development indicators.

The GAD Indicator System (Annex) consists of key macroeconomic impact indicators needed to monitor and assess the overall situation of women in each of the twelve areas of concern. A total of twenty (20) core indicators were identified which included incidence and number of violence against women and children by type and the growth rate and number of human rights violations by sex and age group. An assessment of the indicators shows that on incidence, only the reported cases and cases served are available; hence, the incidence for the entire population is a data gap.

4. DEVELOPMENT OF A METHODOLOGY TO GENERATE STATISTICS ON VAWC.

A statistical framework was formulated, under Component 1 of the Project, to focus on violence against women and children which become a growing national concern despite achievements in advancing their causes. The elimination of violence and all forms of discrimination against women and the protection of children from all forms of physical and mental violence, injury or abuse and neglect or negligent treatment, maltreatment or exploitation have already gained universal acceptance and resulted in worldwide movement.

The Philippine Human Rights Plan specifically considered women and children among the vulnerable groups in Philippine society. The focus is appropriate considering that these two groups comprise a significant portion of the country's population based on the 1995 census —women comprising almost half of the country's total population recorded at 68.6 million and children, 0.-17 years of age, comprising the 45% of the total population.

4.1 Pressing need for indicators and statistics on VAWC

The development of a methodology addresses the lack of comprehensive statistical data on VAWC. This deficiency renders it difficult to ascertain the severity, magnitude and trends on VAWC and limits design of interventions to help victims of violence as well. This brings to fore, the needs expressed by human rights implementers, watchers, protectors, among others, for indicators and statistics on VAWC. These include (a) to inform, advocate and promote

awareness on situation and trends; (b) to serve as early warning signals towards prevention; (c) to provide basis and measures of accountability of concerned institutions mandated to protect women and children from violence; (d) to lay down basis of policies and programs and in monitoring and assessing progress, effects and benefits of interventions; and (e) in aid of legislation. In addition, the development of the methodology directly responds to a strategy in the Declaration on the Elimination of Violence Against Women which provides States to promote research and collect data and compile statistics relating to prevalence of violence against women and make these public.

Hence, there is a need to improve the generation and dissemination of statistics in this area. As underscored in the Human Development Report 2000 “statistical indicators are a powerful tool in the struggle for human rights”.⁶ However, VAWC, being a complex issue, must be tackled in a multi-disciplinary as well as holistic and integrated approach. It necessitates adoption of an efficient referral and networking system that will mobilize government agencies, non-governmental organizations and other institutions dealing with VAWC: The different entities play a crucial role in the generation of necessary statistics and indicators.

4.2 Statistical Framework for VAWC⁷

The development of the methodology was done through an inter-agency Task Force to Generate Statistics on VAWC which was created by the national Statistical Coordination with these objectives: (1) to formulate a framework on the development of statistics on VAWC; (2) review concepts/definitions, issues and problems related to the generation of statistics on VAWC; (3) review related studies on VAWC; and (4) develop and recommend for generating the needed statistics.

⁶ Chapter 5 of the Human Development Report 2000 discussed comprehensively the use of indicators for human rights accountability.

⁷ Final Report on the Development of a Methodology to Generate Statistics on Violence Against Women and Children. A resolution was issued by the National Statistical Coordination Board approving and adopting the statistical framework and glossary related to the protection of women and children and other related concepts for statistical purpose.

VAWC exists in various forms and may occur anywhere within the country and abroad considering the incidents of violence committed against Filipino women and children outside the country. However, the rate of incidence is largely unmeasured and unreported owing to the tendency of victims to keep silent and to consider the abuses committed against them as a private matter. The culture of silence can be explained by other factors such as socio-cultural norms, attitudes, prejudices and the stigma, fear and humiliation faced by the victims. As a result, there is a lack of comprehensive hard statistics on the prevalence of violence against women and children. At present, the only available statistics are those on reported cases which have limitations in terms of coverage.

➤ *Objectives of the statistical framework.*

The data framework aims to provide an efficient methodology to generate statistics on VAWC. It identifies the different issues and concerns related to VAWC in the country. The availability of the framework further guides and orients service providers and other agencies on the issues and concerns for the elimination, prevention and monitoring of VAWC cases in the country.

➤ *Goals on VAWC*

There are three overriding goals aimed at by the framework, namely:

- Prevention and elimination of VAWC;
- Provision of adequate support services to victims; and
- Punishment as well as rehabilitation of perpetrators.

A comprehensive approach towards the prevention and eventual elimination of VAWC calls for specific programs and projects which may take the form of research and documentation, information and advocacy campaigns, education and training, direct services, international and diplomatic work, and legislative action and/or reform.

➤ *Bases for the Development of the Framework*

The development of the framework was governed by the Constitution, national laws for the protection of women and children as well as declarations, international conventions and conferences on which the Philippines is a signatory. The Philippine Constitution recognizes the role of women and children in nation building, ensures equality of women and men before the law and provides that the State shall defend the rights of children and ensure protection from all forms of conditions prejudicial to their development such as neglect, abuse, exploitation, etc.

➤ *Scope of Violence*

The scope of violence to be measured includes (a) violence at home or occurring in the family or domestic violence, (b) violence in the school/workplace/neighborhood or within the general community; and (c) violence perpetuated or condoned by the State or those absolved by the government such as military and custodial rape. The State further facilitates VAWC by not enforcing protective laws or having no laws at all as in the case of domestic violence.

➤ *Dimensions of Violence*

Violence against women and children has a national dimension –VAWC committed anywhere within the country’s territory; and international dimension— violence against Filipino women and children occurring outside national territory or abroad.

➤ *Forms of Violence*

There are four forms of violence against women and children defined as follows:

Physical abuse. Any purposeful injury to the victim that can be result of a single, manual series of different acts or a combination of assaults with the use of a weapon. This includes but is not limited to the following: being hit with a fist, slapped, poked in the eye, strangled, kicked in different parts of the body,

shoved down the floor, pushed down the stairs, banged the head against the wall, thrown hard objects at, burned flesh with cigarette, poured boiling water over, stabbed with a knife or other sharp objects, hit with a butt of a gun, shot at, etc.

Sexual abuse. Any sex without consent of the victim. This includes but is not limited to the following: demanding sex regardless of her condition, forcing her to perform sexual acts against her will, forcing her to watch lewd video shows or see pornographic materials, catching him having sex with another in the marital bedroom, forcing her and his mistress to sleep with him in the same room, etc.

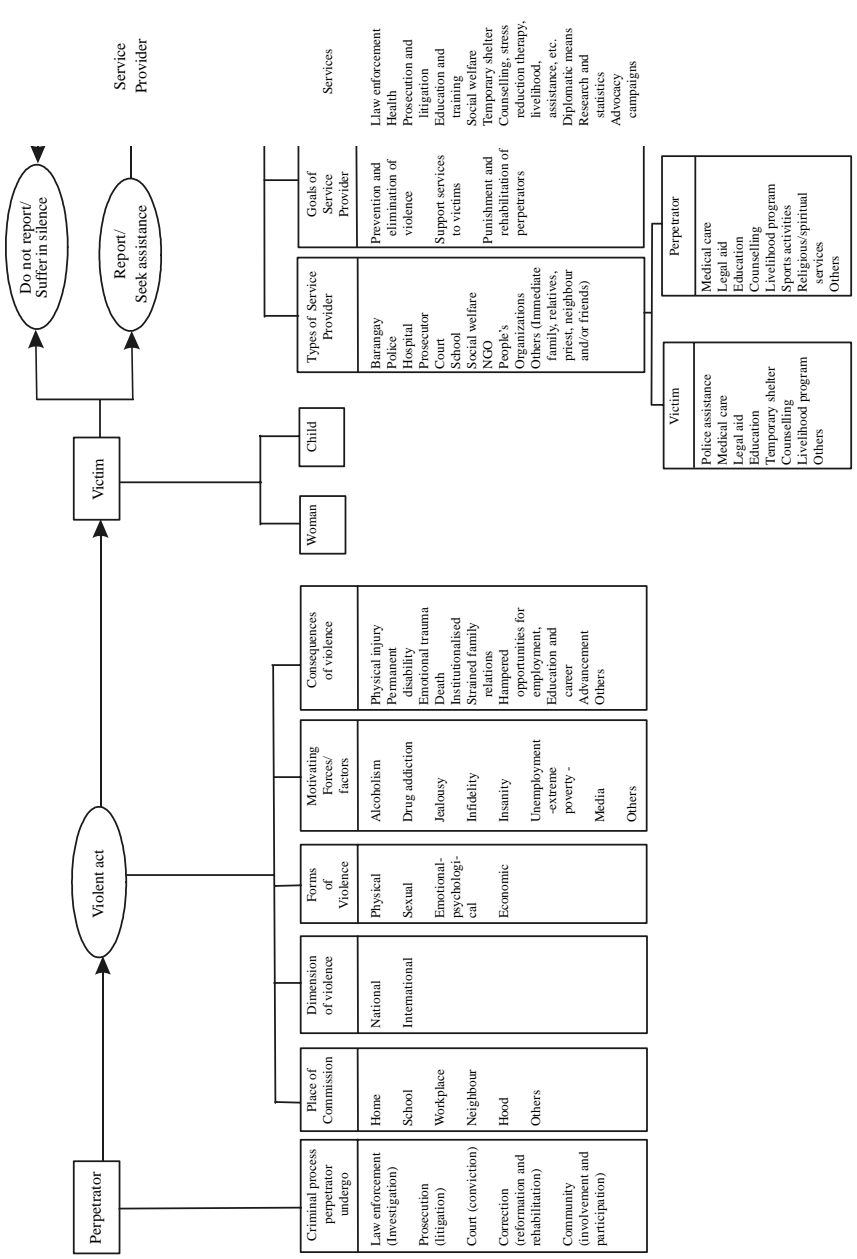
Emotional/psychological abuse. Any act that damages the victim's self-esteem and causes fear, insecurity and confusion to her, Its scar goes deep as physical would but actually takes no longer to heal. This includes but not limited to the following: threat or intimidation, verbal or gestured threats to kill or harm physically, threatening with a knife, gun or other lethal weapons, constant threat of abandonment, use of degrading or insulting words, public humiliation, nagging, prolonged silence after heated argument, accusation of infidelity, openly siding with relatives against her, forced confinement in a room, ordering her out of the house, taking children away from her, forcing her to bear a child, forcing her to have abortion, etc.

Economic abuse. The denial of access/control over economic resources. This includes but is not limited to the following: withdrawal of financial support, forcing the victim to get a job to support the family while he refuses to work, taking her own earnings, destroying household properties, total control over conjugal finances, using household money for his vices, etc.

4.3 Conceptual Framework for VAWC

To better assess the gravity of VAWC, an understanding of the nature of VAWC, its causes and consequences, and the key actors, i.e., perpetrator, victim and service provider, is necessary (Figure 2).

Figure 2. Conceptual Framework for Violence Against Women and Children



Place of Commission	Home School Workplace Neighbourhood Hood Others
Dimension of violence	National International
Forms of Violence	Physical Sexual Emotional-psychological Economic
Motivating Forces/factors	Alcoholism Drug addiction Jealousy Infidelity Insanity Unemployment - extreme poverty - Media Others
Consequences of violence	Physical injury Permanent disability Emotional trauma Death Institutionalised relations Strained family Hampered opportunities for employment, education and career Advancement Others

Types of Service Provider	Barangay Police Hospital Prosecutor Court School Social welfare NGO People's Organizations Others (Immediate family, relatives, priest, neighbour and/or friends)
Goals of Service Provider	Prevention and elimination of violence Support services to victims Punishment and rehabilitation of perpetrators

Services	Law enforcement Health Prosecution and litigation Education and training Social welfare Temporary shelter Counseling, stress reduction therapy, livelihood, assistance, etc. Diplomatic means Research and statistics Advocacy campaigns
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Victim	Police assistance Medical care Legal aid Education Temporary shelter Counseling Livelihood program Others
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Perpetrator	Medical care Legal aid Education Counseling Livelihood program Sports activities Religious/spiritual services Others
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- *The Perpetrator*

The perpetrator commits a violent act on a woman/child, the victim, which may be triggered by different factors like alcoholism, drug addiction, jealousy, infidelity, insanity, unemployment, extreme poverty, media and other motivating factors. The underlying causes of VAWC may be due to unequal gender relations, patriarchal family orientation, exposure to violence or the family system or resolving conflicts.

The perpetrator of the crime then undergoes criminal processes. Members of law enforcement agencies will conduct investigation after apprehending the suspect through a warrant of arrest. Corresponding case shall then be filed against the assailant to prosecute him for the offence committed. If found guilty, he will be convicted in jail until his sentence is served. While in prison, the correctional institution will strive to reform and rehabilitate him with the hope that upon his return to society, he will be able to lead a normal and productive life as law abiding citizen. Once released, his active involvement and participation in various worthwhile activities in the community will prevent him from committing a crime again. If unreformed, however, he will become a police problem anew and the cycle of criminal process continues.

- *The Violent Act*

The violent act committed may be physical, sexual, emotional/psychological or economic in nature. It may occur at home, workplace or in the neighborhood. Filipino women and children here and abroad may be victims of violence, defining a national as well as international dimension of the VAWC problem.

As a consequence of abuse, the victim may suffer physical injury, permanent disability, undergo emotional trauma and has to be institutionalized, that is, brought to hospital, crisis center, correctional institution, etc. Moreover, violence may also lead to death, strain the victim's family relations, hamper opportunities for employment, education and career advancement, or cause may other debilitating effects.

- *The Victim and Service Provider*

The victim may either suffer in silence or report the incident to any or several of the following agencies: the barangay, police, hospital, prosecutor, court,

school, social welfare, non-government organizations, etc. Accordingly, the reporting agency will provide appropriate support services to the victim such as police assistance, medical care, legal aid, education and temporary shelter, livelihood program, among others. The provision of services to both victim and perpetrator is aimed at prevention and elimination of violence, extension of support services and rehabilitation.

4.4 Proposed statistics to be collected for VAWC

Using the statistical and conceptual framework, the statistics to be collected were identified as follows:

1. Statistics on the perpetrator.

a) Demographic profile of perpetrators by sex, age, civil status, educational attainment, employment status, income level, geographic area, etc.

b) Number of perpetrators:

- By category if assailant (civilian, police, military, public official)
- By weapon/means used (firearms, bladed weapon, blunt instrument, hands/feet, etc.)
- By history of substance abuse (alcohol, drugs, both, none, unknown)
- By disposition/whereabouts of assailant (arrested, on bail, convicted, at large)

2. Statistics on violent act

a) Number of cases

- By place of commission (home, school, workplace, neighborhood, within and outside country)
- By form of violence committed (physical, sexual, emotional/psychological, economic)
- By motivating forces of perpetrator (alcoholism, drug addiction, jealousy, infidelity, insanity, unemployment, extreme poverty, media, etc)

- By consequence of violence committed (physical injury, permanent disability, emotional trauma, death, institutionalized, strained family relations, hampered opportunities for employment, education and career advancement, etc.)

3. Statistics on victim

- a) Demographic profile of women victims by age, civil status, educational attainment, employment status, income level, geographic area, etc.
- b) Demographic profile of child victims by age, civil status, educational attainment, employment status, income level, geographic area, etc.
- c) Number of victims.

- By relation to perpetrator (immediate family, relative, classmate/teacher, co-worker/employer, stranger, etc.)
- By type of service provided (police assistance, medical care, legal aid, education, temporary shelter, counseling, etc.)
- Victimization rate of women
- Victimization rate of children, 0-17 years old
- Leading crimes against women and children

4. Statistics on service provider

a) Prevention and elimination of violence

- Number and type of researches undertaken related to VAWC
- Number and type of information and advocacy campaigns conducted
- Number and type of trainings among law enforcers, health and social services personnel, and legal practitioners conducted to effectively assist victims of violence
- Number and type of bills, laws, policies and other legal provisions field/enacted/passed for the protection of women and children

b) Support services to victims

- Number of cases served on women in especially difficult circumstances (battered women, victims of rape/incest, involuntary prostitution, illegal recruitment and armed conflict and women in detention, neglected/abandoned/unwed/standees)
- Number of cases served on children in especially difficult circumstances (abandoned, neglected, sexually-abused/exploited, physically abused, disabled, youth offenders, street children, victims of child labor and child trafficking, children in situation of armed conflict, children of indigenous cultural communities, children victims of natural disasters)
- Number of cases served on Filipino women and children overseas
- Number of crisis centers, shelter structures, counseling clinics and other intervention facilities set up for women and child victims of violence
- Allocation/total budget for providing services to victims of violence by source of funds.
- Percentage of government expenditures on support systems for victims of violence over total budget.

c) Punishment and rehabilitation of perpetrators

- Number of cases by classification of offense (child abuse, physical injury, murder, rape, acts of lasciviousness, etc.)
- Ratio of field cases over prosecuted cases by action taken (settled/resolved, pending, dismissed/closed, etc.)
- Inmate rehabilitation by kind of program (health, education and training, work and livelihood, sports, religious, etc.)
- Ratio of human rights violations against women and children over total human rights violations reported by classification of offense (murder/homicide/execution, torture, arrest/detention, disappearance, etc.)

4.5 Assessment of existing administrative forms

An assessment of existing in-take forms and summary reports of a number of government and non-government agencies was undertaken. It covered the data

contained in the forms, the frequency of data generation/reporting, level of disaggregation, flows, mode of dissemination and the statistical capability of the agency. The results were used in integrating the data collection efforts among concerned agencies to ensure the generation of VAWC data on a regular basis and the sharing of data among concerned agencies.

Among the recommendations identified to improve forms and resolve problems inherent in the existing reporting system are the following:

- A uniform intake form to serve as the standard data capture document;
- Standardization of concepts and definitions;
- Enhancement of the statistical capability of agencies involved in monitoring VAWC cases; and
- Data networking and closer linkages among concerned agencies.

4.6. Glossary on VAWC and other Related Concepts

The glossary was developed for statistical purposes to promote a common understanding and interpretation of statistics on VAWC and make statistical reports comparable across agencies. It consists of two parts, namely: Violence Against Women and Violence Against Children. The concepts and definitions conform with the CEDAW, CRC and related Philippine laws on the rights of women and children.

4.7 Statistical Handbook on VAWC

A compilation of available statistics on VAWC was also published as an integral part of the methodology to generate and improve VAWC statistics. It also consists of two parts — Violence Against Women and Child Abuse. The statistics presented in the publication are based on data from administrative in-take forms used by various government and non-government agencies in handling cases of VAWC. Hence, the statistics presented covers only reported cases of VAWC; nonetheless, it provides a valuable insight on the recent trends and patterns of VAWC problems in the Philippines which revealed that the number of VAWC cases is very significant and that it happens in all regions of the country.

5. PROBLEMS ENCOUNTERED AND RECOMMENDATIONS ON MEASUREMENT OF VAWC AND HUMAN RIGHTS

The development of a methodology to generate VAWC statistics is but a work-in-progress in the measurement of this concern and the wider realm of human rights. The measurement is further complicated by the need to broaden/deepen understanding and awareness of gender issues and VAWC by agencies directly providing services to women and children as well as other concerned agencies generating VAWC statistics. Enhancing their knowledge is but critical and crucial in ensuring the soundness of data to be collected and generated. Meanwhile, the VAWC framework shall form part of a wider statistical framework for public order, safety and justice and a system of monitoring human rights. Such a monitoring system will be put in place as articulated in the Medium-Term Philippine Development Plan, 2001-2004 as a strategy for promoting respect for human rights.

The prevalence of VAWC remains to be a data gap since available data cover reported cases only. The problem is further complicated by difficulties in collecting data on domestic violence due to the culture of silence surrounding VAWC. Among the reasons for non-reporting are (a) domestic problems are considered purely private affairs; hence, are unlikely reported; and (b) the stigma attached to domestic violence discourages victims and their families from reporting these incidents to authorities. While there are limitations, the periodic conduct of a survey on VAWC estimates should be done. The design of the survey will have to seriously consider methodological and legal aspects due to the sensitiveness of the issue. Based on the experiences in the conduct of the Philippines National Safe Motherhood Survey in 1993, the interviewers were instructed to take special care in conducting the interview and to make extra effort to obtain privacy. Despite these precautions, underreporting of domestic violence and rape still occurs in such a structured inquiry.

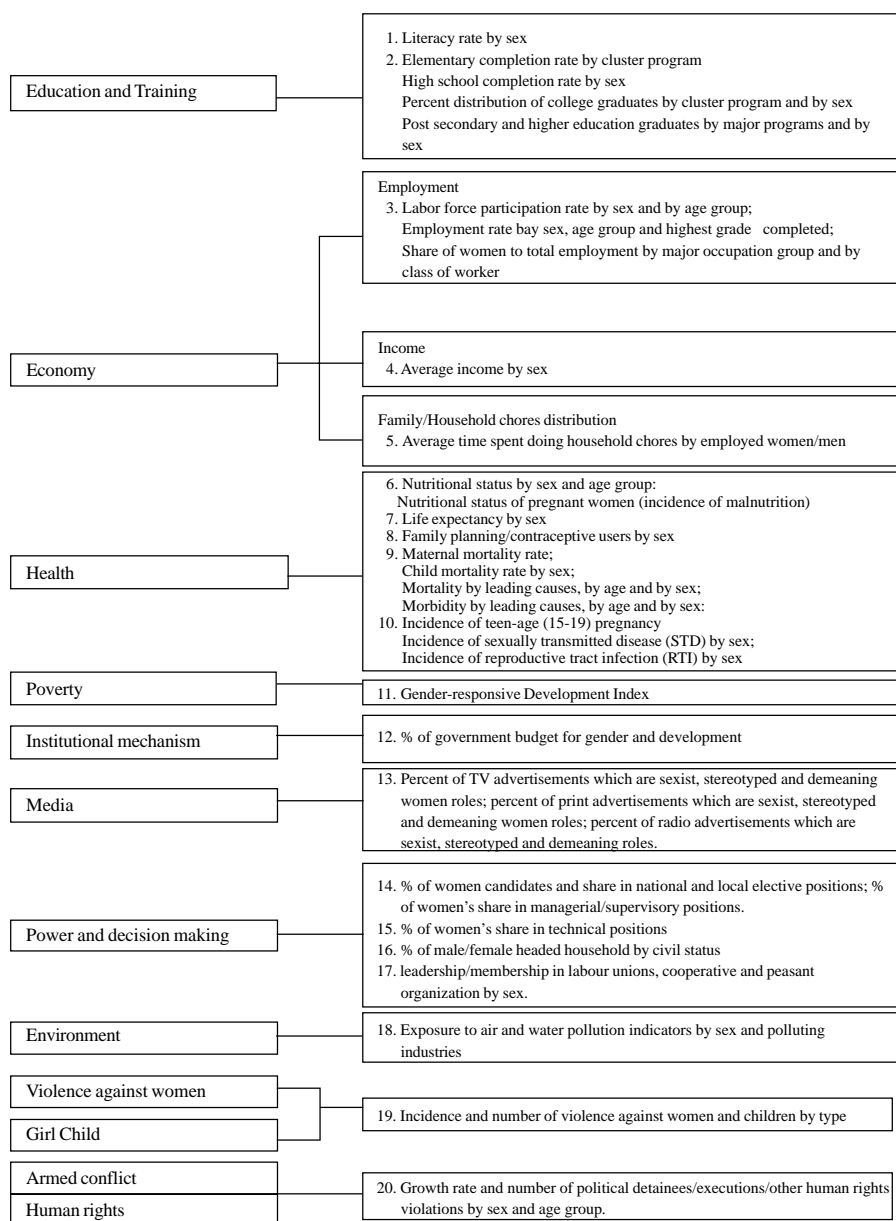
Zeroing in on the rights of children, whom development planners consider as the most important resources for the future and will care for the nation tomorrow, an area to be strengthened is the child monitoring system. The system will provide vital indicators on children developed using a holistic view of the child through a rights-based and life cycle approach.

6. CONCLUSION

The Philippine Statistical System faces tremendous challenge in generating reliable and relevant indicators and statistics on human rights with focus on women and children and covering the whole gamut of human rights concerns. Sharing of country experiences in measuring the incidence, severity, trends, causes, nature, and consequences of violence and other human rights violations will be useful to national statisticians in addressing the data requirements of policymakers, legislators, law enforcers and service providers at the domestic and international arena.

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PRESS DATABASES ON GROSS HUMAN RIGHTS
VIOLATIONS. NEV/USP¹

*Wânia Pasinato Izumino**
*Viviane de Oliveira Cubas***

ABSTRACT

This paper is divided in 3 parts. In the first there is a draft of the history of the Center for Study of Violence, its creation and of its main research lines. The second part is dedicated to ground the studies developed regarding the police violence, emphasizing the process of return to democracy of the Brazilian society in the 80's and the persistence of the gross human rights violations along this process. In the third part is introduced the press databases about police violence —the databases kept by the Center with the purpose of monitoring these gross human rights violations. Besides the history of the creation of the databases, it's also presented the methodology used for its constitution and the conceptual definitions elaborated within the ambit of the project. Finally, it's displayed some of the results of the databases as well as the preliminary results of its application in the project of mapping of the gross human rights violations in Sao Paulo, facing these data to others of socioeconomic origin.

¹ This presentation is based on the paper (Adorno & Cardia) "Police Violence, Democratic Transition and Rule of Law in Brazil (1980-1999)".

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1. THE CENTER FOR THE STUDY OF VIOLENCE

Democratic governance and a new Constitution in Brazil have proven not to be enough to ensure the reform of state institutions towards the protection of rights of citizens. The government no longer simply ignore human rights violations, as it did during the period of populist democracy (1946-64), and it does not directly engages, as it did during the military dictatorship (1964-85) in violations. On the contrary, the federal government has begun to play an important role in trying to build some mechanisms of accountability for human rights crimes. But in many instances states institutions, rather than safeguarding the rule of law, have in fact contributed to undermine it, for instance, through the use of brutal and lethal tactics to deal with violence.

Indeed despite 16 years of democratic consolidation we can safely state that most of the polices forces, in Brazil, still tend to see the rule of law as an obstacle rather than an effective guarantee of public security. They and other institutions of the criminal justice system tend to act as border guards protecting the elite from the poor. Besides torture, which is almost routine, summary executions of suspected criminals by the military police seem to be endemic. Brazil with other democratic countries (not including those experiencing internal warfare), has the highest rate of lethal police violence.

This resistance to change by key areas of criminal justice system has presented tremendous challenges for research centers and human rights organizations, forcing them to find new ways of conceptualizing human rights and defining new strategies appropriate for these changed circumstances to create effective and viable mechanisms for the protection of human rights, particularly of the poorest.

The Center for the Study of Violence, of the University of São Paulo, formed in 1987 the first program linking human rights activism and human rights research, just two years after the return to democracy. The areas of research were defined in relation to the concrete problems facing Brazil's new democracy: the absence of the rule of law and the inaccessibility of the justice system for non-elite; structural racism and racial discrimination; and the lack of accountability for state actors implicated in human rights and other crimes.

The Center began investigating illegal practices, documenting them in reports, carrying out fact-finding missions, and receiving complaints of human rights abuses from the citizenry. As such it in pioneering sociological research

that adapted and refined criteria to measure the arbitrary use of lethal force by state agents. The Center was the first group to provide evidence of the abusive use of force by the police in Brazil and the first result of this effort were a joint publication, with Americas Watch (now Human Rights America Watch) in 1987 the first report on police abuse after the return to democracy. This report was critical in raising awareness of the lawless official violence that plagued Brazil after the return to democracy, and helped to begin the identification of serious shortcomings in the performance of the police. This analysis revealed that between 1971 and 1980 the police in the state of São Paulo alone killed more than 3.000 people.

Simultaneously to the various research projects, an extensive data base on gross human rights violations was developed and implemented to monitor how society and how the criminal justice system reacted to gross human rights violations. This monitoring until now has been done through our data basis on three types of gross human rights: lynching, death squads and violence by the police.

2. THE DATABASE ON POLICE VIOLENCE

The existing database store information about these violations since the 1st of January of 1980 to the present. The databases are fed by clippings made from the national press. This long term monitoring has allowed complex analysis of the phenomena set against specific aspects of the social, economic, political and “public security” scenarios (such as the overall criminality rate). The data available so far has allowed researches to follow in time the pattern of the violations: the profile of the victims and aggressors and the actions by the criminal justice system. Analysis of the information stored in the data basis has show that certain types of gross human rights violations tend to occur more in certain cities and that within the cities again there is a concentration of events in specific areas.

The data refer to Brazil but it is far more detailed for the estates of São Paulo and Rio de Janeiro due the sources used. Five newspapers are used at present²

² Newspapers: state of São Paulo: Folha de S. Paulo, O Estado de S. Paulo, Diário de S. Paulo; state of Rio de Janeiro: O Globo, O Dia.

and despite the fact that they are identified as national newspaper they tend to cover in greater detail their own localities.

The use of the national press derives from the lack or the difficulties in the access to official data.³ The press represents a good source of information about how culture is representing this form of violence. Still the press is a fragile source of information in terms of the reliability of the information. This source cannot be used to measure the size of the problem- but it can inform about more qualitative aspects of the phenomenon. The other problem is that at this point the official data cannot be considered fail proof either.

There are serious limitations to the official sources the most important being the lack of autonomy vis a vis the political powers as well as corporation loyalties that can exert much pressure on those in charge of providing information to the public. An example of such pressures was evidenced in São Paulo when in 1998 it was discovered that, for nearly four years since the publication of the figures on deaths caused by the police had become mandatory, the figures had consistently failed to report deaths in confront with persons suspected of involvement in criminal offenses by *off duty* police officers.

The press is an alternative source of information and one that allows the identification of the profile of the violence committed by police forces throughout the country and that is informing the production of public opinion about police forces. The actions described in the press also contribute to the development and the continuous re-making of the image of: crime, the police forces, the criminals involved in police action, the criminal justice process and finally of civil society, in particular, that of non-governmental organizations.

3. THE DEFINITION OF POLICE VIOLENCE

Because of the difficulty in distinguishing precisely —through the information extracted from the press material— those cases in which there was abusive use of the force, it was decided to include in the data basis about the police violence

³ The role of Police Ombudsman is new, in São Paulo the position was created in 1994, and at present there are five states in Brazil that have a police ombudsman. Publication of data about deaths caused by the police in the state official newspaper became mandatory (through legislation) also very recently.

all the cases involving police agents whose actions resulted in injuries or victims' death.

Distribution of police violence cases, Brazil - 1980-2001

Source: Banco de Dados da Imprensa Sobre as Graves Violações de Direitos Humanos – NEV/USP – FORD/FAPEESP/CNPq.

Distribution of cases by period, Brazil - 1980-2001

Source: Banco de Dados da Imprensa Sobre as Graves Violações de Direitos Humanos – NEV/USP – FORD/FAPEESP/CNPq.

From 1980 to 2001 it was recorded 6838 events of police violence in Brasil. The first chart shows the distribution by year. In the second it's shown the distribution by period.

In the database, police violence, is categorized according with the context in which it occurs: *routine action*, interventions by armed policemen while on duty (during the preventive patrols and investigating criminal offenses); *off-*

duty the context in which the policeman acts to stop a criminal act while off duty or while moonlighting (more often as private security); *prison riots repression* (interventions by armed policemen in prison and police station riots); *public demonstrations repression* (interventions by armed policemen to control strikes and public parade of protest).

Part of the violence by Military policemen takes place during confrontations between policemen and civilian suspected of some criminal offense. The context for confrontations are the routine patrols in poor areas or in densely occupied areas in particular in the working class areas- places where policemen feel more vulnerable despite the fact that most policemen are recruited from this same group. Patrols vary: some are really routine drive by, some may involve a police response to a call from the public or a response to a suspicious behavior spotted by some patrol car. These two types may result in the call for reinforcements and would attract more attention because of the number of cars and police personnel involved. Another setting for police violence within routine actions are the search patrols-that can lead to house being broken into without a court warrant. In all these contexts illegal methods are applied- constraints, threats, excessive use of force are all applied to restrain and to immobilize citizens that for some reason were deemed to be suspects.

It is not uncommon for policemen to execute suspects as result of what they label as a case of “resistance to police orders followed by death”. In this perspective police action is justified. Analyzing data concerning the state of São Paulo, Pinheiro et al (1991) revealed that in such settings policemen are in fact responding to instructions to contain criminals at any cost which implies in shooting to kill instead of shooting to immobilize.

The major problem being raised by scholars and practitioners is that of what are the limits for the use of force. This in turn demands the discussion about what models of police are compatible with the Rule of Law. Some use of force by police officers is inevitable.⁴ To reduce violent crime, violent forms of control have been employed, often with disastrous results. Law enforcement agents,

⁴ As Skolnick and Fyfe have stated: “as long as some members of society do not comply with law and resist the police, force will remain an inevitable part of policing. Cops, especially, understand that. Indeed, anybody who fails to understand the centrality of force to police work has no business in a police uniform. [...] The most critical is the question of escalating force: how much and with what instrumentality is force appropriate in the myriad situations officers con-

when acting under the pressure from “public opinion”, tend to subscribe to a philosophy that the end justifies the means “repress crime at any cost”, in this process instances where they express disregard for the right to life of suspects of crime (and often for those in the vicinity of the events) have not been the exception.

By the end of the 1980’s and the beginning of the 1990’s, police violence escalated. There is consensus among police scholars and police practitioners that police violence and police corruption go hand in hand. A violent police force, in general, is a police force where corruption thrives. Police abusive use of force grew, in Brazil, as grew denunciations of police involvement with all sorts of illegal activities: specially those that provided strong financial incentives such as those that activities like drug traffic, kidnapping, cargo robbery and other forms of organized crime could provide. Parliamentary Commission investigating organized crime activities, have highlighted over and over the involvement of police forces with criminal activities in most states of the federation and involving all levels of decision making. Not surprisingly as many members of the civil and military police forces have been involved with death squads and with vigilante groups.

Abusive use of the force by the Military Police⁵ goes on and are internally labeled as “lawful exercise of their duty” and as response to “resistance to arrest”. Despite the lack of reliable official national data on police violence in Brazil, in the city of São Paulo, the number of civilians killed in confrontation

front on the street? State criminal laws distinguishing criminal conduct from acceptable use of force attempt to operationalize the distinction with admonitions to the effect that officers should use no more force than is *necessary or reasonable*, or that force should be used only as a *last resort*” (Skolnick & Fyfe, 1993, pp. 37-38). The use of force is at the core of modern policing as clearly stated by Bittner when defining modern police as: “a mechanism for the distribution of non-negotiable coercive force employed in accordance with the dictates of an intuitive grasp of situational exigencies” (Bittner, 1990, p. 131).

⁵ Preventive policing is done by state Military Police forces which despite the name are not part of the Armed Forces but can be called to help the Army in a state of emergency. The judiciary police, i.e. the police that investigates criminal offenses is the Civil Police. Both police forces are state forces and hierarchically they are subjected to the state Secretary of Public Security and he/she to the state governor. The municipal police is not a law enforcement agency but it is a security group that, is in charge of protecting the municipal buildings, land and installations.

with the police significantly increased in the period 89-92, while the number of policemen killed has remained unchanged (except for the period 1990-91 when there were sharp variations).

In the last 15 years, 15 times more civilians have died in confrontations with the police than police officers. In 1992 this ratio grew to 23 times more civilians being killed than policemen. (NEV-USP, 1993). These tragic events seem to have had their climax with the massacre at the Carandiru Penitentiary (October, 1992). The description of the events suggests—as reported by Marques and Machado, (1993) and by Pietá and Pereira, (1993)—⁶ that the police employed excessive force. This episode revealed that the police force involved in the killings lacked training despite being an elite group presumably prepared to act in critical situations as result a number of lives -111 were lost.

The data presented so far suggest that abusive or excessive use of force is not absent from police violence. Despite the fact that the reports of police violence in the press are not homogeneous,⁷ in terms of the quality and depth of the information, still it is possible to examine whether the force being used is or is not excessive.

The possibility that excessive use of force is taking place will be examined using the following indicators:

- ratio of fatal versus wounded victims;
- average number of victims per case;
- and average number of policemen per case.

The data from the data base indicate that there are strong indicators that police violence in Brazil, is the result of the use of excessive and even abusive use of force. The graph that follows refers to the number of civilian victims reported in the cases that comprise the data base.

⁶ For other sources on police violence, see Pinheiro and others (1991) and Chevigny (1995) Data from the São Paulo State Public Security Secretariat suggests a decline in this type of violence specially after the Carandiru Massacre (October 1992), as a result of pressure from domestic and international public opinion. Figures from the São Paulo Police Ombudsman shows that killings by the police after having stabilized by 1997 began to grow by mid 1998. This growth continued in 1999. Numbers of police killed have also grown but about $\frac{3}{4}$ of these deaths happen when policemen are off-duty.

⁷ Some reports are very detailed while others (the majority) are very economical.

Distribution of cases by type of police violence. Brazil 1980-2001

Source: Banco de Dados da Imprensa Sobre as Graves Violações de Direitos Humanos
– NEV/USP – FORD/FAPEESP/CNPq.

*Total of police violence cases, n° of victims
and fatal victims. Brazil, 1980-2001*

Source: Banco de Dados da Imprensa Sobre as Graves Violações de Direitos Humanos
– NEV/USP – FORD/FAPEESP/CNPq.

*Distribution of violence policial cases by total casualties
and fatal victims, 1980-2001*

The cases reported by the press reveal that between 1980 and 2001 at least 18646 persons were victims of police violence, 6812 of which were fatal victims.

This violence which may or may not express the size of police violence in Brazil, still provides enough information to strengthen the hypothesis that policemen in Brazil may be using excessive violence in their routine policing activities as the proportion of persons who are killed to that of persons who are wounded is very high.

Total of aggressors and victims. Brazil, 1980-2001

Source: Banco de Dados da Imprensa Sobre as Graves Violações de Direitos Humanos – NEV/USP – FORD/FAPESP/CNPq.

