

Accounting for life: the role of counting and data in the protection of the right to life and the pursuit of safety

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Introduction

As Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof was responsible for investigating and reporting to the United Nations (UN) on some of the most extreme forms of violence, predominantly violence inflicted by the state upon its own people, sometimes inflicted by a state extra-territorially upon other people, and sometimes inflicted by non-state actors upon each other. This was work that he undertook with great passion and diligence, and work with which I was extremely honoured to assist him. But it is also work that one does not have to undertake for very long before realising that no matter how broadly one casts the net, or how scrupulously one attempts a neutral balance, one will always end up selectively presenting only a narrow sub-set of those cases in which the right to life has been violated. This does not necessarily compromise the significance of the UN work – the purpose of the mandate, after all, is not to provide a quantitative account of the level of violations around the world, but rather to cast a spotlight upon concerning patterns of abusive state practice and to develop thematic reports on complex issues of interest. Nonetheless, while undertaking the work, a stark parallel question was brought into focus when reviewing the scholarship and policy processes that were becoming prevalent at the same time and that were both interested in reviewing levels of violence in societies around the world in a more comparative manner.¹

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1 Christof's time as Special Rapporteur overlapped with the period during which the content of the UN's development agenda from 2015-2030 was being negotiated. It had already been recognised that the failure of the Millennium Development Goals (from 2000-2015) to address the significant impediment to development posed by violence had been a serious omission, but the exact character of what would become

It was with a view to better understanding this broader picture, and situating the mandate's work within it, that during 2013 and 2014 we undertook a number of research projects and engagements that would ultimately be reflected in Christof's 2014 report to the General Assembly.² This involved collaborating with the UN Office of Drugs and Crime (UNODC) in Vienna, which at that time was working on an iteration of its *Homicide* report, and the World Health Organisation (WHO)'s Violence Prevention Unit, which was partnering to convene a landmark conference on violence reduction in Cambridge in 2014.

In his report to the General Assembly, Christof presented the broad contours of the picture that emerged from these two global bodies – UNODC's comparison of reported homicides, and the WHO's analysis of violent deaths based on health records. Both approaches, he noted, highlighted that Latin America and Sub-Saharan Africa were regions of concern, both in the sense of having higher levels of violence than the rest of the world, and in the sense that unlike the rest of the world, the level of violence in those regions appeared to be *increasing*.

These statistical pictures were of course presented with a significant caveat regarding the extent and quality of national reporting, which Christof noted was often weakest in areas where it was needed most. As he pointed out, 'Governments either have the information and choose not to share it through health or crime surveys, which is a problem, or they simply do not know how people are dying within their jurisdiction, which is arguably worse'.³

In this way it was made clear that the exercise was not about some utilitarian calculus of weighing and contrasting deaths in different places or circumstances, or about establishing some kind of acceptable thresholds for interpersonal violence. The dignity and infinite value inherent in each human life was a central tenet of Christof's approach to the mandate and to the broader human rights project. His contention was that a vital component of that dignity had to continue after death. This would be a theme he would return to during the work on the updating of the Minnesota Protocol, but in this General Assembly report he simply reminded member states that,

Sustainable Development Goal 16 was still up for debate. Meanwhile, Christof was also intellectually interested in provocative books such as Steven Pinker's *The better angels of our nature* (Viking 2011) or more recently Rutger Bregman's *Humankind: a hopeful history* (Little, Brown & Company 2019) with their discussions of whether an urge to violence is an innate or acquired characteristic of the human psyche.

2 Christof Heyns, *Report of the UN Special Rapporteur on extrajudicial summary or arbitrary executions*, 6 August 2014, A/69/25. In addition to this, the research collaboration between the Centre for Human Rights in Pretoria and the Centre of Governance and Human Rights in Cambridge bore fruit as the study *Unlawful killings in Africa* (CGHR 2014).

