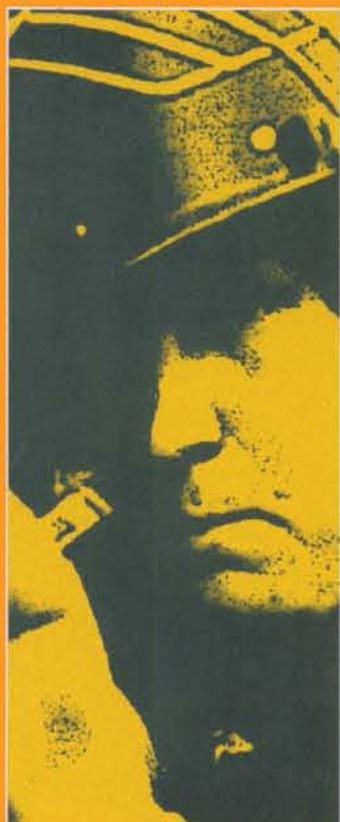


# Commonwealth Manual on



# Human Rights Training for Police



COMMONWEALTH  
MANUAL ON  
HUMAN RIGHTS TRAINING  
FOR POLICE



**COMMONWEALTH**  

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**SECRETARIAT**

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## FOREWORD

by Commonwealth Deputy Secretary-General  
Florence Mugasha

*United in their diversity, all 53 members of the Commonwealth hold certain principles in common. In upholding these and in pursuing the ideals on which the Commonwealth is based – ideals of peaceful and stable, just and equitable, and prosperous societies – the importance of observing the rule of law cannot be overstated. In serving and protecting their communities, police and law enforcement officials play a vital role. They are duty-bound to enforce the law. However, the manner in which such officials carry out their duties in the community contributes to the sort of societal conditions in which human and economic development and flourishing is possible.*

*Human rights training for police trainers is one of most effective ways the Commonwealth Secretariat, through the Human Rights Unit, offers practical assistance to Commonwealth governments in promoting understanding of and respect for human rights. The initial and ongoing training of police officers is the correct place at which to instil an approach to community policing that is grounded in sound knowledge of law and procedure, the limits on powers, and respect for the basic rights of individuals.*

*I therefore welcome this Manual and commend it for use in training institutions across the Commonwealth. It is based on an earlier resource developed for the West Africa region. I would commend the efforts of those police officers in Commonwealth West African countries whose experience contributed to the pilot publication that Commonwealth Secretary General Rt. Hon Don McKinnon launched in London in December 2005, to mark the International Human Rights Day. This kind of sharing of best practice and comparative experience for the benefit of institutions in member countries is one of the core functions of the Commonwealth Secretariat. It is also proper, in my view, that this revised publication addresses the place of human rights in training of prisons officers.*

*I believe that this practical and useful publication will be of help to police and prisons training institutions in Commonwealth countries in building knowledge of and respect for fundamental human rights into their training programmes, and so into the practices of their agencies. I am confident that our Human Rights Unit stands ready to assist in this process.*

Florence Mugasha  
Marlborough House  
London

June 2006

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## INTRODUCTION

by the Human Rights Unit,  
Commonwealth Secretariat

Police officers' duty is to serve and protect their communities. Indispensable to their ability to carry out this vital duty is an awareness of the source, nature, content and limits of the rights of all individuals with whom they come into contact. This manual is a Commonwealth Secretariat training resource to promote human rights-based approaches to policing. It has been designed by the Human Rights Unit of the Secretariat, for use by police and law-enforcement trainers in Commonwealth countries in designing, developing, conducting and evaluating police training programmes at all levels.

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### **The Commonwealth Secretariat (Human Rights Unit)**

The Commonwealth is an extraordinary voluntary association of 53 member States including some of the largest and the smallest countries in the world.

The Commonwealth family includes peoples of many faiths, races, languages and cultures who share many common experiences and concerns, as well as hopes and ideals. By their membership (and as set out in the 1971 *Singapore Declaration* and the 1991 *Harare Declaration*), Commonwealth countries have committed themselves to fundamental values of democratic participation, equality and non-discrimination, respect for the rule of law, and the fulfilment and protection of universal human rights. The Commonwealth Secretariat implements the joint decisions of members' governmental and ministerial meetings and offers technical assistance and advice to member countries.

*"We believe in the liberty of the individual, in equal rights for all citizens regardless of race, colour, creed or political belief ..."*

*Declaration of Commonwealth Principles, Singapore 1971*

The mandate of the Secretariat to promote awareness of human rights in the Commonwealth (and to assist member countries to promote and protect human rights) is co-ordinated by the Office of the Commonwealth Secretary-General, through the Human Rights Unit. The Unit is also responsible for integrating human rights into the work of all Divisions of the Secretariat. The Unit's production of educational and other programmes is based on the understanding



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that internationally acknowledged civil, political, economic, social and cultural rights are indivisible, universal, and inherent in all individuals by virtue of their very humanity. The programmes also represent acknowledgement that respect for human rights, and their fulfilment, is indispensable to the achievement of societies that are fair and just, peaceful and secure, inclusive and prosperous. In this way they are a vital part of the development assistance work of the Secretariat as a whole.

### **Development of this Manual**

In November 2002, Commonwealth Law Ministers meeting in St Vincent and the Grenadines asked the Secretariat to develop, on the back of its general human rights training for public sector officials, awareness programmes on human rights specifically designed for police officers.

Rather than attempt to bring training directly to police services, the Human Rights Unit decided upon an approach of working closely with training institutions in member countries to develop useful and relevant training materials and resources. These would assist trainers to themselves build human rights standards and considerations into the regular police training programmes under their control.