In some types of action, especially in routine police action, there is in average 3 police agents for each victim. Considering that such actions gather also the largest number of homicides, enhancing the disproportion between the risk presented by the persons in confront with the police and the magnitude of the response.

*Total of aggressors and victims. Cases of routine actions and off-duty.
Brazil, 1980-2001*

Source: Banco de Dados da Imprensa Sobre as Graves Violações de Direitos Humanos – NEV/USP – FORD/FAPESP/CNPq.

There is on average much disproportion between the number of policemen and the number of victims. Even if one considers that a case may involve a greater number of persons than that of casualties this number could not approximate that of policemen or else the police would be dealing with an exceptionally high number of incidents involving gangs and other forms of organized collective delinquency.

This overwhelming presence of the police in the events reported emphasize the idea that excessive and abusive force is routinely used. With such large contingent of police officers available at the scene should a suspect have to be detained there are other means of protecting the citizens and of preserving the law and public order other than shooting. Furthermore should the use of guns be necessary there are means to immobilize the opponent without having to kill him/her. The lack of proportion represented by the actual threat posed by the suspects and the great number of fatal outcomes indicate that more than a random result the deaths are an intentional result and not of an attempt to contain or to immobilize the suspect.

3. GEOGRAPHICAL INFORMATION

From 2000 on, the Center for Study of Violence started a new stage in the project of monitoring of the gross human rights violations.

The data available so far has allowed researches to follow in time the pattern of the violations: the profile of the victims and aggressors and the actions by the criminal justice system. Now we want to refine and optimize the use of the data: a) exploring the contexts of the events and b) studying the performance of the criminal justice system.

To explore the contexts of the events means that we will incorporate a new unit of analysis to the cases: instead of relying only on the characteristics of the aggressors and of their victims we have began to focus also on the context in which the violations occur. We will jointly with researches from the School of Architecture and Urban Studies and identify the physical and socioeconomic contexts in which the violations occur.

Analysis of the information stored in the data basis has show that certain types of gross human rights violations tend to occur more in certain cities and that within the cities again there is a concentration of events in specific areas.

If violations are not randomly distributed how can we explain that they repeatedly take place in certain districts? Is it possible that specific types of victims are found in specific situations and that the type of gross human rights violation that develops in such conditions? If gross human rights violations are fostered by lack of access to other rights could it be that most violations take place in areas that present overlapping deprivations? What is to be explored is whether there is a relationship between settings and violations, whether physical, social and organizational aspects of the context generate opportunities for violations. In sum we will explore whether we can link lack of access to social economic rights to gross human rights violations.

METHODOLOGY

Geographical information (GIS) will be used to spatially locate the gross human rights violations from the data basis. This information will be integrated with data from census, health and other criminal justice data to test models of risk factors. This analysis will also include social, economic and physical characteristics of the neighborhoods studied.

The contextual analysis of the gross human rights violations will be limited initially to the Greater São Paulo area. This area is acceptably mapped, a not too frequent feat. Also some of the data needed is already mapped albeit in an aggregate way. Part of the challenge will be to disaggregate the information and to plot it by street. In the analysis we will look for the patterns of social economic rights violations and their connections to gross human rights violations, in particular to whether risks of violations add up and increase the probability of further violations.

We have begun to identify the physical and socioeconomic contexts in which the violations occur for the city of São Paulo. The following data was identified, collected and mapped:

- Hospital beds per 1000 inhabitants across the Municipality of São Paulo
- The distribution of drug use arrests and of drug traffic arrests in the Municipality of São Paulo, according with police stations

It was selected from the police violence data base, homicide cases occurred in the metropolitan area of São Paulo for the periods of 1986-1990 and 1996-2000. The numbers attained were distributed for the districts of the municipality and for the cities within the Great Sao Paulo.

Yearly a representative sample of cases of gross human rights violations will be retrieved from the courts in order to fill in one of the major informational gaps of the data basis: the outcome of the cases that made it into the press. This information will also be added to the context analysis.

FIRST RESULTS

The maps presented illustrate the distribution of some resources in the different areas within the Great Sao Paulo. The presence or absence of such resources is an important indicator of the degree of access to citizenship the people living in those areas have. From comparing such resources (or the lackness of them) with the criminal data and the numbers obtained from the newspapers about police violence, it's expected to get to the answers for the rank of questions set in the targets of the project.

We selected some maps, among them the number of hospital beds for thousand inhabitants and their distribution for district (it's easy to see the better distribution in the central areas and broader privation in the peripheric districts). The same happens for the distribution of the urban sewerage system.

Other informations that has been collected by the project reinforce the lack of basic structure within those peripheric districts: information about the number of schools, leisure and culture establishments, libraries.

The police statitics show the homicide and drug traffic distribution within the city (observes that the homicides are concentrated in most peripheric areas. Many of these homicides results from annihilation group actions and from slaughtering).

At last, we have the maps presenting the distribution of the police violence cases in both selected periods: 1986-1990 and 1996-2000.

Before the digitalization of the information, we worked with the feeling that the police violence was happening again in peripheric and deprived areas. The distribution of the cases on the maps confirmed that feeling. In the next stages of the research the target will be the qualitative analysis of the cases here

presented, looking out for a better knowledge of the context in which they occur. The qualitative analysis will emphasize mainly the reasons alleged by the policemen for the occurrence of the confrontation that, in general, are reported to the repression of urban criminality, above all the so-called crimes against patrimony (burglaries). However, by the official statistics, the urban criminality shows a unequal distribution within the society: burglaries and thefts occur mainly in the central areas of the city while the homicides are located in the more peripheric districts.

Moreover lessons seem not to be learned, as these errors of judgement are repeated over and over again. The profile of the victims may explain why corrective measures are not a priority: most of the victims are poor citizens and whose social status is evidenced in their clothing and looks. This pattern of victims indicates that for most police forces, in Brazil, there is little or no difference between being poor and being a criminal. Poverty is then taken as a clear sign of danger. The repetition of such fatal mistakes suggests that this type of error is not identified as a problem- as errors that must be avoided, as something that embarrasses or shames the police forces. On the contrary, these errors seem to be accepted by the police forces as intrinsic risks of their occupation. This assessment seems also to find echo in public opinion as the fatal incidents rarely provoke public clamor. The exception is when they are witnessed such as when they are somehow filmed and then shown on news programs then they evoke angry responses from citizens.

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THE SEARCH FOR INDICATORS OF AWARENESS AND EXERCISE OF HUMAN RIGHTS IN ANGOLA

*Alfonso Barragues**

A. CONTEXT AND METHODOLOGY OF THE POLL

1. Brief history of Human Rights in Angola

The Republic of Angola, in its capacity as member of the United Nations Organization, has ratified the International Human Rights Charter and the African Charter of Peoples and Human Rights, together with the principal international human rights conventions.

At the level of the domestic legal system, Angola, in its Constitutional Law, upholds national unity, human dignity, pluralism of expression and of political organization and the respect and guarantee of the fundamental rights and liberties as the foundations of the democratic rule of law.

In legal terms, the Government is, therefore, responsible for respecting and creating conditions for the respect of human rights, and also for reinstating the normal exercise of violated rights.

The deterioration of the human rights situation in Angola accounts for two differentiated and interconnected scenarios. On the one hand, in the areas of military conflict, violations arise from the consequences of the conflict on the civilian population. On the other hand, in the areas where State administration has been consolidated, these violations derive from the structural weaknesses of the State and government institutions, for the protection of human rights and the rule of law.

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In the concrete case of Luanda province, which was the geographical area for the conduct of the poll, the scenario for consideration is the latter.

2. Poll objectives

As part of its strategy for improving the full exercise of rights by the citizens, the HRD/UNOA, in conjunction with TROCAIRE and the Attorney-General's Department, contracted the Institute for Economic and Social Research - (AIP) and the MOSAICO cultural center, to carry out an opinion poll in Luanda, with the *concrete aim* of raising the awareness of the citizens about their knowledge and exercise of human rights.

The result of the poll was the creation of a data bank and base indicators on the opinions of the populations, pertaining to the awareness and exercise of human rights, separated by variables relating to differences in gender, incomes, education levels, age and municipalities. The AIP Institute presented an enormous quantity of data which currently is being stored and organized into a data bank of over 300 tables and a 200-page report.

The constitution of a data base will serve, to start with, to measure the progress in awareness and exercise of human rights over time.

To this end, a second poll will be taken in late 2002. In this manner, we shall be contributing to make it easier for all institutions involved in human rights in Angola to define more rationally our actions of intervention.

The objective of the present document is to share the results of the poll between the partners of the government and civil society, wishing that they will utilize all information accumulated to improve the human rights situation in Angola.

3. Awareness of the functions and authority of the Attorney-General of the Republic and of the Tribunals.

Awareness on the part of the citizen of the State organ like the Attorney-General and the Tribunals, is essential for the resolution of problems and legal conflicts which emerge daily. Ignorance, sometimes due to the low level of accessibility and visibility of these bodies, causes situations in which the citizen looks for alternatives, sometimes illicit ones, for resolving legal problems.

The quantitative poll, on grounds of technical restrictions, focused on the measurement of the awareness about the Attorney-General's Department, as that institution is more directly connected to the supervision of legality and, in this regard, the one which by vocation guarantees the aggrieved rights of the citizen, in the first instance. The qualitative poll devoted greater attention to the tribunals.

Awareness about the Attorney-General's Department is quite limited. Practically some 50% of the population lacks formal awareness, as the specific functions it discharges. An alarming result which proves that some social groups, in particular, persons of none or low educational level, women and the residents of some outlying neighborhoods, reveal a very low level of awareness.

The Attorney-General's Department has taken steps to advertise its work more to the citizen. Among the many disseminating actions, it is important to underline the TV program "Law for All".

Questioning the citizens about TV and radio programs dealing with human rights, the program "Law for All", was the most easily identified by the interviewees, with a 54% response rate.

Given the success of the program, it would be important to think of multiplying communication formulae to reach those groups which, precisely exhibit greater levels of deficit and which, perchance, do not have access to TV or the high linguistic records.

We wish to recall at this point the comments made in Section D about trust, in the light of the data which indicated a greater level of trust than mistrust in the Attorney-General's Department (4%) and in the tribunals (7%), that this might lead to the belief that these institutions are not lacking patronage and, yet, the implementation of program in favor of greater awareness, possibility of access and efficiency in the performance of their functions, could translate into a gradual increase in the positive experiences and in the level of trust.

FINAL CONCLUSIONS AND RECOMENDATIONS

1. Conclusions

The data gathered from the poll on human rights held in Luanda in June 2000, make it possible to arrive at the following conclusions:

1.1 *About 15% of the population is unaware of their rights* or they hold such a low level of awareness that they do not know what these rights signify in their practical lives. This percentage population is principally illiterate or of a low elementary educational level. To a less extent, the women and the residents of the outlying neighborhoods suffer from this deficiency of awareness.

1.2 Though a general and vague notion of human rights is shared by the remaining 85% of the adult population interviewed, this notion relates to the moral dimension of the rights. *Slightly over half the adult population interviewed is not even aware of the legal dimension of human rights, as the supra-legal limit of government action and by its agents, nor that they can appeal to restrain government actions which may incur violations; nor are they aware that in case of human rights violations, they can resort to the State institutions to address their exercise, for the punishment of the violators and for the reparation for the damage caused.* Definitively, acceptance as normal of actions conducted by agents and the powers of the State which result in human rights violations, indicate an unawareness of human rights as restrictive legal rules upon government action.

1.3 *For over half the adult population interviewed, the existence of State institutions charged with overseeing human rights and for authority the punishment of the perpetrators, as for example, the Attorney-General's Department and the tribunals, is confusing.* Ample sectors of the population cannot grasp the usefulness of some institutions, like the municipal tribunals, because they are not yet installed and functioning throughout all municipalities of the capital city.

1.4 *The level of trust in the institutions is very low,* either for factors connected to the functioning and credibility of the same, or through ignorance of their practical role.

1.5 As a result of the previous points, we can conclude by saying that *roughly half of the population is unaware of how to utilize their rights.*

1.6 There is the *need to collect data on awareness and the exercise of human rights in a systematic manner,* for their utilization, later, in information on

policies of positive change in human rights. In the concrete case of the poll presented in this report, the information contained in the present document is minimal, as compared to the entire volume of information gathered by the pollsters and not yet exploited.

2. Recommendations

2.1 With regard to the *human rights awareness in their moral dimension*, formulae must be exploited to reach the target groups which present the largest deficits. Below, we mention some of the actions recommended:

- Radio programs devoid of rhetoric, in simple language and direct messages, especially addressed to persons of scanty or no educational level.
- Between 80% and 90% of the citizens consulted appear to have some *notion of the moral dimension of economic, social and cultural rights*. Yet, the *legal dimension* of the rights in their relationship with responsibility which arises when they are flouted, is *not adequately known by some 50% of the population*.

Rights like property subject to legal protection by the State has two important implications:

First, the rights are not understood as a property, whose ownership and exercise can be upheld before the organs of justice. Secondly, the government is not seen as the principal guarantor of the respect for rights by an ample sector of the population.

Definitively, the acceptance as normal of actions conducted by the agents and powers of the State, which violate human rights, indicates an ignorance of the rights as restrictive legal rules limiting government action.

3. Exercise and defense of human rights through the resort of justice

The poll intended to measure, based on the opinions of the interviewees, their attitude regarding the defense of the effective exercise of the rights, in case they are obstructed or violated. Consequently, there as an attempt to measure

whether the persons had a favorable opinion in defending the exercise of their rights, through legal or institutional means.

Discussion among the focal groups

The issue of the exercise of rights, in principle, is accepted by the interviewees in the groups. However, the evaluation of the work of the institutions which see to the safe keeping of rights is generally negative, both in terms of discredit and for lack of confidence.

Though 75% of the population is in favor of the exercise of their rights through appeal, a more detailed analysis indicates the existence on an important split in the tendency of exercise, with regard to the level of education achieved, since those whose education is more basic present serious deficits in the exercise of rights. Some of the responses indicate spits between the extremes, which oscillate between 25 points, sometimes rising (in the case of the prosecutor) to 40 percentage points below the average.

With regard to gender and age, a high deficit was verified, although it was less drastic than in the educational variable, to the detriment of the women and the older age groups. It was verified that there was a pattern of response similar in all questions of this section, with fluctuations of between 5 and 9 percentage points among these two variables, as against men and the younger age groups.

In conclusion, the illiterates, mainly followed by women and those over 34 years of age, are relatively less aware of the exercise of rights through the institutionally defined channels.

In addition to the detailed analysis by variables mentioned above, the high level of awareness as to the exercise of rights through institutional appeals must be differentiated by the level of awareness of the institutions which understand there appeals, as well as by the levels of trust in these institutions.

4. Trust and awareness of the institutions

4.1 Trust in the institutions

In the poll, the interviewees were asked to indicate in whom they placed greater confidence to resolve their human rights problems, when they occur. Besides,

they were asked in the reverse sense, in whom they trusted less. In the table presented in the continuation, each one of the 1511 interviewees had to cast a vote for the institution in which they placed greater trust and another vote for the institution in which they placed less confidence.

<i>Institutions for the protection of Human Rights</i>	<i>Less confidence</i>	<i>More confidence</i>
Police	19%	13%
Parliament	5%	8%
Friends	13%	3%
Provincial Governor	3%	4%
Mass Media	3%	5%
Attorney General	3%	4%
Churches	6%	10%
NGOs	4%	2%
Political Parties	8%	1%
Ministry of Justice	1%	15%
Family	4%	10%
United Nations	4%	8%
President of the Republic	11%	3%
Tribunals	3%	7%
Professional Associations	3%	1%
Traditional Authorities	10%	2%
Total	100%	100%

MEASURING GOVERNABILITY, DEMOCRACY AND HUMAN RIGHTS: THE CONTRIBUTION OF HOME SURVEYS

*François Roubaud*¹

INTRODUCTION

The Conjunction of the relative failure of the structural adjustment policies and the extension of the concept of poverty to extra-economic dimensions led governments and international organizations to an awareness of the importance of new factors, such as governability and democracy, the adhesion and participation of the populations, setting them at the heart of their development strategies. Increasingly, it seems that development issues cannot be addressed solely through the angle of economic growth. In fact, the construction of efficient policies for the struggle against poverty must take into consideration and try to understand the interactions among at least four dimensions: certainly growth, but also distribution (of income or assets), the quality of the institutions (particularly public ones), and the type of political regime. This is why the notions of “good governability” and democracy are set at the forefront today as fundamental determinants for success in terms of economic policies, and generally, of the levels of development of the countries. They not only have an instrumental function (democracy contributes to good governability by favoring growth and limiting inequalities) but also represent constitutive dimensions of the wellbeing of the populations. For example, the respect for individual lib-

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erties (political freedom, freedom of expression, etc.) can be considered an intrinsic component of development: in the same manner, an integral administration increases the sense of justice, reducing discriminatory practices (among other means, through a reduction in corruption).

The objective of this contribution is to show the contribution of home surveys as a statistical instrument for the elaboration and continuation of indicators of governability and democracy in developing countries (PED - Países en Desarrollo). The first part questions the potential contribution of home surveys to the construction of a follow-up/evaluation mechanism of governability and democracy: the objectives, principles and main difficulties. These reflections are made in a general perspective for implementing public policies and especially for putting them within the context of new international strategies for the struggle against poverty. In the second part, we will illustrate our purpose with concrete and select examples, essentially extracted from experiences acquired in Madagascar, within the framework of the² project MADIO.

I. GOVERNABILITY, DEMOCRACY AND HUMAN RIGHTS: WHAT CAN WE EXPECT FROM HOME SURVEYS?

The World Bank and the International Monetary Fund (IMF) issued a joint initiative at the end of 1999 that places the struggle against poverty at the center of the development policies. All the low-income countries that wish to benefit from financial assistance from one of these organizations, or from a decrease of their debt within the framework of the Heavily Indebted Poor Countries (HIPC), must prepare a program for the struggle against poverty, in French called Document Stratégique de Réduction de la Pauvreté (DSRP), or Poverty Reduction Strategy Papers (PRSP). The principles of the PRSP provide two major innovations: that the Bretton Woods Institutions (BWI) make the struggle against poverty their main objective, without taking into consideration structural adjustments; then, to adopt a participation process concept for the definition and follow-up of the PRSP that represents a potential factor in the

² Project MADIO (Madagascar-Dial-Instat-Orstom) is a project that supports the rehabilitation of the statistical national mechanism and the macro-economic analysis.

strengthening of democracy in the countries whose population generally has few means of expression.

*Accountability, empowerment, ownership, voicing:
the key words of the new development policies*

With the launching of the PRSP, THE BRI began a major change in terms of the previous practices. Before, even if national experts participated in the definition of policies, and the latter were the object of negotiations, the poor countries did not have that much clout and had a small margin for maneuvering. The information accessible to the public was more than limited and most of the documents used during the negotiations remained confidential.

The almost generalized failure of the Structural Adjustment Plans (SAP) in the low-income countries, particularly Africa, originates in social or political blockades that present obstacles to the implementation of the programs, as well as a lack of efficiency of the foreseen measures, even when they were applied effectively. Two flaws subjacent to the manner of intervention of the BWI explain this situation in great measure. On the one hand, it was supposed that international experts were the best choice in defining adequate policies for the country, based on the notion of *best price*. On the other hand, being considered as incompetent and marginalized in the elaboration of strategies, those responsible at a national level were considered as having the capacity and the will to make them work efficiently, without necessarily having to follow them.

With the development of the concept of governability, set forth as a major condition for the success of the policies, and the wind of democratization that emphasizes the need to lend greater weight to those who are voiceless, both nationally and internationally, two conditions stood out: first, taking into consideration the economic, socio-political and institutional contexts specific to each country; second, the primordial character of adhesion to the policies, not only of the rulers but also of the population.

In the execution plan for the strategies, the principle of participation of the different actors of society opens new perspectives in terms of the manner in which national issues must from now on be conducted. (Cling, Razafindrakoto, Roubaud, 2002). By favoring respect for the right to information and expression, participation meets a first objective: that of combating one of the dimen-

sions of poverty - exclusion and marginalization. But the potential range of this precept goes beyond this aspect. The “participation” only assumes its full sense if it truly contributes to solving the dysfunctions of democracy in the poor countries. It should reinforce the capabilities and the power of the intermediary bodies (media, unions, associations, etc.) in the making, follow-up, control, evaluation and re-orientation of policies. According to this view, information—whose character of formation must be stressed—assumes a primordial importance. It makes public elections explicit and increases transparency in the administration of matters of the State, giving the different actors of society the possibility to exert pressure, and even to sanction, cases of insufficiency. In brief, the posture is to ensure the principle of democratic responsibility or *Accountability*, making the State responsible to the citizens for its actions.

The concept of participation process supposes the active implication of the group of actors in society in the making, follow-up and execution of the strategy for the struggle against poverty, should above all contribute to enriching the debates and defining a more adequate strategy, responding to real social needs. This step, *empowerment* gives the citizens, particularly the poor, the possibility of influencing policies that affect their life conditions, allowing them to identify and take into consideration their own problems and expectations.

Home surveys: An adapted instrument?

The step that makes use of qualitative and participatory methods, currently known as *Participatory Assessment* (PA) or Participatory Evaluation has been developed since mid-nineties, particularly in terms of poverty (EAP or PPA). Its main objective is to take into consideration the point of view of different members of society, particularly the poor. It is supported by two subjacent principles: on the one hand, the acknowledgement of the fact that the poor are “experts” in terms of poverty and are in a better position to define the type of phenomenon, its origins and the means for getting ahead; on the other hand, the acknowledgement that the multiple dimensions of poverty are hardly understandable in classic quantitative surveys, taking into consideration only the monetary criterion. The general step insists on the participatory aspect, based on a longer view than a simple collection of information. The objective includes

different key-actors, particularly the representatives of the poor, in the follow-up process of the policies implemented.

The PPA were executed in a great number of countries (about sixty), mainly by the World Bank. They are based on sociological or anthropological surveys, using different techniques such as open or semi-structured interviews, individual or group interviews, visual methods (tables, graphs, diagrams), and observations. These participatory evaluations worked for an extensive consultation program (Consultation with the Poor) initiated by the World Bank in order to lend a voice to the poor (Narayan et al, 2000; Narayan et al, 2000). The objective is to collect their points of view on essentially four topics: the perception of poverty (definition of the concept, causes and difficulties encountered), the main problems and priorities in terms of policy, experiences with different institutions (local or outside the community), the issue of inequalities according to the gender inside the homes and the community.

Main results and limitations of the PPA

The main results of the PPA can be of two types: on the one hand, this step provided a more profound knowledge of poverty, particularly focusing on the multiple dimensions of poverty. Aside from the classic dimensions related to the income and spending levels, as well as access to education and health, analysts reveal other aspects such as vulnerability and insecurity, exclusion and incapacity by the poor to influence socio-economic factors that condition their levels of living conditions (powerlessness), the lack of dignity and self-respect. On the other hand, the point of view of the policies, the basis of the reforms is longer and more solid. The participatory methods initiated a dialogue which, mobilizing different actors, favors the appropriation of the policies.

However, this step presents certain limitations. The first derive from the very descriptive character of the information collected, very little of it adapted to the decision making process. Often, those responsible want the quantitative information to help in the definition of the policies. Now then, there are multiple perceptions and they reveal conflicts of interest. Also, it is relevant to ask oneself whether the opinions expressed by the people who were polled are representative of the totality of the poor (the voiceless). It is also true that the direct consequences of the participatory evaluations can be limited, especially

in the short term. Despite all this, the methods elicit enormous expectations from the participants, who consider their implication (time consuming) as an investment. The disappointments that result from false hopes can cause a demobilization of the population, jeopardizing the continuity of the participatory process. Lastly, it is important to stress that the participatory focus has cared little for follow-up and the appreciation of the reforms effectively implemented.

*Qualitative thematic modules added to statistical surveys:
an alternative view*

The PPA that led to the selection of the “voices of the poor”, using the qualitative and participatory methods, have clearly enriched the knowledge regarding poverty. But a question arises: To what point can we continue on this track? This view leaves this problem unresolved: the transcription of the results into useful information for the implementation of concrete measures at a national level.

One alternative and/or complementary view can be proposed. It responds to the concern regarding the representation of the opinions collected, to solve the problems of arbitration in view of the multiplicity of points of view. It is a matter of adding to periodic quantitative classic surveys —preferably light ones— modules in the form of opinion polls, including variable topics depending on the years. Qualitative questions posed in the participatory focus are standardized in these modules. The population (including the poor) is urged to express itself on its perception of poverty (definition, causes), its difficulties and needs, its appreciation of the policies implemented, and the definition of adequate strategies to respond to its expectations.

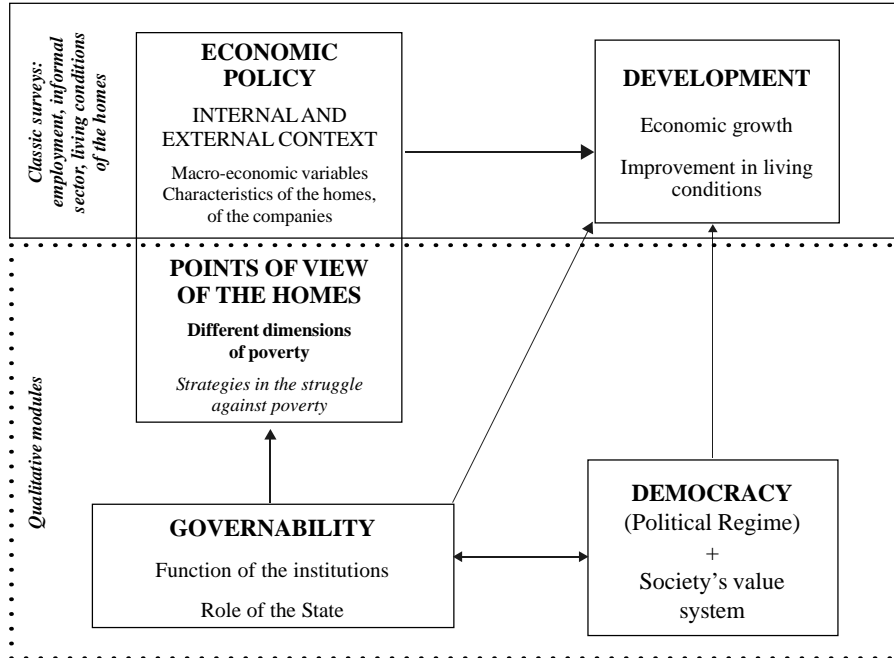
On the other hand, this view can be completed by specific qualitative modules whose objective is to include the cultural, social and political environment in which the homes exist. In fact, paradoxically, we have little information in this sense in the developing countries, particularly Africa, when many analysts set forth social, cultural and political factors as determinants of the manner of functioning of African societies.

This view presents an advantage of collecting not only objective information on the situation of homes or individuals (the quantitative part of the survey: level of income / spending, housing, etc.) but also qualitative subjective

information on the perception and appreciation of the people who are polled (degree of satisfaction with their living conditions, their difficulties and needs, their opinions on policies and the manner of functioning of the institutions). Due to the representative nature of the surveys, the qualitative information is quantifiable: the part of the population that shares the same point of view can be measured. Besides, the opinions can be analyzed according to the characteristics of the individuals. Finally, it is important to stress the possibility of comparing the behaviors and opinions of the poor in relation to the rest of the population, when the survey is accompanied by a classic evaluation mechanism of the living conditions of all the homes.

Chart 1

The quantitative modules for the comprehension of the relationships between governability, democracy, economic policy and living conditions of the populations



From the moment in which the concept of empowerment is integrated into the center of public policies, socio-political surveys contribute making people in general aware of the point of view and increasing the power of the social groups traditionally at the margin of the decision making process. This contribution is essential because, for the poor countries, in which relief institutions of civil society are not fully developed, it represents, in the face of elections, the only medium for the voiceless classes to be heard by the authorities.

Table 1
Comparison of the two methods: Participatory evaluations / qualitative methods added to quantitative surveys

	<i>Participatory methods (PPA)</i>	<i>Qualitative modules added to classic quantitative surveys</i>
<i>Method:</i>	<i>A set of tools</i>	<i>Standardized method</i>
<i>Main tool</i>	<i>Semi-structured interview</i>	<i>Formalized form</i>
<i>Cost</i>	<i>Middle or low (depending on the objective and geographical scope)</i>	<i>Middle or high, but very low marginal cost if quantitative survey is already programmed</i>
<i>Type of participation</i>	<i>Active participation thanks to open discussions and situation analysis</i>	<i>Population opinion polls Survey : expression of the voice of those excluded</i>
<i>Sample</i>	<i>Small or middle (focused on the poor) but not representative</i>	<i>Broad, representative of all categories of the population</i>
<i>Type of information collected</i> <i>Results</i>	<i>Qualitative and descriptive information (difficult to quantify)</i>	<i>Quantitative and qualitative information, but quantifiable (possibility of statistical analysis)</i>

	→ Detailed knowledge of the situation of the poor, as well as of their points of view	→ Broader diagnostic of the situation of the poor (relative to other categories); classification of priorities and opinions according to their importance to the population
<i>Main limitations</i>	Multiple situations and points of view → inadequate information for making decisions	The questions are predetermined → need to have prior knowledge of the situation of the poor to avoid imposing external views and forgetting fundamental factors or problems

Economic policies, governability, democracy and opinion polls

If the introduction of qualitative modules in representative home surveys constitutes an original instrument, albeit underused in the developing countries in the analysis of poverty, it opens the way to immense fields of application, with a more generalized reach. In fact, the wave of democratic transition in the world, particularly sub-Saharan Africa, made it possible and necessary for opinion polls to become generalized as a source of information and policy monitoring, beside the traditional mechanism of economic statistics. On the one hand, the establishment of political regimes brings down political obstacles (censorship) that prevented the realization. On the other hand, the exercise of democracy implies access to all information. For this reason, naturally, modern communication techniques must be made available to the citizens and representatives facing multiple problems of collective option, to acknowledge the diverse sensibilities and their evolution, and thus shed light on the public debate. We have had the opportunity to develop the interest of such a view for an electoral sociology and socio-political surveys (Razafindrakoto, Roubaud, 2000b; Roubaud, 2000b). But the field of opportunities is infinite, as proven by the generalization of surveys and the diversity of topics addressed in the

developed countries. We address the situation of the poor, but multiple other sectors of the social corpus can be contemplated: women, youths, officials, etc.

Paradoxically, the young democracies of the South have not yet become aware of this formidable opportunity. This gap, due to the newness of the democratic process, can be explained by many factors. The lack of financial resources must be taken into consideration first. In sub-Saharan Africa, the public statistics and investigation institutions, affected by a budgetary crisis, were disinherited (Afristat, 1998), while the fragility of the solvent demand inhibits the development of private offer (polling institutes, marketing services). Added to this financial limitation is the lack of skilled human resources, combined with competitions in polling techniques and the treatment of socio-economic-type or political issues. Also in the field of research, it is difficult to find sociologists or political scientists experts on Africa who can handle quantitative analysis tools. Finally, it is important to mention the “economicist” tropism of official statistical information systems, which always favor the measurement of “hard” economic variables (growth, inflation, unemployment, etc.) over the study of qualitative, socio-political or subjective indicators: electoral preferences, preferences, opinions, values. Economists at the World Bank (which had a central role in the definition of policies and monitoring systems in Africa) are responsible for this setback. However, in the heart of this institution, this orientation is beginning to doubt the issue of multiplication of the works on “the quality of the growth” (World Bank, 2000b), which shows that the economic path of the developing countries also depends on factors considered up to now as extra-economic: democracy, governability, appropriation, etc. All the series of new databases are mobilized (index of perception of corruption, civil liberties and policies, ethno-linguistic “fractionalization”, etc.) as are the new generations of home surveys, for example the CWIQ surveys.

If the basis of this type of survey is clearly established, is it necessary to know what institution should be in charge? In the developed countries, generally it is the private survey institutes that are in charge. But several are carried out with public funding, by administrations or research organizations. We can, for example, quote the case of France and the home surveys of the Insee or the Credoc, or in the political field, the surveys of the Cevipof (1978, 1985, 1995, 1997). It is important to mention that, in Europe or internationally, there are true long-term monitoring mechanisms, such as the Euro-Barometers, which have been used since 1970 in the countries of the European Community, the Politi-

cal Action Surveys or the World Values Surveys have already had three successive editions (1981, 1990, 1999), with an extension of the geographic framework covering 23 in the first and more than 40 in the second (Inglehart, 1997).

As we mentioned previously, in the poorest developing countries, particularly Africa, organizations of this type do not fulfill this function. In most of the countries, the human and economic resources are insufficient for the implementation of this type of operation. Within this context, at least three reasons lead to the identification of the National Statistics Institute (NSI) as the best candidate to carry out the surveys. On the one hand, it is at its heart that the essential technical competency is concentrated for these home surveys. On the other hand, these surveys seem to have real public service missions and, in fact, attract public funding. Finally, the strong potential demand for these surveys represents a powerful tool for contributing to the rehabilitation of the social function of the NSI. However, a balance can and must be found between the super-abundance of information in the developed countries (only the France the results of more than 800 surveys were made public in 1991, counting the not-published private as the most numerous) and the quasi-absence of it in the poor countries.

In the end, whatever the reservations may be that we can express on opinion polls (the effect of imposition, artificial construction, even manipulation of the public opinion, etc.: Bourdieu, 1980; Champagne, 1990; Meynaud, Duclos, 1996) these deal more with their abusive exploitation (“ingenuous” and simplistic reading, biased interpretations, submission to commercial imperatives) than with their intrinsic legitimacy as an instrument of knowledge. The necessary precautions for usage, of a technical and deontological nature, constitute an essential and unavoidable component of the knowledge and good functioning of a democratic society.³ Systematically banned in totalitarian regimes, surveys derive from the product of democratic society (Cayrol, 2000).

³ A. Lancelot identified at least four types of contribution of surveys to democracy: the selection of rulers (demand for candidates and elected officials), their control (making the reaction of the citizens public at any given moment), respect for the rights of the opposition (when the instances of power are in the hands of one party, it reflects the diversity that a promotion system would provide) and participation in a culture of freedom (pluralism and diffusion of the information, without which democracy is not formal). Cf. “Enquête et démocratie”, in Sofres, “Opinion publique”, 1984

Participatory processes provide a conceptual framework and legitimacy to the participation of the populations in order to reinforce governability and democracy in developing countries. The current weakness of the organizations of civil society in the three fields of representation, legitimacy and capacity, leads to a critical view of the experiences that are carried out. To go even further, two paths must be situated at the forefront:

- Reinforcing the intermediary bodies that are susceptible to relieving the aspirations of the citizens and playing a role of counter-power. It is a matter of filling the gap between the State, the political class, the all-mighty elite and atomized individuals. It is the focus adopted by the different international organizations that support structuring the institutions of civil society, such as water-users' associations or peasants, savings and credit institutions, but also unions, human rights commissions, election observation commissions, etc.
- Reinforcing the democratic responsibility of the States (accountability), at the same time promoting the revelation of citizens' preferences and demands (voicing, empowerment) via home surveys and opinion polls. This path is under-used by the developing countries and it is easier to implement.

II. THE QUALITATIVE MODULES OF THE 1-2-3 SURVEY: EXAMPLES OF APPLICATION

The 1-2-3 survey: a light and flexible mechanism for the study of urban poverty and governability.

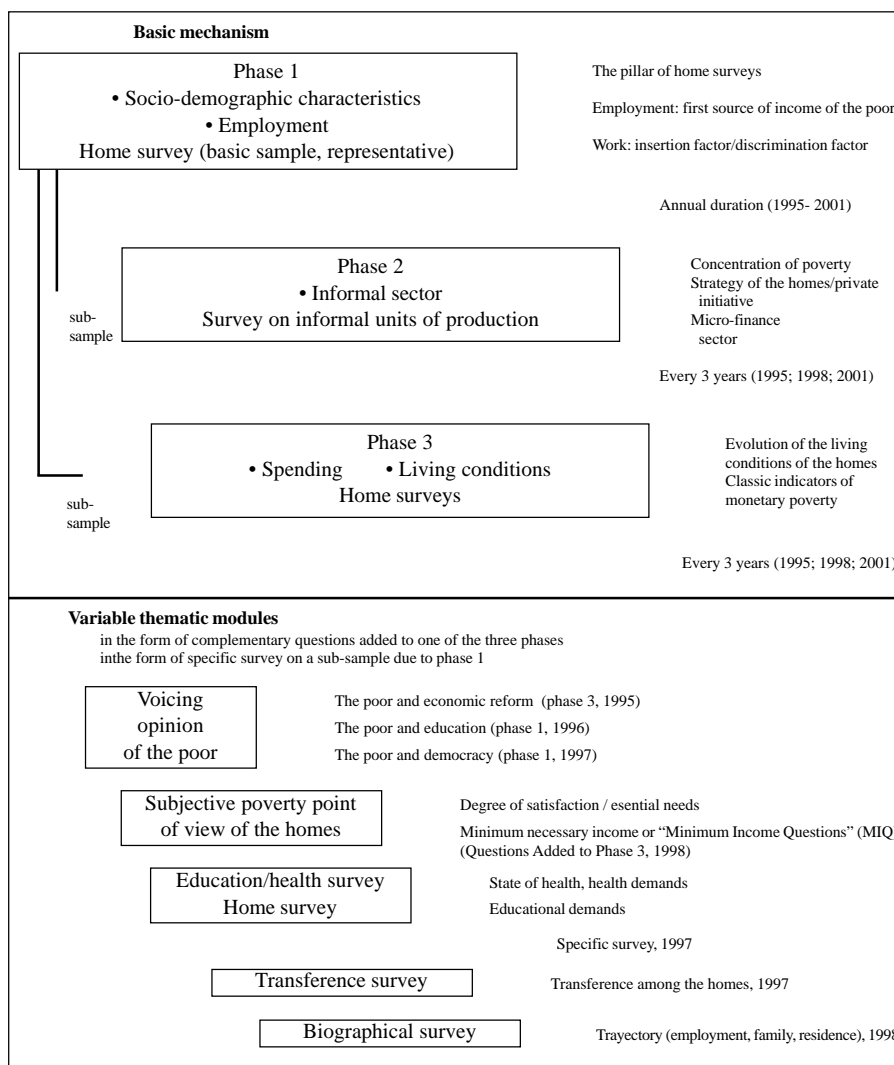
Initially conceived in the early nineties to understand the informal sector (Roubaud, 1992), the 1-2-3 survey has been progressively extended to the measurement and study of urban poverty and governability, adapting to the potential ascension of these issues, which currently constitute the heart of development policies. After an initial partial experimentation in Mexico (1986, 1989), the 1-2-3 survey was applied fully for the first time in Cameroon in 1993 (Stateco, 1994). Its methodology was later consolidated in Madagascar, where the mechanism was established in 1995 and is still functioning (Roubaud, 2000^a). Initially limited to the capital, after five years of success, it was extended in

2000 to seven main urban centers of the country. The successful 1-2-3 survey was rapidly extended. It was applied and is still currently in operation or being projected in three continents: Africa (Morocco, seven capitals of western Africa), Lir life coca (El Salvador, Colombia, Venezuela) and Asia (China, Bangladesh). Thanks to its flexible architecture, the survey seems to be generic, respecting some common characteristics, although the configurations change according to the needs and specifics of the existing information systems in the different countries.