3 A/69/25, para 136.

[w]hile protecting the right to life is thus not merely about counting bodies, without reliable statistics it will in many cases not be possible to ensure that sensible policies are followed in the pursuit of prevention of and accountability for violations of the right to life. The contention here is that accounting for life, both in the sense of keeping count of life and death and in the sense of holding to account those responsible for violations, is a central part of the State's responsibility with regard to the right to life.⁴

The report made the case that there were three broad categories of benefit that could arise from having access to better statistics about the prevalence of violent death around the world: an *analytical* benefit, of better understanding the character of threats posed in different context, a *programmatically* benefit, of being able better to craft policy responses that might mitigate those risks in an appropriate manner, and (as a report from a human rights rapporteur might be expected to stress as the most important) a *normative and procedural* benefit of the counting process itself, which 'serves to make the point that all lives are of equal value, transcending national and other divides' and which underlines how in order effectively to protect life 'States must have knowledge of when and how lives have been lost and, where applicable, hold the perpetrators to account'.⁵

In what follows I shall begin with these three categories—the normative being about the world as we think it should be; the analytic being about understanding the world as it is; and the programmatic being about trying to effect change to bring the latter closer to the former—before turning again to the question of why the process of accounting for life should be thought of as central to efforts to safeguard the right to life.

Normative values

Collecting accurate information about the causes of deaths is a corollary of the duty to investigate – a duty which is a well-established component of the right to life and many other human rights. However, it is a corollary that has arguably not been followed through to the extent that could make significant contributions to protection.

There are contexts in which the obligation to count seems particularly clear, in the sense that there is recognised to be a direct reporting obligation about the death to either an internal or external party. Generally, these are contexts in which a state agent has been directly responsible for causing a death (outside of a situation of armed conflict) or where a death has occurred in a context where a state agent

4 A/69/25, para 115.

5 A/69/25, para 119.

exercised particular control over the deceased (such as in a custodial facility). Even during an armed conflict, a number of international humanitarian law provisions create obligations to record and to share information about persons dying in the power of the enemy or as a result of hostilities.⁶

In the sphere of policing, for example, the Basic Principles on the Use of Force and Firearms provide that law enforcement officials must promptly report internally to their superiors any incident in which an injury or death is caused by police use of force,⁷ indeed any incident in which a firearm is used (regardless of its consequence).⁸ The Basic Principles moreover require external reporting, stipulating that in cases of death and serious injury, ‘a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control’.⁹

In a custodial setting, the reporting obligations are equally explicit. The Nelson Mandela Rules require that, notwithstanding any internal investigation, any custodial death, disappearance or serious injury must be reported without delay to judicial or other competent authority that is independent of the prison administration.¹⁰ On the African continent, the Luanda Guidelines go further, requiring that, ‘[g]iven the control that the State exercises over persons held in police custody or pre-trial detention, States shall provide a satisfactory explanation, and make available information on the circumstances surrounding custody or detention, in every case of death or serious injury of persons who are deprived of their liberty’.¹¹

More recent soft law, the UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement – guidance that Christof called for on numerous occasions and ultimately played a vital role in facilitating – has gone into more detail on the steps required beyond internal or external reporting and discussed an obligation to make such information public. This Guidance makes clear that states must monitor the use and effects of all weapons used for law enforcement purposes.¹² This should

6 Geneva Convention I, art 16; Geneva Convention II, art 19; Geneva Convention IV, arts 129 and 131; Additional Protocol I, art 33. Also see the ICRC’s discussion of Customary Rule 112.