In a pilot project which commenced in May 2004, the Unit worked with senior police officers and police training institutions from West African Commonwealth countries (Cameroon, The Gambia, Ghana, Nigeria and Sierra Leone). At two separate workshops in 2004 these officers expressed the view that a comprehensive human rights training resource (and a parallel training-of-trainers programme) would add great value to their current training programmes. In July 2005, more than 30 senior instructors from various police training colleges in the five countries took part in a major training workshop in Abuja. The experience, advice and expressed needs of officers who had attended the various workshops led to the development and publication, in November 2005, of the Unit's *Manual on Human Rights Training for Police in Commonwealth West African Countries*, which was launched by the Commonwealth Secretary General Don McKinnon in London on 8 December 2005, to mark the International Human Rights Day. In May 2006, in the first country-specific follow up to the regional pilot project, the Unit conducted an intensive training-of-trainers workshop in Yaoundé with Cameroonian police and prisons training officers as well as provincial commanders. In consultation with local police commanders, the Human Rights Unit intends to carry out, in due course, an evaluation of curriculum development in training institutions in these pilot countries.

In order to extend the benefit of this resource to police training institutions in all Commonwealth countries, and following the positive encouragement of Commonwealth Law Ministers at their October 2005 meeting in Accra, the present manual has been adapted from the West African manual with a number of substantial revisions for Commonwealth-wide application. A short chapter on policing and human rights in the context of counter-terrorism has been added. Furthermore, a chapter dealing with the human rights responsibilities of prisons and penitentiary officers has been added, too, although we are fully aware that their work is so significant that it warrants a manual of its own. Finally, edited versions of the core applicable human rights instruments and UN codes of conduct have been included for ease of reference.

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In addition to dissemination of this manual, and providing, on request, advice to police trainers on curriculum development, the Human Rights Unit will continue to extend training in human rights to police trainers in Commonwealth countries, for which this manual will be the primary resource.

### **Some general comments on human rights in policing and police training**

*"...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world..."*

*...it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected..."*

*Universal Declaration of Human Rights, Preamble  
United Nations General Assembly, 1948*

The Preamble to the *Universal Declaration of Human Rights* recognises the logical link between lack of respect for human rights, and the likelihood of disruption to the peace. Viewed in this way, the day-to-day conduct of police in protecting and ensuring the human rights of all persons contributes to safe, stable and peaceful communities. And violation of rights only undermines, rather than enables, the possibility of real security and stability. A human rights-based approach to policing for communities begins with knowledge and awareness on the part of police officers as to the limits of lawful police authority and conduct. Many of these limits are premised on fundamental rights. This knowledge and awareness requires attention to be given to human rights elements of policing during initial, continuation and refresher training for police.

Core police duties, carried out with the authority and resources of the state, touch on the most fundamental of rights, often of people at their most vulnerable. It is most important for those wielding public authority, such as police officers, to appreciate the responsibilities that come with authority which are premised on the foundations of laws and the state's legal process. However, it should also be realised that the government is also the institution primarily responsible and most capable of ensuring, securing and protecting human rights.

Police duties are primarily directed at protecting the rights of the citizens; they also include measures that may sometimes limit the rights of individuals in the interests of the state. This cannot be effectively achieved without police officers knowing about those specific individual or collective rights, in particular, knowing in a practical and tangible way how their day-to-day conduct is enabled or limited by law and by human rights considerations.





*"In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."*

*Code of Conduct for Law Enforcement Officials, Article 2  
United Nations General Assembly, 1979*

There are many challenges that police trainers may face in adapting their existing training courses to more explicitly include human rights elements. These challenges may well include a lack of awareness or uncertainty about what the practical relevance of rights are to their professional duties. Trainers will encounter many myths about human rights, and resistance to the idea that they have a central part in policing. However, many misgivings about the place of human rights in policing activities stem from misunderstanding about rights. The challenge is to get trainees openly, without inhibition, ignorance or fear, to address human rights issues, to see the community as a resource in investigating crime, and as a partner, rather than as an adversary. This resource has been designed to include many useful concepts that will assist in overcoming such challenges trainers might face. A good example is the 'P.L.A.N.' concept concerning the use of force (Proportionality, Legality, Accountability, Necessity).

It will be vital for police trainers to impart not only what the 'rules' of human rights are, but how ordinary police activities are affected. Human rights will not be seen as credible and legitimate among trainees if they are not translated into relevant and practical manifestations that tie to police activity. For this reason, this manual has relied on the advice of police themselves.

The intention behind this training project was to assist police trainers to impart to trainees at all levels knowledge and a way of thinking about policing which would ensure that they provide professional service to the communities that they serve, a service that is based on internationally accepted human rights standards and practices. The Commonwealth Secretariat intended to increase the capacity of police trainers to establish or develop existing courses, and run training courses that have a human rights-based approach to policing at their core. The challenge and the opportunity to police trainers is to feed human rights vocabulary, concepts, content and standards into the existing curricula, rather than to add on a small subject in human rights to already full curricula. The idea is thus that rather than ad hoc occasional training workshops on human rights, there be ongoing and sustained human rights content in standard police training. In this way, human rights considerations and obligations will be in-built in the structures, habits, culture and operational functions of the police.

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Apart from enabling trainees to understand how human rights standards affect actual police activities, the single most important thing from the perspective of the Human Rights Unit, is for trainers to impart to trainee officers that strong emphasis on human rights in policing makes sense in two ways:

- (1) As a matter of principle and legal obligation (international law, national law, moral imperative and conscience) police officers are bound not to break the law or violate human rights in the process of trying to enforce the law.
- (2) As a practical matter, abusive conduct by police officers of arrested persons, detainees, witnesses, and even victims, has many adverse consequences, including alienating police from the community in which they live and must work, leading to cycles of distrust and crime prevention and investigation work harder to do. It can be persuasive to reveal to trainees how illogical it is that a law enforcer should ever become a law breaker in the course of his or her duty; or how 'short cuts' taken in the attempt to secure convictions can lead to unsatisfactory acquittals.

The chapters on 'Community Policing' and 'Human Rights Violations' together highlight the negative consequences of neglect for human rights, and reinforce the positive results possible: it is cynical to assume that police officers do not intend to comply with human rights obligations in the vast majority of cases. Policing in our modern democracies is by nature a responsible and honourable profession.

*"Most Commonwealth police officers would no doubt see themselves as servants of the public: as protectors, not violators, of human rights."*

From the remarks of Commonwealth Secretary General the Rt. Hon. Don McKinnon, London, 8 December 2005 (marking International Human Rights Day) upon launching the *Manual on Human Rights Training for Police in Commonwealth West African Countries*.