Based on the principle of additional surveys, the 1-2-3 survey consists of a mechanism of three overlapping surveys, taking into consideration statistically different populations: individuals, production units, and homes. The first phase of this mechanism is a survey on employment, unemployment and the conditions of activities in the homes (phase 1: employment survey). It can be carried out annually (continually), as in the case of Madagascar since 1999. Aside from the principal thematic of this phase, oriented towards the work market, it has a pivotal function in the making of a broader framework of home surveys. Two techniques are mobilized in order to extend the field of open questions: additional surveys⁴ and surveys on the variable thematic modules on the basic questionnaire. In the first category, we can mention phase 2 on the informal sector and phase 3 on spending, places of purchase and poverty, which are an integral part of the basic architecture of the mechanism. These structure surveys, which are more difficult to put into operation, cannot be carried out annually, but rather supra-annually. For example, in Mexico phase 2 was carried out every two years, while in Madagascar phases 2 and 3 are conducted every three years (1995, 1998, 2001).

⁴ The employment survey is used to obtain a sub-sample, for which we apply a second questionnaire on a particular topic.

*Chart 2
The 1-2-3 survey in Madagascar*



To this basic architecture, one must add specific statistical operations, corresponding to variable thematic modules. The latter can assume two forms: according to the first configuration, presented as simple surveys applied to a sub-sample of homes and/or individuals that result from the first phase (similar to phase 3), according to the principle of the additional surveys. In Madagascar, the SET97 surveys on health, education and transferences, and BIOMAD98 on biographical trajectories (family, migration, employment) were carried out for this purpose. According to the second configuration, different thematic modules can be added to the basic questionnaire of the three phases, taking into consideration specific needs. Mentioning, among others and always in Madagascar, the complementary modules on the perception of the economic reforms and the function of the State (1995), the demands for education and school policies (1996), ethnic identity, religious practices, electoral sociology and the function of the parties and the political class (1997), the reform of public function and privatization (1998), the new dimensions of poverty (vulnerability, subjective processes, "participation", violence, etc., 1999-2000), or the "governability" and "democracy" modules applied to seven capitals western Africa, within the framework of the PARSTAT project. These modules are very close to opinion polls, responding to a concern regarding representation of the opinions collected, and contributing to the application of the participatory process.

The constant ascension of the issues of governability and democracy lead to an extension particularly of survey 1-2-3 on these themes: on the one hand, to appreciate the function of the administration, the quality of the public services, as well as the point of view of the population on the function of the State (on what it does or what it should do). On the other hand, the survey allows one to collect the point of view of the population on the function (dysfunction) of democracy, on the adaptation of the political regime to the context of the country, and specifically on the values considered essential in society. The in fine objective is to explore the relationships between democracy (globally the political regime), public institutions, their effective functioning, the value system of society and the living conditions of the population.

Finally, the 1-2-3 survey allows one to combine and follow the evolution in time of three types of information: *subjective questions*, characteristic of opinion polls (appreciation of the functioning of democracy and the State, level of adhesion to policies implemented, party preferences, concept of ethnicity, feel-

ings of exclusion or discrimination, value and representations system, etc.), *objective data on social behavior and practices* (political and social participation, religious practices, access to public services, violence or corruption, etc.), as well as *traditional socio-economic characteristics* that are traditionally collected in home surveys (gender, age, education, migration, employment, income, etc.).

THE DIFFERENT TOPICS ADDRESSED IN THE MADIO PROJECT SURVEYS
IN MADAGASCAR

The steps that consists in introducing qualitative modules into the representative home surveys has been applied in the capital of this country through 1-2-3 surveys carried out periodically by the MADIO project from 1995 to 2002. In general, the flexible architecture of these surveys allows one to respond to the poverty monitoring objectives in all their dimensions (Razafindrakoto, Roubaud, 2000). Different topics, variable depending on the years, were addressed in the specific modules added to one of the three phases of the 1-2-3 survey:

- the Tananarivians and economic policy (phase 3, spending survey, 1995)
- Educational policy and structure adjustment (phase 1, employment survey, 1996)
- Elections, political parties, ethnic groups and religion (phase 1, employment survey, 1997)
- Administrative reform, privatizations and corruption (phase 1, employment survey, 1998)
- Poverty through the subjective appreciation of the homes (phase 3, spending survey, 1998)
- Savings management and use of the banking system (phase 3, spending survey, 1998)
- Synthetic tax and real estate tax (phase 1, employment survey, 1999)
- Evolution of the economic juncture (phase 1, employment survey, 1999)
- Poverty, violence and exclusion (phase 1, employment survey, 2000-2002)

To these modules added to the basic 1-2-3 mechanism, one adds three specific surveys carried out in 1997 on a sub-sample, addressing: health and medical demands; educational demands; transference among homes.

Good governability, discrimination and result of the administration

Stigmatizing the inefficiency of the political services is a common issue whose satisfaction is not attempted in a legitimate manner. In order to establish the diagnostic, we would have to measure the productivity of the administration. But the non-commercial nature of the activities and their economic aim (creation of positive externals) present many obstacles to the creation of concepts and empirical indicators of the efficiency of public services. Of course, we do not intend to find solutions to this theoretical question facing economic science. However, we will try to support our analysis based on some exceptionally rich original empirical data collected by the MADIO project. In the first place, the users' degree of satisfaction offers an indirect measurement of the result of the administration. As potential beneficiaries of the public services, we must be able to appreciate, through their opinions, whether the administration effectively fulfills its mission. In second place, it is necessary to complete this subjective measurement through more objective indicators. In fact, for a given level of service, people can be more or less satisfied, according to their expectations.

Two subjective indicators: the perception of the users

Now that the reform of public service makes client relations a key word in the administration/administrated relationship, the announced objective is far from being fulfilled. The point of view of the population on the functioning of the administration has no concession. In 1998, less than 15% of the Tananarivians considered it effective, a small percentage granted it the benefit of a doubt, while 36% considered it negative. The denunciation of the public services is not limited to the inhabitants of the capital; it not only affects all of the urban area, but also the countryside, in very similar proportions. Two years later, the situation did not change greatly, and has even degenerated slightly, according to the available information regarding the capital – we collected only 5% positive opinions on the efficiency of the administration (Razafindrakoto, Roubaud, 2001a).

The direct consequence of this negative opinion is related to a low level of trust. Taken as a whole, more than 70% of the population does not trust that the

public services are fulfilling their mission. Globally, peasants' mistrust is greater than that of urban citizens. If all the administrations are affected by this massive phenomenon, some are in the spotlight. Of the different functions identified in the surveys, justice is the most criticized, followed by the services of the domains (for peasants). Health services and education in the rural sectors appear to escape the unanimous point of view of the users, with approximately more than 60% satisfaction.

Figure 1
Rates of satisfaction and trust in the administration

Urbains	Fonctionnaires
Peasants	Industries

Sources: 1998, 2000 Employment survey, 1999 rural observatories, 1998 Annual Survey in the industry, MADIO, our own calculations.

This critical view of the administration does not agree with all the levels of the population. In no level do the public services collect a majority of positive votes: men, women, youths, seniors, the rich, the poor, etc. So, the officials, from whom one would expect more meekness, subscribe to this negative balance: only a quarter trusts it and a mere 12% consider it effective. This criticism is still more significant since it is granted an internal point of view.

The administration has no better answer from entrepreneurs. Less than 4% of the country's companies consider themselves satisfied with public service, while the balance in terms of trust is systematically negative. No service collects, in terms of a favorable opinion, more than a quarter of the entrepreneur's votes. Once again, justice is placed at the forefront, followed by customs and

fiscal services, as a major source of malcontent of the operators [MADIO, 1999].

Objective indicators: absenteeism, corruption and politization of the administration

Why doesn't the administration respond to the expectations of the citizens? The surveys we have allow us to identify at least three fields that contain enormous gaps: absenteeism, corruption and abusive politization of the public function.

In the first place, the problem of absenteeism, at times stigmatized, was set aside. We might even question ourselves on its real existence: was it a massive phenomenon or an abusive generalization on the part of detractors from public service, based on certain isolated cases? But the statements of the administrators confirm that absenteeism massively affects productivity in the public services. Nearly half of the administrators did not find officials in their posts when they were needed and had to return several times. The average number of return trips is 3, and half the population had to return at least twice. For some, the delivery of a service required 20, at times even 50 successive stages for its fulfillment.

In second place, corruption is a gangrene that invades all levels of the administration. Even though minor corruption is in a state of regression since 1995, it is still a massive phenomenon: in 1998, 29% of the inhabitants of the capital were personally victims (42% in 1995) and the people consider this problem an obstacle to the development of the country [Razafindrakoto, Roubaud, 1996]. We will not discuss the disastrous economic effects of corruption in terms of efficiency (distortions, transaction costs, rationing) and equity, since there is an abundance of literature on this issue. Among the services incriminated, territorial administration, its different echelons (neighborhood, counties, provinces, regions) is the one that is mentioned the most. The citizens suffer from it in all fields when they request it (delivery and legalization of diverse paperwork processes, local taxes, registrations, etc.). If we had to draw a conclusion regarding corruption from these results,⁵ we would see

⁵ To truly define corruption, we would have to report the number of acts of corruption *vis-a-vis* the total number of operations executed. The predominance of the local administration in

that the breadth of the phenomenon leads to a more circumspect appreciation of the achievements expected from the current process of decentralization. On the other hand, the central administration is also affected (police, tribunals, health and educational services).

A third factor, the politization of the administration, is set forth as a factor of administrative inefficiency—nearly three quarters of the people complain. If we could demonstrate that fealty to a political party, particularly to the party in power, is low and only slightly superior in the aggregate of the officials than that registered in the population taken as a whole (4% and 2.4% respectively), there would be a sensible increase in the administrative hierarchy (Roubaud, 2000c). The occupation of positions of responsibility by political tendency is a limitation of the democratic and meritocratic principles and favors a clientelist and discriminatory administration of public resources.

Table 2
Absenteeism, politization and corruption of the administration

	<i>Urban</i>	<i>Of which: officials</i>	<i>Peasants</i>	<i>Industrials</i>		<i>Industrials</i>
Victim of absenteeism	44%	45%		—	Non transparent public markets*	89%
Victim of corruption	29%	30%		36%	To obtain a market one needs: —To be connected*	82%
Administration too politicized	74%	74%		80%	—To pay commissions*	65%

* Only companies that submitted.

Sources: 1998, 2000 Employment survey, 1999 Rural observatories, 1998 Annual Survey in the industry, MADIO, our own calculations.

the distribution of the institutions affected by corruption can simply reflect the fact that the proximity services it delivers are more often requested by the population than other services of the central administration.

Paradoxically, the officials are victims as well as those who are administered, of the inefficiencies of the public service. This fact explains the critical point of view of the results of the public function. These results invalidate the hypothesis of a tacit or concerted strategy of passive resistance on the part of officials trying to preserve their situation, a strategy that partly originates the failure of the reforms.

If the peasants seemed to be the least affected by the inefficiencies of the administration, it is above all because those are absent in the countryside. In spite of the submission of the "Nonattendance State" there are not banned: the 18% complain of not finding the officials in their posts when they are needed, 20% have been victims of acts of corruption and two quarters had to suffer the politization of the local representatives of the State.

In fact, the population suffers so much through a lack of public services that it has to appeal to its services: the urban people more than the peasants, and entrepreneurs more than everyone else. Thus, 80% of the entrepreneurs state that the administration is very politicized and 36% that they were personally solicited by tactless officials within the field of their activities. Customs and fiscal services occupy the first place, followed by the police and justice. In the case of the entrepreneurs, it is possible to surpass the measure of minor corruption to affect the more obscure phenomenon of grand corruption, through the delivery of the public markets. Among the companies that submitted calls for public offers (in other words, approximately a fourth of all companies), only 11% state that the accomplishment is transparent, 82% state that it is necessary to have good relations and 65% that it is necessary to pay commissions in order to obtain a public market [MADIO, 1999]. These figures confirm that corruption affects all the administration of the country, growing from the base to the tip of the state apparatus.

Parallel to the three sources of dysfunction mentioned above, the evolution of the manner of recruiting in the public function in the long-term also constitutes an indicator that is worth studying in order to try to lend support to the impression of the functioning of the administration. At the same time that the flow of hiring became depleted, the means for integrating the administration became more related to the social capital of the candidate. If the contest never constitutes the sole form of access to the public function, it account for at least half of the new hirings up to the early 70s. Since then, its part did not cease to return in order not to present more than a third in the last 10 years. At

the same time, the mobilization of personal relations turned into the main channel of recruitment, going beyond 20% for those older than 45 and 75% for those under 25. This evolution must be related to the politization of the administration. This radical change in the form of access to the public function represents the delay symptom of the “webrian” model and of the “re-traditionalization” of the State, expressed by Chabal and Dalloz (1999) in terms of the dynamics of African societies.

The issue of corruption

Corruption is a recurring problem in developing countries, even though these are not the only countries that are affected. It engenders distortions in the attribution of factors and generates processes of exclusion from public services (health, education), of which the poor are victims.

But, above all, corruption violates the social contract; it discredits the administration, affects the level of trust of the population towards its institutions and rulers and, consequently, weakens the process of democratization. Despite its importance, corruption remains a statistically opaque phenomenon. If the recent studies show that corruption inhibits growth (World Bank, 2000a), mobilized indicators, like those developed by “*Transparency International*”, are very fragile. They particularly measure the perception of corruption and its real incidence.

Since 1995, MADIO became interested in the issue and sought to elaborate a methodology to face the breadth of this phenomenon through home surveys (Razafindrakoto, Roubaud, 1996). Not only Tananarivians identify corruption as the main obstacle to the development of the country, but nearly half of them have been victims. The publication of the results of this survey made the headlines: “*Results on Corruption!*” Surfeit of corruption (See below). Then it was impossible to ignore this phenomenon. Supported on the figures of the MADIO, aided by the international awareness of the need to struggle more actively against this evil, the ministry of justice took measures to implement a mechanism of repression. We shall here reproduce an extract from the Report on the motivation behind the proposed law for the struggle against corruption (rejected during the Government Council in 1999): “...*It is very important to remember that according to the results of the statistical survey carried out in*

the month of May of 1995 within the framework of the 'MADIO' project, co-financed by the French Ministry of Cooperation and the European Community, (...) the issue of corruption appears as a recurrent theme that affects the inhabitants of the capital. For 96% of them, it represents a major problem for Madagascar (...) more than 40% of the people 18 or older in the capital had to pay a corrupt official during the previous year. Whatever the credibility of this survey and its interpretations may be, it is undeniable that corruptions constitutes a social phenomenon in Madagascar... it is also important to fight the practice of corruption with the last ounce of energy."

The interest of the measurement of the indicator of the incidence of corruption is twofold: quantifying the breadth of the problem and urging the authorities to react. But it goes even further: the temporal study of the indicator allows us to advance in the comprehension of the phenomenon. For example, the graphic below helps us to relate the improvement in the salary of officials and the important descent in the incidence of corruption⁶ between 1995 and 2000, the measurement of this type of indicator is exception in developing countries.

The serious deterioration of the purchasing power of officials constitutes a negative result, taking into consideration its repercussions on the living conditions in the homes. But, aside from this, it necessarily had effects on the motivation of salaried workers, as well as on the result of the public services. In this regard, the eventual impact of the descent of salaries over the level of corruption is the object of discussions [Van Rijckeghem et Weder, 1997; La porta et al, 1999; Swamy et al., 2001]. But generally, the lack of empirical information limits the scope of these analyses. Instead, we have rates of perception of corruption, naturally subjective and not very reliable. In the case of Madagascar, the available data allows us to estimate with precision the incidence of minor corruption. Thus, we can know what proportion of the population declared itself a victim of corruption during the years previous to the 1995, 1998 and 2000 surveys. In 1995, the incidence of corruption was massive: over 40%. Three years later, it descended to 29% and reached only 11% in the tear 2000 [Razafindrakoto; Roubaud, 2001b]. Although it is impossible to prove the impact of the raise in public salaries on the rate of corruption, other

⁶ The incidence of corruption is defined as the proportion of inhabitants of the capital who were victims of corruption during the previous year. It is an a priori treatment of minor corruption and not grand corruption (public markets, etc.).

factors can act simultaneously (such as the descent in inflation, which reduced uncertainty). There is no doubt that the improvement of the purchasing power of the officials has been a relevant factor in the exceptional descent in corruption (Cf. Figure 2). At the same time, the number of pluriactive officials (moonlighting officials) also descended more than 5 points. If a generous salary policy cannot restore and create an efficient and integral public administration, these results clearly show the suicidal character of a massive contraction of the salaries of officials, such as was carried out in Madagascar, as well as numerous other African countries, during nearly two decades.

Figure 2
Public salaries and result of the administration
in Madagascar (1995-2000)

Source: Razafindrakoto and Roubaud (2001a) from the 1995-2000 Employment Survey, INSTAT/MADIO

A massive consensus for a system of incitation / sanction

The doubtful legitimacy of the State and the devalorization of the public function after the “first generation” of the reforms lead to a phenomenon of demission of the officials in terms of their missions and responsibilities. The re-evaluation of the salaries constitutes an ineluctable stage in the rehabilitation of the

public services. But these raises should only be granted in counterpart of an improvement in the productivity of the services executed. The strange thing is that more ambitious measures in implementing a system of motivation / sanction cannot be considered within the current reforms, especially since the option meets with massive popular consensus. Ninety-five percent of the Tananarivians say they favor the implementation of a salary system based on merit and results. Ninety percent ask that inefficient officials be sanctioned, without excluding the possibility of firing them, in the case of a serious offence. Always against these officials who are negligent in their mission, 88% propose substituting them for young qualified officials. As could be expected, entrepreneurs unanimously declared themselves in favor of these measures.

Primary sociology, which is a reference to the strategists of the State in most of the countries of the world in which it is proposed, seeks to oppose those who are administered, victims of all the virtues, archaic officials, who supposedly represent the main obstacle in the modernization of the administration. Aside from the fact that officials always had a motor function in the implementation of both economic and political changes (in the process of democratization, for example), this limiting bipolarization seems to be erroneous. [Officials seem reticent in the case of some of the measure considered above, especially those that have a more repressive connotation. "Only" 84% vindicate the application of severe sanctions, even destitution, of indelicate officials, and 82% the recruitment of youth people to take their place, against 90% and 88% respectively. Trying to find among officials, groups susceptible to being more reticent, such as those who can be the first in being victims (the least qualified, the elderly) or the unions, does not enable the identification of true pockets of resistance to the principles of the reform.

The application of these measures would doubtless be a true revolution in terms of the current practice, where impunity reigns supreme. They are also identified as key factors of the result of the administration in several studies [Rauch et Evans, 2000], the massive adhesion of the population, including the officials themselves, to these principles set at the heart of the official orientations of the reform, lead one to wonder the reasons why they are not implemented effectively. From a general viewpoint, home surveys allow us to construct a consensus for the implementation of the reforms (cf. the famous pro-poor alliances called on by the World Bank in its last report on poverty, 2000/02).

Table 3
Measures for improved administrative efficiency

<i>In favor of the following measures for improving efficiency:</i>	<i>In %</i>	<i>Total</i>	<i>Officials</i>		
			<i>Total</i>	<i>Does not qualify + 45 years</i>	<i>Unions</i>
			1. Relate salary to merit / performance	95,0	92,5
2. Sanctioning / firing officials who fail	90,0	83,0	83,5	73,4	
3. Recruiting qualified youths in place of officials who fail	88,4	82,0	87,6	63,6	

Sources: 1998 Employment survey, MADIO, our own calculations. The estimates of the last two columns are fragile because they take into consideration a restricted number of observations (60 and 40 respectively).

Participation, political class and functioning of democracy

In democratic societies, within which we can classify Madagascar since the early 90s, elections constitute the main strong times of citizen activity. For this reason, the non-registration in electoral lists and abstention are considered as marks of non-participation. Paradoxically, in Madagascar, the poor have levels of political participation equivalent to those observed for the totality of the homes. In the first place, non-registration, which represents the most patent mark of political exclusion, is a marginal phenomenon. In 1997, only 5% of Tananarivians were not registered in the electoral lists. As a means of comparisons, this proportion amounts to 10% of the potential electoral body in France (Heran, Rouault, 1995). Aside from this, and contrary to the situation in developed countries, marginalization of the poor does not go through a differential distribution of the rates of non-registration, the latter being constant, whatever the category of the homes considered.

In second place, the data collected for 5 recent democratic elections (1st and 2nd round of 1992/93 and 1996 and the municipal elections of 1999) converge towards the same balance: *the rate of abstention does not depend on the level of income*. In fact, abstentionists constitute a heterogeneous group. Politologists make a distinction between two forms of abstention. The first marks a lack of

interests in electoral scrutiny and democratic life in general and it is characteristic of the poorest people, who do not have the necessary “culture” to comprehend the true achievements of the consultations. The second, which we can qualify as “critical abstention” would be more characteristic of a sector of the elite. The latter express their lack of satisfaction in relation to inapt candidates, in order to represent the “subtlety” of their own points of view. This distinction does not apply to Madagascar. Poor or rich, “passive” abstentionists, who state that “*there’s no point in voting*”, represent nearly 15% of abstentionists, and at least 5% of the electoral body. We are faced with one of the most original phenomena in Madagascar: while the poor have very inferior means than those of their fellow citizens in order to exercise their civic rights (human capital, income), they do not decide to exclude themselves from political life and believe in the usefulness of their participation. Only their economic limi-

Table 4
Poverty, participation and insertion

	<i>Per capita income quarter</i>				
	<i>1st</i>	<i>2nd</i>	<i>3rd</i>	<i>4th</i>	<i>Total</i>
<i>Follow the news: in %</i>					
—Regularly	19,1	26,4	32,1	50,1	31,9
—No time	34,1	19,5	14,2	7,5	18,8
—Not interested	5,7	2,9	4,5	2,3	3,9
Administration during the year (homes)	20,5	13,7	17,4	9,5	15,3
<i>Economic participation</i>					
—Tax payment	46,2	59,6	57,8	67,2	57,7
—Income tax	29,3	37,3	41,1	58,1	41,5
—Capital tax	20	30,8	28,2	31,1	27,5
<i>Social participation</i>					
Family association	29,3	35,5	40,1	50,3	38,8
Neighborhood association	21,3	20,7	22,7	20,6	21,3
Professional association	5,4	8,5	12,5	21,5	12,0
Religious association	27,5	28,1	31,4	34,8	30,5
Political association	2,3	3,4	3	6,2	3,7
Other types of association	2,1	2,8	1,9	4,1	2,7
think that political relations are necessary for success in life	22,7	19,4	21,2	16,8	19,8
<i>Political participation</i>					
Not registered (1996)	4,9	4,9	5	6,3	5,3
Rate of abstention (1 st round 1996)	28,6	23,1	26,3	22,6	25,0
Rate of abstention (2 nd round 1996)	47,1	47,1	42,1	50,5	46,7
Rate of abstention (municipal, 1999)	37,5	30,5	34,2	37,7	35,0
There is no point in voting (1996)	15	12,5	18,6	12,2	14,7

Source: Job survey 1997, MADIO, our own calculations: supported by heads of the household.

tation prevents them from keeping themselves informed of the different achievements by keeping up with the news (34% of the quarter of the poorest sector do not have either the means or the time, against 7% of the rich).

Even though, globally, the diagnostic of a reduced insertion of the poor leaves no room for doubt, they do not appear to be completely excluded from community life. Particularly in terms of political participation, the behaviors are no different according to income levels. Their strengths should compel the public powers to become interested in their cases. However, up to now, the policies implemented do not significantly and specifically integrate the favorable orientations of the poor. In fact, in practice, the dysfunctions of the system prevent a true monitoring and control of the actions undertaken by the rulers. The latter find themselves in a position of strength and do not feel they owe anything to the population (principle of accountability).

Poverty, democracy and political commitment

If at the forefront of democratic morals the interventionism of the poor in the economic plane does not translate into a more authoritarian and conservative concept of the individual forms of conduct, one can only wonder about their preferences in terms of political regulation. Indeed, while the market economy and electoral democracy form a closely imbricate diptych, the issue of the first should be naturally associated with the contestation of the second. In the case of Madagascar, the changes registered in the relationship of the citizens to the State in the last decade have been carried out almost simultaneously, as the country commits to a double process of economic and political transition. The liberalization of the economy, initiated in the first half of the 80s, with the implementation of the first structural adjustment plans, was quickly followed by a movement of popular contestation that brought about the fall of the ruling socialist regime and the establishment of the Third Republic, founded on democratic principles (free elections, freedom of association and the media, etc.). If the democratic vindication of the early 90s seemed to be shared very much by all social levels, it is the middle and higher classes, particularly officials, who were at the vanguard of the events of 1991 (Urfer, 1993). It is precisely in the popular electorate that President Ratsiraka had his best results in the elections of 1992/93, albeit far from obtaining a majority (see Table 5).

Table 5
Poverty, political and democratic class

	<i>Per capita income quarter</i>				
	<i>1st.</i>	<i>2nd.</i>	<i>3rd.</i>	<i>4th.</i>	<i>Total</i>
<i>Affiliation to democratic (sources) principles</i>					
Opposed to the regime of single party	83,3	89,0	90,2	90,8	89,6
Electoral democracy adapted to poor countries	70,6	70,6	77,5	69,2	72,0
Claiming more democracy	67,5	65,2	62,4	63,7	64,6
Democracy favours the development in 1995	62,9	64,8	63,6	64,9	64,1
Democracy favours the development in 1997	35,8	42,5	38,7	35,2	38,2
<i>Malfunctionings of democracy</i>					
The political class doesn't reflect their worries	84,2	82,7	84,8	86,3	84,5
Work of politics: to satisfy their personal ambitions	81,7	78,7	75,1	76,1	77,9
I will informed about political life	87,2	80,4	84,8	80,8	83,1
<i>For a "controlled" democracy</i>					
Too much elections in Madagascar	86,1	88,3	82,2	83,1	84,9
Against the total freedom of political association	71,6	66,2	70,7	65,4	68,2
<i>Politicization and vote</i>					
Membership of a political party	2,1	2,9	1,6	2,7	2,4
To feel close to a political party	10,6	14,7	18,2	15,8	14,9
Vote for Didier Ratsiraka (1 st tour 1996)	40,4	34,8	30,0	24,8	32,0
Vote for Didier Ratsiraka (1 st tour 1992)	26,5	28,5	29,0	16,1	25,1

Sources: Job survey 1997, phase 3 1995, MADIO our own calculations

In the second half of the 90s, the poorest sectors of the population continued granting their favors to D. Ratsiraka and to the reelection to which they contributed in 1996. But this tendency cannot be interpreted as an indicator of rejection of democratic values. Nothing distinguishes majority and opposition in terms of economy and politics: they all seem to be in favor of democracy and market economy. These convergences appear both through the programs of the political parties and the options of different electorates. Directly and independently of their party preferences, the poor have no particular pre-disposition

towards a rejection of democracy. As we saw in the second part, instead of moving away from the elections, they asserted their political rights by participating in the voting with the same intensity as the rest of the citizens. This mobilization constitutes a rate of index of adhesion to democratic principles. But it also goes beyond the simple framework of electoral behaviors. It also appears in the opinions regarding a democratic system, which do not differ from those of their fellow-citizens who have a better living situation. They are also recalcitrant in considering the return of the sole party or that the lack of adaptation to the electoral system does not apply to a poor country such as Madagascar, due to a lack of education of the population. In 1995, nearly two thirds of Tananarivians, both rich and poor, deemed democracy favorable to the development of Madagascar and demanded greater democracy.

In fact, although a movement of uprise of opinions regarding the virtues of democracy seems to become clearer in Madagascar, it does not particularly affect the poorest classes, but rather the entire population. Thus, in 1997, not more than 38% thought that democracy favored development, vis-à-vis 64% two years before.⁷ This step backwards does not so much concern the “democratic ideal” as the manner in which it function within Madagascar. The great majority of the citizens observe the country’s democratic practices very strictly: a lack of transparency in the elections, vacuity of the programs, opportunism of the politicians who seek only their personal interest, clientelism, corruption, etc. These considerations, based on facts (Roubaud, 2000c) lead to a generalized rejection of the political class and to a demand that democracy be placed under tutelage. Less than 15% feel close to a political party (against more than 80% in France), 85% consider that there are too many elections and that they are badly informed on political life. Nearly 70% want to limit the freedom of creation of political associations. In the end, the practices of politicians and the State are originating the real dysfunctions of the democratic administration. The rise in abstention and the weakening of the democratic convictions of the voters constitute a potential threat to the country’s democracy which must be solved.

⁷ We should point out that in 1995, the level of satisfaction regarding democracy in Madagascar was comparable to that registered in the countries of the European Community. The fall observed in 1997 put it at the bottom (only Italy had less, with 24%), but it was greater than those which prevailed in the new democracies of Eastern Europe (G. Toka, “Political Support In East-Central Europe”, in Kaase et al., 1995).

CONCLUSION

The new democratic share proportions in the developing countries offer new, unexploited horizons for public statistics. Their mission must not be limited to providing the sole authorities with economic data, as past experience has shown that the authorities have done nothing with the data. A process of autonomy of the actors (homes, companies) is necessary for the good progress of a market economy, such as access on the part of the population to information in order to promote the full exercise of citizenship, demanding that the statistics system make the flow of data and analyses of the main problems of society uninterrupted and free in civil society a priority. This function of reinforcement of public debate must lend all its sense to statistical activities. It is at this price that they will be able to effectively fulfill their mission as public servers and contribute fully to the strengthening of democracy and find their lost credibility. The experience of the MADIO projects in Madagascar and PARSTAT in Western Africa show that this policy is not unattainable. On the contrary, based on the teachings of past experiences, this step is worth extending into other African countries, even beyond Africa, into many developing countries where statistics have not been able to penetrate. Obviously, the more or less authoritarian nature of the regimes is liable to oppose this ambition. But international organizations that support civil society, should pressure on the authorities in order to make them free public statistics.

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RIGHTS IN PRINCIPLE AND IN PRACTICE: THEORETICAL
FOUNDATIONS FOR METHODOLOGICAL CHOICES
AND QUANTITATIVE COMPARATIVE RESEARCH
ON RIGHTS REALIZATION
“In praise of the Imperfect Indicator”

*Nancy Thede Ph. D.**

INTRODUCTION

Understanding and monitoring respect for human rights over time requires establishing qualitative and quantitative tools for that task. It also requires periodically revisiting those necessarily imperfect tools in an attempt to improve them in the light of experience and lessons learned. The establishment of indicators (whether they be qualitative or quantitative) evokes two types of problem: that of the nature and content of the rights and their translation into “measurables”, and that of the nature and limits of the indicators themselves. This paper focuses first on these problems in the context of ensuring the coherence between concept and indicator.

It then turns to an examination of some of the problems which must be confronted in the endeavour to develop indicators for torture. Despite the ostensible straightforwardness of translating such a right into quantifiable indicators, a closer examination of the variety of situations in which torture actually occurs reveals a complexity that will require solid groundwork and collaborative efforts from all stakeholders in order to establish adequate measures. Specific examples can be found in issues related to the forms of torture experienced by women, and in the context for and reactions to torture in a multicultural society such as Mexico (with special reference to the issues raised on the basis of the experience of communities of indigenous peoples). These examples illus-

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trate problems both of conceptualisation of indicators and of data generation and collection.

In conclusion, the paper calls for a collaborative process of analysis of the phenomenon of torture and identification of indicators in a given country, on the basis of in-depth analysis of the variety of forms it may take. It also pleads for a commitment to an iterative methodology that allows for lessons to be incorporated into the measurement process.

1. THE NATURE AND ROLE OF INDICATORS FOR CIVIL AND POLITICAL RIGHTS

The growing number of attempts to establish indicators for human rights internationally are a manifestation of the overwhelming recognition of the importance of understanding and monitoring evolution of the respect for rights. Ideally, this must be done in a manner that will not simply allow us to identify trends, but that will also —and even more importantly— inform policy and action to correct the problems identified. This requires not only monitoring but also feedback on the monitoring and on the tools developed to carry it out. There is therefore a dialectic between the indicator and what we learn about it, through applying it.

The length and intricacy of the discussion over indicators for human rights is in itself a demonstration that measuring such phenomena is not a self-evident process. Two categories of problem present themselves: 1. Understanding the nature and content of the rights and translating them into “measurables”; 2. Recognising the limits and the nature of indicators *per se*.

a. The Nature and content of the rights:

I have elaborated on this issue elsewhere (Thede 2001). I will simply resume here by mentioning five major issues that, in my view, must be addressed in order to understand the nature and content of a given right with a view to measurement. They are the following:

- i) the fundamentally qualitative nature of civil and political rights, and the difficulty in capturing their content through measurement (albeit qualitative measures)
- ii) the need for adequate conceptualisation of a right and its various dimensions prior to establishing indicators, and the need for theory linking the various dimensions of a right to the specific indicators proposed for measuring it
- iii) the problem of complexity of rights (some perhaps more than others)
- iv) the need for interpretation and contextualisation of any data generated through the application of an indicator
- v) the need to define the scope of the right we are trying to measure.

b) The limits and nature of indicators:

Non-statisticians are often grossly unaware of the implicit biases and objective limitations of statistical measures. It is crucial to explicitly account for them, however, in order to avoid creating statistics that may be too easily subject to manipulation and misinterpretation. It is important to concretely consider in attempting to measure a right what is the impact of five key characteristics of indicators:

- i) An indicator is a tool in a qualitative analysis: it tells us something that must be integrated into an analysis; it does not stand alone.
- ii) There is a tendency towards the relative autonomy of statistical measures once they are published. Even if they are methodologically unsound, the methodology “disappears” from the final product (the statistical measure), and it is thereby mystified, treated as if it represents objective truth, simply because it is a number. This is a major ethical challenge in establishing statistical measures for human rights. We carry a major responsibility to ensure the soundness of a measure before applying it, and to correct it through learning over time.
- iii) The problems of methodology are so serious in the case of attempts to create composite indices and inter-country comparisons that their usefulness is highly questionable.

- iv) Any indicator has limits to its validity, and those limits must be made explicit and their impact on the results of the measurement continually assessed.
- v) Any data generated by an indicator is part of a context and is dependent on that context for its interpretation.

The central problem, in my view, is and must be that of how to construct the link between the concept (i.e.: the various facets constituting a particular right) and the indicator. This is far from a technical operation since the manner of *operationalising* a concept depends on the theoretical framework underlying the approach (Antonius 2002:17). Different actors in the field of human rights adopt different theoretical frameworks for their action (although often those frameworks remain implicit). The issue is put very succinctly by the philosopher Patrick Viveret (2002) in a recent report commissioned by the French government: “*tout indicateur est un choix, tout agrégat privilégié... est un choix de société*”.¹

I would also add a plea for humility in the process of developing indicators for human rights: recognise the role, the limits and the necessarily imperfect nature of a given set of indicators. That recognition implies that we will build into the process of measurement a manner of identifying and capturing the lessons learned in order to improve the indicators on the basis of the experience of their application.

2. THE CASE OF MEASUREMENTS OF TORTURE

Torture is clearly one of the most extreme forms of negation of human dignity. It is reprehensible in and of itself; it also has a specific impact and importance in the context of democratic transitions, such as that which Mexico is experiencing. Torture, and other forms of inhuman and degrading treatment, instils fear and mistrust towards the state and its institutions. It thus inhibits the development of the public sphere and undermines political participation. Such trends are lethal for emerging democracies. Torture, therefore, cannot be treated simply as a vestige of a former non-democratic regime: it must be seriously and

¹ “Any indicator is a choice, any weighted index ... is a choice of society”

rapidly addressed and eradicated. Hence, the importance of ensuring that any measure of torture reflects the real extent and gravity of the problem. The danger, obviously, will be that, given the political stakes at issue in such a context, the very definitions and measures proposed will reflect the positions of diverse actors in the transition process.

At first glance, torture would appear relatively simple to measure, as compared, for example, to certain other very complex and inherently subjective civil and political rights contained in the ICCPR. How then can we conceptualise torture? Freedom from torture is, like any other human right, subject to evolving interpretation and definition on the basis of the emergence of new social actors and their demands for recognition of their rights.²

As defined in the major international instruments, for torture to be said to exist, three fundamental elements must be present (Callamard 1999:11). They are: a) severe pain or suffering; b) intent to inflict harm; and c) the qualified perpetrator (acting on behalf of the State). Already on this level we find significant divergence amongst international instruments as to the concept of torture. For example, although the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) requires that the pain or suffering be “severe”, the Inter-American Convention to Prevent and Punish Torture (1985) requires simply “physical or mental pain or suffering”, thereby eliminating a problematic and controversial point, i.e.: what degree of pain or suffering can be considered severe?