7 Basic Principles on Use of Force and Firearms by Law Enforcement Officials (1990), Principle 6.

8 Basic Principles on Use of Force and Firearms by Law Enforcement Officials (1990), Principle 11(f).

9 Basic Principles on Use of Force and Firearms by Law Enforcement Officials (1990), Principle 22.

10 UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015) (A/RES/70/175, Annex), Rule 71.

11 African Commission on Human and Peoples’ Rights, Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (2014), s 20.

12 UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020), s 4.3.1.

include collecting contextual information about the circumstances of their use, and data about persons against whom force is used (disaggregated, for example, by age, sex/gender, disability and ethnic group).¹³ Importantly, the Guidance establishes that the results of this monitoring should be made public, including as a minimum national statistics on deaths and serious injuries relating to different categories of less-lethal weapons.¹⁴

However, even that minimum standard of data about deaths related to law enforcement activities is not widely respected around the world.¹⁵ In the absence of official data, various civil society sources of information have sprung up, as a means both of supplying important data and shaming official mechanisms into doing a better job. As one high-profile such initiative, the ‘The Counted’ collaboration between the *Guardian* and *Washington Post* newspapers aimed at collating information about lethal police shootings in the United States, began to gain traction, the Director of the FBI remarked to a Department of Justice summit on violent crime that it was ‘ridiculous – embarrassing and ridiculous’ that people could find details about the box-office ticket-sales of a popular movie, or that the Centre for Disease Control could count cases of the flu, with greater accuracy than the US Government could count the number violent encounters between US police officers and civilians.¹⁶

But the significance of ‘accounting for life’ is to cast the net wider than this. Of course, to say that the duty to investigate is particularly strong in certain cases is also to say that it is comparatively less important in others. This is where the human rights project (in contradistinction to the public health project) struggles to view all life as equal, all deaths as comparably deserving of explanation.

The Minnesota Protocol attempted to straddle this divide. After defining its scope – a potentially unlawful death – as primarily those

13 UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020), s 4.3.2.

14 UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020), s 4.3.2. The Guidance notes (s 4.4.2) that the anonymity of law enforcement officials and/or victims may be preserved where necessary and appropriate, but it cautions that the imposition of legitimate limitations on details should not be used as a justification for suppressing the publication of aggregate data.

15 See A Osse & I Cano ‘Police deadly use of firearms: an international comparison’ (2017) 21(5) *International Journal of Human Rights* 629. After Anneke Osse’s untimely death in 2019, several colleagues and friends, including Christof and myself, contributed to the creation of an international comparative project ‘Lethal Force Monitor’ (www.lethal-force-monitor.org), which continues this work, attempting to collate available information about official and unofficial national reporting on deaths following police contact.

16 ‘FBI chief: ‘unacceptable’ that Guardian has better data on police violence’ *Guardian* (8 October 2015) available at: <https://www.theguardian.com/us-news/2015/oct/08/fbi-chief-says-ridiculous-guardian-washington-post-better-information-police-shootings> (accessed 31 December 2021).

situations where the death had been caused by the acts of a state agent, the death had occurred when a person was detained in some way by the state, or the death had occurred where the state may have failed to act with due diligence to protect life, the Protocol then further noted that '[t]here is also a general duty on the state to investigate any suspicious death, even where it is not alleged or suspected that the state caused the death or unlawfully failed to prevent it.'¹⁷ The implication seems to be that the standards of good practice set out in the Protocol for a death investigation would still apply in these cases.

In its General Comment on the Right to Life, the African Commission underlined that '[t]he failure of the State transparently to take all necessary measures to investigate suspicious deaths and all killings by State agents and to identify and hold accountable individuals or groups responsible for violations of the right to life constitutes in itself a violation by the State of that right'.¹⁸ The Commission did not clarify what was meant by 'suspicious' in this context, but it seems broader than the scope of 'potentially unlawful' in the Minnesota Protocol.

The language in these examples is designed to highlight those cases where the state is suspected to be directly culpable, but nonetheless also to require some kind of action to deal with the proverbial 'body in the street with a knife in its back.' In those cases, some form of death investigation at the scene is a bare minimum. An investigation that also contributes information about the death into a broader body of knowledge about the circumstances of death is the beginning of a system of accounting for life.

