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# **PUTTING INTERNAL SECURITY FORCES UNDER THE RULE OF HUMAN RIGHTS LAW: THE NEED FOR A CODE OF UNIVERSAL PRINCIPLES REGULATING THEIR GOVERNANCE**

James C.N. Paul\*

INTWORLSA's project on "Human Rights and the Structure of Police, Military and Other Internal Security Forces" grew out of an earlier undertaking - a series of international seminars on "Building Democratic Constitutional Orders in SubSahara Africa."

In these seminars (and in papers written for them) a great deal of attention was focused on strategies to build institutions for the rule of law and democracy, e.g. independent and adequately empowered judiciaries, legislatures and human rights commissions; competitive elections and parties structured to provide meaningful popular participation - and institutions to build civil societies capable of ruling rulers. But in worrying about how to achieve these and similar goals, it became clear, too, that much more attention should be paid to the problem (urgent in many countries in light of experience) of reconstituting the "internal security forces" of the state (the police, the often semi-secret "intelligence" agencies and the military wherever "soldiers" are extensively used for internal police-type functions).<sup>1</sup>

The present project focuses on this apparent need to create legal structures for the organization and governance of internal security forces (ISFs) which will make them far more accountable to - and more governed by - the elected legislature, the courts, the constitutional order and human rights law, and civil society. By legal structure we mean, here, the body of law (constitutional, legislative and internal law - e.g. regulations,

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1. See James Paul, "Developing Constitutional Orders in SubSahara Africa: An Unofficial Report" in THIRD WORLD LEGAL STUDIES 1988: Building Constitutional Orders in SubSaharan Africa, 25-29.

prescribed operating procedures) which, cumulatively, provides for:

- the creation and organization (including responsibilities for command and empowerment) of ISFs;
- the control and oversight (fiscal and legislative as well as executive and judicial) of ISFs;
- the recruitment, training and acculturation of ISF personnel (notably human rights training);
- a code of conduct applicable to all ISF personnel reflecting the need to require scrupulous protection of human rights and provide for the discipline (among all ranks) of those who violate that code;
- the accountability of all personnel, and of the agency as a whole, to this law and to all other laws governing ISFs;
- transparency regarding recordkeeping and full disclosure of information regarding detentions, treatment of prisoners and other operations governed by the code of conduct;
- the creation of effective remedies, criminal and civil, for victims of all violations of law governing ISF operations;
- the adequate empowerment of civilian officials (including prosecutors), legislative bodies, courts, and human rights commissions to enforce this accountability;
- the empowerment of organs of civil society (e.g. the press, NGOs) to monitor ISFs and demand continuing compliance with these provisions.

These are only some suggestive elements of a "legal structure" which are important and which should receive the attention of law makers.

The assumption is that in all states which purport to be governed under a constitutional order that values democratic participation, human rights and the rule of law, a focus on structural elements such as those listed above is of fundamental importance - especially in light of the generally unhappy, often intolerable, past experience with ISFs in so many states (or in regions within states - such as Los Angeles). Several further assumptions animate the INTWORLSA project:

(1) In most countries (in all parts of the world) there are gaps in the law - and often very little law, or inadequate provisions of law - governing the structure of ISFs in respect to the concerns listed above. Indeed, much of the law structuring ISFs is law characterized by immense delegations of discretionary power and by legitimizing ISF autonomy from civil governance - hence a species of "lawless" law.

(2) These structural pathologies in the law contribute to well-known, widely documented operational pathologies of ISFs - to systemic patterns of abuse of basic rights (such as beatings, torture, illegal interrogation etc.), discriminations and other abuses against the poor and vulnerable, neglect, corruption and many other kinds of legally unprescribed or prohibited conduct.

(3) Thus, pathologies in the legal structure of ISFs lead to pervasive violations of "universal" rights now secured by the International Bill of Rights and other basic instruments such as the United Nations Convention on Elimination of All Forms of Discrimination Against Women<sup>2</sup> (Women's Convention) (for women are, too often, in too many countries, the victims of particular forms of systemic police abuse).

(4) Hence there is a need to make the legal structure of ISFs a matter of international rights concern: It is *not* enough simply to promulgate universal rights standards designed to protect people from ISF abuses; the organization, governance and accountability of ISFs must be legally prescribed so as to assure (as far as law can assure) that their personnel (at all ranks) will understand, respect and be strictly accountable to universal human rights standards, *and* to the legislature, courts and civil society.

(5) Existing human rights law instruments in fact call for this step. Principles are set out (e.g., in the International Bill of Rights) which can and should be collected, and a Code of Principles (drawn from existing human rights law) can (and should) be formulated to govern the legal structure of ISFs.

Of course the above assumptions need to be examined more carefully, and that is an objective of the INTWORLSA project. Country studies are needed which examine both the law (or absence of law) structuring ISFs and actual practices followed in managing these organizations - particularly practices which appear to lead to systemic abuses of human rights. The legal autonomy of ISFs - the absence of law imposing strict accountability to other organs of government and to civil society - can be documented, and the human rights consequences of these laws can be estimated in a more informed way.

A further objective of the project is to begin the process of formulating a comprehensive body of interrelated principles (drawn from existing human rights law) which should be incorporated into, and otherwise used, to frame the laws (constitutional and other) which structure ISFs. That undertaking led to the attempt to draft the Code which is presented here. The hope is that this initial step will lead to further, more informed, efforts to formulate a Code of Universal Principles geared to the concerns reflected in the country study research described above - and to efforts

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2. Adopted December 18, 1979. U.N.G.A. Res. 34/180 XXIV, 39 U.N. GAOR, Supp. No. 1, U.N. Doc. A/0000 (1980) *reprinted in* 19 I.L.M. 33 (1980) [hereinafter Women's Convention].

to convince international human rights organizations of the need for such a code.

Anyone who studies the reports of Amnesty International and countless other international, regional and local human rights monitoring organizations must surely appreciate the importance of this effort.

Of course a Code of Principles cannot by itself transform the character of ISFs. Legal reforms do not work that way: they only work when the duly enacted legal reforms are used as legal resources by those concerned with realizing goals sought by the reform. A Code of the type proposed here could well be a valuable resource to all kinds of human rights organizations. It could be used as a framework of criteria to critique national (and local) laws relating to the organization and governance of police. It could be used by constitution makers, and by NGOs seeking to influence the processes of constitution-making to force that process to focus more closely on lessons of experience with lawless ISFs.

Indeed, developing strategies concerned with institution-building may, it is hoped, come to be the next phase of the international human rights movement. Previous decades have seen an explosion of notable efforts to set out international rights standards governing many fields of activity and concerns. The UN Women's Convention, various ILO conventions (e.g. No. 141, the Rural Workers Convention, No. 169, the Indigenous Peoples Convention), the UN Declaration on the Human Right to Development, the UN Migrant Workers' Convention and other instruments have extended and applied the International Bill of Rights to a wide variety of sectors of immediate concern to many countries. The UN Code of Conduct for Law Enforcement Officials and the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment have extended, amplified and applied principles of basic rights law to the operations of ISFs. The need now is to insist - as a corollary to these developments - that the relevant institutions immediately responsible for adherence to these standards will be so structured that their obligations to protect human rights will be made a paramount function of their existence and governance.

The draft Code which follows is the outcome of a project developed with students at my Law School. It is simply meant to be illustrative and suggestive of the work to be done. I am grateful to the students who researched various international instruments and drafted and explained the principles proposed in the "Code," and to other law students for various useful inputs to the project. The work is offered in the hope that others will adapt, expand and improve upon it.