I will further illustrate this process of evolving definition with reference to two areas of debate regarding the scope and definition of torture. These emerging issue areas concern, on the one hand, women’s rights and, on the other, the rights of indigenous peoples. My comments are inspired in part by the spirit of the Istanbul Protocol (1999) in the keen sensitivity it demonstrates with respect to issues of gender and cultural diversity.

a) Women and torture

The recognition of specific forms of torture perpetrated against women is a recent development. Studies dating from the early 1990s revealed an inconsis-

² On the notion of rights and collective actors, see Thede 2000.

tency of the application of gender-specific analysis to the phenomenon of torture by international mechanisms, including the UN Special Rapporteur on Torture, and particularly the under-reporting and even ignoring of the use of rape and sexual assault as forms of torture directed specifically against women in contexts of massive human rights violations such as Bosnia-Herzegovina or Rwanda (Charlesworth & Chinkin 2000:218-219). Since then, the situation has evolved considerably, in particular due to arguments made and pressure brought by women's human rights activists and organisations. Rape or threat of rape and sexual assault are now increasingly recognised under international human rights and humanitarian law as forms of torture. The Rome Statute establishing the International Criminal Court (1998) has carried enormous influence by defining serious violations of the Geneva Conventions to include rape and other forms of sexual violence. It thus "supports an interpretation of specified grave breaches such as torture or inhuman treatment, wilfully causing great suffering, serious injury and unlawful confinement, as including sexual violence" (Charlesworth & Chinkin 2000: 316). The Inter-American Commission on Human Rights went even further in its 1996 findings in the case of *Mejia Egocheaga vs Peru*. "The Commission found that rape can constitute torture under the Geneva Conventions as well as coming within article 5 of the Inter-American (*sic*) Convention.³ It emphasised that 'rape is a physical and mental abuse that is perpetrated as a result of an act of violence'. It is also a method of psychological torture through the humiliation, victimisation and fear of public ostracism that are inflicted. The purposive element is satisfied by the use of rape for personal punishment and intimidation" (Charlesworth & Chinkin 2000: 331).

Clearly, therefore, there has been a major broadening of the scope of the accepted interpretation of what constitutes torture over the past decade. But that does not mean that the definition of the act of torture is now closed. On the contrary, new issues are still being raised. For example, the definition of torture as necessarily occurring in the public realm denies and renders invisible in the eyes of international human rights and humanitarian law, specific forms of torture to which women are subjected in the domestic sphere (the sphere in which, arguably, torture of women principally occurs). Thus, the UN Special Rapporteur on Violence against Women considers severe forms of domestic violence as torture. In her 1996 report, "she showed the similarities between

³ The reference is to the American Convention on Human Rights (1969).

torture and domestic violence: both the torture victim and the abused women are isolated and live in a state of terror; they suffer physically and psychologically; they develop coping mechanisms that come to dominate their existence; both forms of violence are committed intentionally in order to terrorise, intimidate, punish or to extort confessions of often non-existent deviant behaviour” (Charlesworth & Chinkin 2000: 234-235).

b) Torture and indigenous peoples

Members of indigenous communities, and in particular indigenous women, are often more vulnerable than the members of dominant ethnic groups to extreme forms of abuse such as torture, given historical problems of discrimination and the skewed distribution of political power between indigenous and non-indigenous groups. However, despite the gravity of the problem, cultural and political factors render data collection regarding acts of torture very difficult amongst indigenous communities. Such factors include the following:

- Indigenous peoples have their own distinct legal traditions and concepts: it is therefore often very difficult to translate the logic of abstract state institutions and international principles in the terms of local systems and understandings and conceptions of remedial action.
- Members of indigenous communities are often reticent to provide data because of the discrimination to which they are subject on the part of state authorities. They may thus not want to further expose the community to it by revealing information that may accentuate negative perceptions from outsiders.
- Mistrust of outsiders is often acute due to the historical power imbalance prevailing in most, if not all societies, with respect to indigenous peoples.
- Mistrust of state institutions may prevail in many indigenous communities, particularly where they have been the target of repression or abuse of power by state agents (in conflict situations, for example).

All of the above factors are rendered doubly complex in the case of indigenous women. On the one hand, they are reluctant to provide information about torture, and especially about sexual abuse, in an attempt to avoid humiliation

for themselves and for their community. On the other hand, they may also be subject to sanctions from the community itself should they reveal that they have been sexually abused. Such sanctions can range from avoidance to divorce and ostracism.⁴ The Istanbul Protocol, in its paragraph 148, adds the following crucial observations: “Questions about psychological distress and, especially, about sexual matters are considered taboo in most traditional societies, and the asking of such questions is regarded as irreverent or insulting. If sexual torture was part of the violations incurred, the claimant may feel irredeemably stigmatized and tainted in his or her moral, religious, social or psychological integrity” (UNHCHR 1999).

CONCLUSIONS

The examples briefly outlined above demonstrate some of the difficulties and hazards which must be faced in attempting to identify indicators for measuring torture. First, the definition of the concept of torture and its scope is subject to debate and is continually evolving. Any method of measure must take the necessary analytical care to ensure that it covers an adequate scope and that it can be revisited and revised in the light of the evolving definition ascribed to torture. The two definitional debates we have highlighted here concern the issue of the inclusion or not of the word “severe”, and the problem of restricting the concept to the public realm.

The second issue raised is that concerning the difficulties of obtaining reliable data, given the extreme fear and sensitivity to which all victims of torture are subject. That difficulty is made even more complex in cases of specific communities, particularly when they have been historically discriminated against and marginalised. In such situations, it is necessary to acknowledge that although we may be able to conceive measures theoretically, we not be able to apply them concretely.

⁴ Rights & Democracy (the International Centre for Human Rights and Democratic Development) is preparing an adaptation of its earlier manual on documenting sexual violence against women (Callamard 1999) in Spanish for the case of indigenous women: “*Una metodología para investigación sensible al género y a las mujeres indígenas y para pueblos indígenas*” (working title). It will be available in the autumn of 2002 at: www.ichrdd.ca.

Finally, it is essential to recognise the political nature of the phenomenon we are attempting to measure. Torture is an act that is perpetrated as part of a system of power relations, in an attempt to force compliance. The recognition of its existence, amongst other things through measurement, is an extremely politically sensitive issue. The methodology for measurement must recognise and address the political nature of the phenomenon. To ignore the political context, or to proceed unaware of it on the assumption that an objective measure is possible without that knowledge, is to expose the results generated by that measure to political manipulation and, possibly, to undermining rather than advancing the cause of human rights.

These three issues, added to the fact that indicators are necessarily limited and imperfect in nature, call for the use of extreme caution in developing the methodology for measurement and in applying it. It is essential to explicitly recognise the imperfection of both our tools for measurement and our understanding of the phenomenon of torture in all its evolving dimensions. Such recognition requires periodic revision of the indicators and their mode of application (i.e.: of data collection), on the basis of what we learn in the process over time. Admittedly, this may create a situation where it proves impossible to construct a coherent time series of data. But our purpose in constructing indicators cannot be the coherence of the indicators themselves. Our purpose is to sketch an accurate portrait of the problem in order to develop policy and action to correct it. Obviously, indicators that do not reflect an evolving situation and analysis will impede rather than enhance the development of appropriate policy and action.

Key to ensuring the most complete baseline analysis and the identification of all possible sources of data and a strategy for its collection, is the implementation of an inclusive process from the outset. This requires a process which includes all relevant expertise, from state institutions at all levels and also from academia, NGOs and community organisations. This expertise must be mobilised from the outset in a collaborative process of design of the methodology and indicators, followed by its application and evaluation/revision. The importance of using the expertise of NGOs in this matter cannot be overstated. Particularly in a situation as sensitive and difficult as that prevailing on the issue of torture, NGOs have access to information and analysis that rarely is available to state institutions.

Above all, we must be transparent with respect to the limits and weaknesses of the measures we develop. The problem of torture, with its far-reaching and

devastating effects on the human personality and community, is multi-faceted. Any measure we can imagine will only be provisional, and it must be treated as such. What is important is what will be learned: the unimagined dimensions of the impact of torture and how to address it, through a consistent effort to develop instruments for a collective understanding. The search for a perfect indicator can only distract us from this task. What will prove most useful are the imperfect indicators, and our recognition that they are and will remain works-in-progress, milestones on the road to a fuller understanding, and not a reified calculation.

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THIRD SESSION

THE EXPERIENCE OF THE CDHDF IN TERMS OF TORTURE

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In the last five years, the international organizations whose work is connected to the field of torture have produced a series of highly important reports on the case of Mexico.

References, for example, of the United Nations Committee Against Torture, a report that was issued in '97 in which the Committee mentions in point 162 that torture continues to be practiced systematically in Mexico, especially by both the federal and local judicial police, and lately, by members of the armed forces with the excuse of the struggle against subversion and drugs. This is also stated by the United Nations Committee Against Torture when discussing recommendations, mentioning that: in order to banish the practice of torture, the Committee considers that it is necessary to apply effective control procedures in the fulfillment of duties and prohibitions on the part of Public Officials of the judicial and legal organizations.

There is a section where there is mention of the Human Rights Commissions that is part of the debate and, in my opinion, it is important to grant the public human rights commission's judicial faculties to exercise penal action in cases of serious human rights violations, among which we must include complaints of torture practices. This has not been done after five years and continues to be an unresolved debate.

The second Report is by Mr. Nigel Rodley, special rapporteur on torture, who in '98 issued a report that arose after a visit to our country.

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Point 78. Analogous torture and mistreatment frequently occur in many parts of Mexico, even though the information received by the special rapporteur does not lead one to a conclusion that indeed it is practice systematically in all parts of the country. The Inter-American Human Rights Commission (IACHR) issued a report in '98 in which it establishes the situation of human rights in this country. It dedicates a full chapter to the topic of torture in terms of the right to personal integrity and once again relates two matters that are of the utmost importance for the National Commission and the State Commissions: the necessary support so that actions of torture continue to be observed and denounced to the corresponding authorities, the adoption of the necessary measure to ensure that actions of torture be qualified and sanctioned as such by competent jurisdictional organizations, according to the international definition of what constitutes a violation of the right to personal integrity.

Other relevant issue mentioned at the report is that Public Ministry officials play a key role and many of them clearly consent to torture; many medical experts who are asked to examine the detainees seem to be willing to do so superficially or to issue false reports.

A report was issued by Amnesty International (1991) on Mexico: Betrayed justice, torture in the judicial system and the cases of torture. Torture in the hands of officials in charge of enforcing the law and members of the Mexican armed forces is a practice that has been widely denounced and has been acknowledged by the Mexican authorities. The United Nations, the Inter-American Commission and the Mexican and International NGO's that the reasons for the persistence of torture in Mexico are found above all in the fact that successive governments have not had the opportunity to address the problem systematically and effectively, nor have they assigned the necessary resources to solving the problem.

I present only these elements as part of the dimension of the problem but, of course, one can discuss other signs that there has been a certain degree of progress. However, the topic of torture in this country is still a vital issue in the agenda of the Human Rights Commission.

Six major points that have resulted from our experience in facing and addressing the topic of torture:

1. There is no practice for the documentation of the fact in Mexico. It is an element that is still met with enormous resistance. There is an under-measurement or incorrect classification of the phenomenon and we find different rea-

sons for this under-measurement: we find that people do not dare denounce torture because in reality, quite often, once a person is detained and must return to make a statement, he/she returns to do so in the presence of precisely the people who tortured him/her and there is a fear of repression or reprisals. We are not even certain of the real dimension of the problem of torture.

2. It is a problem that is incorrectly registered, that is, it is registered as lesions or abuse of authority, but not as a case of torture. There are dramatic cases that are registered in the Commissions simply as abuse of authority.

3. In spite of the fact that a legal framework has been established, there are no laws, mechanisms and procedures in this country. Sanctions for torture are few, processes initiated are few, and public officials sanctioned for torture is still inexistent and this discourages, in general, legal punishment of whoever commits torture.

4. This continues being a problem of resistance in the application of the international norm. The Inter-American Convention, the Protocol of Istanbul and any other instrument receive a NO as a first response. There is absolute confusion in this matter because the Senate of the Republic has already ratified these international instruments, they are part of the Supreme Law of the Nation, and they have been incorporated as Supreme Laws. The ignorance of judges and even of the public security bodies is impressive in terms of international norms.

5. There is a technical and professional lack of capacity in processing acts of torture in their true dimension, for example, we have the case of Mr. Velez Mendoza, which occurred last March, 2002. A young man was detained by judicial police of the General Prosecutor of the Republic and now there is a scandal because he died with possible signs of torture. His father asked to see the body and was not allowed to do so but was only shown the head for purposes of identification. It is not until the burial that they ask for a second examination and it is detected that he has 31 blows or signs of aggression and a lesion in his trachea. The medical examiners do not allow the father to see have the body examined by an examiner expert in the detection of torture.

In general, there is a series of factors that affect the application and processing of torture. One serious issue is that judges continue accepting the validity of statements obtained under torture and, of course, agents of the Public Ministry clearly consent to torture. There are cases in which recommendations are made by the Human Rights Commissions regarding torture and, although these

recommendations have been accepted, they are not carried out and this leads one to think of the efficacy of the instrument of recommendation: we must re-think the difference between the acceptance of a recommendation and the implementation of a recommendation. Practically all the Commissions in this Country have issued recommendations on torture; there are 32 commissions, one national if the instrument of the Recommendation is not made, is obvious is lack of efficacy.

6. Issue: legislative reforms still pending. For example, in the case of Yucatan, there is now law against torture, regardless of the pressure that has been made by several sectors for the existence of a norm that at least sanctions the action. So, in this state it is not even typified as a crime, hence the relevance of holding this event in this place. Hopefully, initiatives will arise that will allow us to promote a law against torture in Yucatan. This are the elements of the context that bring to an end the persistence against the torture.

THE CASE OF THE FEDERAL DISTRICT (MEXICO CITY)

By detecting these elements, we reach a conclusion and a conviction: that the application of the international norm will be highly useful, so we have released a process centered on four elements. We shall call one of the elements a conceptual re-design and it refers to an element of conceptualization, as we are conceiving torture from this conceptualization, as it is being classified, measured, registered and studied. Then we have a process of training, implementation and follow-up. In the training we had a very interesting experience with a guest from the International Human Rights Service from Geneva, and there were people from thirteen State Commissions and, after the noon presentation, one of the visitors of the Commission came to me, very concerned, and asked me, quite anxiously, “what are we going to do about this? Everything this man did to me is torture, and now how are we going to process it?” Because her schemes were questioned in terms of what it meant as a Human Rights defender, in typifying and classifying torture, in the way in which we processed the detection of torture in prisons or agencies of the Public Ministry. There has been a training process for medical experts, visitors and the juridical orientation staff, who do important work in the Commissions. Detection of the phenomenon from an institutional operation, in its just dimension, is not an easy process.

The implementation of new forms has led us to this phenomenon I mentioned in the beginning, where in six months the phenomenon multiplied five-fold in terms of registration. If this is not placed in its just dimension, the consequence is a political scandal and those authorities use torture more than the others. This is automatically the reading that started to prevail in the media. However, since we did not even have a measurement of the problem, at least in more precise terms, we did not even know what we were up against, thanks to this conviction we generated a follow-up coordination for the recommendations, whose function is to explain the high cost of a lack of attention toward those recommendations. Carrying out the recommendations is not only a matter for the authorities, it is a matter for the Commission, because there is a citizen or a group of citizens who made a complaint and indemnifying the victim for damages or assisting the victim is a matter that not only pertains to the authorities, hence we are talking about a mechanism to lower the lack of attention towards the recommendations. Obviously, this leads to a re-design of our database and we realized that there was no field that included records of cruel, inhuman or degrading treatment. So, if we sought to record this information, the database did not allow it because it was an absolutely different conceptualization. This is an integral issue, which reflects registration, follow-up and processing. Obviously, what we expect when we start making these problems public is for the authorities to assume the dimension and face the problem. We are seeking to work with civilian organizations because the problem goes beyond the scope of the Commission and we believe it would be a mistake to reduce it to the size of the Commission; this is a problem that typically requires synergy and groups effort.

We start from a very elementary principle: he who does not know what he is looking for, does not know what he finds. Thus, he who does not know what he is recording, does not know what he is measuring. If we do not have solid conceptual elements regarding torture, who know what we are recording, what we are measuring. We require multidisciplinary and multi-sector work and this work should place special emphasis on the victims of torture so that we can systematize the dynamics of the victims. This, I believe, can be a substantial ingredient for the comprehension of this problem. Of course, the challenge is also to deal with the conceptual aspect of this issue, how we measure the phenomenon, how we record it, how we follow-up on it, how we incorporate the standards and national and international contexts. When we examine the

Protocol of Istanbul, we find that United Nations specialists say that the distinction between physical and psychological methods of torture is artificial. The method for making the lists can be counterproductive, as established in paragraph 144, as the total resulting clinical picture regarding torture contains much more than a simple aggregate of lesions produced by the methods listed. How can we incorporate this complexity into the follow-up process; not trying to simplify the results but to measure them in their just dimensions? With these criteria in mind at the Mexico City Commission, we came up with eight indispensable elements:

1. The definition of torture of the Inter-American Convention for the Prevention and Sanction of Torture must be included, as we believe that it is the broadest instrument and that it allows us to understand the problem in its just terms.

2. We must make sure that it is compulsory for the medical examiner to carry out his examination invariable without the presence of members of the police or custodians.

3. When the detainee presents lesions the descriptions must include at least region, shape, size, coloring and surface state, and the lesions must be photographed.

4. The aggression against the detainee must be recorded in relation to the origin of the lesions.

5. It must be compulsory for the medical examiner to ask the detainee if he/she was mistreated or tortured physically or psychologically. If the detainee should state that he was tortured, the certificate must include the names and data of the possible witnesses of said torture, as well as the description of the possible torturers, including their manner of dress.

6. The medical certificate of the lesions must be filed with the Public Ministry or the Director of the Detention Center, never with the police or custodians.

7. Signs must be made visible on the walls of holding rooms in prisons and other detention centers, explaining that people have the right not to be tortured, as well as other rights of the detainees. This is a key point, because the detention centers are where the largest number of torture is generated, is during the detention, where is generated the largest torture cases that are denounced.

8. The Detention Centers must have a log recording the arrival of the detainees, including name, hour of arrival, names of the people who made the deten-

tion and acknowledgement of the document through which the detainee was informed of his/her rights.

It is our opinion that in all cases in which torture is suspected, the Protocol of Istanbul must be applied.

FINAL CONSIDERATIONS

I am convinced that the measurement of torture must have the objective of solving the issue. Through these mechanisms we can learn about the phenomenon, so their study and analysis for the design of policies and actions is of the utmost importance. We must learn to generate a follow-up process of particular cases that will seek study the general causes in order to revise the application of justice, an issue that is strictly connected to the performance of the security forces.

I am convinced that the central issue is the manner in which inter-sectorial actions are generated that will combat or put a stop to torture.

The democracy-human rights dyad is indivisible in Mexico, a country that is in a process of transition. Democracy cannot remain solely at the voting booths. I am glad that elections are transparent, but we need a concept of democracy that is based on an exercise of one's rights and it is here where the concept of human rights becomes a strong component of the right to democracy. Thus, this issue can be vital in reinforcing our democratic system.

THEORETICAL FRAMEWORK FOR THE CONSTRUCTION OF AN INDEX ON TORTURE IN MEXICO¹

*Ricardo Hernández Forcada**

0. INTRODUCTION

One of the main reasons for the existence and responsibilities of every State is to protect, respect and promote the human rights that arise from the common dignity of every individual. Among these fundamental rights recognized by the Political Constitution of the Mexican United States is the guarantee of juridical security, which consists of safeguarding physical and mental integrity of all people, and which prohibits isolation, intimidation and torture, as well as the use of torments of any type.

This practice has not been eradicated in our country in spite of being prohibited in the Constitution and despite the existence of a law whose specific objective is to prevent and punish the crime of torture, aside from being typified in the penal codes.

1. WHAT IS TORTURE?

According to its nominal definition the word torture means “grave physical or psychological pain inflicted on a person, with diverse methods and tools, in order to obtain a confession from that person, or as a form of punishment.

¹ Based on the research developed by Ricardo Hernández Forcada and Maria Elena Lugo Garfias, Researchers at the National Center of Human Rights, Mexico.

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2 as a torment. 3 pain, big affliction or the thing that causes it. 4 deviation from that which is correct, curvature, obliquity, inclination”.²

The Federal Law for the Prevention and Punishment of Torture, in article 3^a, describes torture in the following sense “a civil servant commits the crime of torture when, due to his/her attributions, he/she inflicts on a person grave pain or suffering, whether they be physical or mental, in order to obtain from the tortured party or a third party, information or a confession, to punish the person for an act committed by that person or that the person is suspected of having committed, or to coerce the person into behaving or not behaving in a certain manner. The following will not be considered as torture: annoyances or penalties that are a consequence only of legal punishment, that are inherent or incidental to these, or derived from a legitimate act of authority.”

Even though in colloquial language torture is a synonym of diverse sufferings, for the purpose of an investigation on torture, we cannot use the term indiscriminately because the meaning is diluted and anything can be torture. In the juridical order, within the framework of human rights and penal law it has a very precise meaning.

The notion of torture in the special Mexican law is derived from Mexico’s subscription to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published in the Official Journal of the Federation on March 6, 1986:, in which the article 1.1, defines it as follows:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

² Real Academia Española, *Diccionario de la Lengua Española*, vigésima segunda edición, Madrid, Espasa Calpe, 2001, t. II p. 2201.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

As we can see, the elements of the United Nations Convention definition are *sine qua non*, the act would cease to be such but that it would qualify as cruel, inhuman or degrading treatment just as it is set out in article 16 of the Convention that is herein quoted:

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

In the American region, the Inter-American Convention to prevent and punish torture was approved in 1985, subscribed on December 9, 1985, approved by the Senate on February 3, 1987 and published in the Official Journal of the Federation on September 11, 1987, which main difference between the definition of torture of the United Nations Convention and the Inter-American Convention is that the latter does not demand that "severe" pain or suffering be inflicted, so that the scope of its protection is broader.

Article 2 defines it as follows:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

The second difference, consists of the fact that the Inter-American definition broadens the scope of the protection when it foresees the case of torture in which there is an absence of physical pain or psychological suffering by means that tend to annul the personality of the victim or diminish his physical or mental capacity through the application of drugs.

Regarding the objective of torture, the definition of the Inter-American Convention also differs from the teleology recognized by the United Nations Convention, since, although it is basically the same, its wording is more general and allows for a broader scope of protection.

The objective of the typical description consists of:

- A. Criminal investigation
- B. Means of intimidation
- C. Personal punishment
- D. Sentence
- E. Any other aim.

Incorporating the objective of using torture as a “means of intimidation” implies the threat of harm or suffering, that is, a state in which no physical harm or lesion is actually produced, even when a state of fear or anxiety is produced in order to induce the conducts that were described above.

On the other hand, in mentioning it as a personal punishment, it is supposed that suffering or pain inflicted on a person without the application of a previous procedure with all its inherent guarantees, unlike the imposition as a sentence that implies the commitment of avoiding the incorporation into the penal laws of juridical consequences of that nature, and at the same time, the prohibition of imposing a sentence on a person that implies the acts of torture.

Finally, in including “any other purpose” without mentioning specific reasons as does the United Nations Convention could include torture for futile reasons which are included in the United Nations Convention and, consequently, are considered as constitutive of torture.

The active characters involved in torture could be:

- A. Public employees that harass, induce harassment or do not impede its occurrence when having knowledge of such behavior by third parties in the work field.

- B. People that order and/or induce directly or indirectly any form of harassment as a result of third parties putting pressure on them to perform these acts on others.

2. THE MEXICAN JURIDICAL FRAMEWORK AND TORTURE

2.1 *Constitutional dispositions*

Currently, article 20, section II of the Political Constitution of the Mexican United States prohibits torture of an accused person and establishes that whoever carries out such an action will be sanctioned. It also establishes that the confession of such a person will “lack any value” if it is not rendered in the presence of a Public Ministry or Judge, so long as they are assisted by a defense attorney.³

Constitutional article 22 further prohibits, as a sentence, “the torment of any sort and any other unusual and transcendental sentence,” seeking to preserve the integrity and dignity of all human beings.

Civil servants violate the rights of people who are victims of torture according to the guarantees contained in articles 14, 16, 18, 19, 20, section II and 22 of the Constitution, since they are illegally deprived of their liberty and, in some cases, of their life, suffer acts of harassment when they are detained or in prison, are mistreated and the basis of social re-adaptation in penal systems is not fulfilled.

The Federal Law for the Prevention and Sanction of Torture, published in the Official Journal of the Federation on May 27, 1986, is the first special decree that includes the crime of torture, however, as mentioned previously, article 22 of the Constitution prohibited it as a sentence; given the circumstances indicated, it was necessary to typify that conduct due to its seriousness and considering that “...the State, by virtue of its sovereignty, dictates the norms creating the crimes and applicable sentences or security measures...”⁴

³ The expression of torture and all that is related to the confession, due to the reform decreed and published in the Official Journal of the Federation on September 3, 1993.

⁴ Pavón Vasconcelos, Francisco. *Derecho Penal Mexicano*, 8ª Edición, Editorial Porrúa, México, 1987, p. 20 and 85.

the State will determine when an action or omission thereof can be sanctioned or not, even though its application does not conform to its discretionality but to the principles established in its juridical decree, as would be that of legality, equally, the crime of torture has a principal juridical consequence that is the punishment.

In view of the perfectibility of the law and in order to adjust the law to the demands of society, on October 16, 1991, the National Human Rights Commission presented the President of the Mexican Republic with several preliminary projects, among them one for a new law for the Prevention and Sanction of Torture, as established in Constitutional articles 20 and 22, dedicating the principle of nullity of proof obtained by illicit means, more serious punishment for criminal conducts and criteria for payment and restitution for damages.

This law was consolidated through its publication in the Official Journal of the Federation on December 27, 1991.

On the other hand, it is important to take into consideration that several legislative modifications have arisen from this special new law, such as the following: both the Federal Code of Penal Procedures and the Code of Penal Procedures of the Federal District classify torture as a serious crime, according to articles 194 and 268,⁵ respectively, so that in a case of urgency the Public Ministry can order the detention of a person, and said detention must have solid foundations and motivations in order to fulfill that which is foreseen by paragraph five of constitutional article 16.

Equally, the act of compelling the accused to testify through torture, in article 225, section XII of both the Federal Penal Code and the Penal Code for the Federal District,⁶ is established as a crime against the administration of justice, in the former from the amendment contained in the first article of the Decree published in the Official Journal of the Federation of January 10, 1994, valid as of February the first of the same year.

Furthermore, The General Law that Established the Bases of Coordination of the National Public Security System, the Organic Law of the General Pub-

⁵ Código Federal de Procedimientos Penales y Código de Procedimientos Penales para el Distrito Federal..., *op. cit.*, pages 154, 155 and 271 to 272-3.

⁶ Código Penal Federal, en Legislación Penal, Ediciones Andrade, S.A. de C.V., Vol. I, pages 57 and 58 and 102-84 and 102-85.

lic Prosecution of the Republic and the Public Security Law of the Federal District establish in articles 22, 51 and 17,⁷ respectively, establish the mandate for members of police corporations to abstain from *inflicting, tolerating or allowing acts of torture or other cruel, inhuman or degrading treatment or sanctions*, in the case of the Organic Law of the General Public Prosecution, it is also an obligation of the agents of the Public Ministry.

In the same manner, article 40 of the Law of Public Defense of the Federal District⁸ 17 establishes the duty of public defenders to report violations of the rights of their defendants to the Public Organizations for the Protection of Human Rights, specifying de case of torture, although the relation that exists with regard to article 11 of the Federal Law for the Prevention and Sanction of Torture is also observed, since being aware of this type of abuse they would be compelled to denounce it or otherwise incur in the sanctions established therein.

In the Centers for Social Readaptation, *torture is forbidden* in the application of sanctions, otherwise sanctions will be issued, independently of penal responsibility, according to that which is established in article 129 of the Regulations of the Federal Centers for Social Readaptation,⁹ as well as in the treatment of the personnel of the centers towards the interns, according to article 9 of the Regulations for Prisons and Centers for Social Readaptation of the Federal District.¹⁰

It is important to mention the responsibility of the State in making restoration for damages, as well as for regulation of the means to enforce it, which was foreseen by article 10 of the Federal Law for the Prevention and Sanction of Torture of 1991, in charge of the person directly responsible, which changed

⁷ Ley General que Establece las Bases de coordinación del Sistema Nacional de Seguridad Pública, Ley Orgánica de la Procuraduría General de la República, Ley de Seguridad Pública del Distrito Federal en Legislación Penal, Ediciones Andrade, S.A. de C.V., Vol. II, pages 358-114, 358-115, 356-16, 356-17, 358-68 and 358-69.

⁸ Ley de la Defensoría de Oficio del Distrito Federal, en Legislación Penal, Ediciones Andrade, S.A. de C.V., Vol. III, pages 514-517.

⁹ Reglamento de los Centros Federales de Readaptación Social, en Legislación Penal, Ediciones Andrade, S.A. de C.V., Vol. V, pages 740-59.

¹⁰ Reglamento de Reclusorios y Centros de Redaptación Social del Distrito Federal, en Legislación Penal, Ediciones Andrade, S.A. de C.V., Vol V, page 731.

with the solidarization of the State as mentioned in the introduction of the last paragraph of article of interest, according to the amendment published in the Official Journal of the Federation on January 10, 1994.

Finally, the Code of Military Justice establishes in article 523¹¹ that a confession will be carried out without the mediation of isolation, intimidation or torture.

2.2 The crime of torture in local legislation

Legislative dispositions have been issued in most of the Federal Entities for the typification of the crime of torture, the only exception being the State of Yucatan.

In 13 of them there is a special law, and in 16 and the Federal District it is established in their respective penal codes; in the State of Guerrero it is included in the law that is regulated by the Organization for the Protection of Human Rights.

In the particular case of Guerrero, the crime of torture is included in the Law created by the State Human Rights Defense Commission, in Title VI of the crimes, Only Chapter, article 53, in which it is states that it includes only the first of the typical assumptions contemplated by the Federal Law for the Prevention and Sanction of Torture, imprisonment is decreased from 2 to 8 years, the fine from 200 to 400 days fine and discharge from one's post is indicated.

INTERNATIONAL SETTING

In article 133 of the Mexican political Constitution it is established that it, as well as other treaties that are in accord with it, will constitute the Supreme Law of all the Union, hence it is important to consider both the national legislation and the international setting, especially with regards to the protection of Human Rights, as is the case of torture, where the objective is to prevent the serious violation of human dignity in all beings.

¹¹ Code of Military Justice, Tomo III, Secretary of the National Defense, Mexico, page 186.

It is important to highlight that unlike the United Nations Convention, the internal legislation does not include cruel or inhuman treatment and this scope of acts falls within the scope of crimes such as lesions, abuse of authority or intimidation.

The types of torture, on the one hand, and on the other hand those of lesions, abuse of authority and intimidation are excluded in value, based on the principle of specialty, consequently if sanction were to be made for both crimes, one would be punishing the accused doubly for the same acts.

It is necessary to carry out a review of the punishment indicated for diverse penal types at issue and it is convenient to think that the abuse of authority can be punishable by 1 to 8 years of imprisonment, as well as a fine of fifty to three hundred days fine and destitution and discharge for a term of 1 to 8 years from one's post, charge or public commission. The lesions, if they are severe, are punishable by 3 to 6 years imprisonment when it is a lesion that endangers life, but if any of the qualifying crimes should be present also the punishment can be increased in one third, if two concur then it can be increased in one half, and if there are more than two qualifying crimes then it may be increased in two thirds.

From the above information the result is that the accumulation of penalties adds up to a total of from 6 years to 18 years imprisonment, which contrasts with that which is established in article 4 of the Federal Law for the Prevention and Sanction of Torture in which a penalty is indicated of three to twelve years and from two hundred to five hundred days' fine and disqualification from holding any public post, job or commission for up to two times the lapse of imprisonment imposed, marking a substantial difference between both penalties, which in the case of torture is evidently not proportional to other penal types.

METHODOLOGICAL CONSIDERATIONS FOR THE DESIGN OF DATABASES ON HUMAN RIGHTS VIOLATIONS: THE CASE OF TORTURE

*Rosa María Rubalcava**

I. INTRODUCTION

This presentation, dedicated to the methodology for the construction of *indicators* for the *observation* of the fulfillment of human rights had a double purpose, on the one hand to refer to the theoretic issues which are most closely related to said construction, and, on the other hand, to support which they lent to the technical decisions adopted.¹

In the first part topics are discussed which are covered, within the social sciences, by the field of methodology. The presentation is made in considering them abstractly in order to show their generality and the potential for their application in the observation of human rights. The basis of this knowledge is epistemological and in this presentation one follows the basic *constructivist or genetic* focus based on the formulations of Jean Piaget and the Geneva school of thought.

* Presentation prepared for the *International Seminar on Statistics and Indicators for the National Diagnosis in the Field of Human Rights: the Case of Torture in Mexico*, Mérida, Yucatán, April 3-5, 2002.

¹ The *observation*, understood in the sense used by Norwood Russell Hanson, is an activity that joins the knowledge of the observer with his/her capacity for observation. The objective of his work is to demonstrate the impossibility of *pure observation*. The final phrase of the first chapter summarizes his idea with these words: "The paradigmatic observer is not the man who sees and communicates what all normal observers see and communicates, but the man who sees in familiar objects what no one had seen before" (1989: 252).

In the second point one presents, while trying to preserve the temporal sequence in which they occurred, the practical decisions derived both from the discussions related to the methodology as well as the demands of the techniques that were used from the beginning in order to integrate an information system that will allow the wide dissemination and use of the information that has been amassed for statistical purposes.

II. THE FIELD OF METHODOLOGY IN SOCIAL INVESTIGATION

It is common to suppose that the follow-up on any phenomenon demands a *methodology*, but usually this field is associated with a group of particular methods and techniques that it would be convenient to use, without considering the complexity represented by the objective of having a *monitor* designed to reveal the presence of signs that allow one to characterize the phenomenon and analyze its evolution. As the purpose of said device is to generate knowledge, we can state that we are faced with a *problem* that can be dealt with scientifically.²

It is convenient, however, to consider *methodology* as a *field of problems* related to *scientific investigation*, in general, and to investigation in social sciences specifically in the case that interests us: the observation of the fulfillment of human rights. The investigation, conceived dynamically, entails a commitment to the assumption that it is a *process* and, consequently, is not directly observable but is reconstructed from inferences that allow us to weave mutually conditioned events into a temporal sequence. In the words of García: “The processes are not empirically given *data*, nor are they *observable* phe-

² The following three quotes support this statement:

i) “Science has no fixed objective; any problem can be dealt with scientifically so long as it involves knowledge. What characterizes science is not a sphere of objects but a method” (Bunge M., 1997: 39).

ii) “In some way, the problems must always be of a theoretical nature. Serious practical problems, such as that of poverty, illiteracy, political oppression and judicial insecurity, have been important starting points for social scientific investigation” (Popper K., 1972: 103).

iii) “The objectivity of empirical social investigation is not, generally, but the objectivity of the methods, no that of the object investigated” (Adorno T., 1972 :84).

nomena constructed as an interpretation of the data: they are *relationships* established on the base of *inferences*” (García R., 2001: 70).³

Consequently, if the investigation is conceived as a dynamic process, *methodology* cannot be a fixed group of specific methods and techniques that are susceptible to change throughout its development, but a body of knowledge that allows one to become aware of the process and to adopt at each moment the appropriate theoretic and practical decisions.

methodology can be considered as a field of knowledge that unites two worlds: the theoretical (conceptual) and the empirical (factual). This dual nature leads one to consider *methodology* as a hinge fixed in epistemology, which articulates the decisions based on the logic of investigation, objectivation, operationalization, measurements, observation and research design, with those relative to the technical options that will allow one to compile, systematize and analyze the empirical information (Cortés F., 2000; Cortés F. y R.M. Rubalcava, 1993; Cortés F., R.M. Rubalcava y R. Yocelovsky, 1990).

From this methodological perspective, it is necessary to assume that in defining the *problem* that originates the process of investigation one has already adopted a theoretic placement that must be expressed within the conceptual framework that will help to delimit the *empirical complex* and construct the *facts*. This operation makes it possible to identify (infer) the appropriate *empirical referents* for the theory from whence one departs: “The reference relationship is established between members of the linguistic or conceptual level and members, should they exist, of the physical level which are correlates of the former” (Bunge M., 1979: 76). In a given conceptual framework it is possible to identify several levels of abstraction of the relationships, which compel us to also seek various empirical referents. The connection between these two fields becomes *objective* in the link between concepts and *indicators* and it is based on hypotheses; due to its epistemological character (relative to the construction of knowledge) this link is known as *an epistemic correlation* (Blalock H. y A. Blalock, 1968).

³ It must be mentioned that the book by Rolando García is dedicated to the analysis of the construction of knowledge starting from the formulations of Jean Piaget and taking advantage of the theoretical developments that arose later on complex systems. The use that is made of said work in this presentation is a free extension to applied social sciences and in no way compromises the autor for having inspired it.