The presentation and discussion of disaggregated statistics about violent death during human rights reporting of various kinds, whether before UN or regional treaty bodies, or during the Universal Periodic Review, is a practice that ought to be encouraged and enhanced. Meanwhile, beyond the sphere of human rights, as Christof highlighted in his 2014 report, the two broad areas of international affairs in which states are already required – or at least encouraged – to share such information are international public health (via the WHO's Global Health Estimates) and criminal justice (via the UN Survey of Crime Trends and Operations of Criminal Justice Systems, the UN-CTS). These global data-collection efforts are sustained as much by international communities of professional practice as they are by binding or even non-binding state commitments, but it is worth noting that, in the health sphere, recurring resolutions of the World Health Assembly since the mid-1990s have underlined the importance of the collection

17 Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), para 2.

18 African Commission on Human and Peoples' Rights, General Comment 3 on the Right to Life (2015) para 15.

and, as appropriate, dissemination of comparable and disaggregated data on the magnitude, risk and, protective factors, types, and health consequences of violence.¹⁹ Meanwhile criminal justice data collection and sharing has been trying to reach the same position of an agreed classification according to which to compare and contrast crime data, through the process of finalising the International Classification of Crime for Statistical Purposes.²⁰

Global health reporting is currently more developed than international criminal justice data-sharing, but even there, as the COVID-19 pandemic has made cruelly evident, levels of state capacity to count deaths and to collect relevant data, as well as levels of compliance or cooperation with international reporting procedures, remain extremely uneven. But the principle that they *ought* to be collecting and sharing it is by and large more widely recognised for these population-level violent death statistics than for the more politically-sensitive ‘right to life’ cases.

Analytic potential

The information collected in this way at global level allows bodies such as the WHO and UNODC to undertake periodic assessments of the overall burden of lethal violence around the world. The WHO estimates that 1.25m people died violent deaths in 2019, slightly more than those who died of tuberculosis or who died in road traffic accidents.²¹

From this global picture two striking patterns emerge: Firstly, more than half of these violent deaths were the result of self-inflicted injuries: suicide represents a frequently under-acknowledged proportion of violence around the world. The WHO has produced public health guidance on suicide-prevention, but there is also a clear connection with the state’s duty to protect the right to life, especially in certain contexts.²² Secondly, of the remaining, non-self-inflicted, violent deaths, another striking fact is the contrast between the number of deaths that

19 The seminal resolution recognising violence prevention as a public health priority was World Health Assembly Resolution WHA49.25 (1996). More recently Resolution WHA67.15 (2014) and Resolution WHA69.5 (2016) have urged the building up of national capacity within health systems to address these questions. With respect to health estimate reporting more broadly, see Gretchen Stevens et al. ‘Guidelines for Accurate and Transparent Health Estimates Reporting: the GATHER statement’ (2016) 388 *Lancet* e 19-23.

20 See, for example, ECOSOC Resolution 2015/24 [E/RES/2015/24] (2015)

21 Based on data available in the WHO’s 2019 Global Health Estimates, <https://www.who.int/data/gho/data/themes/mortality-and-global-health-estimates> (accessed 31 December 2021).

22 WHO *Preventing suicide: a global imperative* (2014). For an analysis of suicide prevention (in a custodial context) and right to life jurisprudence of the European Court, see G Cliquenois, S Snacken & D van Zyl Smit ‘The European human rights system and the right to life seen through suicide prevention in places of detention: between risk management and punishment’ (2021) *Human Rights Law Review* 1.

result from interpersonal as opposed to 'collective' violence. It cuts against many people's intuition to find that a significant majority result from 'ordinary' criminal homicide rather than from large-scale armed violence or civic unrest.²³

In addition to these insights about the type of events that make up the overall burden of violence, the global data also informs about geographic variation in the intensity of violence. As noted above, basic comparisons between different regions of the world can have a certain value in contextualising information about specific episodes of violence; meanwhile, longitudinal comparisons can play an important role in conversations about violence at all levels, from grassroots up to international policymakers. But the variances which emerge also serve to make a more fundamental point: that violence is not an immutable fact of life, but rather a symptom of social, economic, cultural, and political context in which it occurs.