Finally, it is often overlooked that police officers have rights as individuals and deserve protection from humiliation, discrimination based on race or ethnicity or region or religion. They also deserve safe conditions in which to work, and provision of sufficient equipment and resources to enable them to meet human rights obligations effectively. However, many of the most significant changes in systems, habits and institutional practices do not entail cost. While there are many unfair stereotypes and public prejudices about police officers, police officers cannot wait for community attitudes towards police to change, but must help the process by their conduct in protecting and ensuring human rights. Part of changing the mind-set of the community is for police to show restraint, integrity and dignity even in provocative situations. In turn, the community will respect and trust the police, making their basic functions (for example, crime prevention and investigation based on community information) easier. Training in human rights helps develop a mind-set that for an effective, unthreatening, co-operative working environment, police officers need a community that is on their sides. So, respect for





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human rights is not just 'the right thing to do', but leads to more effective policing in a more conducive operating environment.

The Human Rights Unit would like to express its gratitude to Pieter Cronjé, a South African-based consultant on human rights in policing and former Head of the Human Rights Unit of the South African Police Service (1996–2002), who was responsible for the production of the West Africa manual from which the present manual has been developed. I would also like to record with appreciation the contribution of my colleague Jolyon Ford of HRU in putting together this manual.

The Secretariat seeks to share best practices from across the Commonwealth, drawing on common experiences and in pursuit of shared ideals. As the Deputy Secretary General has noted in her Foreword, the Human Rights Unit stands ready to further assist law enforcement training institutions in Commonwealth countries to build human rights effectively into their programmes, and so into policing practises themselves.

**Rabab Fatima**  
**Advisor and Head, Human Rights Unit**  
**Commonwealth Secretariat**  
**London**  
**June 2006**

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# Aims and Objectives of this Manual

## **Developing existing training curricula**

The main purpose of this training manual is to provide a ready-to-use resource for police and law enforcement trainers in Commonwealth countries, enabling them to build human rights standards, principles and approaches directly into the ordinary, existing curriculum of their training institutions. The aim is to ensure human rights obligations and considerations are explicitly brought into the mainstream of law enforcement training, and made relevant to that training.

The manual is therefore organised by reference to core activities (such as 'Arrest') so that the human rights dimensions of these can be made directly, memorably and persuasively applicable to actual law enforcement operations and management, rather than being perceived as abstract principles. It is vital that mere information about human rights is transformed into practical behaviour.

The overall objective is that police trainees enter the communities they serve able to provide a professional service: understanding and accepting the principled and practical reasons for rights-based policing, their own potential for affecting human rights in their own daily decisions and conduct, and the framework of internationally accepted human rights standards in which all policing takes place.

## **Specific human rights training programmes**

In addition to revising their ordinary curricula so that the human rights elements are clearly understood, some trainers may wish to produce specific training modules, seminars or workshops on human rights for fellow trainers, trainees or even the community. This manual is intended to assist with the process of establishing or developing such specific courses.

The Commonwealth Secretariat's Human Rights Unit continues to assist police and other law enforcement training institutions and management in Commonwealth countries, by providing human rights 'training for trainers', using expert resource persons with law enforcement backgrounds and with experience of integrating human rights into training in a number of countries. The manual is also intended as a resource for use in such training programmes as and when they take place.

Finally, because it explains the place and content of human rights in a policing context, the manual may be useful to those responsible for internal reviews of police operating policies and practice.

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## CHAPTER 1

# International Human Rights Standards and Policing

### Learning objectives for Chapter 1

Each Chapter is intended as a resource for curriculum development. This requires the instructor to be confident about the material. After completing this chapter you should be able to:

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- *Discuss the historical background to human rights and their source*
  - *Define human rights and the nature of the duties they impose*
  - *Explain the documents that are known as the International Bill of Rights*
  - *Provide examples of international and regional human rights instruments and their provisions that are applicable to policing*
  - *Discuss the role of police officials in respecting and protecting human rights*
  - *Discuss the wider importance of respect for international standards for police in Commonwealth countries*
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## Chapter 1

# International human rights standards and policing

## Contents

- 1.1. Introduction**
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  - 1.11. Questions for self-evaluation**
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## 1.1. Introduction

Policing in democratic countries is a service to the community. It is provided through the formal entity of the community, the State. As this chapter sets out, internationally agreed human rights standards form the basic value framework guiding the work of police agencies that serve and protect communities in Commonwealth countries. Because of the nature of their duties, police officers are also permitted (indeed sometimes obliged) to act in a way that limits individuals from enjoying fully some fundamental rights, for example during arrest, detention, investigation and searches. Most human rights protections are not absolute and are relative to other rights at play. It is considerations of human rights often encompassed in laws that describe the boundaries of how far police can go within their lawful authority to limit a person's rights.

This manual as a whole explains the importance, as a matter of principle and law, and also as a practical matter, of all police officers acting to respect the human rights of the persons that they encounter on a daily basis, and all persons in their custody and care, from suspects to victims to family members of either. To do so, they need to know about human rights standards. From the beginning of their training, police officers should be encouraged to understand their role as law enforcement officials as being that of protectors and enforcers of human rights. Training should take place explicitly by reference to human rights so that police officers conceive of their basic functions as having a human rights basis.

This chapter is a very basic introduction. It looks at human rights in general, how thinking and speaking in terms of rights has come about, some important international human rights instruments, and some reflections on the significance of respect and protection of human rights for police officers in the Commonwealth. An introductory section considers how the fact that police officers can lawfully limit and restrict the rights of individuals might be explained. Particular human rights provisions will be dealt with in more detail in other chapters.

## 1.2. What are human rights?

There are many definitions of human rights and people may well differ and argue about the relevant importance of different particular rights. In human rights training, it will be important to receive different views on the nature, source and effect of human rights. This will enable the trainer to persuasively address any myths, misunderstandings and misconceptions.