The *units of observation* (*empirical referents or observations* for the methodology, and *cases or records* for the techniques) that correspond to the conceptual framework of interest, are the correlate for recording, at the physical level, the attributes that best suit one for its characterization in order to make a *data matrix* that works as a starting point for the application of the methods and techniques of analysis that are appropriate to the objectives of the study (Cortés F. and R.M. Rubalcava, 1993: 232). “The selection depends on the objectives of the investigation and will be determined by the specific questions that are formulated regarding the types of situations that are subject to study” (García R., 2000: 71).

The contents of the *data matrix* come from the empirical record of the chosen features in order to characterize the units of study that have been selected, which is carried out by making use of the relevant information compilation techniques; there is a wide variety, including such techniques as life stories, biographical narratives, guided interviews, semi-structured questionnaires, structured questionnaires, as well as several methods of collective interviewing and direct observation, aided by recordkeeping technologies such as magnetic recording and videotaping. The files of the so-called *administrative records*, also constitute a prime source for the investigation, even though there may be some limitations in the analysis since the possibilities of making a data matrix depend on the information that has been stored.

From this theoretical-methodological perspective, the sense of the *indicators* in the empirical social investigation is quite clear: 1) the *indicators* must be connected to the concepts whose relationships are expressed in the theoretical framework; 2) they must be susceptible to empirical recording, that is, they must be measurable (in any measurement scale); and 3) they must represent a field of variability (that is, adopt several values; this being the property to which the term *variables* refers to). Also, the *indicators* depend on the empirical context of application of the theory (that is, they have a spatio-temporal root), a dependence known as *systemic interference* and which alludes to “The situation in which the inferences from the direct measurements are not equally valid in all systems which are under investigation...In the case of measurements for comparative purposes, it is necessary to modify the propositions on which the inferences are based in order to maintain the validity of the statements of measurement in each system” (Przeworski A. and H. Teune, 1970: 104-105). In brief, the *indicators* have a double indicative role, on the one hand

towards the theory and, on the other, towards the world of empirical facts, or if one prefers, *reality*.

Let us discuss with some detail the meaning of these characteristics or properties of the indicators in the empirical social investigation.

i) Theoretical Link

The indicators are a resource for the objectification of concepts, in Bunge's words "The relationship between an indicator and an unobservable characteristic is based on hypothesis, not on conventions or rules" (Bunge M., 1996:169). The theoretical framework is constructed by relationships among concepts with several levels of abstraction and only a few of these relationships will be placed in direct correspondence with the empirical field. Not all concepts of the theoretical framework are linked to indicators but all indicators are connected to at least one of the concepts of said framework (Blalock H. y A. Blalock, 1968).

ii) Empirical Record

The indicators represent *observable and measurable* properties of the objects (units or cases) and can be *qualitative or quantitative*. It is often believed that this distinction arises from measuring, a methodological operation that taken in its broader sense, consists in empirically recording the indicators and expressing this record in a standard language (Przeworski A., 1973: 11). The numerical system provides one of the possible standard languages, and perhaps the most often used, but the measurements that are recorded in numbers are not necessarily quantitative.

In two of the four basic measurement scales the numbers are used without assuming their metric properties; as names (nominal scale) to differentiate *objects* (units or cases), or as ranges (ordinal scale) to place them in hierarchies. Under these circumstances, the numbers facilitate the recording and processing of information that originally is not numerical. These types of measurements are considered *qualitative*, and this adjective is also applied to the indicators that are being measured. When the numbers are assigned respecting their location on the *real numbers' line* they do represent magnitudes (interval scale

and reason scale) and it is considered that the indicators measured are quantitative (Cortés F. y R.M. Rubalcava, 1990: 55).

If the measurement scale marks the difference between *qualitative and quantitative*, obtaining a “qualitative change” would be trivial since a metric scale can easily be transformed into a nominal or ordinal scale. Consequently, the terms *qualitative and quantitative* must be reserved for deeper distinctions.

iii) Variability

The justification of this property of the indicators can be taken from the following statement: “The concept of variable allows one to discriminate carefully the diversity and to discover and make explicit the partial identity; it is useful to understand both the variety and the change as well as the schemes of variation and change” (Bunge M., 1979: 336).

This property has led to a preference for the term *variable* when referring both to the indicators and the indexes. Since in the social sciences speaking of *indicators* implies a permanent commitment to assuming the other two characteristics, the theoretical link and the empirical record, it is advisable to maintain this term.

iv) The Empirical Complex

According to the constructive methodological view, the delimitation of the object of study is done within an *empirical complex* that consists of a piece of reality selected on theoretical basis. This notion involves determining the space and time of the phenomena that is to be observed, posing the problem that will be investigated, deciding which are the empirical referents and the convenient indicators, as well as anticipating the methods of analysis that will be used.

In brief, from a constructive view of knowledge it must be mentioned that it is necessary to conceive the empirical data at two levels of interpretation. “On the one hand they are interpretations of what we commonly call ‘observational data’ or ‘observations’ ... On the other hand, crossing over to the analyses and conceptualizations peculiar to the scientific disciplines implies selection and or-

ganization of the observational data, which supposes a second level of interpretation” (García R., 2000: 44).

The following section seeks to show the application of these methodological notions to the follow-up process in human rights violations, particularly the case of torture.

III. METHODOLOGICAL CONSIDERATIONS FOR THE DEFINITION OF A DATABASE ON TORTURE

The steps that are followed in taking decisions regarding the organization of empirical available material in the dossiers where human rights violations are recorded are listed below and described briefly, from the methodological standpoint presented in the previous section.

1. Problem Formulation

From the outset it was stated that part of the problem has to do with the construction of indicators for the observation of human rights violations in Mexico. Notwithstanding, in order to have a concrete system of reference, with a certain degree of homogeneity that enables one to propose an array of indicators that is applicable to all its elements, it was decided to set limits on the group of violations.

As a pragmatic criterion one has chosen to consider as a first field of interest the *complaints regarding torture*, for one main reason: the available knowledge fund at the National Human Rights Commission (CNDH) in this specific category of the human rights provides the theoretical elements and empirical material necessary to define the *indicators* (CNDH, s/f). The sources of information that will be used in this application will be both *real (complaints)*, as well as *formal (Recommendations)*.

Of the nearly one thousand complaints regarding *torture* that have been received by the CNDH in ten years of work, at this first stage only those that were subjects of *Recommendation* directed to an Authority on the part of the Commission will be considered, so that the field is reduced to 139 dossiers in

which 445 *victims* are grouped. The basis for this decision resides in the fact that precisely these cases constitute the nucleus of facts (offences) that unequivocally correspond to the category of *torture*, because the *Recommendations* are based on the reports presented by doctors and on the investigation of the visitors from the Human Rights commissions, who are in charge of qualifying as *torture* those acts which are recorded in the complaint.

2. *Units of Observation*

After examining the contents of the dossiers and discussing the possibility of the units of record being *Recommendations*, their heterogeneity in terms of the victims and the specific acts of human rights violations, it became obvious that it would be convenient to consider the *victim* as an *empirical referent* of the torture; a *Recommendation* can refer to one or more acts of torture, concerning one or more victims. Each record in the database will refer to only one victim and will contain information that will enable one to identify the dossiers, both of the complaint and the *Recommendation*, the individual characteristics of the victim and the methods of torture, as well as the circumstances under which they were employed.

3. *Indicators for Characterizing the Victims by Acts of Torture*

Once having decided that the units of observation or cases of study are the *victims*, one proceeded to review the descriptions of the facts recorded in the *Recommendations* dossiers. The juridical framework that enfolds the human rights provides indications regarding the features which one must consider in those who are victims of torture, as well as the most relevant characteristics of the acts inflicted, the conditions in which they were applied and the authorities who are presumably responsible, among others.

The indicators can be grouped into five sub-classes: 1) elements of identification of the offence (including the spatio-temporal reference of the facts); 2) individual characteristics of the *victim*; 3) methods and circumstances of the torture; 4) authorities who are presumably responsible or who acted in collu-

sion with those responsible; 5) *Recommendations* of the CNDH, punishment and follow-up.

4. *The Data Matrix*

Taking into consideration the long-term objectives of the Commission, one considers three technical paths for the definition of the data matrix. First, the matrix must feed an information system that articulates the indicators of the main acts of human rights violations in a data structure that enables one to use it both for the purpose of analyzing and producing statistics, as well as for the purpose of disseminating it widely among those interested in the topic. The second path considers that the data matrix must adapt to a strategy of statistical analysis that will enable us to know the behavior of each indicator in a population of victims that is being studied and empirically contrast certain hypotheses on the relationships among indicators. The exploitation of the information gathered through the construction of indexes, time series and from statistical models that allow for multidimensional analysis will also be possible.

5. *Coding Manual*

The 123 fields that characterize each victim capture qualitative information (such as the method of torture or the authority responsible) and quantitative information (for example, the age of the victim and the year in which the facts were recorded). Numbers are used in both cases; if the indicator is qualitative, the numbers are assigned as codes, and if it is quantitative, as values.⁴

The following conventions were adopted in all the fields: recording under code 90 any “other situation” that is not specified in the manual, under 97 a lack of information, under 98 a case in which the field does not apply and under 99 when a piece of information is not reported.

⁴ The only exception is the name of the victim and of those who presented the complaint in order to easy find them in the dossier.

6. *Database of victims of torture (complaints presented at the CNDH that originated a Recommendation)*

A product of the methodological work developed to date is the *database*, the first tool of the system of information and the statistical analysis. In the case of torture, the base is a bi-dimensional arrangement captured in an Excel page with 450 records (lines), each one corresponding to a victim included in the group of acts of torture consigned to the dossiers of the 139 *Recommendations*. In the columns one records 123 variables (fields), which specify the five sub-groups of indicators mentioned previously. In the personal characteristics of the victim one includes gender and age; in circumstances of the detention, the moment in which the torture took place, the acts of torture the victim suffered (a maximum of three are recorded), the methods of torture that were applied, the procedural stage at which the events occurred and their objective, as well as the authorities who are presumably responsible and who, one presumes, concealed the acts.

The database generated is, *per se*, an instrument that can be used for several purposes, for example: to carry out a search of cases that have certain characteristics of interest, in order to produce reports as a form of dissemination and to process the information through statistical analysis packages. Besides, this database constitutes the first step towards the integration of an information system with the structure that best suits the objective of maintaining the follow up of the principal human rights, as well as spread the information gathered and the results of the analysis.

Before presenting some examples of the use of the database, it must be mentioned that the design of the codes took into account that the questions of those interested and who may approach this source will be of a varied nature, hence, it was considered necessary to record the greatest amount of information available in the dossiers. This explains that for each victim at most three acts of torture can be recorded and in each one up to five physical methods and five psychological methods. The physical methods admit forty options and the psychological admit seven; in both cases, one has anticipated that the review of new dossiers will increase the options, as well as the respective codes.

To illustrate the possibilities of approaching the files on torture, below we will present the construction of three *derived traits*; that is, the generation of “new” characteristics of the *victims*, which result from the processing of the

original information recorded in the database, and from the creation and analysis of a *new database*, referred to the *Recommendations*.

1. If one analyzes the victims grouped by dossier, that is, taking as a unit of analysis all those who correspond to the same *Recommendation*, one can see that most *Recommendations* originated in complaints related to torture report only men as victims; they are 85.9% of the total. Those that involve only women are minimal, 3.7%. The rest, 10.4%, refer both to men and women.

More than half the *Recommendations*, 53.6%, report only one victim; 40% between 2 and 9, and the rest, 6.4%, ten victims or more. It is important to point out that four of the *Recommendations* show that a complete community was subjected to acts of torture.

2. One could think that foreseeing five methods of physical torture for each moment is excessive. In order to illustrate that this view is mistaken, one looked for those who on the first instance were subjected to three methods. The result was surprising: of the 445 victims, 119 (26.7%) suffered at least three methods of physical torture and there were 75 different combinations of methods. Seen in greater detail, for six of every ten of these victims, the first method was a *beating*.

The individual combinations with more than 3% of the cases were: in first place, "beatings with hands, feet or objects - blows to the ears - violent detention" with 7.6%; the second place corresponds to "hands and feet tied - submerged in water - beaten" with 5%; the third combination is "beatings - violent detention - pretended execution", with 4.2%; and the fourth place in frequency, with 3.4% of the 119 multiple torture victims is "beatings - water in the nose or mouth - plastic bag on the head". These three combinations group one of every four victims; each one of the rest of the combinations, there are 71, have a maximum of three cases.

3. The cases in which the acts of torture produce the death of the victim are seven of the 445. In studying them, one can see that six died due to the first action of torture (one must remember that up to five physical methods could be included); of these, five were victims when they were under "custody" of the agents who apprehended them, and the sixth, when he was being "protected" by the *Public Ministry*. The authorities who were presumably responsible of these offences that provoked the death of the victim are the *Federal Judicial Police*, in three cases, and in the other three, the *Local Judicial or Ministerial Police*.

Only one of the victims whose death came about due to torture resisted until the second moment. The physical method was applied when he was under “custody” of the Public Ministry, and the authority whose responsibility is presumed in this act is also the *Federal Judicial Police*.

After presenting these examples, it is a good idea to point out two limitations detected through the analysis of the data stored on the torture database. The first refers to the age of the victim, which was only consigned in 12% of the cases and is a fundamental indicator if one wishes to see if there are differences between the methods of torture applied to the young and the elderly, and to detect whether they depend on the gender of the victims. The second limitation has to do with the complaints on acts in which both men and women are involved; these lead to the possibility of family torture but in the dossiers the kinship of the victims to the “main victim” is not recorded.

This first critical look at the records of the torture cases leads, as was expected, to the necessity of reviewing the dossiers once again in order to include in the coding manuals characteristics that could have been set aside but which the demands of the analysis compel one to search for. If such indicators are not found, these activities will direct us to improve the complaints registration in the future.

IV. FINAL OBSERVATIONS

When defining the coding for the offences of torture, certain elements that were found missing were included and gradually enriched the characterization of said acts. The perception of these information gaps led to the examination of the juridical framework on which they are based, both in the registration and the processing of the complaints and in the analysis of the elements that lead the Commission to direct a *Recommendation* to the authorities that are presumably responsible. At the same time, new indicators arose from that examination as nuances for the proposed codes.

The next step will be to code the complaints of torture received by the commissions of the federal entities (with *Recommendation*). Later, all the complaints that did not have the necessary conditions for the corresponding Human Rights Commission to issue a *Recommendation* will be coded, both in the federal as well as local fields. The analysis of these complaints will give elements

that will enable one to help the victims and the visitors to provide the necessary information and gather sufficient proof to vouch for the acts of torture.

The CNDH set out to operate a methodology to follow-up on the phenomenon of human rights violations in Mexico. Once the database on torture has been tested by feeding the information into the general system and it has been exploited for statistical analysis purposes, one will proceed to make the pertinent modifications. At this time one will be able to apply the proposed methodology to other topics of interest, keeping an integral perspective of the information system in order to offer greater flexibility for the use and dissemination of the databases and thus satisfy the need that prompted its construction.

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SOME STATISTICS ON TORTURE. REFERENCES TO COMPLAINTS WITH RECOMMENDATION

*Ignacio Méndez**

The database consisting of 139 complaints and comprising 445 victims is analysed. The complaints are those received at the CNDH between 1988 and 1999, after whose investigation a recommendation was filed with the competent authorities. For certain variables there was no information available regarding all the victims.

This analysis is presented in two points

1. Some descriptive statistics of the victims.
2. Some associations between pairs of variables.

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17.8%

MONITORING POLICE VIOLENCE & TORTURE IN SOUTH AFRICA

*Piers Pigou**

INTRODUCTION

Quantitative monitoring of police violence and torture in South Africa in both apartheid and post-apartheid eras has been, and to a large extent remains, an under utilised area of research, and as such has not been used to inform or advocate for required changes in South African policing. Whilst much has been written on human rights violations committed by the police in South Africa, including aspects that have utilised some quantitative data, especially in relation to political detainees, the bulk of these violations perpetrated by the South African Police have not been subject to effective monitoring.

AVAILABLE DATA / ACCESS TO INFORMATION

Apartheid era

As in many repressive states, South Africa during the apartheid era was subject to widespread censorship and counter-propaganda initiatives around the issue of repression and human rights violations. In this context, the government attempted to retain some semblance of legal legitimacy by publishing details of political detainees arrested under specific clauses of emergency regulations and security legislation. Of course, many others —exactly how many is un-

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clear— were also arrested and detained during this time, and consequently a detailed picture has not emerged.

In general, the government and policing / security agencies did not release reports on shooting incidents, or responses to allegations of torture involving members of the police. When forced to do so, illegal behaviour was routinely denied, and in the few cases where irrefutable evidence was established, such incidents were categorised as isolated —the work of (infamous) ‘rotten apples’. This issue did not present any serious dilemmas for government, South Africa’s white electorate remained largely ignorant or indifferent, and consequently, no proactive attempts were made by the government to ascertain the nature or extent of the phenomenon.

The extent to which relevant data may have actually been collected, collated and analyzed by the State is not public knowledge. No attempt has yet been made to establish what, if any systems were in place (or efforts made) to record and monitor such allegations. It is assumed, however, to have been very limited, at best. Acts of torture, assault and extra-judicial execution were officially outlawed, and this provided an adequate legal veneer for a culture of denial to permeate.

It is now firmly established, however, that such abuses were in fact widespread. The Truth and Reconciliation Commission (TRC) received over 21,000 submissions relating to violations, thousands of which related to security force violations. In addition, over 300 former members of the security forces provided the Commission’s Amnesty Committee with graphic detail of their involvement in assassinations, torture and other abuses.

In context of apartheid policing and its heavy emphasis on counter-insurgency measures, there was no political will to put an end to these practices. Indeed, available information from the Truth & Reconciliation Commission (TRC) shows that they were actively encouraged, even at the highest level of government. (Of course, this is still denied by the bulk of apartheid-era politicians, but a combination of disclosures made during various TRC hearings, coupled with documentation from political security structures that endorsed the ‘elimination’ of political resistance, clearly shows that the political leadership was, at best, aware of the various methodologies employed by the security forces.)

As in other countries under the yoke of repressive regimes, in South Africa there was a heavy reliance on non-governmental organizations —NGOs—

(both domestic and international) to document, collate and report on incidents of violence and abuse by the security forces. These organizations were dependent on a range of sources, including the media,¹ legal fraternity, medical practitioners and other organs of civil society, as well as their own direct contact with victims themselves. Several domestic NGOs focused exclusively in this field, such as the Detainee Parents Support Committee (DPSC) in the 1980s and Peace Action, the Network of Independent Monitors in the early 1990s. Although they played an important role in bringing a range of violations to the public's attention, they remained largely urban based with limited access to many rural and peri-urban areas. As such, our insight into abuses in many parts of the country (both in terms of qualitative, as well as quantitative data) remains very sketchy.

The DPSC, based in Johannesburg, had a membership that was spread across the country, and kept track of hundreds, sometimes thousands of political detainees during the 1980s. The Human Rights Committee of South Africa² estimates (conservatively) that there were 78,000 politically related detentions between 1960 and 1990. Between 1986 and 1987 alone it was estimated that 25,000 were detained.³ Many detainees were interviewed following their release and a record of those subjected to torture and other abuses was compiled by several NGOs and individuals. Although this was not a comprehensive record and no detailed quantitative analysis was attempted, it broadly established how reports of abuse increased in accordance with increases in the number of people detained, and that torture was "widespread and systematic"⁴. This was subsequently confirmed by the number of torture allegations received by the TRC for the five-period 1985-1989 (the period of most detentions), which was than from previous 25 years combined, supported these findings.⁵

¹ The media was subjected to draconian restrictions that severely limited their ability to independently monitor, verify and report on much of the violence and abuse. Although a number of reports were written on these issues, the State was able to coerce and co-opt and when necessary simply ban and censor.

² The DPSC was renamed the Human Rights Commission in 1990, and subsequently the Human Rights Committee of South Africa in 1995.

³ *A Crime Against Humanity* - reports of the Human Rights Committee of South Africa, edited by Max Coleman, 1998, p.48 & p.56

⁴ *Ibid.*, p.53

⁵ TRC Report, Vol. 2, Ch.3, Para. 103.

The early 1990s

During the negotiation period in the early 1990s, certain parts of the country were plagued by widespread violence and killing. In fact, many more people were killed and injured during this four-year period than the previous 20 years of conflict and repression. In 1992, the Community Agency for Social Enquiry, an NGO, also based in Johannesburg, compiled a database of alleged perpetrators and victims as reported in the print media over an 18-month period. Despite the limitations of relying on media reports that were often inconsistent and contradictory, as well as lacking in verifiable detail, the statistics generated from this data showed that in cases where the identity of attacker could be established, the Inkatha Freedom Party (IFP) and the South African Police (SAP) were the primary agents responsible for acts of violence.⁶ Although these findings were vehemently denied, it established that there was a clear pattern of security force collusion with the key protagonist, the IFP, as well as the culpability of African National Congress (ANC) supporters in the violence, albeit at considerably lower levels.

Violence monitoring was also hampered by allegations of political bias. Whilst the use of violence appeared to be integral to certain parties negotiation strategies, these statistics, along with other generally qualitative data generated by other NGOs working in the field, was used somewhat selectively for political capital, primarily by the ANC. This led some analysts and NGOs to accuse several violence monitoring NGOs of spreading dis-information.⁷

⁶ Community Agency for Social Enquiry, *Inkatha / ANC Responsibility for Reef Violence*, May 1991

Community Agency for Social Enquiry, *Who is murdering the Peace? C.A.S.E. Research Statistics*, October 1991

⁷ S.A.I.I.R - South African Institute of Race Relations – *Spotlight on disinformation about violence in South Africa* – Anthea Jeffrey, *Spotlight*, No 8/92, October 1992 - Most reports, including those produced by international agencies such as Amnesty International and Africa Watch, did report on abuses committed against the Inkatha Freedom Party, although details remained largely sketchy. The IFP did produce its own report of officials and supporters killed during the 1990s, as evidence of the ANC's objective to eliminate political opposition. This list of several hundred incidents was submitted to the TRC, where efforts to corroborate individual cases were undertaken.

Despite the importance of such information, attempts to expand and improve NGO monitoring capacity remained insufficient, and activities consequently remained ad hoc. In terms of quantitative monitoring, the best that could be achieved were random compilations of figures drawn from a range of field and media resources. With regards to police abuses, monitoring organizations relied on descriptions of incidents that they argued represented typologies of abuse, through acts of omission as well as commission. Despite endemic levels of violence in some quarters, civil society involvement in such initiatives was sparse, and funding to develop capacity wanting. In this context (and given their own complicity in the violence) the authorities, including the police, were unwilling to work with, and share information with NGOs trying to identify patterns and trends of abuse, as well as those responsible for the violence.

During the negotiation era, the National Peace Secretariat, with representation from all the main political bodies, as well as security force representation, was the primary agency tasked with brokering and maintaining peace through an infrastructure of provincial and local dispute resolution committees. Little or no attempt was made to access &/or utilise available data on abuses to hold those responsible in check. Although the Secretariat played an invaluable role in stemming and preventing violence in many parts of the country, with only one or two exceptions this was done largely at the expense of any sort of forensic accountability.

Under the auspices of the CSVV's Human Rights Documentation Programme, the data generated by several (mainly Johannesburg-based) human rights and violence monitoring NGOs was subsequently collated using the HURIDOCs system into a larger database with [with over 5000 individual cases], which was subsequently made available to the TRC. Regrettably, and without explanation, the Commission made no use of this material.

Of course the TRC itself has also developed its own important database of violations. Although this has left us with an impressive archive and provided an unprecedented insight into a range of violations committed by members on all sides of the conflict (including the police), in terms of quantitative data regarding police abuses, the picture is limited on a number of fronts. First and foremost, access to the Commission's database is prohibited, and it remains to be seen what admission will be given to these and other archival material generated through the process. On a more substantive level, it is unlikely the quantitative data will provide us with an accurate overview of levels of abuse dur-

ing this period. Although many people reported abuses at the hands of the police, it is suspected that many more did not. Many activists who were subjected to police brutality did not engage with the TRC, for one reason or another. In addition, and despite the important disclosure regarding police abuses made during the amnesty process, less than 5% of the 7,100 applications received for amnesty came from police officers.⁸ Most of those who came forward were from certain sections of the SAP's internal security wing (aka. The Security Police). Most appeared to have applied for amnesty as a result of revelations and progress made during post-1994 criminal investigations and prosecutions.

On the whole, available data on policing abuses is geographically biased according certain areas that received better coverage from and access to the Commission. In addition, certain time periods were not adequately represented. This includes, for example, for the period around the Soweto uprisings in 1976, or the Vaal Uprisings, eight years later, both of which experienced widespread police repression and violence.

As we can see, quantitative data on abuses by the police for this period has its limitations. Much of the available information is qualitative and also almost exclusively focused on politically related incidents. While the NGO and TRC databases are both likely to have to a certain extent helped to rectify this situation, although access to their database currently remains restricted.

Our picture of policing abuses during this period is also severely curtailed by the (almost) complete absence of data regarding the treatment of criminal suspects, including those who died in police custody or as a result of police action. Nor are there available statistics on allegations of torture and assault made by those picked up &/ or accused as criminal suspects against police members. Despite this, in the light of subsequent research and interventions it is believed (albeit retrospectively) that torture was also routinely practiced by other policing units, especially certain detective and specialist units, and was widely employed against criminal suspects. Before the early 1990s, however, there were no detailed studies on this phenomenon and gauging levels (as well

⁸ CSVr's (currently unpublished) research on publicly available information relating to amnesty shows that approximately 310 members of the apartheid security forces applied for amnesty from a total of over 7000 applications.

as locations) of abuse remains speculative. Given the widespread practice of such violations in terms of political policing, and the apparent effectiveness of using these methods to extract information, it is reasonable to suspect that the torture of criminal suspects for similar purposes was also systemic. This investigative methodology was also encouraged by a legal framework that put the responsibility of proving a confession was extracted illegally on the accused.⁹

In 1991, research conducted at the University of Cape Town based on a series of interviews with prisoners concluded that ordinary criminal suspects have also been victims of the same and similar treatment that was meted out to many political detainees.¹⁰ These findings were supported by findings in a report compiled by three non-governmental organisations in March and April 1995. This report documented 380 cases of alleged torture, extra-judicial executions, deaths in custody that had been recorded by human rights organisations in the provinces of KwaZulu Natal, Western Cape and Gauteng between 1990 and 1995.¹¹

The Gauteng component of this research, which made up the bulk of the allegations, was compiled by the Independent Board of Inquiry (IBI), which had developed a close working relationship with the appointed civilian responsible for police oversight in the province.¹² Although this official was prohibited from proactively investigating allegations of torture under his jurisdiction, he was able to pass information to the IBI, which subsequently conducted its

⁹ This situation has subsequently been changed, and the onus for proving confessions were made freely and voluntarily now lies on the state.

¹⁰ Fernandez, L: *Police abuses of non-political criminal suspects: A survey of practices in the Cape Peninsula* - Research Report - 1-91, Institute of Criminology, University of Cape Town, 1991.

¹¹ *Breaking with the past? Reports of alleged human rights violations by the South African Police: 1990-1995* - Network of Independent Monitors, The Trauma Centre for Victims of Violence and Torture, the Independent Board of Inquiry, May 1995.

¹² The Police Reporting Officers (PRO), as they were known, were civilian monitors operating under the auspices of the 1992 National Peace Accord. Allegations of police abuse were reported to these individuals who were tasked to oversee the investigations of the Complaints Investigation Unit (CIU), specially established during the negotiation era. With the exception of the PRO for the Witwatersrand, and to a lesser degree the PRO for Natal, in most instances the PRO/CIU proved to be largely ineffective, as it was believed by some they were intended to be.

own preliminary inquiries, and subsequently lodged official complaints with his office. In this way, during 1994 the IBI was able to submit a dossier of over 150 allegations of primarily torture, which subsequently became the subject of an unprecedented investigation launched by the first post-apartheid provincial (Gauteng) police minister, involving both international police officers and NGO participation.

Post-Apartheid era

With the new political dispensation there has been a clear development of policy towards ensuring that policing in South Africa is conducted in a manner consistent with human rights and democratic values. This process has been multi-faceted in nature and has been underpinned by the adoption of a Bill of Rights, the establishment of a South African Police *Service* (SAPS) in 1995 and the implementation of a human rights training curriculum in basic police training. A civilian-controlled monitoring and investigative body known as the Independent Complaints Directorate (ICD), tasked with investigating allegations of police abuse, was also established. In addition, and largely in response to ongoing allegations of abuse, the SAPS introduced a “Prevention of Torture” policy by the SAPS in 1998/99.

The ICD remains the central official monitoring and investigative body of alleged police abuses. Both its investigative and monitoring capacity of police abuses, however, remains constrained in several areas and for a number of reasons. The ICD has 10 offices (nine regional and one national) spread across the country based in key urban centers. Access to these offices and is further limited by widespread ignorance about the ICD from the general public. With the exception of incidents of deaths in custody or as a result of police action, the ICD’s picture of alleged police abuse is entirely governed by what matters are referred to them, from a range of sources, from members of the general public to the Minister responsible for policing. Proactive efforts to access other relevant information are largely ad hoc, and recent developments have seen such initiatives officially discouraged.¹³ Consequently, the ICD, by its own

¹³ During 2000 and 2001, the ICD instituted a number of ‘spot checks’ on police stations about which they may have received complaints. This prompted a strong reaction from the police

admission, does not have a comprehensive overview of reported allegations of police abuses.¹⁴

Despite this, since 1994 data purporting to provide an overview of alleged and proven criminal activity involving the police is periodically provided by the government. According to the Institute for Security Studies (and NGO based in Pretoria), between 1994 and 1997 an average of 13,954 complaints or charges per annum were laid against SAPS members. In 1997, 17526 charges were laid, including several thousand complaints of assault. Statistics for 1998 and 1999 were not available. In 2000 over 14600 charges were laid, including several thousand allegations of assault.¹⁵ On average, 1200 officers were convicted of criminal offences every year between 1995 and 1999.¹⁶ Almost a quarter (23%) of all convictions relate to cases of assault with the intention to cause grievous bodily harm (Assault GBH), and common assault, and a further 13% of cases for violations of the Firearm and Ammunition Act and for pointing firearms. During the same period approximately 170 SAPS member have been convicted for murder, and a further 220 for attempted murder—it is not clear how many of these cases involved incidents that occurred during the course and scope of policing duties.¹⁷

It is clear that there is a wide discrepancy between the number of charges laid and the number of convictions secured. This is influenced by a number of factors, such as: abusive practices by the police are typically under-reported by the

department and Ministry who effectively sought to bar the ICD from access to police stations, and in particular to holding cells. A memorandum from the SAPS was circulated to police stations effectively informing them that the ICD had no authority to instigate 'fishing expeditions' for complaints in this way. The ICD suspended further station visits, but continues to experience problems from some stations who have interpreted the aforementioned memorandum as authorization for a blanket ban on ICD access.

¹⁴ Consultation with Shadrack Mahlangu, Head of Complaints Registry, ICD – 19 March 2002

¹⁵ *Policing the Police: SAPS Members Charged and Convicted of Crime*, Nedbank / Institute of Security Studies Crime Index, Volume 5, 2001, Number 2, March – April. www.iss.org.za/Pubs/Crime%20Index/01Vol5No2/policiong.html

¹⁶ Statistics provided by the Minister of Safety & Security in June 1998 show that 3767 officers were convicted over a three-year period, for a range of crimes ranging from murder and rape to petty offences. This included 252 convictions for assault (GBH) and a further 556 convictions for assault. – *Nearly 4000 police guilty of a range of crimes* – Cape Argus, 24 June 1998.

¹⁷ *Polthe Police: SAPS Members Charged and Convicted of Crime* – *op. cit.*

public (especially in situations where there remains a fundamental mistrust of policing agencies); investigations are generally under-resourced and not given adequate priority; incidents of alleged abuse often take place in contexts where supporting evidence cannot be secured; court cases against police officials do not receive priority attention.

Deaths

The number of deaths in police custody or as a result of police action remains high. Since 1997, when the first statistics were produced, between 550 and 700 people die annually in custody, and as a result of (or in relation to) police action. Post-apartheid legislation governing the police requires that all deaths either in custody, or during the course of police action be referred to the ICD. Although there is some evidence that some cases have not been brought to the ICD's attention, since 1997 (when the Directorate was established), quantitative monitoring of these deaths has been relatively comprehensive.

Although these figures appear very high, this should not be regarded as an accurate indicator of abusive practice. With the exception of one targeted evaluation conducted by the CSVr on behalf of the ICD in 1998, there is no detailed analysis of these cases. The CSVr research referred to involved an analysis of 168 deaths in custody or as a result of police action that were recorded in the Gauteng Province between April and December 1997. This research highlighted some of the difficulties and complexities associated with determining whether or not abusive behavior was employed, and touched on a range of issues, including; the consistency and quality of information recorded, the competency of specific investigations and the categorization employed by the ICD.¹⁸

The ICD does provide its own breakdown in terms of cases dealing with deaths. In terms of deaths in custody, these are broken down into five categories; natural causes, suicide, injuries in custody, injuries prior to custody, and possible negligence. While this provides us with some insights into what may

¹⁸ Bruce, D. (1998). *Towards a Strategy for Prevention: The occurrence of deaths in custody or as a result of police action in Gauteng, April - December 1997*. This report was produced at the request of *The Independent Complaints Directorate*, 2 July.

have happened and whether or not the police are responsible, the categories employed are not definitive. In terms of negligence, for example, although there is a specific category dealing with this, it is quite possible that negligence (by the police) also contributed to the deaths in other categories). In terms of abusive behavior, it is also possible the injuries sustained “prior to custody” were in fact sustained at the hands of arresting or investigating officers, or that suicide was in fact induced.

Turning to deaths as a result of police action, the ICD breaks these incidents down into seven categories. These are: shooting during the course of arrest, shooting during the course of a crime, shooting during the course of an investigation, other intentional shootings, possible negligence, negligent handling of a firearm, and ‘other’. Once again, this categorization does not provide us with any detailed insight into abusive practices. It appears, therefore, that we cannot place too much reliance on the ICD’s own statistics in terms of determining levels of abusive behavior resulting deaths. Although the bulk of the ICD’s investigative resources are focused on this work, anecdotal evidence suggests that investigations are not necessarily thorough, which reflects the limited skills and experience of many ICD investigators

Shootings

Recent research by the CSV, on shooting incidents involving the police between 1996 and 1998, utilised several data sources from the SAPS (i.e. data on shooting incidents, data on criminal and internal disciplinary cases, and data on civil claims brought against the police). The report highlighted a number of problems, especially with regards to the breakdown in the SAPS monitoring systems—which consequently had serious implications for assessing levels of abuse.¹⁹

Indeed, as with the research on deaths in custody, this research provided some insight into the difficulties determining what cases might fall within the parameters of abuse. The research concluded that the level of fatalities as a

¹⁹ Bruce, D. & O’Malley, G. (2001). *In the Line of Duty? Shooting incidents reports and other indicators of the use and abuse of force by members of the SAPS*. Research Report written for the Independent Complaints Directorate, October 2001.

result of police action was not exceptional in relation to the rates recorded in many US cities. It also found that in the context of the high levels of societal violence in South Africa, the police's use of force was not necessarily high, although this does not mean that this force was used "appropriately, effectively or justifiably".

Torture

Allegations of torture against the 'new' SAPS have continued to surface on a regular basis in the post-94 dispensation. The cases themselves have almost exclusively involved criminal suspects. As in the era of political repression, torture is primarily used as an "investigative" method, in other words, a means of extracting information and confessions.

Determining what cases may or may not fall within the definition of torture has a direct bearing on how levels of torture are determined (statistically and otherwise). Despite ratification of the United Nations Convention Against Torture (CAT), South African law itself has no provisions relating to torture, and such cases are dealt with in terms of the Criminal Procedures Act, under the broad category of assault with the intention to cause grievous bodily harm (Assault GBH). Although the SAPS has adopted a Prevention of Torture Policy which includes an even more expansive definition of torture than that contained in the CAT, the SAPS does not record or categorize complaints of torture and relies on the ICD for the provision of statistics in this regard. The ICD, which has recently adopted the SAPS definition of torture does not have, by its own admittance an accurate picture of the torture, and available statistics provide little insight into rates of prevalence. Indeed, the ICD's own reports on torture²⁰ indicate that the monitoring body has thus far utilized a very narrow definition of torture, in which certain methods (i.e. electric shocks, suffocation, suspension) are the only cases regarded as torture. As such, it's own reports do not correspond with either the CAT or SAPS definitions of torture. Consequently, this excludes a large number of other cases that would fall within these definitions.

²⁰ i.e. Report on torture cases investigated by the ICD, 1 January, 2001 - <http://www.icd.gov.za/reports/torture.htm>.

Unlike cases of police-related deaths, there is no legal obligation on the police to refer cases of torture / assault GBH to the ICD. Consequently the ICD is dependent on what is brought to its attention. Many more cases of assault are reported to the SAPS itself every year. Some of these are likely to have fallen into the category of torture, as defined by the SAPS policy, and /or the CAT. In addition, given the absence of available or legitimate alternative remedial mechanisms it is likely that many others do not lodge complaints.

Available Statistics

Statistics from the ICD's Complaint's Registry are contained in the Directorate's annual reports (available on the web – www.icd.gov.za). According to their latest report, for the period 2000 / 2001, they received an almost 20% increase in the total number of complaints received (from 4380 to 5225). In the same period, however, the number of serious cases declined by 27,4% —although the report warns that this does not mean the actual number of incidents has declined.²¹

As we have seen, the ICD's responsibility for effective monitoring of police abuses and the production of reliable and meaningful statistics is constrained on a number of fronts. ICD reports on torture and other abuses are in most cases descriptive. Possibilities for rectifying this situation are, however, apparent. Official statistics on police issues are compiled by the SAPS' statistics arm, the Crime Information Analysis Centre (CIAC). Several categories of crime are constantly monitored, although the process of improving the data gathering process is an ongoing project —competing for funds amongst a range of other policing (and other) priorities. The existing infrastructure is clearly insufficient, and is compounded by human resource problems, such as insufficient training, inadequate resources and computer support at station and unit level, as well as a high turnover of skilled personnel.²² This situation reflects the legacy of a policing culture still struggling to come to terms with the practicalities of basic

²¹ <http://www.icd.gov.za/reports/2001/areport01.pdf>

²² *Figuring it out: Getting to know police crime statistics -*, Nedbank / Institute of Security Studies Crime Index, Volume 5, 2001, Number 2, May-June.

information technology.²³ The result is that quantitative monitoring of general crime for the purpose of informing crime management strategies remains very much in its formative stages.