This insight, which in public health discourse is referred to as the socio-ecological model of violence, leads to the consideration that these drivers of violence are themselves inherently susceptible to public policy intervention (which will be discussed below, under programmatic insights). But in order to design those policies effectively and sensitively, a very granular understanding of the context is required.

Over the past fifteen years, (since the Geneva Declaration on Armed Violence and Development was adopted in 2006) international organisations, NGOs and other practitioners have focussed attention on this analytic work. The contributions of agencies such as UNODC, UNDP, and the World Bank, and of NGOs such as the Small Arms Survey, Action on Armed Violence, and Saferworld have highlighted an analysis of interpersonal violence within both peacebuilding and development spheres.

But it has been with the adoption of the Sustainable Development Goals (SDGs), and the inclusion of a series of targets related to interpersonal violence, access to justice and the institutionalisation of human rights and good governance within Goal 16, that the review of salient information at local, national and international levels has been fully mainstreamed.

Because of the complexity and interconnectedness of the development agenda, information about violent deaths is not collected in isolation but rather is expected alongside data about other forms of vulnerability, data about the criminal justice system, and data about

23 The proportions fluctuate year on year, and one cannot be as confident of this distinction as one could be of the distinction between self-inflicted and non-self-inflicted violence. It should also be underlined that the burden of 'collective violence' would only include direct 'battle deaths' rather than the full lethal toll of an armed conflict that could include deaths resulting from conflict-induced famine, disease or migrations.

the perceived legitimacy of governance institutions. Moreover, the structure of Goal 16 itself (along with Goal 17) underlines that an effective path to achieving peace, justice and effective governance must include developing capacity to account for life.²⁴

It should be recalled that, set against many of these other factors, dead bodies are relatively easy to count, which is why we tend to privilege lethal violence as a proxy indicator for broader levels of violence within societies. But there are many forms of violence that are not so readily quantified. Allowing our analysis of the problem of violence to be reduced to the counting of bodies would significantly skew our understanding, and it is to the credit of the SDGs' indicator framework that it also attempts to collect information about other forms of violence (measured by victimisation surveying rather than reported crime data), and to review more subjective issues such as public perception of safety.

It is also worth underlining, given that the obligation to protect the right to life should be understood broadly so as not only to require measures to address direct threats to life but also other factors that prevent individuals from enjoying their right to life with dignity,²⁵ that the SDGs also address a host of issues aside from crime and violence that can have an impact on the right to life and about which the collection and analysis of appropriate data can play a vital role. To take just one example, the most recent UN Sustainable Development Report includes the example of policymaking around where to allocate additional pre- and neo-natal healthcare services in Mongolia, based on available data about infant mortality in different regions of the country.²⁶

The possibilities raised by such analysis for the greater protection of the right to life can be generalised as being the recognition of observable patterns of risk. The expectation is that states account for these risks – that they are capable of recognising them (the analytic part) and putting in place policies to attempt to avoid them (the programmatic part that will be discussed below). But the identification of the patterns themselves must accentuate the obligation to protect. The African Commission, for example, has noted that states are

24 The SDGs include two targets directly related to 'accounting for life' both at the beginning and end of life, with SDG Target 16.9 focused on birth registration, and Target 17.19 focused on international partnerships to support statistical capacity-building, measured in part by the effectiveness of both birth and death registration.

25 Human Rights Committee, General Comment 36 on the right to life, para 26.

26 UN, Sustainable Development Goals Report 2021, <https://unstats.un.org/sdgs/report/2021/The-Sustainable-Development-Goals-Report-2021.pdf> (accessed 31 December 2021) at 5.

responsible for killings by private individuals which are not adequately prevented, investigated or prosecuted by the authorities. These responsibilities are heightened when an observable pattern has been overlooked or ignored, such as is often the case with respect to mob-justice, gender-based violence, femicide, or harmful practices. States must take all appropriate measures effectively to respond to, prevent and eliminate such patterns or practices.²⁷

Programmatic insights

Analysis of the data can show where action is most needed, and information about the drivers of different forms of violence can suggest potentially effective interventions. The fields of criminology and public health both share a methodological preference for the controlled trial as a means of assessing the impact of such an intervention. Over the last twenty-five years a rapidly growing evidence base has been accumulating about ‘*what works to prevent violence?*’ In more recent years this expertise and scholarship has been mainstreamed into the field of international development, converging with that sector’s emphasis on monitoring and evaluation.