Human rights can be defined in various ways, such as 'generally accepted principles of fairness and justice inherent in every individual by virtue of their humanity' or 'moral rights that belong equally to all people simply because they are human beings'. Article 1 of the Universal Declaration on Human Rights (below) explains that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'. Rather than attempting a set definition of human rights, it is useful to consider a few principles that can be applied to explain human rights, or the qualities that apply to human rights, as follows:

**'INHERENT'**

*Human beings are born free and equal in dignity and rights – this means that their rights are inherent, not given, bought, earned or inherited. By being born human, one is imbued with rights. These rights are indications of our inherent dignity and humanity. At the same time they protect our dignity and humanity.*

**'UNIVERSAL'**

*Human rights are generally accepted principles that apply equally to all human beings, wherever they may live. This is a function of what we share in common – that we are all human, our humanity. 'Universality' means that the core content of human rights are the same for all regardless of race, sex, religion, ethnicity, political or other opinion, social or national origin. They are universal because they are the same for everyone everywhere in the world.*

*Rights can also be described as 'universal' because they have been settled by overwhelming international consensus, and are protected and proclaimed internationally, including in the United Nations Charter. Those who sometimes attempt to justify violations of rights use a number of explanations but very seldom deny that these rights exist.*

**'INALIENABLE'**

*Because they are inherent, human rights cannot be waived or taken away – they are inalienable. Human rights cannot be renounced, lost or forfeited. Of course, human rights can be limited – see 'absolute' below.*

**'INDIVISIBLE'**

*Human rights are based on the principle of respect for human dignity. In order to live in dignity, all human beings are entitled to freedom, security and decent standards of living all at the same time – human rights cannot be divided up, or made conditional upon each other – it soon becomes obvious that they are all interconnected, interdependent, and indivisible.*

**'FUNDAMENTAL'**

*Life, dignity and other human values, needs and aspirations depend on recognition and fulfilment of rights. Human rights form the basis of every human being.*

**'APPLY EQUALLY'**

*All people have the same human rights, and it follows that all human beings have the right to equal protection of their rights. This entails equal treatment before the law, and equal access to the law itself. The principle of equality of application of the law entails that police officers may not unjustifiably discriminate against any person for example, treating someone differently only because of that persons' race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

**'ABSOLUTE'**

*Certain core rights create obligations that are absolute and cannot be limited. Under international law they include the right to life (the absolute prohibition on taking life arbitrarily - without any process of law), the right to be free from torture (the absolute prohibition on torture, an international criminal act), the right to be free from slavery (the absolute prohibition*

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on torture), the right to recognition as a person before the law, and the prohibition on retrospective criminal punishment.

However, the human rights system was not created in a vacuum and provides that most human rights protected in international law may be limited if competing social interests are important enough, in particular circumstances, for example, to take into account the legitimate claims and entitlements of other individuals and groups. Most rights can certainly be limited temporarily and for rational purposes, provided the limits are proportional to the justifiable purpose for which the limitation is imposed, and only limited to the extent strictly necessary to reach that other purpose.

International law provides that rights can only validly be limited in accordance with the general, published laws in ways that are reasonable and justifiable in an open and democratic society and only to the extent necessary in order to protect the rights of others. The principles of proportionality, legality, accountability and necessity should guide police officers when limiting the rights of a person. Police officers should also be able to justify their actions and also be able to indicate that they were reasonable in their actions.

#### **'CREATE DUTIES ON OTHERS'**

It is a basic quality of a right that it has a 'co-relative' – a duty corresponding to the right. A right held by person 'X' makes sense only by virtue of the automatic duty it creates on person 'Y' not to disrespect, violate or interfere with that right, or to take some positive action to fulfil that right. With all fundamental human rights it is possible to identify a duty-bearer or bearers corresponding to the right holder. The right to life of any individuals creates a duty on the State (including its officers, such as police) not to deprive any individual of his/her life without cause. These duties are described in constitutions, national legislation – and in international law.

### **1.3. Some examples of human rights**

A good way to describe human rights is to look at some examples of human rights. Human rights are described in the Universal Declaration of Human Rights of 1948 and in the various treaties (also called 'covenants' and 'conventions'), declarations, guidelines and bodies of principles elaborated by the United Nations and by regional organisations. They include a broad range of guarantees, addressing virtually every aspect of human life and human interaction. Among the rights guaranteed to all human beings are:

- the right to life (not to be arbitrarily deprived of life);
- the right to be freed from torture and cruel, inhuman or degrading treatment or punishment;
- the right to be presumed innocent until found guilty in a court of law;
- freedom from arbitrary arrest or detention;
- the right to a fair and public trial;
- the right to recognition as a person before the law, and equal protection of the law;
- freedom from arbitrary interference with privacy, family, home or correspondence;





- freedom from discrimination;
- the right to apply for asylum;
- the right to a nationality;
- freedom of association, expression, assembly and movement;
- freedom of thought, conscience and religion;
- the right to vote – to influence framing the society in which one must live;
- the right to just and safe work conditions;
- the right to adequate food, shelter, clothing and social security;
- the right to access best available healthcare;
- the right to receive an education; and
- the right to participate in cultural life.

#### **OBLIGATIONS OF THE STATE**

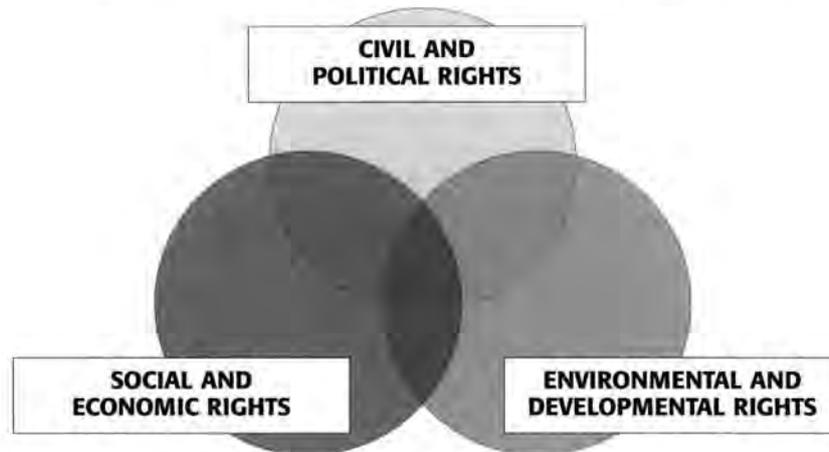
Human rights create an obligation on States (vis-à-vis the rest of the international community, and the individual), to protect, respect, fulfil, promote and ensure rights. Police officers represent 'the State' – their actions in carrying out duties are State acts in the eyes of international law.