Although the CIAC compiles statistics on several categories of crime, they are not involved in the monitoring or systematic co-ordination of available data on allegations of police abuse. Monitoring of these issues is undertaken by the SAPS department responsible ‘discipline management’, (with the exception of allegations of corruption that are handled by a separate department – the Anti Corruption Unit. The ACU has developed its own database, as well as its own web site on which its statistics are published and updated regularly.)²⁴

Every year the Minister responsible for the police responds to Parliamentary questions on the number of police personnel charged and convicted each year. These statistics are compiled by the discipline management department, and are drawn together from statistics that should be provided by each of the provinces (and area levels within the provinces) on a monthly basis. The department, however, only records matters that relate to disciplinary action. In theory, all criminal allegations against SAPS members, which are denoted as “serious misconduct”, must also be subject to an internal disciplinary inquiry. Consequently statistics on internal discipline should provide a relatively accurate overview of criminal charges that are of a serious nature. The provincial statistics are broken down into categories of crime, but no detail on which stations or units are worst affected is generated. The absence of a proper database, means that available statistics on alleged misconduct are limited to very few variables.

Information is not shared between or effectively utilised by relevant departments. The Discipline Management Department, for example, has little to do with the CIAC, and only deals with the ICD in terms of cases it receives from them (for specific monitoring purposes). In other words, the ICD does not receive the monthly figures generated by each of the provinces in terms of internal disciplinary cases opened against specific members. This is remarkable, given the ICD’s general oversight mandate, and means that between all the civilian oversight bodies not one has a detailed overview of allegations

²³ While South Africa may boast a capacity to conduct DNA forensic investigations in stock theft cases, for example, it still struggles to generate and maintain relatively basic data systems, such as the Case Administration System (CAS).

²⁴ www.saps.co.za/16_divstat/anticor/index.html.

made against the police. The head of Discipline Management was keen to point out that the Department's responsibility was not with regards to criminal matters, but for internal disciplinary issues. It did not, for example, monitor the progress of criminal matters, although it was pointed out this would be possible on the basis of available information. Apparently, there are also plans in the pipeline to develop a workable database, which in turn will require improvements and standardization in processes of data gathering and capturing.²⁵

Despite the irregular production of aggregate figures on police criminality, police management does not have a detailed insight into the information compiled, and as such does not use it for the purpose of management and performance appraisals. No apparent plans have been made to rectify this situation, and criminality within the police, or at least reported human rights violations are unlikely to be subject to rigorous monitoring by the police.

The ICD is well positioned to develop a closer working relationship with relevant SAPS components, such as the SAPS own Internal Investigation Units (IIUs), which operate at area and provincial levels and are responsible for the bulk of criminal investigations into allegations against SAPS members.²⁶ Although the IIU liaises with Discipline management, there is no formal correlation of their cases. As far as we are aware, the IIU does not provide statistics based on its own investigations. The ICD could certainly play a role in assisting to improve and standardise their own monitoring and reporting systems. In the absence of a proper regulatory framework, however, the ICD is reliant on police co-operation in sharing information —something that has not always been forthcoming. The ICD is hoping to rectify this situation, and draft legislation before cabinet calls for clarification on these kinds of issues.

Monitoring of police abuses by civil society agencies has all but disappeared in the post-apartheid dispensation. Although some victims of abuse have found legal and other remedies to tackle violations and the media continues to report on certain (especially sensational) cases, NGO monitoring of police abuses is virtually non-existent.

²⁵ Telephonic consultation, Senior Superintendent A Khan, Discipline Management Department, 28 March 2002

²⁶ Despite this intention, many policing areas in the country are not serviced by the IIU, and investigations against police members are conducted by other members of the SAPS. In some cases this results in investigations being conducted by someone from the same police station.

This lack of involvement is paralleled by the limited attention given to the subject of policing abuses by the South African Human Rights Commission (SAHRC). The Commission has addressed a number of individual incidents, especially those that contain a distinct racial component. In addition, the Commission has tackled the police (and others) on the treatment of migrants and refugees. Since its inception in 1996, however, it has not provided a focus on the subject of systemic abuse and organizational culture, but has preferred to refer matters on a case-by-case basis to the ICD. No attempt has been made to address the systemic problems regarding police abuses as they relate to the broader transformation goals of building integrity, professionalism and accountability.

APARTHEID ERA / POST-APARTHEID ERA – DIFFERENCES AND CONTINUITIES

The important developments in South Africa's legal and regulatory framework have not been complimented with an adequate monitoring and oversight capacity of abusive police practices, either from within the SAPS or the external independent monitoring and investigative body, the ICD. While there have been important strides in transparency and accountability in some areas, there remains considerable room for improvement in terms of developing internal SAPS monitoring mechanisms of criminal and unprofessional behaviour, as well as the consolidation of civilian oversight.

Of particular concern is the failure to place criminality and corrupt practices within the police, of which illegal use of force is but one component, higher up the list of priorities in the general campaign to tackle crime, which remains a central concern of nearly all South Africans. Dealing with abusive practices is almost entirely reactive, and generally limited to very public cases. Despite an important shift towards addressing internal discipline as a management function, the internal disciplinary system remains in disarray.²⁷ Consequently, police violence and criminality has not been factored in, in terms of police management's priority objectives, or even as indicators to achieve objectives within the disciplinary arena.

²⁷ Newham, G. (2000). *Transformation and the Internal Disciplinary System of the South African Police Service*. Occasional paper written for the Centre for the Study of Violence and Reconciliation, November. - <http://www.csvr.org.za/papers/papnwhm6.htm>.

Energies are instead focused on other (important) priorities in relation to other areas of crime fighting. The National Crime Prevention Strategy and annually published policing priorities make little or no mention of the issue of police criminality. The lack of adequate data allows the authorities to continue treating the issue as a low-priority concern which is dealt with through long-term preventative measures, such as the human rights training programme. Shock is expressed and harsh action promised when cases of abuse are brought into the public arena, but no action has yet been taken to tackle police criminality as a priority management function. Although there is no detailed insight into the different circumstances in which abuses arise, there are clearly patterns of abuse emerging from particular investigation units and police stations. Why then is no meaningful action taken?

Since 1994, there has been a general concern that a concerted and rigorous effort to address police abuse would be counter-productive. Consequently a 'hands-off' approach has been adopted, with the intention that such 'problems' would best be dealt with by police management itself. Despite the police's central role in apartheid violations, abusive police practices do not command significant attention. Crime fighting is a national priority, for both the government and the general public, and there is widespread public sympathy for harsh treatment of criminal suspects. A national survey conducted in 1998, for example, found that a third of South Africans supported the police's right to use force to extract information from a criminal suspect. (A further 25% were indifferent on the subject). Physical abuse has been a traditional methodology of policing in terms of its various functions of protection, enforcement and investigation. As such, there is a widespread reliance on police who use or tolerate such practices.

Police criminality and corruption have, however, become serious obstacles to the SAPS' transformation, which in turn undermines the longer-term prospects for tackling crime. Despite this, police violence and torture are not viewed within the broader ambit of criminality, either within the police itself, or more generally. Indeed, the focus in terms of police criminality appears to rest on cases of corruption, although no detailed insights into the relationship between corruption and other offenses have emerged. Nor is violence and torture treated in terms of discipline and accountability as a professional and managerial concern. Instead, an ad hoc largely reactive approach has been retained, denials of systemic problems permeate, and an age-old explanation that abuses are

the work of miscreant individuals endures. Whilst allegations of abuse do not necessarily meet with the fierce denials of previous administrations, actions and sentiment of police management remain largely protective.

In terms of police shootings, efforts to bring legislation in line with international standards have been fraught with complications, as well as fierce opposition from within the SAPS itself. Although the current situation remains legally confusing and unclear, it is extremely unlikely that there will be a return to the kind of impunity that existed within the SAP.²⁸ Whatever the precise detail of the finalised legislation, South Africa's constitution demands higher levels of accountability, which will help to curb the number of abusive incidents.

In terms of torture and physical assaults, these practices continue and are dealt with on a case-by-case basis with varying degrees of sanction—but typically not harsh. There are, for example, cases of police officers who have been found guilty of electric shock torture, for example, receiving fines from the courts and returning to work in the same units. A failure to take appropriate action is likely to feed into a culture of impunity that appears to permeate within many parts of the SAPS.

CONCLUSION

Certainly, a distinction must be drawn between South Africa's democratically elected political leaders and their predecessors, and it is evident that the current leadership has been relatively vocal in terms of calling for the protection of human rights. Although some of these words have been translated into concrete actions, in the context of ongoing policing abuses, pertinent questions remain as to whether enough has been done to finally put an end to police violence and torture in the new South Africa.

South Africa is touted as having one of the most progressive Constitutions in the world with a powerful human rights regime. One of the core criticisms

²⁸ For a discussion on the key unresolved legal issues relating to the use of legal force, see Bruce, D. (2002). *The Legal Framework on the Use of Lethal Force in Effecting Arrest - a new Section 49?* Memorandum produced by the Centre for the Study of Violence and Reconciliation, March.

of South Africa's transition has been the gap that exists between the development of policy and its implementation. The SAPS must put in place an effective information regime to assist in the campaign to root out criminality within the police service. Such a regime requires action at a number of levels, including an effective statistical monitoring component, and a willingness to use this information as an effective management tool for improving service and accountability. With no effective lobby within civil society to champion this issue at present, the necessary developments are dependent on the efforts of the under-capacitated ICD and a handful of other individuals. The opportunities for such a development clearly remain—but it remains critical that the appropriate advocacy is undertaken.

At the same time, efforts must also be made to galvanize relevant civil society structures to continue recording and collating qualitative data, relating to alleged violations committed by police members. Such records can be subsequently developed into statistical data. In 1994, one of the most important factors in prompting immediate government intervention to secure an investigation into torture in the Vaal Triangle was the sheer number of detailed allegations placed in front of the provincial policing Minister.

In 1995, as a member of the Police Reporting Officers Board, an interim structure that facilitated the shift from the Police Reporting Officer system²⁹ to the ICD, I suggested that if it was possible for the Minister to provide Parliament with an annual figure of alleged criminality within the SAPS, surely it would be possible to develop a monitoring system that would allow a more detailed overview of what the problems were, which in turn could facilitate targeted interventions—which was of particular importance in the context of limited resources. A senior SAPS representative informed me that this was already “in hand”, and that this data would be available to the ICD when it was up and running. Almost seven years later, however, there has still been no action in this regard, and concerns remain that police criminality, including human rights violations, remains widespread. The opportunity to build an effective monitoring system remains, but without a policy shift that places the issue of police criminality within the broader parameters of crime fighting, and the associated political will that can make this a reality, it seems likely that police abuse will remain part of South Africa's policing landscape for the foreseeable future.

²⁹ See footnote 12.

CONSIDERATIONS FOR THE IMPLEMENTATION
OF A SYSTEM FOR THE DISSEMINATION OF STATISTICS
ON THE COMPLAINTS RECEIVED BY THE NATIONAL
HUMAN RIGHTS COMMISSION

*Dr. Gabriel Vera Ferrer**

1. BACKGROUND

The National Human Rights Commission (CNDH) has from its inception registered certain in magnet media certain information regarding complaints it has received, as well as the results of the procedures to which they had been submitted. Some complaints end in recommendations to several authorities involved, but others have ended their process before this, be it because they did not fulfill the requirements for a recommendation or because the parties involved came to an agreement.

2. THE NEED FOR A SYSTEM OF DISSEMINATION
OF STATISTICS BOTH BASIC AND DERIVED
FROM COMPLAINTS RECEIVED BY THE CNDH

Starting with the registration of the complaints and their evolution, an information system can be generated for the dissemination of basic and derived statistic in order to keep the public duly informed of the evolution of the work of the CNDH regarding these matters.

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3. GATHERING INFORMATION FOR AN ANALYSIS

In order to be able to set up this system, it is necessary to first carry out several activities of differing natures.

In the first place, it is indispensable to analyze the characteristics of the information obtained and currently in the magnet files of the CNDH, among others:

Regarding the characteristics of the information contained in the records:

- the name, type and significance of the data on file;
- whether each record contains data regarding a complaint or whether there are aggregations represented on a certain variable, for example, whether the records are grouped by type of complaint, etc.;
- the date from which said records are being kept;
- the time unit in which they are expressed, that is, whether the data are daily, weekly, monthly, etc.;
- the formats in which the records are stored (formats: dbf in dBase, Clipper, Visual Fox Pro, Pascal, etc.);
- the systems or sources that permit the creation of these records, for example, the data come from data captured by systems in the CNDH.

Regarding the consultation and security needs:

- the variables or criteria by which the stored data is consulted, for example, by type of complaint, etc.;
- the units of time to be considered, that is whether one wishes to carry out consultations by day, month, semester and/or year;
- the classifications of the criteria on which the data are consulted, for example, if time is considered a consultation variable, one hierarchical classification would be year, semester, etc.;
- the frequency of the consultations and the criteria involved in them, for example, if a particular report contains the type of complaint in each period (semester, month, day);
- the calculations and formulas that must be applied to the stored data, for example, if one wishes to obtain an average of complaints by period of

time or the percentage difference in the number of complaints during the month of January of 2002 compared to January of 2001;

- the levels of security that are required, for example, whether the consultations cannot involve certain criteria for certain users;
- the media by which the information will be distributed (by web interfaces with characteristics through intranet, internet or extranet).

A second aspect that must be taken into consideration is the computer infrastructure of the CNDH, it is particularly important to know:

- the characteristics of the CNDH hardware (number of servers, number of PCs, processor speeds, peripheral devices, storage capacities, memory available, etc.);
- the characteristics of the network and communication architecture;
- the platforms, for example, Unix, NT, etc.;
- the environments and languages developed, authorized and available at the CNDH;
- the administration systems of the available databases, for example, Oracle, Sybase, Progress, etc.;
- the technological characteristics of the web servers of the CNDH;
- the characteristics of the security software (firewalls) that will prevent access by intruders into the CNDH systems and the alteration of available data in the websites;
- the means of backup and support for the CNDH data.

The administrative organization of the technological information functions is the third point that must be taken into consideration. Specifically, one must consider:

- the policies and lineaments of the data processing planning at the CNDH;
- the policies and lineaments of data distribution via intra and internet;
- the policies and lineaments of security and backups.

4. OBJECTIVE OF THE SYSTEM THAT IS TO BE DEVELOPED

Depending on the analysis of the above mentioned points, one can plan the development of a dissemination system for statistics of the CNDH through a website. Said system must allow the permanent, systematic, trustworthy, complete, timely and efficient distribution of the statistics on the complaints received by the CNDH.

DEVELOPING AND APPLYING STATISTICAL METHODS FOR HUMAN RIGHTS VIOLATIONS MEASUREMENT

*Jana Asher**

OVERVIEW

- Background
- Multiple Systems Estimation
 - Example: Kosovo
- Circuit Analysis
 - Example: Country X vs. Kosovo
- Witness-Based Modeling
 - Example: Country X
- Role of the Statistician

BACKGROUND

- Researchers wish to know the count for a particular human rights violation (e.g., civilian deaths, instances of torture) in a particular area/country.
- Question: how is a count of human rights violations estimated?
- Answer: depends on how the data is collected!
- What I've encountered to date is interview/exhumation data.
 - Investigative data collection.

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- Enumerative data collection.
- In both cases, the data are not random.
- Ideal: carefully developed survey of random sample of target population. Then estimation is “easy.”
- Instead: estimation relies on sophisticated statistical machinery...

MULTIPLE SYSTEMS ESTIMATION

- MSE is a statistical technique for using two or more separately-collected, incomplete lists of a population to estimate that population’s size.
- Dependencies between lists and different capture probabilities of members of the population (heterogeneity) can be incorporated into modeling procedure.
- Log-linear modeling, Rasch modeling, Bayesian methods, etc... complex!

MULTIPLE SYSTEM COUNTS: KOSOVO

- Patterns of counts of deaths/migrations used to refute theories as to the causes of deaths/migrations.
- Interview data from three projects and exhumation data form four “lists” of Albanian deaths that are matched to determine overlaps between lists.
- Estimates created for counts of deaths for six-day periods for each of four regions, for two-day periods and for entire time period/country.
- Dependency modeled for, heterogeneity addressed through time/space stratification.

MULTIPLE SYSTEM COUNT FOR PROJECT LIST

- Let a list be a specific interview/witness.
 - Investigative data collection leads to rich overlap of interviews.
 - My guess: a substantial, expensive amount of data collection is required for this to work.

Research Question

What other statistical methodologies can be developed for creating a count of human rights violations from interview data?

CIRCUIT ANALYSIS

- Define a circuit to be a set of witnesses linked by the deaths they share.
- Define circuit analysis to be exploratory data analysis focused on the structure and distribution of circuits within a dataset.
- Circuit characteristics such as size, density, and composition can be summarized numerically.

Circuit Analysis

<i>Country</i>	<i>Data Collection Strategy</i>	<i>Number of Circuits</i>	<i>Overall count of witnesses</i>	<i>Overall count of violations</i>
Country X	enumerative	611	804	1302
Kosovo	investigative	308	529	1947
<i>Country</i>	<i>Mean witnesses per Circuit</i>	<i>Mean violations per circuit</i>	<i>Violations per Witness</i>	
			<i>Mean of circuit means</i>	<i>Overall mean</i>
Country X	1.32	2.13	1.51	1.62
Kosovo	1.72	6.32	2.80	3.38

Potential Uses

- Circuit analysis quantifies characteristics of the data collection process (enumerative versus investigative).

- Circuits reflect social networks that generate the data.
- The “traveling salesman.”
- Circuit analysis could be used to inform investigative data collection as it occurs.
- Numerical summaries of circuits can be used to form covariates for models for estimating the count of human rights violations.

WITNESS-BASED MODELING

- Models that rely of the number of witnesses captured for a death.
 - Without covariates, simple.
 - With covariates, complicated, but potentially better estimates.
 - Using numerical summaries of circuits as covariates injects data collection strategy into a model.

EXAMPLE: COUNTRY X

- Frequency table created as follows:
 - 1103 deaths observed by 1 witness.
 - 142 deaths observed by 2 witnesses.
 - 40 deaths observed by 3 witnesses.
 - 13 deaths observed by 4 witnesses.
 - 2 deaths observed by 5 witnesses.
 - 2 deaths observed by 6 witnesses.
 - 1302 deaths, 1582 witness-death pairs.
- Estimate the number of deaths for which the number of captured witnesses is zero.
- Simple estimate: 4000 deaths; more complicated estimation procedure is being developed.

THE ROLE OF THE STATISTICIAN

To aid in all steps of a research project:

- Developing questions of interest.
- Developing appropriate data collection techniques (e.g., survey design, experimental design, data collection plan).
- Developing the statistical methodology to analyze the data collected.
- Interpreting the results of the analysis.

FURTHER READING

- Ball, P., Betts, W., Scheuren, F., Dudukovich, J., and Asher, J. (2002). *Killings and Refugee Flow in Kosovo March - June 1999: A Report to the International Criminal Tribunal for the Former Yugoslavia*. American Association for the Advancement of Science, Washington, DC.
- Asher, J. and Ball, P. (2001). *Understanding Human Rights Violation Data through the Analysis of Circuits*. Invited paper presented at the Joint Statistical Meetings, August 8, 2001.

QUANTITATIVE MONITORING OF VIOLENCE
OR HUMAN RIGHTS VIOLATIONS
WITHIN JUSTICE INSTITUTIONS

*Bruno Aubusson de Cavarlay**

The topic of this paper is mainly methodological. Is it possible to get figures about torture, ill treatments or violence within the criminal justice system? These acts are illegal and we are facing usual problems for criminologists trying to get figures about crime. The first one is about the definition of crime; the second is about the gap between committed offences and recorded offences; the third problem is about statistical rules adopted as regards counting units and descriptive variables.

Criminal statistics have a very long history but they have been misused for a very long time –and they are still misused– because of what we call the dark figure. Police forces or public prosecutors collect criminal statistics. The figures are related only to reported crime¹ and not to actual crime. These debates about crime measurement have been renewed some twenty years ago or so by victimisation surveys. These are quite useful to know what is going on about crime when natural persons are victims of some kinds of offences. These surveys are not designed only in order to measure actual crime. They also gather information relating to what happens after the crime from the victim's point of view. Does the victim report the offence to the police or to another institution? Did police forces record the offence? Was the offender arrested?

On the other hand, criminal statistics should not be anymore used as crime measurement. But they are still quite useful in order to know the social response

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¹ Reporting crime : bringing crime to notice of authorities.

to recorded crime. Then criminologists look at selection processes from the police stage to correction: how many cases are recorded by the police, how many are reported to the public prosecutor, and so on.

On the long term, when the two sources are available, one can search for a possible interaction between the two levels: how does the criminal justice system react to a growing concern about a particular offence among victims or the society, how are victims influenced by the judicial response in reporting offences?

One can imagine that this two-levelled approach is somehow disrupted when offences occur within the criminal justice system (abbreviated to CJS and including the police, courts, prisons and correctional institutions...). In such a situation, how can we adapt this general framework?

A. WHAT KIND OF FIRST LEVEL MEASUREMENT?

A1. Victimisation surveys

The general problem about victimisation surveys is that very large samples are required because of the low frequency of crime. For instance victimisation rate for assault in Europe range between 2 and 5 percent for national samples. In order to get reasonable accuracy, ten thousands respondents could be the minimum sample size.

Obviously, surveys among general population would not be adapted to get figures about victims of violence within the CJS. But we can perhaps imagine using surveys among people who had contacts with the CJS (i.e. who were arrested or detained).

The feasibility of such a survey depends on the definition of ill-treatments or violence. The broader the definition is, the higher the victimisation rate. Once again, this is true among general population. Most serious offences are far less frequent than petty offences in ordinary times. But there is a limit to broadening the definition of ill-treatments within the justice, since the standard definition excludes pain resulting from the legal process. Response to a question as "have you been submitted to violence when you were arrested?" would probably not match this definition.

A2. Capture-recapture methods.

Another way to get figures beyond reported crime is to adapt the capture-recapture method to the situation where two independent individual data sources exist about the same crime for the same period and the same place. Some historians did it to estimate homicide rates by comparing files coming from judicial archives and files coming from a newspapers review. I will not go into technical details about this method, but it should be stressed that the statistical independence between the two sources is required to apply this method. And in order to check this fundamental hypothesis, we must find some quantitative evidence about the link between victimisation and reported cases.

Once again, it is more important to learn about selection mechanisms than about the exact difference between the actual number of cases and the reported one.

A3. Intermediate agency records

One distinctive feature of crime reporting regarding violence within CJS is that most of the time the involvement of an intermediate agency is required (one or more). Because violence and ill-treatment against arrested persons by police forces are obviously not reported to these forces, victims can register a complaint against the police only if some special agency is acting for these victims. It may be an NGO, a police disciplinary body or some institution as CNDH in Mexico.

As a consequence, the first level of quantitative measurement will be the activity of an intermediate agency. Figures will tell us about its activity and not about the actual level of violence within the CJS.

This situation can be seen as a definitive impediment to quantitative assessment of these agencies impact. If their activity is growing according to figures, the conclusion is neither a decline in Human Rights enforcement (because violation would be increasing) nor the opposite (because reactions to these violations would be growing). In fact, as a general rule, when the creation of an official agency devoted to a particular problem is followed by the publication of a statistical indicator (produced by this new agency), the figures show that the problem is increasing!

On the opposite, Human Rights enforcement being seen as a dynamic process, we can accommodate ourselves to this methodological situation and abandon the idea of measuring an actual level of violence within the CJS. But accurate quantitative description at the first level of social response is even more necessary within this approach of Human Right as a process.

B. QUANTITATIVE DESCRIPTION OF THE RESPONSE TO VIOLENCE WITHIN THE CJS.

Even if a specialised agency is involved in the first step of a social and judicial response to violence within the CJS, the cases have to be brought either to ordinary courts or to international courts in order to get formal sanctions. When some figures are given about these cases, they are mostly very low figures. Statisticians may feel that figures are so low that they do not have to think about a standardised framework to collect data. No job for a statistician here!

For example, the Office of the High Commissioner for Human Right (UN-Geneva) gives on its web site a *Statistical survey of individual complaints dealt with by the Committee against torture under the procedure governed by art. 22 of the convention against torture and other cruel, inhuman or degrading treatment or punishment* (www.unhchr.ch). The table, updated in February 2002, gives a total of 200 cases for the 45 States which have accepted the competence of the Committee. Among those, 160 cases are involving six States (Australia, Canada, France, Netherlands, Sweden and Switzerland). The table covers about five years for these six countries, that is to say an average flow of about 5 cases per country.

The breakdown of the total is given according to the procedure followed by the Committee: 38 cases are in a column under the heading “pre-admissible”, 4 are counted as admissible, 4 as suspended, 37 as inadmissible, 55 as discontinued. For the last 62 remaining cases, the Committee expressed its view: in 20 cases it disclosed a violation, among which 14 were involving the six countries listed before. A footnote tells the reader that 46 cases were living cases (we could say pending cases).

How should we compute a positive response rate? The result may range between one out of ten (20/200) and one out three (20/62) with many other admissible solutions.

From comments about this not unique example, some guidelines could be drawn about statistical methodology: firstly, statistical data collection should adopt a general framework describing input and output of agencies and institutions, secondly, statistical rules should be clear and fitted with the measurement objectives.

B1. General framework (input-output model)

Specialised agency and the different parts of CJS (police, prosecutors, courts) can be described as boxes receiving cases and sending cases to other boxes or steps of the system. For a regular statistical production, a period of observation must be chosen—usually the year—in order to measure flows during the period and stocks at the beginning or the end of the period. Flows are counted as input or output. For a period—let say a year—input flows and output flows are not equal, the difference coming from pending cases or “living cases”. There must be a balance of flows and stocks for a year. Such a balance requires very clear definitions about input and output at a given level. Typically, the proceeding of some cases will stop at this level and these dropped cases must be counted as output (and input).

Statistically speaking, very poor description is obtained when output includes only flows to the following levels of the system (dropped cases are omitted) or when dropped cases are mixed up with pending cases.

Insofar as the proportion of dropped cases is undoubtedly one of the key variables of a statistical analysis, a great attention must be paid to the input definition and to the ground for dismissals or abort. A rich statistical description includes as input all the cases reported at a given level and allows understanding how a subset is selected for prosecution and why the others are dropped.

B2. Statistical rules: field, counting units, and nomenclatures.

Consequently, this description of a selection process needs first an accurate definition of a *statistical field*. At the first level, which is supposed to be a specialised agency for torture, ill-treatments and violence within the CJS, this

definition must rely upon practical criteria in order to achieve some consistency over time. What should be counted as an entry: a written complaint? A telephone call? An anonymous denunciation?

In addition, this definition implies some choices about the kind of events that should be recorded and about their nomenclature. At the first level, these choices should allow the recording of cases that will not be taken into consideration by the agency according to its competence after a first examination.

The very technical point of *counting units* is a headache for statisticians. Sometimes cases (files) are counted, sometimes persons, which can be victims or authors of offences or violence. Offences can be counted as well and then the link has to be made with authors when dealing with multiples offences or repeated offences. Since no general rule has been adopted within each country for criminal statistics, there is no standardisation available on this point. One recommendation could be to handle data collection combining case counting and person counting since each one may be inevitable at a given level of procedure.

Last but not the least, *nomenclatures* are required. Statisticians do not like overall single figures. Their main activity relies upon breakdown into categories and comparisons. Nomenclatures are required to build variables. I already emphasised the need for a nomenclature about grounds for dropping cases when some first level agency is involved in a preliminary selection of cases to be proceeded in a way or another. In order to make up for the lack of information from the victims' point of view, another important variable could describe how victims or witnesses report cases to this agency.

In order to get consistency in international comparisons and in time series analysis as well, it could be appropriate to reach some agreement about a statistical nomenclature describing violence within the CJS. Some general framework already exists with the distinction between torture, ill-treatments or violence within the CJS. Beyond general agreement upon these categories, precise definitions will not be the same in practice for each national or international agency. Such differences could be handled for international agencies with a list including all the existing criteria. But this approach is useless when dealing with all national particular definitions.

It can be argued that international definitions, resulting from large legal conventions, are the relevant reference for a statistical nomenclature about torture, ill-treatment and violence within the CJS. Two methodological difficulties appear with this solution.

Firstly, as a general rule, the allocation of cases to the legal categories is an output decision and it may be impossible —regarding the available administrative information— to use legal definitions to describe the input of specialised agencies (unless the statistician makes legal choices himself);

—Secondly and consequently, this allocation of cases may change over time and from (or for) one country to another. In order to monitor such a “dynamic” process, some concrete description of violence within the CJS would be more efficient than a strictly legal approach. Building such a nomenclature should involve agencies acting in Human Rights field but the legal view should not be dominant.

C. ENVIRONMENTAL APPROACH

All these considerations about methodology apply to ordinary criminal statistics. In some countries, accurate data may be available from the CJS about the proceedings of offences matching more or less with the definition of torture and ill-treatment. Even if this favourable situation is reached, as mentioned before, it may happen that because of very low annual figures, statistical analysis is not relevant. Usually, reports from international agencies dealing with torture or ill-treatments only report lists of cases ended by a judicial decision. A statistical presentation would be imperative only if the lists were longer.

Regardless the necessity of a statistical approach, it remains necessary to collect information about judicial decisions ending the proceedings for cases of violence within the CJS. Quantitative approach would be useful however to monitor the environmental context of these case of violence.

If we turn for instance to the European CPT procedure, we can observe that the inquiry protocol pay much attention to general conditions of detention in a way which could lead to a statistical approach. Once again, we do not find a lot of statistics in CPT reports. The explanation could be that these statistics are not available and that the CPT option is to rely upon direct observation. Nevertheless, some statistical work and co-operation within Council of Europe can be useful in the future perspective of Human Rights indicators. For instance, correctional overcrowding measurement brings up methodological questions that are closely linked with the measurement of inhuman or degrading punishment.

In such an environmental approach, we can list some topics where a quantitative approach exists or could be adopted.

At police level:

- frequency and conditions of police custody,
- medical supervision during police custody,
- access to a lawyer during police custody;

At the judicial level:

- limitation of procedure time,
- frequency and duration of pre-trial detention,
- access to a lawyer;

At the correction level:

- overcrowding in prison,
- activities in prison (work, training and education),
- proportion of cells and community facilities in prison area,
- medical observations (among which violent cases recorded on forensic medical form),
- suicide,
- disciplinary sanctions and recourse.

The availability of data mainly depends on official recording systems, which States are responsible for. In a Human Rights development perspective, such statistical indicators would be necessary complement to ordinary criminal and correctional indicators. But international comparability will be doubtless a very long dynamic process as for ordinary criminal statistics.

ROUND TABLE

IMPLEMENTATION OF THE ISTANBUL PROTOCOL

*Dr. Raúl Plascencia Villanueva**

This is a manual for the efficient investigation and documentation of torture and other cruel, inhuman or degrading treatments or sentences. You have been working long hours on the topic of torture, on the way it can be conceptualized and, above all, on how to generate indicators regarding what is happening in a certain country, but I must point out something in this regard. This manual for the efficient investigation and documentation of torture, also known as the Istanbul Protocol, was made with juridical bases, with normative bases, that is, it had to arise from pre-established concepts and a framework for reference, and several international instruments were taken into consideration. Simply as a form of reference, I would like to mention them.

The Universal Declaration of Human Rights that prohibits torture, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the American Convention on Human Rights, the African Charter on Human and People's Rights, the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials, the Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, the Basic Principles for the Treatment of Prisoners, the European Convention for the Prevention of Torture, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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There is a legal framework that is precisely the basis of the Istanbul Protocol that cannot be set aside or ignored, since it allows us to approach the topic of torture.

Torture, in this context and from a legal standpoint, can be analyzed from two perspectives:

As a human rights violation, a violation qualified as inhumanity, which constitutes one of the most censurable in humanity. On the other hand, it is also feasible to see torture from a penal standpoint, as we would express it technically, or colloquially as a crime. The elements that form each of these concepts, even when they are closely related, have substantial differences.

Torture is, without a doubt, one of the phenomena that most concerns humanity as, although very important efforts have been made to eradicate it in the last few years, it is still in practice today. In countries such as ours, for example, it has been prohibited in our constitution since 1857; it is considered a crime in the penal codes and yet we still find cases of torture in this country and we must ask, why does torture persist? What can we do to eradicate this practice one and for all? How can we understand the concept of torture clearly so that there is no doubt as to what it means?

Torture is very different if we see it as a crime, than if we see it as a human rights violation. The organizations that investigate one and the other are completely different. Hence, there are International Committees for the investigation of torture, but they do not have the power to seek prosecution or to present an individual before a tribunal. For this latter purpose, there are internal laws, internal codes that generally have subscribed to an international commitment in the field of torture, be it the Convention of the United Nations, the European Convention, or the Inter-American Convention. They have incorporated into their internal laws a definition or formulas that foresee a sanction for any person who incurs in an act of these characteristics.

But if we are referring to torture and the Istanbul Protocol, we are speaking about a manual efficient investigation and it is convenient to have a precise concept in mind.

From the origins of the concept of torture, the concept was identified basically as having 3 elements or components: 1) it proceeds from a public official or from a person who carries out a public activity. This is a fundamental element that has been characteristic since the Middle Ages or since the existence of torture. 2) The public official applies torture as a form of suffering or mis-

treatment of an individual. 3) This suffering or mistreatment has a specific objective. El ancient principle of *INQUISITIO VERITATIS PERTORMENTA* makes it perfectly clear that we are talking about investigating the truth through torture in order to find or obtain something. However, it has been a very long time since torture was foreseen in laws or decrees, when it was allowed or tolerated and it was practiced routinely within the limits of the law.

Nowadays, in a country like ours and in the most democratic states on the planet, torture is prohibited and is a censurable practice. Based on the concept of the United Nations in 1975, a declaration was approved on the protection of all people against torture and other cruel, inhuman or degrading treatment. It is important to analyze this declaration from 1975 because it precedes the 1984 Convention of the United Nations on the topic of torture. In this declaration a concept was established that persists to date and that refers to torture in the following manner:

Torture is any act through which serious mental or physical pain or suffering is inflicted on a person in order to obtain from that person or from a third party, information or a confession, to punish the person for an act committed or suspected of having been committed, or to intimidate or coerce that person or others, for any reason based on any type of discrimination, when such pain or suffering are inflicted by a public official or another person during the execution of public functions, by his/her own instigation or with his/her consent or acquiescence.

This concept of torture reminds us of the natural, essential and original elements of the concept of torture, of course with a legal view or a version that is incorporated into an international instrument, with the elements that allows justice to operate in all cases, but the Convention of the United Nations also presents a definition that has a certain degree of complexity because it distinguishes cruel, inhumane or degrading treatment. In other words, it not only indicates what torture is, but also establishes that there are other types of suffering or ills that can be inflicted on a person, which are not considered to be torture, but which are somewhat related. It also establishes a commitment on the part of each state towards prohibiting any act that refers to cruel, inhuman or degrading treatment or punishment which does not constitute torture, as it is defined.

The distinctive note between torture and cruel treatment, from the perspective of this Convention of the United Nations is, one would say, by exclusion,

that which does not constitute torture but which is in essence the same, without going to extremes, but is certainly cruel, inhuman or degrading treatment.

For example: Discriminatory treatment from a public official towards a person can be cruel or degrading treatment.

Torture in Mexico has been inscribed since 1986 in the federal laws, that is the Convention of the United Nations in terms of torture is set down in 1985 and our country brings about a law for the prevention or sanction of torture that takes up the same concept, just as it is set out in the Convention of the United Nations, and it inscribes it not as a human rights violation but as a crime which is connected to a specific form of punishment for the public official who inflicts grave suffering or pain on a person for the purposes referred to in said Convention.

From the Middle Ages to our time there has been a transformation and evolution in this context, and although it was originally applied for criminal investigations, it is currently not only applied for that purpose or for obtaining confessions, but it can also be used as a means of intimidation, to prevent someone from doing something he/she has a right to do, and as personal punishment or any other purpose. And it is in this latter category, any other purpose, is where Mexican legislation does not make it very clear what those purposes are. This has caused a great deal of concern in the National Human Rights Commission in effective and adequate regulation of this phenomenon.

In our country, legislative evolution had also been very important in the last few years in terms of torture, and this legislative evolution has gradually allowed both the constitution and the laws that derive from it adapt their content to the international commitments that our country has incurred in the pacts or conventions it has signed.

In Mexico, when the Federal Government subscribes an international treaty or convention, and if the Senate of the Republic approves it, this treaty or convention acquires the character of a supreme law, and consequently the secondary laws must gradually adapt to the content of these commitments. If the convention in terms of torture were the constitution in our country, on the other hand, the laws would be institutional.

The Protocol of Istanbul provides very important elements so that through a juridical investigation, we can determine whether we are looking at a case of torture or not, and we can obtain definite conclusions. But it also provides the necessary and sufficient elements for the medical experts to be guided in all

cases in the identification of mistreatment or the type of damage presented by a person, and to conclude whether said person suffered torture or damage.

It is very important and urgent for the Mexican juridical system to carry out deep reforms that will enable us in all cases not only to identify torture but be able to take those responsible for it to justice.