The intuition underlying Christof’s 2014 report, and our subsequent work on ‘freedom from violence’, was that there are valuable lessons that could be learned from this field of evidence-based violence reduction. That the human rights approach of focussing retrospectively on individual cases and particularly on those where the state was proximately involved could be supplemented by the public-health or developmental approach of focussing prospectively on population-level drivers of violence and thinking about the broadest possible range of stakeholders. In what follows I highlight just a few examples of programmes designed from this broader viewpoint, focussing on those that draw upon careful and shared data-collection, or counting.

At the international level it may be seen that criminal justice and public health data is collated separately by different institutions (UNODC and WHO). That is not in and of itself problematic – those with an analytic research interest in the results can take the time to compare and contrast and draw different kinds of conclusion from the different datasets. However, more problematic is when the same disconnect occurs at a more operational level on the ground. Research conducted during the 1990s in the UK and in Denmark showed that between two-thirds and three-quarters of violence that resulted in hospital treatment was not known to the police.²⁸ It is a well-known

27 African Commission on Human and Peoples’ Rights, General Comment 3 on the Right to Life, para 39.

28 C Florence & others ‘Effectiveness of anonymised information sharing and use in health service, police, and local government partnership for preventing violence

and frequently caveated point that criminal justice data will under-represent the true burden of violence because many victims of violent crime choose not to report their victimisation, for a whole host of reasons ranging from stigmatisation to lack of trust in the police. Those issues of perception of and access to justice are themselves concerns for human rights advocates. But, in the meantime, there are still potentially valuable insights about the character of violence in a given location that are not contributing to law enforcement's prevention strategies.

In the UK, the 1998 Crime and Disorder Act placed a legal obligation on police, local government, and the National Health Service (NHS) to collaborate to develop and implement joint crime reduction strategies. A particularly dynamic example of such a partnership was created in the city of Cardiff. What has become known as the 'Cardiff Model of Violence Prevention' sought to address the information gap by ensuring that anonymised data about violence – concerning the precise violence location, time, weapon and numbers of assailants – was shared between emergency health departments and crime analysts, allowing a Violence Prevention Board, with stakeholders from both health and criminal justice sectors, to make informed decisions about violence prevention strategy.²⁹ Police strategies could include adjustments to patrol routes, employing more police in the city rather than the suburbs, targeting problematic areas, and informing the public of the use of closed circuit television (CCTV). In an evaluation of the impact of the initiative against a number of comparison cities in the UK over the same period, it was found that the Cardiff programme was associated with an estimated 42% fewer woundings recorded by the police four years after implementation.³⁰

The Cardiff example is particularly striking because the whole logic of the intervention is geared around the collection and sharing of relevant information about violence – about institutionalising the process of accounting for life and threats to life. But there are many other examples of policies or projects that have directly addressed a specific driver of violence.

A frequent example of such a public policy relates to the better regulation of alcohol. This had been studied in various ways in places where alcohol was already significantly controlled, and it had been shown that changes can have a noticeable but not dramatic impact on levels of violence. However, in the early 2000s an opportunity

related injury: experimental study and time series analysis' (2011) 342(3313) *British Medical Journal* at 2.

29 A short policy briefing concerning the core elements of the Cardiff model can be found here: https://www.cardiff.ac.uk/_data/assets/pdf_file/0012/1034130/VRG-Cardiff-Model-Briefing-WEB2-002.pdf (accessed 31 December 2021).