For the purposes of the station-level police officer, the nature of the obligation on the State is best understood as mainly 'negative' – the State by and large is respecting rights if it refrains from acting in a way which infringes these. Sometimes a more 'positive' duty is involved – to act to protect life, for example.

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## 1.4. Classification of human rights

Human rights are indivisible and interdependent, although often classified into three distinct categories or 'generations', for conceptual purposes. Policing mainly directly concerns only one of these:



### 1.4.1. Civil and political rights ('first generation')

The first group of rights – the so-called 'blue' rights – are civil and political rights. These rights are sometimes seen as constituting the core of human rights. They create mainly a 'negative' obligation on States not to infringe upon these rights. The State generally respects the right it if does not interfere with it. It may also need to act more positively to ensure the right is not interfered with by others.

'Civil rights' are those that allow one to enjoy the basic freedoms that belonging to a society give, such as freedom to practice one's religion. They also include the sacred rights that have defined 'civil liberties' struggles in many societies – to equality before the law, to a fair trial, to not be arbitrarily detained or tortured, to know the charges made against one, etc. 'Political' rights are the rights that people have that enable them to participate meaningfully and freely, politically, in framing the society in which they live and the way their country is run. Some examples of these rights are the right to vote and the right to form and join political parties.

### 1.4.2. Social and economic rights ('second generation')

The second group of rights or so-called 'red' rights are social and economic rights. These rights – which are less obviously the concern of police officers themselves - deal with survival and development. They govern how people are able to live and work together in dignity and with opportunity, and the right to basic necessities such as food and water. Examples include the right to access a basic education, the right to health care and the right to basic shelter. Social and economic rights place a duty on the State to provide at least a framework for the progressive realisation of these rights, insofar as resources allow. At the very least, people should not be discriminated against in accessing basic services.

The indivisibility of rights makes it obvious that someone's enjoyment of their civil and political rights cannot be made to be dependent or contingent on the fulfilment of their social or economic rights. However, respect for one kind of rights enables better enjoyment of the other kind.

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### 1.4.3. Environmental and developmental rights ('third generation')

The last group of rights, the so-called 'green' rights, are the least evolved in terms of content and acknowledgment by the international community. They include environmental and developmental 'rights'. These two sets of rights are often in conflict with each other: those who wish to preserve the environment might be opposed to further development. These rights have less application to policing situations.

### 1.5. The source of International Standards and the 'International Bill of Rights'

In presenting any introduction to human rights and law enforcement, it may be imperative to anticipate questions about the source of human rights obligations. Addressing this, and describing the international legal framework surrounding all policing, will help to underline the legitimacy and pedigree of international human rights standards, and their evolution over time.

There are many available sources on the long and complex history of thinking and speaking in terms of 'rights'. Any introduction to human rights for police trainees would observe how the basic principles of human rights, and ideas and values that resonate with human rights in their modern expression, can be traced back in concepts of law and justice dating from much earlier times, in a wide variety of cultures and civilisations and religions. Although what we mean by 'human rights' is an old concept, the term itself is fairly new, having come to the fore most sharply in relation to grievances underlying the North American struggle for independence and the French Revolution of 1789, and the Bills of Rights these produced. The modern human rights system and standards can be traced by observing how the expression of fundamental human rights gained considerable momentum during the campaigns to end the slave trade and to abolish slavery, the ever-evolving common law, and international movements for the improvement of labour conditions which accompanied the industrial age. In parallel was the development of minimum standards for the conduct of hostilities in war time, which would lead in time to the *Geneva Conventions*. Finally, the widespread and systematic extermination, abuse and neglect of civilians on a massive scale before and during the Second World War (1939 –1945) prompted formal international reflection on minimum protections of human rights.

All of these developments, particularly the Second World War, gave increasing specificity and concreteness to the content of human rights, as well as increasing the determination of the international community together to prevent human rights violations. These developments laid the basis for the *Universal Declaration of Human Rights*, drafted by an international panel and accepted by the United Nations General Assembly on 10 December 1948. The Charter establishing the United Nations itself also made strong references to the protection by States of the human rights of their populations as a founding value and purpose of the organisation.

The *Universal Declaration of Human Rights* (UDHR) is the most important international document dealing with human rights. Although the UDHR is not a legally binding document, it has considerable moral authority and sets a standard of behaviour or a guideline that countries should try and achieve or adhere to. Some of its core provisions were (like the prohibition on slave trading) or have become (like the absolute prohibition on torture) representative of customary international law, and so are binding on all States even without there being any specific treaty in place. The UDHR has also formed the basis of many

international covenants and conventions. Its provisions and its underlying principles of fairness, justice and equality have been built into many Commonwealth countries' constitutions.

### **The International Bill of Rights**

The 'International Bill of Rights' is the term used as a collective reference to three major human rights instruments namely:

- the Universal Declaration of Human Rights;
- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights.

It is from the first two of these that the rights applicable to policing activities can be derived. Extracts of relevant parts of both are included in this Manual.

In 1966, the General Assembly of the United Nations adopted two covenants to convert the declared ideals in the UDHR into international legal instruments capable of binding States. These covenants, one on civil and political rights and the other on economic, social and cultural rights, are different from the UDHR in that the countries that ratify them are then bound in international law to comply with and implement them, and to ensure the protection of the rights they contain to their population.

- The International Covenant on Civil and Political Rights (ICCPR) of 1966. The ICCPR came fully into force in 1976. It is widely ratified. It deals with the right to life, liberty and security of the person, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the rights of detained and arrested persons. It also protects freedom of religion and expression, assembly and association. It obliges States to implement the rights by adopting legislative and other measures to ensure that these rights are not violated or that remedies exist for violations.
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. The ICESCR deals with socio-economic issues such as the right to education, health care, housing and shelter, water, food and social services.