The types of reforms which, in light of the content of the Protocol of Istanbul, we believe must be formulated:

1. A criterion of excuses, impediments and exceptions must be established so that under no circumstance can a Public Official in a Government Office accused of having committed an act of torture be investigated by the Office to which he/she belongs. That is to say, if a Public Official committed an act of torture or is accused of having tortured someone and he is to be investigated by his immediate superior or by personnel from the same Public Office, the situation will potentially not be investigated in an impartial manner.

2. In order to banish torture definitively, it is important to make progress in the elaboration of a reform that will allow us to annul penal procedures completely when it is proven that a person has made a statement under torture. Currently, in our country, the only part of the process that is annulled is the statement but the penal process continues forth, which leads us to the absurdity of supposing that the person was tortured nevertheless, implying that the judge will not take his/her statement into consideration, but will consider everything else in the process, which lends it a certain margin of impunity.

The field of torture has evolved with practice and in our country the public commissions for the promotion and defense of human rights arose in 1990. Since then, there has been a greater awareness of the human rights culture and, above all, of the topic of torture. Public Officials came to learn that if they should commit acts of this nature they would be subject to justice, with the same criticisms and indications we have mentioned previously, but with certain legal risks.

Twelve years later, we perceive a substantial change in the field of torture in Mexico. The torture that was inflicted on people twelve years ago, which generally left material marks on the human body, nowadays appears almost as an exceptional case. What we do have, however, is psychological torture where there are no external material marks on the subject which would facilitate accrediting the subject as a victim of that type of mistreatment.

The Protocol of Istanbul is greatly important in this field of psychological torture, because precisely one of the greatest challenges nowadays is for the law to establish criteria under which a person can be declared to have been subjected to torture of this type —whether someone attempted to annul a subject's personality in order to cause full or absolute fear; he may not have been a victim of burns, may not have been subjected to beatings, but may have been the subject of threats, isolation, acts of intimidation that altered his/her mind and made it possible for him/her to respond according to the will of the torturers.

In the Protocol of Istanbul, certain elements are clearly defined that it is important to include in the penal laws so that they can be indicative of torture: traumatic stress, a state of anxiety after having been subjected to psychological torture, etc. This should be incorporated into the law so that there is no doubt on the part of the Public Ministry or the judges that this is indicative of psychological torture.

ACTIONS OF THE FORENSIC MEDICAL EXPERT IN THE PRACTICE OF TORTURE

*Dr. Fernando Cervantes Duarte**

In view of actions of the forensic medical expert in the practice of torture, it is important first of all to be conscious that legal medicine is an auxiliary science of the law that helps to solve legal issues, taking into consideration that the last instance of legal medicine is to assist in making decisions, but never attempting to supplant a judge.

In the conclusions that are sometimes drawn by forensic medical experts, we can reach an absolute conviction that we wish to compare with a mathematical truth, as proof becomes evidence and encompasses an irrefutable certainty that turns it into proof that. In other circumstances, that would be of a relative certainty which is capable of generating a strong moral conviction in terms of an analysis of probabilities of a fact. Finally, we have the negative proof by exclusion, which has the same degree of certainty but has no expert efficiency. That is why all similar institutions should spread this interest so that there are more forums that deal with these issues, with the participation of more professionals, in order to provide feedback for each other and build a single group of criteria in which each and every one of the medical experts speak the same language. This can be achieved today, thanks to the Protocol of Istanbul.

The Protocol is the starting point that all of us medical experts were waiting for, since it is a universal guide for the unification of criteria, based on principles from several legal texts and international statements on the subject.

Dr. Plascencia has spoken about all the obstacles that had to be faced and all the studies that had to be carried out in order to come to the analysis, inves-

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tigation and drafting, so that each of the medical experts who intervene in the Seminar and are aware of the matter, could discuss and understand each other. 75 experts from 40 Associations and Institutions in 15 countries participated in the elaboration of the above mentioned document, and for this reason, it is widely acknowledged and used in the fields of prevention and use of torture. Among others, the International Council for the Rehabilitation of the Victims of Torture establishes an authorized interpretation on the requirements of a conscientious and ethical professional investigation. I truly think that we should feel very satisfied since the fields where an expertise intervene can be as diverse as the human condition itself.

If conducted appropriately, this Protocol can be an effective tool for the diagnosis and struggle against torture, since it includes a complete investigation, from the least transcendent points to highly specialized medical examinations, in order to achieve a certainty pertaining the cases that occupy the investigation of torture. In these terms, all medical experts in the country must be informed and aware, in order to be able to offer attention and assistance to the probable victims of torture, especially those experts who work in institutions where people are kept in custody or who are bound to meet with groups of people who are vulnerable to torture or mistreatment. This Protocol is a new instrument for reliable analyses, applicable in the field of torture, always keeping in mind a checklist of points that must be examined in order to achieve a precise, efficient and effective investigation.

Thanks to the conscientious study of the different elements of some of the particular cases, one can learn what happened to an individual, the way in which his/her rights were violated, and whether these affected him/her physically or psychologically. There is invariably a trace, a clue, a print or a sequel that can be found thanks to the application of the scientific method used for investigation.

For this reason, I would like to stress the basic points of a medical examination and that we must not forget. Currently, the forensic medical expert must have a very well-defined professional profile, a very clear and precise sense of the value of the techniques he/she employs, of their precision and their specificity, which must lend a certain margin of security in obtaining data, but above all, which will allow him/her to work with greater confidence. This is why the forensic medical expert must be highly qualified in his/her field, must be objective, have a keen investigative spirit and, especially, learn to work in a team. Nowadays, I believe no medical expert will achieve any type of certainty by

himself; we must support one another by working in interdisciplinary teams, be they made up of psychologists or psychiatrists, gynecologists, traumatologists, urologists, general practitioners, and surgeons; it is important that we all be part of one team. The purpose of this kind of work is to be able to face the groups that are currently preparing with very sophisticated methods that can inflict great harm without leaving a trace on the victim.

Our common objective is to assist in the investigation and clarify facts regarding presumed incidents of torture, and to preserve the medical proof, as well as to try to determine the *how, when, where and who* of those incidents of torture. The medical examination must include an evaluation of the necessity to treat the lesions and illnesses, as well as provide psychological help, making sure to carry out a follow-up of the victim. One must not forget that within the work established by the Protocol of Istanbul in achieving certainty, the States are compelled to implement measures to ensure that those who are aware of the existence of a possible case of torture do not hesitate to come forward and are offered every facility in order to speak to the investigating authority.

It is important that we all work together to get rid of the obstacles that are before us. For example, we arrive at a prison without authorization for access and we receive the usual replies, the Director is out, the Assistant Director is in a meeting and, when we're finally able to get in, we can't bring our material (tape recorder, videotape recorder, work camera, Bauman meter, stethoscope, diagnostic kit, lamps, etc.); we're always met with a thousand excuses. Once inside, they want to assign us to a smelly room where we will work in a shared cell or a guardroom or under a stair. All of above mentioned seem to be arranged in order to not to let the victim feel free to express his/her version.

Another obstacle we are faced with is the time we are given in which to examine the victims; we are given 10 minutes, one hour or two, which one insufficient for us. We need from 4 to 6 hours, at not only once, but 4 or 5 examinations in order to reach a certainty regarding the situation.

In order to begin the examination, it is important to gain victim's trust; thus, we have to conduct the examination without the presence of the personnel of the institution who allegedly committed the crime (judicial agents, police, etc). It is even better if a victim requests presence of a relative or a lawyer. Women and children must be accompanied by a relative or persons they confide in.

In case of suspicion of torture, a forensic medical expert must formulate the following questions:

Is this a case of torture? Are these injuries caused by subjection, resistance or dispute?

That is the reason we have to know, first of all, which were the circumstances of the event:

- Place of initial detention and other places (chronology, transport and conditions of the detention).
- Narration of the act of torture or ill treatment in each of the places and how much time the detainee spent there.
- Conditions of the places: dry, humid, cold, existence of stairs, smell, kind of noises, voices, etc.
- Description of applied methods of torture: how many persons participated and how long did it take; was it a day or night; how the victim knew the time; did he/she eat, drink, sleep; in which conditions he carried out his/her activities; were there other persons in the same conditions; who were they? Thus, we have to find out all possible circumstances of the act.
- With all our data, we have to classify if we deal with physical, mental or mixed torture.

If we deal with physical torture, we have to establish the type of trauma, the chronodiagnosis of injuries, as well as possible agents used (physical evidences). For the above mentioned, first of all we have to establish relationship between acute and chronic symptoms and incapacities, on the one hand, and denunciation of torture and ill treatment, on the other.

Afterwards, we have to establish relationship between the results of physical examination and denunciation of abuses.

We will have to establish relationship, as well, between the results of physical examination and the methods of torture used in a particular region, together with its effects.

The most common methods of torture are: contusions on head, feet, nail extirpation, thermal trauma, as cigarette and other burns, electric trauma as it is the application of electricity directly on head or genitals, submersion in cold water, keeping victims in hot, cold, humid, smelly places, etc., with presence of noxious fauna proper of the place (insects, rodents, etc.).

In case on ancient torture, make clear sequels, sustain them with specialized valuations and diagnostic proofs (simple radiography, computerized tomogra-

phy, magnetic resonance, ultrasonography, endoscopy, etc) and classify them accordingly to mechanics of injuries: if they are consistent with the date of the event; establish if they were caused by other persons, or self-inflicted and for their attributes, if they are from manoeuvre of subjection and submission, physical abuse or torture.

When we are dealing with mental torture, it has to be remembered that it is also caused by third persons whose intention is to repress, damage or destroy the victim's self esteem, subject him/her in a secret place to demonstrate his/her state of defenselessness, without leaving any traumatic print.

This is a hard case for us to integrate in a diagnosis, and we need an intervention of a professional for that, to carry out an appropriate clinical psychological approach, as well as to diminish the pain of victims and their relatives.

The most common methods of mental torture are: Threatening relatives and friends with corporal injuries, insults and blessing judgments upon personal and family honor, prolonged solitary subjection, obliging to see or listen torturing others.

In relationship with the mixed torture, we have to apply both above mentioned methods of investigation. The most common type of injuries are:

Prolonged standing or kneeling in uncomfortable postures, submersion, in order to cause asphyxia in water or excrement, burying, water and food privation, doing exhausting exercises like running, sit-ups, sexual abuse, exposure to dazzle light, to keep the victim listening strident noises for a long period of time, applying psycho-active substances, etc.

The experience of the examiner, combined with the Istanbul document, must guide us in the practice of the appropriate methodology in the examination of a victim and in order to be able to establish and issue a well-founded diagnostic of the corporal harm sustained by the subject of study. The exploration must follow the established guidelines and must be based, step by step, on the Protocol in an orderly, systematic and detailed fashion. When the affected organs have been uncovered, we must pay close attention to them and request laboratory analyses, office consultations or inter-consultations with medical specialists when the case so requires. It is better to count on this group of professionals and not needing them then needing them and not counting on them.

With all the advantages we can take from the Protocol and the people who will assist us, we can issue a strong and precise diagnostic. Still, in order to be able to implement it, in our country we are faced with many administrative

obstacles, even on behalf of specialists in medicine, which I would like to mention.

Obstacles from the medical experts themselves:

1. There is a lack of knowledge on legal procedures regarding the obligation to report a case of presumed torture.
2. There are insufficient technical and human resources in the country.
3. Ignorance of the existence of a basic protocol for the routine investigation of cases of torture.
4. The organization that commits the torture is in charge of the investigation of the violation.
5. It is difficult, and in many cases impossible, to carry out technical and medical research in order to reach a diagnostic.
6. There is no educational institution to certify a professional to study cases of torture.
7. No medical examination is conducted on incoming detainees in the rehabilitation centers or the public ministry.
8. A lack of reparation of the damage, a lack of confidence and credibility of the victim towards the authorities.
9. A long judicial process.
10. The impossibility to pay for administrative events and specialized tests required by the victim.

CONCLUSIONS

A medical evaluation made for legal purposes must be carried out in an objective and impartial manner. The evaluation must be based on the clinical expertise of the medical expert and, above all, on a practical sense in order to be able to report on all the findings, however trivial, for they may be indicative of torture or other forms of mistreatment. Consequently, we call on all medical experts, on each and every one of our institutions to consider the importance of continuous professional training of medical personnel. With this new and effective instrument called the Protocol of Istanbul one can avoid having to keep relying on medical experts with little experience in the field, who place us at a disadvantage against the aggressors who practice the shameful activity called torture.

STUDY ON TORTURE AS CASES AND PHENOMENA IN
THE ISTANBUL PROTOCOL. DIFFICULTIES AND NEEDS
IN THE IMPLEMENTATION OF THE ISTANBUL PROTOCOL
IN THE STUDY OF TORTURE CASES IN MEXICO

*Dr. Javier Enríquez Sam**

There are basic problems in the field of human rights and especially of torture, such as unfulfilled international pacts and agreements, and the need of the states of the Mexican Republic to have legislation for the sanction of torture, as is the case of the State of Yucatan. There is also the need for autonomy in the human rights commissions to require the investigation and the absence of the use of torture as a work instrument by security forces in obtaining false confessions or statements. The role of judge and jury of the government authorities in terms of torture leads to impunity.

In Mexico, torture is used systematically by security forces to make the alleged criminal confess to crimes he did not commit, and this first statement or testimony is considered by the judicial organizations as irrefutable proof of guilt, and any other proof is set aside that could revert or modify said statement. For this reason, it is vital to use the model of medical examination promoted by the Istanbul Protocol as a basic instrument for the effective investigation and documentation of torture, for this is an internationally recognized standard that is not yet applied in all the institutions in this country that are involved in this problem.

Certain efforts have begun to be made within the agreement of technical cooperation between the Office of the United Nations High Commissioner for Human Rights and the Mexican Government. Within this context, a first national course was held last year on the model of medical examination in torture and other physical abuses, although this process is still not practiced by all the centers involved in this issue.

* ACAT – México .

The use of the model for the examination of torture has, in our experience, a very important application in the truth and reliability of we can obtain in order to declare whether torture has or not been used in a case. In our experience, in applying the model one needs to employ two disciplines in the field of health case: medicine and psychology, since physical and mental health integrate to recognize torture or the lack thereof, as an aggregate of that which is physical, psychological and mental, in a complete manifestation of the pathology of torture, such as, posttraumatic stress and not only visible lesions, as well as its link or relationship to the methods of torture which are applied.

This manner of approaching and knowing the aftermath of torture allows us to provide proof that torture has occurred. But, of course, due to the complexity of the phenomenon, we need to make use of other health disciplines.

Nowadays it is also common to find that certain areas involved in this issue of torture often refer to the Istanbul Protocol, however, in practical terms, it is not applied as it should and this leads to two situations: on the one hand, it is simulated, and on the other, no truthful and reliable information is generated that can assist in the investigation of torture, that is, if we are going to apply it we must make practical use of it as indicated in the Protocol's principles, as so to obtain reliable and truthful data in order to generate indicators that will allow us to approach the phenomenon or causes of the problem of torture with greater veracity.

Then, it is necessary to generate a source of truthful, reliable information that can be applied in the study of the cases and this instrument, the Istanbul Protocol, allows us also to promote the actions of prevention and reparation of damage. However, given its social transcendence, for the knowledge of the dimension and alterations of this phenomenon of torture in our society, we need to implement other methodologies that will let us deal with the problem in its true dimension through epidemiological studies that take into consideration the most vulnerable groups, the places where torture occurs more often, such as detention centers, as well as through comparisons of places or regions that are potentially susceptible to torture, in order to assess their behavior and take preventive measures.

This phenomenon is very complex and requires the construction of variables within a well-defined conceptual framework by the subjects involved in said study, where the process of dialogue and commitment are the cohesion and construction bases for it.

IMPLEMENTATION OF THE ISTANBUL PROTOCOL

*Dr. Jens Modvig**

I would like to commence the Seminar of the Mexican Civic Human Rights Commission this morning, for this very strong indication of why it's needed to implement Internationally recognized instruments in the investigation and examination of torture. I think it was very convincing the arguments that were left done, the background of the Istanbul Protocol is in fact the UN Convention Against Torture. This convention sets an internationally agreed framework for the effective struggle against torture. In the view of the IRCT, our International NGO, this is probably the most important instrument globally to fight torture.

Mexico is a state party to the convention, as mentioned, and accordingly Mexico is obliged to implement the standards of the convention and in this context the Istanbul Protocol provides an internationally agreed instrument for the implementation of UN standards on the area of effective investigation and documentation of torture.

The definition as has already been set, I think we can maybe have it one more time, according to the UN Convention Against Torture is that we are speaking about severe pain or suffering. It could be mental or physical. It's inflicted intentionally for a specific purpose by a person acting in a public capacity.

The obligations to the state parties to the convention is, amongst others, these are the most important ones to assure that torture is an offense and punishable under criminal law and as I mentioned before I think the area we are in right now has a problem here, where as far as I've been told, this is now implemented in the law in Yucatan, which is an obligation.

* International Rehabilitation Council for Torture Victims (IRCT), Denmark.

Secondly, to provide education and training of all staff involved in arrest, detention and imprisonment.

Thirdly to monitor the rules and practices of detention to prevent acts of torture, to ensure a prompt and impartial investigation in possible cases of torture and this is what the Istanbul Protocol comes in, and gives directions and guidelines of how to do so.

To ensure protection of torture complainants. It should not be dangerous to file a complaint of torture, neither for the victim of torture nor for his or her family nor for the victims or the witness involved, there's an obligation to provide rights to conversation, including as the formulation is, as full rehabilitation as possible.

There is an obligation to assure that no statement forced by torture is involved as evidence. And there is an obligation to prevent even other x of cruel and human question in this context where we are speaking relevant indicators in the area of torture one could consider different source of the indicators emerging from the obligations from the UN Commission Against Torture.

- For instance to which degree the convention has been implemented a national law.
- To which degree this preventive training at detention staff.
- To which degree the detention rules in practices an effect monitor.
- To which degree the promptness and impartiality of investigations and effects are taken.

I could mention here, since we are talking about also the medical guidelines in the Istanbul Protocol, that an interesting indicator might be the time between the event and the medical examination average time of the distribution of wasting time.

The protection of torture complainers does an in fact work, the conversation given in cases of torture and the users of quests statements in courts.

As mention with the risks of repeating previous speakers the Istanbul Protocol is not a medical guideline, it is a Medical guide line but it's certainly also a guide line of how to undertake the investigation of possible cases. We put the UN side on the previous line because the Istanbul Protocol is a UN standard, and the principal set up in this Istanbul Protocol in terms of investigation of cases of possible torture is competence, is impartiality, is independence, is promptness, is medical ethics and is confidentiality, and a prompt active inves-

tigation approach you don't need to sit back and wait for the cases to come you, in fact, according to the Istanbul Protocol, you should take a proactive approach when there's any reason to believe that there's a torture problem somewhere.

I would like to mention also that the Istanbul Protocol provides an integrate approach to torture, we are not only speaking about physical torture; as we see in this case of the submarine, this poor victim of torture, yes a doctor as you see but I don't think this doctor is very helpful to the victim of torture, on the contrary, he is monitoring his respiration to make sure that he doesn't die. Most likely this victim of torture will expire polluted water we don't know what happened to that water before this situation of torture, but it's probably not very nice.

But also the psychological aspect of torture in this case it is experiencing the torture about us, maybe friends, maybe relatives; but also those who are raping your daughter if you don't confess, also the most executions which don't leave marks, a technique a count as a reality that composes the integrate approach of torture and its consequences, it's a feature of the Istanbul Protocol we are not just talking about.

So thinking about indicators and data sources what might be relevant data sources on the torture, of course they are emerging from the victims that their complaints would have nature of possible cases is one and the second which we have been discussing today is the approve cases and, I think it has been clear that this test resource reflex, also the operation of the body in question.

The Medical doctors might also contribute to the extend of torture and I like to mention here also that the Istanbul Protocol is in fact the guide line for how to make a forum expert assessment, My guess would be that it won't be realistic to expect that any possible case of torture with in a short time could be subject to The Istanbul Protocol legal artist investigation.

For that reason which is not left the medical documentation that could be obtain from the first meeting with a doctor it could be a doctor in the tension sense in a prison it could be a TP. It could be a NGO doctor that might not need to make a full Istanbul Protocol examination, but would be able to register the consequences which could be added to the Istanbul Protocol later on.

In fact the technical cooperation program between the Mexican Government and the High Commissioner of the Human Rights asset of the guide lines for this two levels has been developed.

This might allow the potential of all medical doctors in Mexico to make a brief registration of possible cases which could be followed by a Istanbul Pro-

to col examination, those sources, in my view, could be very important in the long term and potentially there is a interesting in this convention.

However, as it's been said a lot of times, torture is horrified experience surrounded by fears, silence and lack confidence, so we are facing a civilian under recorded phenomenon. What might reflect what's going on is a vicious of law impunity that is that two few complaints. There are few cases to persecute, if there are few persecutions, the persecutors will go free, if the persecuted go free there is not trust in the investigation and there are going to be few complaints.

So in the long term away ahead might be to implement the Istanbul Protocol, including reporting mechanisms from all doctors, and here by also trust against the victim in the investigations and they are by refused the black number that has been mentioned a couple of times.

But until such a routine data system, routine data sources, have been established, it would probably be necessary to take pro active steps that is to collect effort data and one possibility might be to undertake inspections surveys in detention centers or other areas of high risk of torture that could be done in collaboration with NGO's, it might be very useful for the Human Rights Commission to authorized certain NGO's also to do inspections and to define a format for such inspections surveys, if it should probably be as simple as possible. But that could contribute and provide data that will not advise as only building on the routine data sources and what it might even be the perspective in such a measure it could be a continuous monitoring of detention centers.

That centers are random or after a certain secret scheme in fact where subject to visit by competent lawyers and medical doctors from the National Human Rights Commission from NGO's, like establishing a national accountability and even if we might consider data problems as it has been the discussion today.

It's not that easy, there might be a very important prevention in fact of such inspections because as long as nobody cares then the torture can go on, but at the moment that you are in risk, that we have made an interview with all the details here and we have detected the frequency of this that we have dertermind the consequences, then, we will hinder much more the human rights violations.

FOURTH SESSION

LESSONS ON THE OPERATIVITY OF THE DIAGNOSTIC OF HUMAN RIGHTS IN MEXICO

*Mrs. Verónica Velo y Valencia**

First of all, we believe that it is important to have a point of view not only from the perspective of the National Human Rights Commission, which is in charge of carrying out the diagnostic, but other points of view must be taken into consideration, that of the Academy, of the Civil Organizations, and of other government institutions and organizations. We must not start off from only one perspective, but from a more global, not very specific point of view.

We also wish to take into consideration all that which can be of use to us in dealing with the field in Mexico and in updating our database or that of the National Human Rights Commission regarding human rights. Once this tool has been updated, we must make it available to the public. We are currently working on access to public information; once the database has been updated, it must be available to all.

We must view the concept of human rights in a more integral fashion and, in this case in terms of torture. The Civil Human Rights Organizations consider that for the construction of indicators it is necessary to work on a definition of the concept of torture in the sense established by the Inter-American Convention for the Prevention and Sanction of Torture, not limiting the concept to the definition of the Federal Law for the Prevention and Sanction of Torture, which albeit current in Mexico, its concept of torture is limited. Similarly, we consider that the measurement indicators used for diagnosis must arise from an integral perspective of the human rights, always with a view to protecting the integrity

* CENCOS–National Center for Social Communication.

and dignity of the people and not limiting one's actions to a simple evaluation of the facts. In this sense, it is important to insist that behind each piece of information, data or statistic on torture there is a victim, an issue we have not addressed. It is not merely a matter of reporting qualitative data but also considering the other point of view.

Torture is a problem that is not resolved only through the establishment of quantitative indicators, one must address the root of the problem: the systematic practice of torture as a method of police investigation. This phenomenon must be dealt with through an analysis of the legislative framework, of administrative and institutional deficiencies, of the social acceptance of this practice and the lack of political will of the authorities towards solving the problem of torture in Mexico.

The subject of torture is not only a sociological problem but also a political phenomenon that has resources and infrastructure; while those responsible for it have names and faces, and they must be sanctioned.

THE SEMINAR OF MERIDA WITHIN THE FRAMEWORK OF THE MONTREUX-MUNICH PROCESS

*Carol Mottet and Raúl Suárez de Miguel**

*“A quest for Science of Human Dignity”
through concrete action*

Mary Robinson
High Commissioner for Human Rights, U.N.

THE SPIRIT OF MONTREUX

- Ø A challenging objective: enhancing reliability, consistency and efficiency of monitoring and reporting on Human Rights.
- Ø A focus on statistical methods, quantitative analysis and generation of indicators.
- Ø A policy-oriented initiative based on national and international human rights agendas.
- Ø A learning approach of current concrete work and initiatives stemming from the ground.
- Ø Strong qualified participation from the South.
- Ø Multidisciplinary dialogue: human sciences specialists, statisticians, human rights practitioners and development experts.
- Ø Multi-institutional dialogue: national administrations, NGO's, National Human Rights Commissions, universities and research centers, parliamentarians, international agencies.

* Department of International Affairs. Swiss Federal Statistical Office.

OUTCOMES OF THE CONFERENCE

- Ø Monitoring: making an emerging issue visible.
 - Ø World-wide review of the state of the art, best practices and innovative experiences.
 - Ø Constitution of a multidisciplinary international network of institutions and experts.
 - Ø Conclusions oriented towards implementation of concrete work.
-
- ü Background and objectives;
 - ü Conference's detailed programme;
 - ü All invited and contributed papers available on line (www.iaos2000.admin.ch).

LESSONS OF MONTREUX

- Ø Urgent need for application of professional techniques in human rights reporting.
- Ø Need for a method of work based on partnership and a multidisciplinary approach.
- Ø Need for consolidating the conceptual framework of human rights indicators.
- Ø Need for developing strong scientific teams and efficient networking.

GUIDELINES FOR A CONCRETE FOLLOW-UP ACTION

- Ø Pragmatic policy-oriented approach: to facilitate and implement applied research and pilot projects to handle current national needs.
- Ø Learning by doing: to set up, test and evaluate quantitative methods and indicators focusing on human rights reporting.
- Ø Maximising available resources and know-how: to adopt a coherent strategy and an integrated programme of action.

CONCRETE EXAMPLES OF MONTREUX FOLLOW-UP

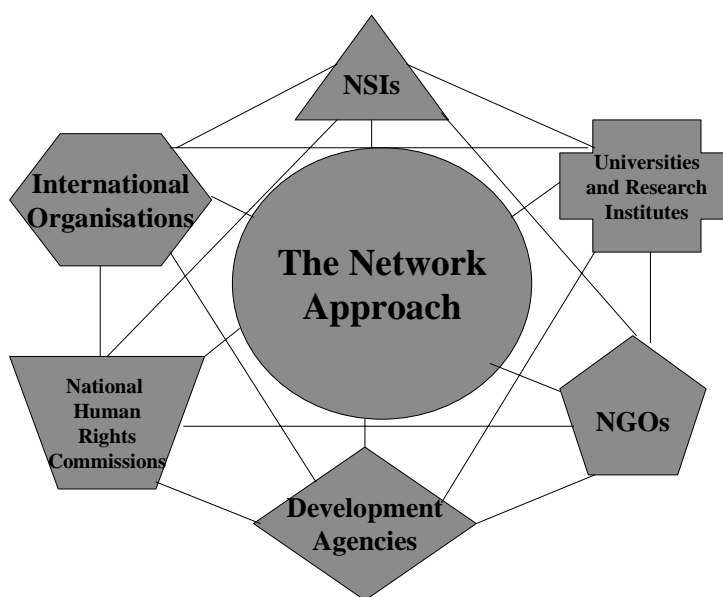
- Ø Survey on Human Rights awareness (Angola).
- Ø Measuring democratisation, governance and Human Rights through household surveys (8 African countries).
- Ø Research on inter-reliability procedures (Sri-Lanka).
- Ø National platforms of action (Philippines, Benin, South Africa).
- Ø International scientific support to the AAAS report on crimes against humanity in Kosovo.

MUNICH: MEASURING DEMOCRACY AND GOVERNANCE (JANUARY 2002)

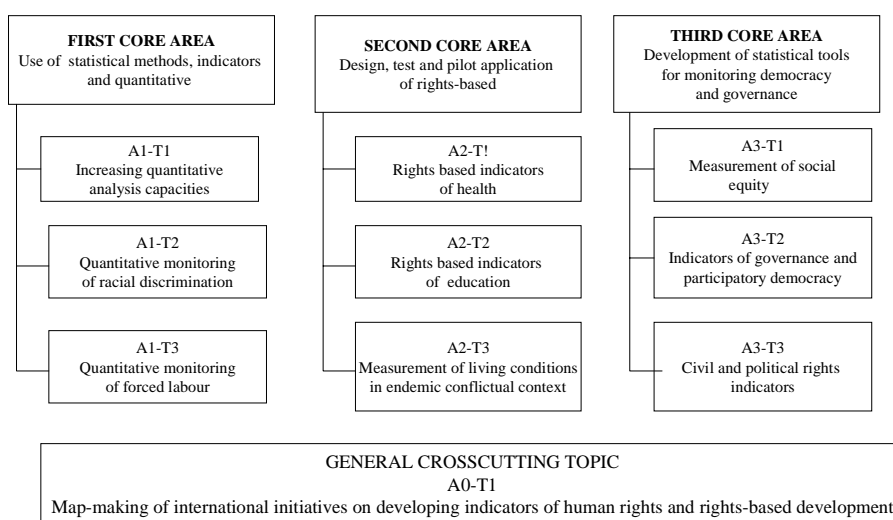
- Ø Recognition of essential link between human rights, democracy and governance.
- Ø Range of issues to be measured and assessed, with Human Rights and rule of law as central components.
- Ø Oriented towards policy needs, based on national priorities and national actors empowerment.
- Ø Focus on developing methods and capacities for democracy and governance measurement, as a necessary and replicable know-how.
- Ø Drawing policy conclusions from pilot outcomes.
- Ø Interaction with closely relating work on human rights and human development monitoring.

Montreux – Munich operationalisation:

- Ø Consolidating and extending the network approach.
- Ø Effective mobilisation of scientific know-how.
- Ø Launching of an international consortium and creation of a focal point for co-ordination and facilitation.
- Ø Added value for national initiatives.
- Ø Handling initiatives within an agreed agenda: seminar of Merida, seminar of EC, etc...



Priority areas of work and coherency



EXPECTATIONS FOR THE MERIDA SEMINAR

- Ø A project-oriented seminar: not a one-off exchange of views between experts, but recognition of needs for exploratory field work.
- Ø The launching of a participatory, multi-institutional process of work (CNDH, governmental bodies, NGO's, universities).
- Ø A national-based pilot project internationally serviced and internationally oriented.
- Ø Programming capacity.

The focus on a human rights diagnosis

The way forward:

concrete steps

participatory dialogue

and a lot of work, work and work.... because

POTATOES DON'T GROW IN A SUPERMARKET

SOME PHILIPPINE STATISTICS

*Ana Elsy Ofreneo**

PROVERTY (2000)

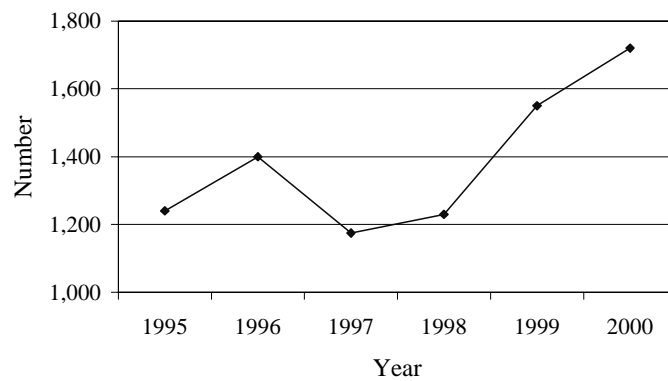
- 33.7% of families are poor
- 39.4% of population is poor

HDI rank(1998), 77 th, of 174 countries

GDI rank (1998), 64 th, out of 174 countries

GEM rank (1998), 44th, out of 174 countries

Human rights violation 1995-2000



* Education and Investigation Office. National Human Rights Commission, Philippines.

ECONOMIC ACTIVITIES

- Agriculture, 20%
- Industry, 34%
- Services, 46%

EMPLOYED (29.2M EN 2001)

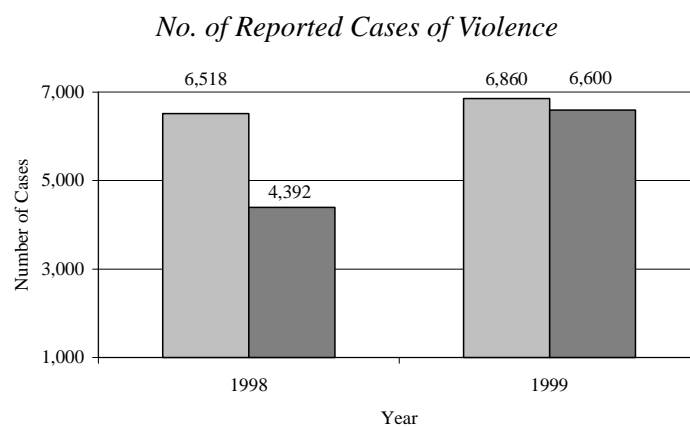
- Male, 61%
- Female, 39%

UNEMPLOYED (3.7M)

- Male, 59%
- Female, 41%

HUMAN RIGHTS WITH A GENDER PERSPECTIVE

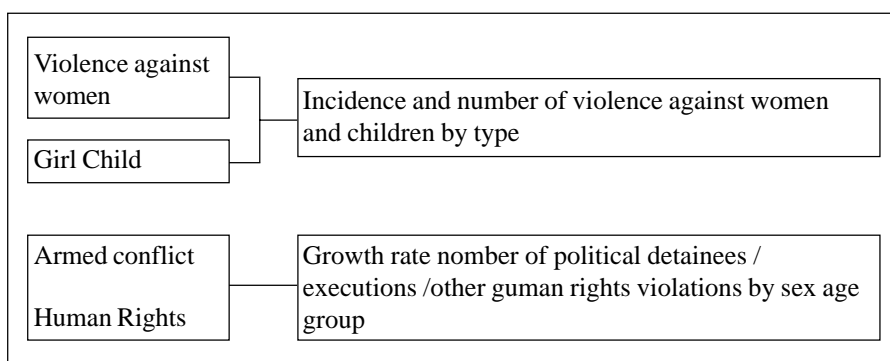
Indicators of Violence Against Women and Children for Policy Analysis and Monitoring in the Philippines



POPULATION

- 76.5 Million (2000); 79.5M (2002)
- 13th most populous country
- 2.36% annual change (1995-2000)
- Sex ratio: (Male, 50.4%; Female, 49.6%)
- Female outlive men by 5.25 years
- 45% children, 0-17 years old

*Beijing Platform for action areas of concern
and the final list of GAD indicators*



BASIC INDICATORS CONCERNING THE VAWC

- Scheme
- Another parameter
 - it measures general issues of GAD
 - relatively small quantity
 - measurable
 - easy to understand
 - reliable and consistent
 - it implies intervention / specific political / action /
 - guided toward results

OBJECTIVES OF PRESENTATION

- Share experiences
- Learn from other experiences

GENDER AND DEVELOPMENT

- Led to VAWC statistical initiative
- Improvement of Statistics on Gender Issues Project (CIDA)
 - 1 – Development of Statistics on Gender Issues Project (VAWC)
 - 2 – Conduct of a Pilot Time Use Survey; Development of Framework for Measuring Women’s And Men’s Contribution to the Economy
 - 3 – Refinement of Existing Gender and Development

OUTLINE OF PRESENTATION

- Objectives of paper/presentation
- GAD: a statistical initiative on VAWC
- Development of a methodology to generate VAWC statistic
- Some problems and recommendations
- Conclusion

PROPOSED STATISTICS TO BE COLLECTED FOR VAWC

- Statistics/indicators on the victim
 - demographic profile of women/child victim
 - No. of victims by relation to perpetrator
 - victimization rate
 - leading crimes
- Statistics on support services to victims
 - prevention and elimination of violence
 - support services to victims
 - punishment and rehabilitation of perpetrators

OTHER INITIATIVES

- Assessment of existing in-take forms
 - Ø Data items, frequency, disaggregation,
 - Ø Flows, dissemination, agency capability
- Some recommendations
 - Ø Uniform in –take forms as standard data capture
 - Ø Standardization of concepts and definitions
 - Ø Enhancement of agency statistical capability
 - Ø Networking

OTHER INITIATIVES

Glossary on VAWC and Related Concepts for statistical purposes

- Ø Common understanding and interpretation
- Ø Consistency and comparability
- Ø 2 parts – Violence Women; Violence Against Children
- Ø conforms with CEDAW, CRC and related with Philippine laws

OTHER INITIATIVES

2001 Statistical Handbook on VAWC (maiden issue)

- Ø provides valuable insights on trends and patterns
- Ø reported cases only
- Ø revealed that number of VAWC cases is significant

REFERENCE

2001 STATISTICAL HANDBOOK ON
Violence against Women and Children
Republika ng Pilipinas
Pambansang Lupon SA UGNAYANG PAG-ESTADISTIKA
(national statistical coordination board) may 2001

PROBLEMS & RECOMENDATIONS

- Work-in-progresses in human rights measurement
 - Ø Improve understanding/awareness of VAWC
 - Ø Prevalence of VAWC, a data gap
 - Ø Difficulties in data collection-“culture of silence”, stigma and personal matter
- Some recommendations
 - Ø National VAWC survey; benchmark as basis of estimates
 - Ø VAWC framework vis-a vis public order, safety and justice and human rights monitoring system
 - Ø Indicators of children using rights-based and cycle approach

Conclusion

- Philippine Statistical System faces tremendous challenges on VAWC and human rights indicator system development and maintenance
- Learning from other’s methodologies and assistance

VAWC STATISTICAL FRAMEWORK

Objectives

1. to identify the different issues and concerns related to VAWC; and
2. to define the necessary data support to assess the prevailing conditions in the country.