30 Florence & others (n 28) at 8.

existed to study the effect of a move to regulate the sale of alcohol in a developing context where it was previously relatively uncontrolled.³¹ Diadema, an industrial city of 360,000 close to São Paulo, in 1999 had one of the highest murder rates in Brazil (103 per 100,000), of which police statistics estimated 65% were alcohol-related, and most occurred in or close to bars between the hours of 11pm and 6am. Concerned by the high murder rate, in 2002 the Mayor introduced new legislation that enforced the closure of all bars in the city at 11pm, ending what until then had been the practice of most establishments to remain open 24 hours a day. The results were almost immediately felt (and subsequently documented in a peer-reviewed study) – with levels of homicide dropping by nearly a half. There were also noticeable decreases in traffic accidents, assaults against women, and alcohol-related hospital admissions.³²

Other projects have not relied upon a change of public policy but have instead sought to affect behaviour at a more local level. Some of the most impressive initiatives in this space have been aimed at better understanding what programmes can be shown to be effective in reducing sexual and gender-based violence against women and girls.³³ These have included community-level activism, couples' interventions, economic empowerment initiatives, school-based programmes, individual self-defence or other skills building.

Programmes and policy initiatives conceived, trialled and eventually implemented on the basis of this 'what works?' philosophy can range across the spectrum from questions of early childhood development to municipal service delivery. The role of the police as only one among many potential agents of change has been recognised within the emerging community of practice around crime and violence prevention.³⁴ This has also overlapped with a trend within police departments around the world to seek to improve their effectiveness in respect of a wide range of outcomes with reference to controlled trials and experimentation, with 'Evidence-Based Policing' becoming the

31 The summary that follows is taken from the impact study undertaken into the new legislation, see S Duailibi & others 'The effect of restricting opening hours on alcohol-related violence' (2007) 97(12) *American Journal of Public Health* 2276.

32 Duailibi (n 31) 2277f. Duailibi and his colleagues show that the impact on homicide is statistically significant regardless of whether underlying trends (such as socio-economic drivers of crime) are controlled for. Moreover, the impact seems to have been greater than the (also identified) impact of Brazil's national firearms control legislation of 2004.

33 A flagship programme in this regard has been funded by the UK Department for International Development (DFID). See generally R Jewkes & others *Effective design and implementation elements in interventions to prevent violence against women and girls* (January 2020) <https://www.whatworks.co.za/documents/publications/373-intervention-report19-02-20/file> (accessed 31 December 2021).

34 South Africa's 2016 White Paper on Safety and Security is an example in this regard at national level. At regional level, in 2018 SADC adopted Regional Guidelines on Crime and Violence Prevention which adopted a similar philosophy.

latest organisational objective. Perhaps the archetypal example of an evidence-based policing initiative, and one that, like the Cardiff model, relies upon accurate and granular counting of crime in specific places, is the idea of hot-spot policing. This is based on the insight that crime can be a highly clustered phenomenon, and that by focussing policing resources on those few locations authorities can achieve significant reductions of crime, importantly without displacing the crime into surrounding areas.³⁵

Combating impunity

Accountability, as Christof and I conceived of it, essentially consists of asking three kinds of question: (i) what happened and who was responsible? (ii) who suffered and how can their suffering be remedied? and (iii) what can be done to prevent this from happening again in the future?³⁶ Evaluating the processes and considering the results of the pursuit of accountability in specific cases makes up a significant proportion of the work of any international system for the protection of human rights. But by highlighting the responsibility to account for life, the system can emphasise the importance of asking all three of these questions in the broadest possible way.

Moreover, the public sharing of data about these questions itself ensures another form of accountability, that is the accountability of transparency and comparability. Bringing together all the available information – whether about the death penalty, or about legislation on the use of force or peaceful assembly – and allowing policymakers, civil society practitioners, journalists and scholars to draw upon that information, was a form of accountability to which Christof was extremely dedicated.³⁷ Ensuring that every violent death (and indeed any other kind of death recognised to be of international concern) is recorded and that information about them is collated both at national and international level is a natural extension of this project.