As of June 2006, only 20 Commonwealth countries had not signed one or both of these covenants'. However, like the UDHR, many of the rights contained in them have taken on the quality of customary international law, because by their practice over time and formal statements, it is evident that States accept the obligations as legally binding even without specific ratification.

In any event, the sheer authority of the covenants and the crystallisation of human rights standards that has resulted from the covenants (including through their interpretation by

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† The following Commonwealth countries have not yet ratified the ICCPR: Antigua and Barbuda, Bahamas, Brunei Darussalam, Dominica, Fiji, Kiribati, Malaysia, Maldives, Pakistan, Papua New Guinea, St Kitts and Nevis, St Lucia, Samoa, Singapore, Solomon Islands, Tonga, Tuvalu, Vanuatu. Nauru has signed but not yet ratified this covenant.





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various international bodies) informs the general framework within which modern policing takes place.

### **1.6. International human rights instruments applicable to police**

In addition to the International Bill of Rights, there exists today a comprehensive framework of international human rights standards that relate to law enforcement and criminal justice systems. This body of standards is built upon some of the most fundamental and universally binding of international obligations and prohibitions. But the overall framework also includes guidelines, principles, codes of conduct and declarations of various authoritative bodies (such as the General Assembly of the United Nations). Again, these guidelines are not necessarily binding, but because of their source they carry what has been called 'morally persuasive universal guidance'.

Some of the more important of these instruments are considered later in this manual and include:

- *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), and its *Optional Protocol* (2002).
- *The United Nations General Assembly's Code of Conduct for Law Enforcement Officials* 1979.
- *United Nations Standard Minimum Rules for the Treatment of Prisoners*.
- *United Nations Basic Principles on the Use of Force and Firearms*.
- *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- *United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power*.
- *The International Convention on the Elimination of All Forms of Racial Discrimination* 1966.
- *The Convention on the Rights of the Child* 1989.
- *The Convention on the Elimination of All Forms of Discrimination against Women* 1979.
- *United Nations Declaration on the Elimination of Violence against Women*.
- *The Convention Relating the Status of Refugees* 1951.
- *The Rome Statute of the International Criminal Court* 1998.

In addition, some Commonwealth countries are party to regional human rights instruments which must also be included as part of the matrix of guidelines, minimum standards and obligations. All of these oblige ratified States to guarantee respect for human rights and fundamental freedoms including the right to life, to equality before the law and in respect of legal protection, prohibition of torture and ill-treatment, the right to a fair trial, and a guarantee of the liberty and safety of the individual:



- All Commonwealth African countries have ratified the *African Charter on Human and Peoples' Rights*, which entered into force on 21 October 1986.
- The Commonwealth includes three European Union countries which are at the same time parties to the *European Convention on Human Rights* and the Strasbourg system which includes the European Court of Human Rights.
- At least four Commonwealth Caribbean countries have also ratified the *American Convention on Human Rights*.

Finally, to the extent that police in Commonwealth countries are ever involved in internal or international armed conflict, their conduct would also be governed and limited by International Humanitarian Law (the Geneva Conventions). Later in the manual, the status of police in this most exceptional situation is considered.

### 1.7. Human rights in Commonwealth countries

Aside from any other international legal commitments and their membership of the United Nations, all Commonwealth States are committed to ensuring respect for and promotion of the association's fundamental values, as set down by Heads of Government of Commonwealth countries in Singapore in 1971 and in the 1991 Harare Declaration and formally reaffirmed on many occasions since. It is partly these common values that tie Commonwealth countries together.

The colonial and post-colonial experience of Commonwealth countries has added immeasurably to the history of thinking and talking in terms of human rights, in particular since the 1948 *Universal Declaration*. The body of international standards on human rights and the basic duties of the State have drawn a great deal from the legacy of the struggles for independence from colonial rule, and the more recent campaign against **apartheid**.

It is not only international frameworks that inform the legal environment in which policing for human rights takes place. One particular legacy of the independence processes of many Commonwealth countries is the inclusion of human rights protections in some national constitutions and legislation. In addition, those countries which have inherited a common law legal system have certain fairly ancient human rights elements built into their legal heritage, such as rules relating to fair trials and the writ of **habeas corpus**.

### 1.8. Why are human rights important for police officers?

- A police officer is a 'Law Enforcement Official', and according to Article 1 of the United Nations Code of Conduct for Law Enforcement Officials:

*"Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession."*

Police officers should understand 'law' to mean not only local or domestic legislation, but also internationally accepted standards and practices. Police officers are part of an inherently honourable profession the world over, occupying a very unique and



significant position. They work with people who may have proved to have broken the law and to have abused other people's human rights. They work with victims and with families. When the police work generally, or when they deal in particular cases with members of the public police have a very important responsibility to respect, protect and promote the basic human rights of every person.

The chapter on 'Human Rights Violations' more fully explores how trainers can impart vividly to trainees the practical and other consequences of policing that is consistent, and not consistent, with human rights. Since this chapter has looked at the international framework, it needs to be said that within this framework, police officers are by virtue of their duties best placed not only to respect and protect human rights, but also to abuse the human rights of people at moments when they are particularly exposed and vulnerable. This is, again, why international standards require States to ensure that police officers should not only know the human rights of, for instance, suspects or people in detention, but should also know how to apply these rights, and how to protect and respect such rights against abuse by others, including other police officers. It follows that police officers not only to know and understand the legislation of their respective countries, but also international standards and practices.

- Police officers also have to respect and protect the rights of victims and vulnerable groups in society. They are there to protect and serve the community they work in.
- Another aspect of human rights that is equally important for police agencies is the fact that police officers are also human beings, and therefore also have basic human rights that should be respected and protected. An example would be the right of police officers to have safe working conditions, or not to be discriminated against on the basis of race, language group, ethnicity or gender.
- As the Preamble to the Universal Declaration of Human Rights notes, respect for human rights is closely linked to peace and stability, which in turn are preconditions for national development and prosperity. Violation of civil and political rights, wrong in itself, has also always tended to lead to violence and instability. And non-fulfilment of basic social and economic rights prevents the growth of an equal, developing society in which peace is more likely to prosper. The principles on which the Commonwealth is founded and operates acknowledge these truths. The question of human rights and policing should be always understood in this context.