However, many cases of violence remain unrevealed and unreported due to the victims fear and humiliation in reporting incident.

The lack of hard statistics on the prevalence of VAWC makes it difficult to measure the extent of the problem.

> *Task Force to Generate Statistics on VAWC*

- Government; NGO; Academe –20 members
- CIDA-ISP Project support

Introduction

Violence against women and children exists in various forms. They are beaten, mutilated, sexually harassed raped and murdered.

A. Three action goals:

1. prevention and elimination of VAWC;
2. provision of adequate support services to victims; and
3. punishment and rehabilitation of perpetrators.

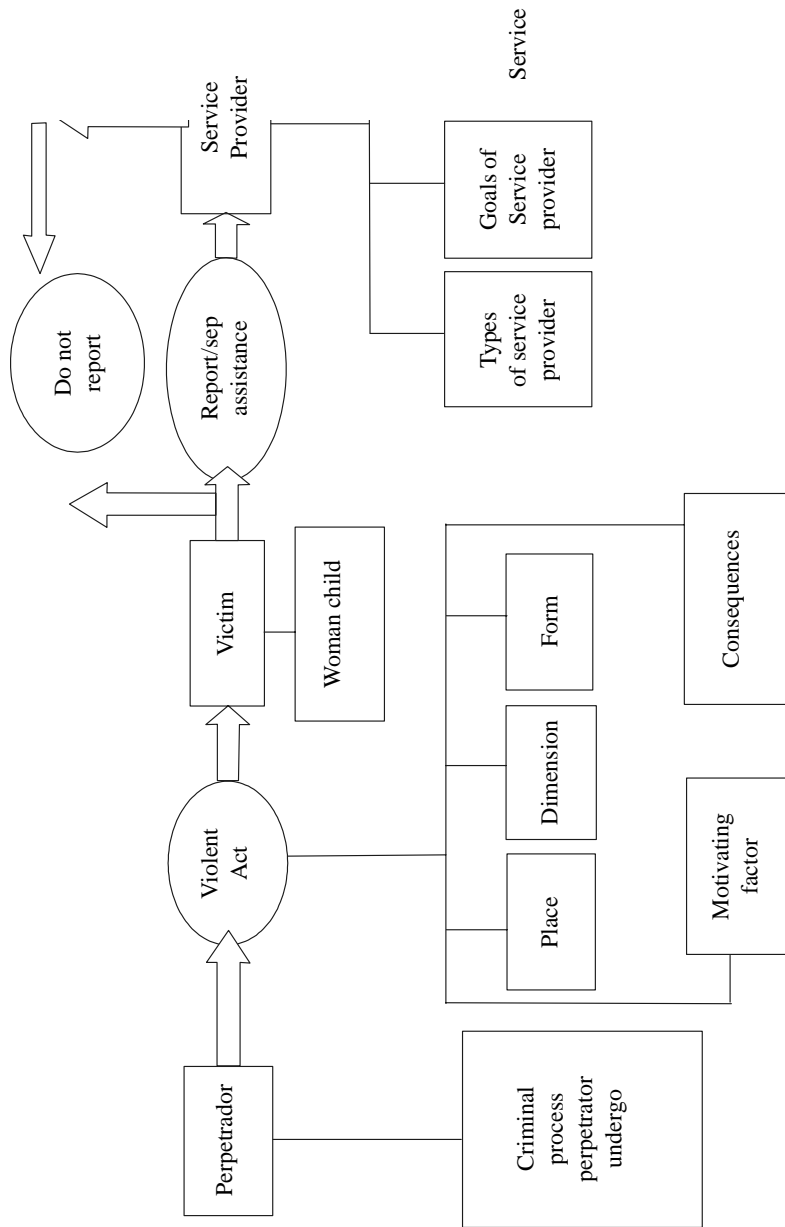
B. Scope of violence:

1. Violence at home or domestic violence;
2. Violence in the school/workplace/neighborhood; and
3. Violence perpetuated by condoned by the State.

C. Forms of violence:

1. Physical abuse;
2. Sexual abuse;
3. Emotional/psychological abuse, and
4. Economic abuse.

- Place of commission
 - Ø home
 - Ø school
 - Ø workplace
 - Ø neighborhood
 - Ø others



- Criminal process which the perpetrator may undergo
 - law enforcement (investigation)
 - prosecution (litigation)
 - court (conviction)
 - correction (reformation and rehabilitation)
 - community (involvement and participation)

- Forms of violence
 - Ø Physical
 - Ø Sexual
 - Ø Emotional/psychological
 - Ø economic

- Motivating forces/underlying causes of violence
 - Ø alcoholism
 - Ø drug addiction
 - Ø jealousy
 - Ø infidelity
 - Ø others
 - Ø unemployment
 - Ø extreme poverty
 - Ø media
 - Ø insanity

- Consequences of violence
 - physical injury
 - permanent disability
 - emotional trauma
 - death
 - institutionalized
 - strained family relations
 - hampered opportunities for employment
 - others

- Types of service provider
 - barangay
 - police
 - hospital
 - school
 - others (immediate family, relatives, priest, neighbors and/or friends)
 - social welfare
 - NGO
 - court
 - demencia
- Goals of service provider
 - prevention and elimination of violence
 - support services to victims
 - punishment and rehabilitation of perpetrators

BACKGROUND

- I've encountered to date is interview/exhumation data.
 - Investigate data collection.
 - Enumerative DATA collection
 - In both cases, the data are not random
- Ideal: carefully developed survey of random sample of target population. Then estimation is "easy".
- Instead: estimation relies on sophisticated statistical machinery...

Multiple Systems Estimation

- MSE is a statistical technique for using two or more separately-collected, incomplete lists of a population's size.
- Dependencies between lists and different capture probabilities of members of the population (heterogeneity) can be incorporated into modeling procedure.
- Log-lineal modeling, Rasch modeling, Bayesian methods, etc...complex!

Multiple Systems Estimation
Kosovo

- Patterns of counts of deaths/migrations used to refute theories as to the causes of deaths/migrations.
- Interview data from three projects and exhumation data form four “list” of Albanian deaths that are matched to determine overlaps between lists.
- Estimates created for counts of deaths for six-day periods for each of four regions, for two/day periods and for entire time period/country.
- Dependency modeled for, heterogeneity addressed through time/space stratification.

FIFTH SESSION

PERSPECTIVES FOR INTERNATIONAL DEVELOPMENTS – THE CASE OF SOUTH AFRICA

*Piers Pigou**

The discussions at Merida have been an important ‘meeting of minds’ in the long march to making human rights a reality for all. A key lesson for me from this conference, in terms of the study of torture and the importance of quantitative data gathering in that process, is that there is no set template or model that can be utilised to measure its prevalence. Indeed, because of the multi-dimensional make-up of torture, such as the varying interpretations and definitions of the phenomenon, as well as the contexts in which it manifests and varying capacities to address it, priorities and foci will necessarily vary from situation to situation. It is critical, however, that whatever we do, it is guided by the core objective of eradicating torture.

In terms of the South African situation, the prospects and potential for developing existing data sources about alleged criminality and misconduct within the SAPS that could be used both to enhance internal disciplinary and related management concerns are self-evident. In addition, the improved collection and collation of relevant data could greatly enhance civilian oversight of alleged abuses, which in turn would facilitate political and functional accountability, as well as the relevance of recommendations for targeted interventions. Non-governmental sources of information are limited as few NGOs are actively involved in this field. Despite this, a number of organisations do deal with individual cases at a local level, and some incidents do receive media coverage. For this reason, the focus of recommendations have remained on the de-

* Centre for the Study of Violence and Reconciliation, South Africa.

velopment of official information sources, and civil society / civilian oversight access to this information. In the context of the basket of other priorities facing South Africa's political and administrative leadership responsible for policing, considerable thought will have to go into developing a strategy that will generate support for the development of existing and other data sources.

Although there is clearly a need to clarify a range of issues regarding the definition of torture, especially in terms of collecting reliable data, and to be able to accurately measure issues of prevalence, it is recommended that the first step is to 'throw the net' widely, in order to capture a range of cases and issues. It is important to remember that torture does not exist in isolation to a range of other problems, concerns and interventions. This, more sweeping, approach would facilitate a general overview of where certain problems / allegations exist, which would in turn allow for more targeted interventions (including more detailed research).

Another key lesson from Merida has been the importance of optimising the benefits of an inter-disciplinary approach. In this context, statisticians and human rights practitioners need to strive towards common understandings of the issues under consideration. In certain situations, such as South Africa, human rights 'experts' must be properly trained / equipped to understand the actual and potential benefits of effective data gathering and analysis, and that the significance of quantitative methods is largely dependent on the quality of the information collected – after all, "garbage in will result in garbage out". Improving our statistical literacy is extremely important in efforts to develop a "Science of Human Dignity". On the other hand, statisticians, and quantitative methodology experts also need to deepen their understanding about the human rights issues that need to be measured, and how best to ensure that information collected is reliable and of good quality.

There is a tremendous opportunity in South Africa to integrate this thinking into the broader efforts of transformation within our own police service. This requires us to take cognisance of the political context in which we find ourselves, which requires a strategic approach that demonstrates to both political leadership and civil society the tangible benefits of dealing with abusive behaviour in the police service, and how this links into the strengthening of democratic values. Our strategy will inform what information sources we need to tap into and/or develop. This is why, in the South African context it is important to emphasise (a) the linkage between (alleged) police criminality and

misconduct, of which torture is but one, albeit important, component, and crime in general. In addition, it is critical to examine the link between such abusive behaviour and the overall development of a professional and accountable policing service, which requires a focused and concerted effort to break the ongoing cycle of impunity. This, in turn, will enhance the legitimacy of policing institutions, which have a very particular role in terms of the protection of human rights within the broader panoply of the State's constitutional responsibilities.

We are fortunate in South Africa to have considerable potential to develop our data sources around issues of alleged police criminality, including issues of torture – this provides an important opportunity to take forward what has been initiated by the Montreux process, within the parameters of alleged police abuses. The opportunity to spread this methodology into other arena's is also apparent, and could be developed in relation to key human rights initiatives, such as the government's own National Action Plan for the Promotion and Protection of Human Rights and the South African Human Rights Commission's constitutional obligation to monitor the government's implementation of social and economic rights. It is important as a first step, however, that there is a greater orientation and awareness of what is intended by this process, which will require a strategy to 'sell' the 'Spirit of Montreux' to key stakeholders. In South Africa, Montreux must be marketed within the context of existing domestic and international legal obligations, and importantly within the context of development policies that seek to address poverty and inequality. There is also clearly room for collaborative work with colleagues in the Southern African region, which in turn could assist in the standardisation of aspects of the research challenges that the Montreux process presents to us all.

WHAT PERSPECTIVES FOR INTERNATIONAL DEVELOPMENTS ? THE ANGOLAN CASE

*Mario Adauta de Sousa**

WHAT ARE THE KEY LEARNINGS FROM THIS SEMINAR RELEVANT FOR THE STUDY OF TORTURE IN YOU OWN COUNTRY?

I personally, found out very enlightening these 3 days seminar on a very sensitive issue such as torture which made me think more of the nature of human being and the way society, deals with such problem.

I guess during these days there was too much emphasis on the quest for a definition of torture. I am not an expert on the field of torture but the I found out that so much discussions around a concept would have necessarily an impact on the way individuals and groups will tackle an issue such as torture in the real life. That is particularly true when one is trying to advance the agenda of a Human Rights based approach.

What I have learnt is that an act of torture is the direct result of the denial of more than one human right such as the right to physical integrity; right to access to a fair trial; right to have access lo legal assistance; right to fair detention conditions, etc., which could ultimately lead to the lack of the right to life. It is a process which involves at least one victim and one perpetrator and above all the State. The role of the State in the exercise of torture is an example of serious institutional public failure and also the expression of historical, cultural, political and power relations found in a society.

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It seems to me that there are two ways at least to go about fighting torture within a human rights based framework.

- A legal, corrective and remedial approach aimed at the repairing of a gross human rights violation which has already taken place. This is an ex-post approach centered on the symptoms of institutional and human failures which have led to the exercise of torture;
- A pro-active advocacy, preventive and increasing public awareness approach aimed at policy change. This approach is centered on the institutional, human and societal failures or causes which lead to the exercise of torture.

Although different they may be in nature both approaches should complement each other if one expects to eradicate the institutionalized practice of torture. One of them is more on the supply side of the human rights, its goal being the creation of an enabling social, economic, political and institutional environment conducive to the prevention of the exercise of torture. It is a long term and systemic approach leading to incremental and steady social changes. The other one is more on the demand side of the realization of the human rights aimed at providing corrective, casuistic and remedial measures centered on the demands of the victims of torture.

Both demand different data, information and action plans and carry with them the need to use tools from different fields of social, political, economic and information sciences. (ex. statistical methods; management information systems; databases; conflict resolution and conflict prevention techniques; lobbying and political marketing; legal, medical, social sciences expertise; etc.).

In brief we are dealing with a complex multidimensional issue whose solution could not be the direct result of a “fix magical solution” such as the enactment of a law but could be found in a somehow unstructured adaptive process which will address several dimensions of the same problem.

If I could summarize the key learnings on torture I picked up during these three days I will say:

1. Definition and scope of the concept of torture matters when one wants to understand and act upon a phenomenon which is multidimensional in na-

ture. However a lack of precision in scope of the concept should never be seen as an impediment for action to fight the practice of torture in a society;

2. Consensus building around the need to monitor and eradicate the practice of torture in a society is vital and should involve different stakeholders. Bodies such as the National Commission on Human Rights wherever they exist should play a pivotal role in that respect;
3. There are several ways of dealing with the phenomenon of torture and therefore different roles for different stakeholders to play and different plans of action. The search for complementarities, increased institutional coordination and the efficient use of scarce resources such as sharing information is vital to achieve positive results.
4. The quest for a better understanding of torture as a process should involve the need to study the roles of the State, the victim and the perpetrator involved in the process of torture.

Questions such as: What are the main determinants of the exercise of torture by, law enforcement officials?; What are the elite and people's perceptions on torture and how do they have evolved over time?; What are the main threats perceived by those in position of power which prevent them to push for policy changes on issues such as the institutionalized practice of torture? Who are those groups of interest and public figures that should be brought on board for a national cause on torture eradication? What are the main institutional and legal impediments that prevent the exercise of some human rights which lead to the practice of torture? What can be done to empower the victims of torture in their search for moral and material compensation? should be part of a plan of research and answered in a way to inform policy changes and help design adequate plans of action.

In a specific context of Angola which is a post-conflict country in transition towards a democracy I would push for a two-pronged strategy as describes above. Institutional capacity building; reform of the Justice and legal system; empowerment of citizens and the exercise of citizenship; production, dissemination and use of information on the exercise of human rights and people's perceptions on their rights; are among some of the components that could be part of a national plan to eradicate torture.

WHAT ARE THE KEY LEARNINGS FROM THIS SEMINAR RELEVANT FOR DOING A BROADER HUMAN RIGHTS DIAGNOSIS IN YOUR OWN COUNTRY?

There are some key learnings that I would use for doing a broader human rights diagnosis in my country. Probably the most important one would be the strategy itself to use to conduct a human rights diagnosis. In my opinion I would start to answer the following questions:

- *Why* a human rights diagnosis is important to the country?
- *Who* should be part of conducting such an exercise?
- *What* could be the content of such a diagnosis?
- *Whom* are we addressing with the conduct of a human rights diagnosis?

Whatever the format that the diagnosis will take it should always try to identify which are the current main deficits of the exercise of the human rights in the country and the nature of such deficits. In terms of content the diagnosis it should contain among others the following:

- a stakeholders analysis aimed at understanding the dynamics of power in the society;
- a poverty profile of the country breakdown by regions, socio-economic categories and gender aimed at understanding the economics of the exercise of human rights;
- an institutional analysis of some critical public services providers aimed at understanding the institutional impediments for the realization of the exercise of human rights;
- a profile of values, norms and people's perceptions on the knowledge and exercise of human rights;
- a information profile containing the description of the main information providers; the type of products available such as statistics, indicators, administrative records, databases, general information; aimed at supporting the informational dimension of a human rights based approach;
- a profile/directory of who is who in the human rights field, their strengths, needs (particularly in the field of the production and use of statistical information) and contributions they can bring in monitoring and advancing the agenda of human rights.

In terms of process such a diagnosis should involve since its inception the participation of several governmental and non-governmental institutions and international institutions as well. By doing that there will be an increase in terms of ownership and a consensus building around main issues and above all the creation of institutional and individual trust among all the participants.

HOW WOULD YOU GO ABOUT ORGANIZING A SEMINAR RELATED TO THE MONTREUX PROCESS IN YOUR OWN COUNTRY ?

I guess the first step to make would be to sell the “spirit of Montreux” to a series of stakeholders who have already stakes on human rights issues and would-be stakeholders whose contribution and role would be considered vital for policy changes in the field of human rights.

As part of a buying-in strategy it would be important to find out the reasons which make the “spirit of Montreux” locally important an entry point could be the need to operationalize both Rights Based and Sustainable human development approaches within the framework of Poverty eradication strategies such as the PRSPs (Poverty reduction strategy papers). There has already been some activities on the PRSP front involving some groups of the civil society and the Government and poverty is becoming more and more an high issue in the political agenda in the country.

Another issue to be considered should be the institutional arrangement of the Seminar. Given the fact that there is not a body such as a Human Rights National Commission there will be a need to find out a sponsor or a set of sponsors that could be the focal point to operationalize the “spirit of Montreux”. Institutions such as the Ministry of Justice, the Angolan Bar Association, Catholic Church, Jubilee 2000 network, individual NGO’s, research institutes could be part of a consortium for that purpose.

The thematic of the seminar either openly centered on a single issue such as the torture in the Mexican case or on a broader thematic context should be the result of consensus building among those involved in the realization of such exercise.

Finally such an exercise should build on local previous experiences in the field of human rights and aimed at informing a national plan of action centered on the “spirit of Montreux”.

PERSPECTIVES FOR INTERNATIONAL DEVELOPMENT
“BEHIND EACH FIGURE/STATISTICS IS A HUMAN FACE,
A HUMAN STORY...”

*Resurreccion Lao-Manolo**

FLOW

- I. Some Initiatives at the Homefront
- II. Some Lessons/Reflections Learned in Merida
- III. Some Proposed Doables (Philippine/Asian/International)

I. SOME INITIATIVES AT THE HOMEFRONT

1. *Policy Advocacy*: Filed resolutions/bills at the Phil. House of Representatives (Committee on Civil, Political and Human Rights)

- reiteration of the prohibition of a) torture, b) public display of criminals, c) indemnification of more than 10,000 HR victims during the Marcos period (Hawaii Class suit)
- incorporating HR framework into development planning /legislative work in Congress

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2. *Education-Training:*

2.1 43 Phil. Executive Judges on human rights, specifically on the ICESCR (CP violations re issues of housing demolitions, etc.)

2.2 . Phil. UN Country Training on Rights-based Development (ILO, UNICEF, UNIFEM, UNDP, etc.): using claimholder-entitlement-duty-holder-obligations framework.

3. *Executive Order: Revival of the Presidential Human Rights Committee (2001).*

—monthly dialogue/meeting between military, House of Representatives, Dept. of Justice, selected NGO's (e.g. involuntary disappearances)

—expanded the mandate of the committee to ESCR-related issues (housing, food, education, etc.)

4. *Standard and Indicator-setting:*

4.1 Phil. Comm. on HR: developed a nat'l action plan involving sectoral working groups

4.2 Indicator-setting on HR and governance

4.3 Results of Phase 2 Stand. Indicator Setting on 5 ESC-related rights (work, health, education, housing and adequate food): June 2002*

The study contains:

a) proposed framework for monitoring ESCR

b) critique of the UNDP- Human Dev. Index from the lens of human rights

4.3 A joint memo of agreement (MOA) between the Phil. HR Info. Center (PhilRights) and the Phil. Commission on Human Rights (CHR): undertake standards and indicator-setting on *economic, social and cultural rights*.

* Using grassroots-experts approach.

II. LESSONS LEARNED IN MERIDA

“Montreux was not a one-time affair..”

Merida Encounter:

- a) continuing reaffirmation of the “marriage of 3 disciplines (HR, statistics and development)
- b) a pilot endeavor towards the race of identifying a nat’l set of standards (focus: on civil and political rights- torture)
- c) attempt/application of a bottom-up approach

Merida also:

- Stimulated/Created an attitudinal “check” re civil-pol related violations e.g torture
- Politically-motivated state perpetrated HR violations (invo. disappearances, torture, detention, etc.) has been the focus of HR groups for the last 20 years
- Review of existing standard formats

III. SOME PROPOSED DOABLES INTERNATIONAL OPTIONS (PHILIPPINE/ ASIAN/ INTERNATIONAL LEVEL)

1. Continue “replicating the Montreux process” down to the grassroots: an Asian /Philippine perspective

2. Dream: A Phil.training-education or a capacity building institute / center in the integrating the 3 expertises: HR, Statistics and Development

- a) regular and professional trainings
example: *Uses/Misuses of Stats. in HR Monitoring, Standards and Indicator-Setting: The Rights Way*
- b) develop customized pop-ed modules /programs
Target Beneficiaries: grassroots/ field info.gatherers, dev and HR workers (not only traditional technical professionals)

c) Concept of a training institute (3 Years):

- pilot, stagial development, instructors coming from the S, D and HR fields with field exp. (ie. working statisticians not just simply academics, dev. planners than simply theorists, HR activists than legal people, etc.)
- Curricula building on S, D and HR. Development to more formal training courses possibly leading to diplomate or regular degree.

3. “*Come and see a Beautiful Volcano In The Middle of A Lake*”: A Philippine Conference on Statistics, HR and Development (with select Asian delegates): late 2002 or early 2003

Concept/target participants: Phil/Asian Statistical Offices, GO agencies (economic, development planning offices-NEDA, ADB), national commissions, human rights groups.*

4. Towards the development of International Standards (for ESCR): 2 Parallel Tracks

a) national level:

- an effective system of sharing re “best practices” in institutionalizing the rights-based approach to national action planning/standardsetting

b) international level

Requirement: Through the UN, a Tripartite International Conference/Consultation composed of governments, IGOs and civil society to come-up with an international common agreement on a continuum of standards.

* “Montreux spirit” bring a discourse/concretizing the call to a multid. approach to development.

*Flexible Approach To Standardsetting*a) *Minimum standards*

- apply internationally;
- define the absolute HR responsibility of the State to their citizens;
- non-fulfillment constitutes an HR violation.

b) *Optimum standards*

- attuned to a particular situation of a country, community or sector;
- apply only to these countries, communities or sectors;
- non-fulfillment constitutes an HR violation.

c) *Maximum standards*

- moral incentives or prestige targets of capable States;
- measures the capability of progressive realization of ESC rights;
- non-fulfillment *may not* constitute a human rights violation.

In standard-setting:

- a) participation by the people, specially the grassroots in determining applicable standards;
- b) Agreement between the State and civil society;
- c) Flexible approach/process in standardsetting.

A Tripartite International Consultation/Experts Meeting that would update, critique “settle” the various proposals re stand and indicator-setting on ESCR.

5. Resource-generation: human, technical expertise and logistical/financial resources.

- endeavors of the South needs support.

HANDLING THE CHALLENGE OF MEASURING HUMAN RIGHTS

*Aline Bouzergan**

BACKGROUND

The European Union (EU) seeks to uphold the universality and indivisibility of human rights- civil, political, economic, social and cultural- as reaffirmed by the *1993 World Conference on human rights in Vienna*. The EU also upholds the principle that the human rights of Women and the girl-child are an inalienable, integral and indivisible part of universal human rights, as reaffirmed by the *1995 Beijing Declaration and platform for action*. The protection of such rights, together with the promotion of pluralistic democracy and effective guarantees for the rule of law and the fight against poverty, are among the EU's essential objectives.

The *treaty of Amsterdam* (which came into force on 1st May 1999) reaffirms in its Article 6 that the EU '*is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States*' and emphasises in article 49 that the respect of these principles also is required by countries who apply for EU membership. It is also introduced, in article 7, a mechanism to sanction serious and persistent breaches of human rights by the EU Member States. The

* Eurostat. Directorate C: Information and dissemination; transport; technical cooperation with non-member countries (except Phare and Tacis countries); external and *eurostat* intra-community trade *statistics*.

Unit C-3: Technical cooperation with non-member countries (except Phare and Tacis countries).

Treaty of Nice concluded in December 2000 further reinforced this mechanism. This also extended from development cooperation to all forms of co-operation with third countries (article 181 bis TEC).

Since 1992, the EC has included in all its agreement with third countries, which covers now 120 countries, a clause defining respect for human rights and democracy as essential elements' in the EU's relationship. This constitutes a major step in the development of the EU's human rights policies.

The EC believes that the more systematic inclusion of human rights and democracy issues into political dialogue will *give substance to the essential elements and will allow both EC and its counterparts to identify the most effective measures needed to build political and economic stability.*

The EU's insistence on including essential elements clauses in the agreements with third countries is not intended to signify a negative or punitive approach. They are meant to promote dialogue and positive measures, such as joint support for democracy and human rights, the accession, ratification and implementation of international human rights instruments where this is lacking, as well as the prevention of crises through the establishment of a consistent and long term relationship.

The EC recognises that the crosscutting nature of human rights and democratisation requires considerable effort to ensure consistency and coherence. Community activity cannot be viewed in isolation from other on-going actions in this field. In this respect, the adoption of a *Community Co-operation Framework for Country Strategy Papers* in May 2000 now provides a strategic basis for such co-ordination. The objective is to encourage a *more systematic approach by requiring an analysis of the situation in each country relating to human rights, democratisation and the rule of law.*

Moreover, the EC recently launched a '*human rights approach to humanitarian assistance*'. This has two aspects: EC supports humanitarian protection activities are funded in emergencies, and human rights considerations are mainstreamed into humanitarian projects financed by ECHO (European Community's Humanitarian Office). In this context, partners requesting financial support to the EC for developing humanitarian projects must explain how their operation will impact on the human rights situation in the field.

In addition, since 1994, the *European Initiative for Democracy and Human Rights (EIDHR)* has been set up to support, human rights, democratisation and conflict prevention activities to be carried out primarily in partnership with

NGOs and international organisations. The strong political will that is at the origin of this initiative is clearly attested by the allocation of an amount of 100 million euros per year to the implementation of EIDHR action.

On May 2001, the Council of the EU adopted the EC Communication on the EIDHR programming document for the period 2002-2004. This document emphasises the need to enhance the impact and flexibility of Community action, and to achieve a more strategic, long-term approach, focusing on four priority fields of action:

- 1) Strengthening democratisation, good governance and the rule of law;
- 2) Activities aiming at the abolition of the death penalty;
- 3) Support for the fight against torture and impunity, as well as for the action of the international tribunals and criminal courts;
- 4) Combating racism and xenophobia, as well as discrimination against minorities and indigenous peoples.

The support of EIDHR to the implementation of actions in these priority areas will be provided through three different kinds of instruments:

- Calls for Proposals, published in the Official Journal and on the EC Websites
- Microprojects (50,000 E over 12 months), managed by the EC Delegations in third countries and awarded through local calls for proposals. - Targeted projects, carried out in support of policy objectives which cannot be covered under calls for proposals or microprojects. Such projects will be selected and supported in line with transparent, published guidelines.

To support all these initiatives and to monitor and conduct political dialogue the EC needs reliable indicators that refer to universally agreed standards and benchmarks in this field.

On September 2000, the EC took an active part to the *Montreux international conference on 'Statistics, Development and Human rights'*, organised jointly by the Swiss Development and Co-operation Agency and the Swiss Federal Statistical Office. This conference aimed to evaluate current and potential contribution of statistical methods to the measurement and monitoring

of human rights. The conference intended also to enhance the human rights approach to development issues and therefore offered an opportunity for a policy-oriented scientific debate on the relevance, accuracy and consistency of existing indicators of human development. This high level conference gathered around 700 participants from five continents (123 countries and 35 international organisations), including political and scientific personalities, representatives from institutions responsible for official statistics and development policy, from organisations active in the field of human rights, from academia and from the media.

The main conclusions of this conference were:

- a) In the field of human rights, *statistics are deemed to be crucial*. There is a lack of statistical information in many domains related to the protection of human rights. This applies to both official and non-official statistics (e.g. from non-governmental organisations). Statistics and indicators constitute, however, essential instruments for enhancing reliability and effectiveness of monitoring over time the implementation of human rights, and therefore for defining well targeted policies in this field. There is therefore an urgent need to promote a better use of existing relevant data (more often collected for non-statistical purposes), the collection of specific statistical data through appropriate surveys, as well as the development of professional statistical methods and tools to be applied in this field.
- b) *Development of statistic and indicators in the field of human rights should refer to the definitions and standards provided by universally agreed instruments such as in international declarations and treaties*. It is essential that technical and scientific work in this area is based on existing agreed concepts.
- c) For policies within the EU, it is essential that *statistical experts, human rights practitioners and development specialists be closely involved in this process*. This multidisciplinary approach requires close co-operation in order to establish a genuine partnership in the development of related indicators, methods and analytical tools. The international network created in Montreux, with a view to increasing co-operation between human rights experts and statisticians should be consolidated.
- d) *The implementation of such a combined initiative must be carried out several kind of organisations and bodies: human rights institutions (such*

as the National Commissions for Human Rights), National Statistical Institutes (NS Non-governmental Organisations, academic and research centres, as well as the International Institutions. Efficient networking and appropriate light mechanisms should be developed in order to inter-connect and co-ordinate initiatives launched those actors in this domain.

THE MONTREUX FOLLOW-UP ACTION OF THE EC

As an immediate *follow-up of the Montreux Conference*, the EC (Eurostat) carry out the following actions:

- It contacted all NSI of EU Member States for a complete review of the data available in view to further development of human rights statistics.
- It contacted several NGO to evaluate existing work carried out in this area.

Moreover, on January 2002, the EC convened, in collaboration with CDG Munich, *North-South workshop on 'Measuring Democracy and good governance'* that to place in Munich. The overall objective of this workshop was to bring together researchers, statisticians, analysts and practitioners in view to identify the different methodological options as well as the best practices in this area. In this sense, the workshop intentionally intended to respond to the specific recommendations of the Montreux conference and in particular to the request for *concrete follow-up actions aiming at designing and testing governance indicators that fully integrates the human rights dimension.*

The Munich workshop clearly showed the need for a comprehensive interpretation "governance" that integrates democracy, participatory process, behaviour setting and the human rights dimension. In this sense, participants stressed that evaluation democracy and good governance should include better measurement of trends concerning equity, accountability and respect for human rights. They discussed current experiences of collection and analysis of data on these aspects, namely within the framework of national household surveys. They also examined theoretical and practical problems in developing consistent indicators, and agreed on a set of characteristics the indicators of governance, including the human rights dimension, should have in order to be fair, reliable and useful for policy-oriented reporting.

One of the main concrete outcomes of the Munich workshop (see minutes disseminate as a reference document to this international seminar) is that it provided to a stakeholders concrete guidelines for further steps to be taken in order to achieve the general objectives defined within the Montreux process. Indeed, it was agreed that the multi-disciplinary North-South network should be further developed, building on existing work and on increased exchanges of experiences at the national and international levels. Some organisations and experts volunteered to create a task force that is currently drafting a programme detailing the network's work program.

IMPORTANCE OF THE MERIDA SEMINAR WITHIN THE MONTREUX PROCESS

The Merida seminar is therefore taking place within a process that since the Montreux conference is increasingly growing and attracting an impressive commitment of many national and international actors. The fact that the initiative of convening this seminar was taken by a Mexican institution, the National Commission for Human Rights (CNDH), is highly significant in many aspects.

First, the significance of the seminar has to be valued in terms of its impact in deepening and promoting the common fundamental values and principles that underlie the relations between the EU and Mexico. Indeed, EU-Mexico bilateral relations are governed by the Economic Partnership, Political co-ordination and Co-operation Agreement signed on December 97 and entered into force on 1^o October 2000. This Agreement is based on democratic principles and the respect for human rights, which are an 'essential element' that 'underpins the domestic and external policies of both parties'. On February 2001, the Joint Council held the first meeting under the Framework of the Global Agreement and discussed political issues such as human rights, latest developments in the region, United Nation's reform and peace keeping operations. In addition, one of the cooperation priority activities identified in the Country Strategy Paper (CSP) is the consolidation of the rule of law and institutional support, in areas such as judicial reform, public security, decentralisation, and civil and human rights education at the level of civil society.

The initiative taken by the CNDH in convening this seminar should be considered as a major step both in the national process of advocacy and promotion for human rights, and in the international process aiming at developing tools

for improving the monitoring methods and mechanisms in this area. Indeed, the project submitted by the CNDH to the advice of the international experts in this seminar aims at launching a *systematic diagnosis of the human rights situation in Mexico, based on scientific quantitative and qualitative analysis*. Such a project constitutes an exemplary contribution to the concrete follow-up of the national democratisation process as well as to the implementation of the lines of international action emerging from the Montreux process.

In line with the conclusions of the Montreux conference and the Munich seminar, the CNDH is proposing:

- to develop and test a model of human rights diagnosis based on applied statistical methods and providing a set of selected key indicators;
- to establish an international multidisciplinary support team aiming at providing scientific assistance and developing the technical tools necessary for reaching the objectives of the project;
- to set up a platform for international exchanges of views on similar efforts undertaken or foreseen abroad;
- to develop, on the basis of the intermediary results of the project and in collaboration with other National Human Rights Institutions, an international initiative aiming at ensuring and supporting the replication effects.

The EC, and Eurostat in particular, take a keen interest in this initiative, that is in line with the conclusions of Montreux and Munich, and involves the expertise of many actors, including national and international NGOs as well as universities and research centres. The “project rationale” presented by the CNDH and the program of the Merida seminar clearly attest of the importance of this initiative. The debates of the Merida seminar should therefore focus on operational implementation of the project and also be oriented towards the forthcoming deadlines of the Montreux process agenda.

It is essential that, in an international perspective, the debates and the conclusions of the Merida seminar be related to forthcoming steps, and in particular to the *international conference on “Statistics and Human Rights” (November 2002)* that Eurostat is organising in close collaboration with other organizations. At this occasion, the CNDH and other national Commissions for Human Rights could present the results of the work carried out in Merida as well as first plans for concrete follow-up action.

CONCLUSIONS

STATISTICAL SUGGESTIONS

OBJECTIVES

- Quantification of the magnitude of human rights.
- To refine relationships between demographic characteristics and human rights experiences.
- Develop the specific project on ill-treatment.

SURVEYS VS. CAPTURE-RECAPTURE

- Capture-Recapture probably not viable.
- Survey: Double Sample.

FIRST, WIDE-SPREAD, GENERAL SURVEY ON HUMAN RIGHTS

- Collection of *demographic* information (e.g., household characteristics, gender, race, religion) and information on experiences and perceptions on how *rights* are respected.
- Potentially use a large *existing* survey, and add questions to that survey (to reduce cost).
- Survey repeated annually, or periodically.

SECOND, TARGETED SURVEY ON SPECIFIC HUMAN RIGHTS ISSUE
(E.G., ILL-TREATMENT) OR FOR SPECIFIC POPULATION
(E.G., MIGRANT WORKERS)

- Different topics can be addressed in different years.
- Survey is given to a subset of the people interviewed for the general survey, chosen on the basis of the answers given on the general survey.

QUALITATIVE APPROACH TO COMPLEMENT SURVEY

- In-depth interviews
- Case studies/focus groups (e.g. minority, lawyers).

DATA STORAGE

- Spreadsheet for easy access by multiple users.
- Confidentiality fully respected, anonymous subset of database available to the public.
- Rows are individuals, columns are variables (e.g., migrant status, sex, age, answers to questions)

ANALYSIS OF DATA

- Depends on questions of interest.
- Part *art*, part *science*.
- Performed by national statisticians, international experts if necessary, brought to Mexico.

CONCLUSIONS OF THE INTERNATIONAL SEMINAR ON INDICATORS AND DIAGNOSIS ON HUMAN RIGHTS

WHAT HAPPENED IN MERIDA?

—“Brainstorming for action”

- General human rights issues - definitions, data collection strategies, statistical methodologies.
- In-depth discussion on measurement of ill-treatment.

—Sharpening the *focus* and the *methods of work* for a National Human Rights Diagnosis based on quantitative methods, qualitative inputs, generation of indicators, and analysis.

CONCLUSIONS FOR THE NEXT CONCRETE STEPS IN MEXICO

- A policy-oriented work based on national human rights experiences and international exchanges.
- Pilot experiences - work in progress - pragmatic approach - learning by doing.
- Time Frame.
- Participatory process.

- Multidisciplinary dialogue.
- Multi-institutional dialogue.

- Integration of national experiences and know-how for developing national human rights diagnosis's with the international Montreux -Munich process and consortium.
- To design and implement a regular survey on human rights realisation in Mexico.
 - Constitute a task force to work on the classification of topics covered, questionnaire content, including human rights NGOs, human rights commissions, governmental agencies and statisticians, etc.
 - Discussion by the task force on how to take into consideration results of the tests of questionnaire.
 - To get professional technical input for quantitative methods from local statisticians, with support of international experts.
 - Involve in the next concrete steps of the Mexican initiative the facilitators of the Montreux process and Munich follow-up, so that both undertakings are mutually supportive.
- Promote and consolidate a system of information on the human rights situation in Mexico, including appropriate databases for:
 - documentation;
 - analysis, and
 - dissemination.
- Consolidate methods for making databases compatible for information providers and users (human rights commissions, NGOs, etc.)
- Next programmed meetings:
 - Meeting of Mexican/international statisticians (technical support team) in summer 2002;
 - International EC seminar on "statistics and human rights" (November 2002).

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