Answering the ‘what happened?’ and ‘who was affected?’ questions in a transparent fashion also allows a range of stakeholders to weigh in on the ‘what should be done?’ questions. This might take the form of programmatic design, as discussed above, or, in a more abstract way, may involve the setting of targets. Ultimately Christof’s recommendation

35 For a systematic review of the significant literature on hotspot policing, see Anthony Braga & others ‘Hot spots policing of small geographic areas effects on crime’ (2019) 15 *Campbell Systematic Reviews* 1046.

36 See T Probert & C Heyns (eds) *National commissions of inquiry in Africa* (PULP 2020).

37 The two global databases that he and Stuart Casey-Maslen have designed, www.policinglaw.info and www.rightofassembly.info, were models of this, but drew inspiration from the example of www.deathpenaltyworldwide.org.

that SDG 16 should be drafted so as to include an ambitious numerical target with respect to violence reduction was not acted upon by member states.³⁸ However, as noted above, the broad character of Goal 16 and its indicator framework does establish a pattern of good practice with respect to the kind of information that ought to be considered when pursuing the objective of greater safety.

This broader objective of community safety will itself contribute toward greater enjoyment of the right to life, but there is also the tantalising prospect of using the same kind of translation from analysis to programming with respect to deaths that would more classically be thought of as extrajudicial killings. That is, to adopt the development practitioner's approach to a question such as the use of force in law enforcement, and to ask 'what works to prevent excessive force?' One can see these questions becoming more salient within human rights practice, both with the possibilities of new technologies and with a greater focus on impact assessments and understanding exactly how initiatives such as human rights trainings are effective in shaping attitudes and behaviour.

Of course, none of this is to argue that the human rights system does not already care about the body in the street with a knife in its back, or that it stops caring once it has been established that it was not a state agent that did the stabbing. There is a natural subsidiarity principle at play: with a commodity as precious as international attention, it is important to focus on those cases where there are the greatest asymmetries of power. But a strong potential shorthand for understanding the state's obligation with respect to the right to life is to say that they have to *care* about life. The state is not expected to prevent every death: in situations where their own agents are involved they are expected to take all possible precautionary measures to avoid causing a death; where they knew or ought to have known about a threat to life they are expected to take steps reasonably within their power to prevent it; in other situations where they find out about a death, they are supposed to investigate to find out what caused it. In this sense every death should be a matter of state concern even if not of state responsibility.

One of the key legacies of Christof's time as mandate-holder was his emphasis on the importance of death investigations of all sorts, and on accountability – the idea that the failure to investigate a suspicious death amounts *in and of itself* to a violation of the right to life, because

38 At the time of Christof's 2014 report there was a proposal to frame Target 16.1 as halving levels of violent death. See A/69/265 paras 141 and 145. Also see M Eisner & A Nivette 'How to reduce the global homicide rate to 2 per 100,000 by 2060' in R Loeber & BC Welsh (eds) *The future of criminology* (OUP 2012).

of this failure to care about whether or not life had been adequately protected.

The African Commission, in their General Comment quoted above, make this point very clearly. As Christof noted after the passage of that document, when there is a systemic failure on the part of the state to fulfil its positive duties by investigating any and all suspicious deaths, ‘the result can be a deterioration into a culture of impunity’.³⁹

Impunity with regarding the right to life is often conceived of with reference to the exemplary case where, because of their proximity to state power, an identified individual is able literally to get away with murder. With his insistence that the state’s responsibility to ‘account for life’ is central to its protection of the right to life, Christof was attempting to highlight another pernicious quality of impunity, which is related not to punishment in specific cases but to a wider failure to recognise that many deaths have taken place at all. As we pursue the SDGs, with their mantra of ‘leave no one behind’, the values of human equality and dignity make Christof’s basic assertion, that every body should count, a vital guide.

39 C Heyns & T Probert ‘Casting fresh light on the supreme right’ in T Maluwa & others (eds) *The pursuit of a brave new world in international law: essays in honour of John Dugard* (Brill 2017) at 53.