The commitment to human rights in Commonwealth countries stems from an acknowledgment of the importance of protection of human rights, not only in themselves, but because this enables progress and development more generally. The State is the institution in a society most capable of ensuring, securing and protecting human rights of the population.

- It is thus often useful to invite police trainees to see their duties as having a positive significance within the wider development agenda of the country. It may also be complete to note that individual officers' conduct has a possible negative wider consequence: the conduct of the State toward its own citizens is something about which the regional and international community may have legitimate concern and interest.

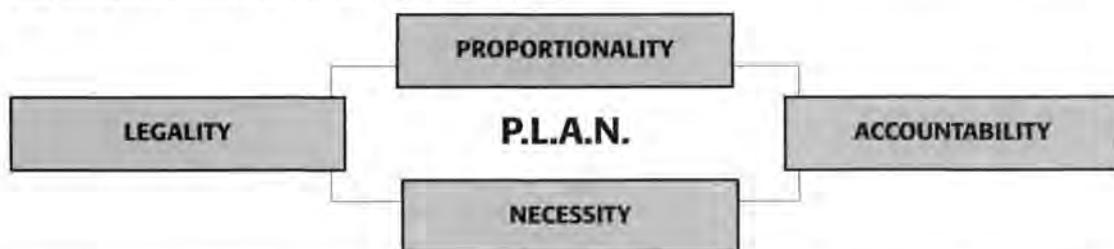


**1.9. How may police officers limit the human rights of suspected criminals?**

Police officers can be seen as the first line of protection of human rights. These rights cannot be taken away arbitrarily and without legal justification. As stated above, police officers may be in a position to lawfully limit rights of people who are (for example) suspected of committing a crime, through arrest, detention, investigation of crime, searches and other police activities. This can never be done without legal justification. As well as being, of course, a vital issue of operational and technical skills training per se, from a human rights perspective it is important for police officers to know how far they can go in limiting rights of people when dealing with them. Indeed, the human rights aspect of arrest (etc) is integral to the operational aspects, and defines their boundaries.

When rights are limited there are important issues that have to be taken into account. Any limitations on rights should be only to the extent that is **necessary**, and any actions to limit rights should be **legal** (justifiable by reference to a valid law properly applying to the situation) and the use of any force or the extent of limitation should be **proportional** to what is lawfully being achieved. Police officers' behaviour should also be **ethical** – this is the topic of the next chapter – and it is also important for police officers to realise that they may be held **accountable** for their actions. These matters are considered again in the chapters which follow.

The training acronym 'P.L.A.N.' makes it easy to remember the aspects that have to be taken into consideration when limiting human rights:





### 1.11. Summary

Human rights considerations are increasingly becoming more important for police officers all over the world. Police are the protectors of human rights, ensuring them for the population. On the other hand, the police occupy a position in society where abuse of human rights can take place readily, if there are no systems of accountability. These systems start with good training to build a culture of respect for human rights. All police conduct takes place within the framework of international and national standards. It is increasingly expected that police officers know and apply these standards and practices in their normal duties.

#### SOME CORE CONCEPTS

- Aside from internal rules binding the State (eg constitutional rules), the source of human rights obligations of States is the international legal consensus on minimum universal rights of individuals.
- International human rights law binds the actions of all States, including law enforcement officers as the lawful agents of the State.
- The violation within national borders of internationally-protected human rights is a legitimate subject of international concern and scrutiny.
- The State is obliged to take legislative and other measures to protect, promote, fulfil and respect certain basic rights, to ensure its officials know and apply these rights, and to provide remedies for violation of rights.

### 1.12. Questions for self-evaluation

- *What are human rights and what is their source? Discuss the historical background to human rights.*
- *Name and describe the international instruments that are known as the International Bill of Rights.*
- *Provide examples of international and regional human rights codes and instruments applicable or relevant to the work of police officers.*
- *Discuss the importance of international standards for police in Commonwealth countries.*
- *Explain what is meant by limitation of human rights. When and how may police officers limit the human rights of persons? Can you give examples, reasons, and the manner in which such limits must take place?*

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## CHAPTER 2

# Human rights and police ethics

### Learning objectives for Chapter 2

After completing this chapter you should be able to:

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- *Discuss the UN Code of Conduct for Law Enforcement Officials as the basis for ethical policing that is consistent with human rights*
- *Explain what is meant by ethical and professional police behaviour*
- *Explain the link between police ethics and human rights-based policing*
- *Provide examples of unethical police behaviour*
- *Describe what is meant by the term 'police corruption'*
- *Provide examples of mechanisms that can be put in place in a police agency to combat corruption and nepotism*



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## Chapter 2

### Human rights and police ethics

#### Contents

- 2.1. Introduction**
- 2.2. The UN Code of Conduct for Law Enforcement Officials**
- 2.3. Professionalism and ethical behaviour**
- 2.4. Professional ethical dilemmas**
  - 2.4.1. Ethics and the use of force and firearms
  - 2.4.2. Police brutality and discrimination
  - 2.4.3. Ethics and actions against corruption
  - 2.4.4. Ethics and torture
- 2.5. Summary**
- 2.6. Questions for self-evaluation**



## 2.1. Introduction

This manual deals with a number of aspects of police duties, but it is important to first consider the special nature of responsibility attached to police work. This special professional duty is underpinned by human rights considerations. But it is also obvious that human rights standards in the policing sphere are best advanced where there is a close parallel attention to police professional ethics. It is vital for trainers sharing knowledge on ordinary aspects of policing to include not only the human rights component of any topic, but also how police ethics are related. Since a great deal of police ethics matters are issues for proper review and supervision processes, the chapter in this manual on command and management also considers police professional responsibilities.

Police officers are at all times expected to fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. How can police officers enforce the law if they do not themselves respect and adhere to the law?

Codes of conduct and codes of ethics are the basis for consistency of ethical police behaviour. These codes are intended to provide guidelines on the desired behaviour, responses and attitudes when police officials fulfil their duties. Since it is not possible to create a rule for everything and to provide supervision in every situation, it is important to note that principles serve to govern conduct generally. What is just as important as having such codes is ensuring a practical understanding of them by police officers – this is the trainer's function.

## 2.2. The UN Code of Conduct for Law Enforcement Officials

On 17 December 1979, the United Nations General Assembly adopted Resolution 34/169 which approved a Code of Conduct, developed by law enforcement experts from all over the world, to serve as a guideline for all police agencies, within the framework of national legislation or practice. It contains eight articles with an explanatory commentary after each article (the full Code is included at the end of this manual). The Code can serve as a basis to develop new or existing codes of conduct and codes of ethics. In addition to its authoritative source in the UN, this Code is not something alien to Commonwealth police services, since it by and large reflects the standards and norms of conduct to be found in the common law system, common laws and by-laws, rules and regulations relating to the police. However, there is always more that can be done to improve awareness about the Code's provisions, and how they relate to practical issues and questions of human rights.

The term 'law enforcement officials' includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. It therefore includes police and prisons officers.

### Article 1

***Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.***



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**Article 2**

*In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.*

**Article 3**

*Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.*

**Article 4**

*Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.*

**Article 5**

*No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.*

**Article 6**

*Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.*

**Article 7**

*Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.*

**Article 8**

*Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.*

*Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.*

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### 2.3. Professionalism and ethical behaviour

A code of conduct provides the basis for professional and ethical behaviour of all law enforcement officials. All actions of police officers must be compatible with the following principles:

- Respect for, and obedience to, the law.
- Respect for the dignity of the human person.
- Respect for, and protection of, human rights.

What criteria might be used for the measurement of acceptable and professional police behaviour? The following principles, norms and values can serve as measurements for ethical and professional police behaviour: respect for liberty and equality of every person; respect for property; respect for life; service; and truth.

#### 'LIBERTY AND EQUALITY OF EVERY PERSON'

*Every person should be treated as free and equal before the law. Members of the public should be protected from unlawful or arbitrary arrest and detention. Police should not make distinction in treatment between rich or poor, old or young, different religions, different races, male and female, etc.*

#### 'LIFE'

*Police should respect the life of every person. The principles of minimum force during the use of force and firearms should always be taken into account.*

#### 'PROPERTY'

*Police should respect the property of every person. They should always try to cause the least damage possible when doing their job.*

#### 'SERVICE'

*The police should provide a professional service to the community. Police agencies should constantly strive to improve their service delivery to the community and should implement measures to evaluate their service.*

#### 'TRUTH'

*Police should always seek the truth. This is guides the investigation of crime and the methods that are used.*

Internationally accepted **norms** and **values** for police ethics are –

- honesty;
- integrity;
- accountability;
- fairness;
- civic duty;
- pursuit of excellence;



- loyalty; and
- comradeship with other officers.

In any democracy, although police agencies will be held responsible for the actions of police officers, police officers themselves are also individually responsible for their actions. The responsibility of police officers is also addressed in a number of international instruments. Some examples of individual responsibility of police officers, or commanders, can be found in the following international instruments:

- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

As Chapter 6 of this manual makes clear, there is an absolute prohibition on torture. No police officer (public official or person acting in an official capacity) may commit any act of torture even if instructed by a superior officer. In Article 2 of the Convention it is stated clearly that, "An order from a superior officer or a public authority may not be invoked as a justification of torture." This reflects a principle known in international law generally, applied since the 1945 Nuremberg and Tokyo war crimes trials. Therefore, an officer will be held individually responsible for their actions if they commit an act of torture. And the principle of "command responsibility" can lead to commanders being accountable for the acts of their officers in certain cases.

- **UN Code of Conduct for Law Enforcement Officials**

In Article 5 of the Code of Conduct the prohibition of torture and the personal responsibility of police officers is again repeated. It states that no law enforcement official may invoke superior orders as a justification of torture.

- **UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

In the Basic Principles on the Use of Force and Firearms there are three principles that refer to individual responsibility of police officers.

*Principle 24* requires governments and law enforcement agencies to ensure that superior officers are held responsible if they know, or should have known, that police officers under their command are resorting, or have resorted, to the unlawful use of force and firearms, and did not take all measures in their power to prevent, suppress or report such use.

*Principle 25* requires governments and law enforcement agencies to ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

*Principle 26* states that obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.



- **UN Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions**

These include two principles, each containing a number of provisions, referring to individual responsibility, as follows:

*Principle 3* requires governments to prohibit orders from superior officers or public authorities authorising or inciting other persons to carry out extralegal, arbitrary or summary executions; requires that all persons shall have the right and the duty to defy such orders; and stipulates that police training shall emphasise these provisions.

*Principle 19* states that, without prejudice to Principle 3, an order from a superior officer or public authority may not be invoked as justification for such executions; and allows superior officers or other public officials to be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts.

It is important for every police officer to realise that professionalism and ethical behaviour is linked with the conduct, aims, or qualities that characterise all law enforcement officials. Unethical behaviour will not be tolerated and individuals can be held accountable for their illegal actions.

## **2.4. Professional ethical dilemmas**

Professional ethical dilemmas are those ethical problems in policing which require the police officer to make the right decisions. These situations may bring about conflict and struggle within the police officer's mind. It feels as if he/she is trapped in a whirlpool and is drawn in slowly. It may also make the officer feel as if he/she is caught in a maze and does not know the way out. Group pressure, a lack of objectivity and the realisation that someone is going to be adversely affected by his/her decision make it so much more difficult to make a sober decision.

Ethical dilemmas are part of policing. The freedom that police officers have to make decisions also creates the opportunity for problems similar to the ones described above to arise.

Sometimes the police officer walks unsuspectingly into an ethical dilemma. The reality is that an officer will be faced by ethical dilemmas in the course of his or her career in the police and be forced to make decisions. The following examples of ethical dilemmas can serve to make police officers understand ethical decision-making and may constitute human rights violations.

### **2.4.1. Ethics and the use of force and firearms**

The use of force by law enforcement personnel is a matter of critical concern both to the public and the law enforcement officials. Police officers are involved on a daily basis in numerous and varied human encounters, and when warranted to do so, may use force in carrying out their duties. The use of lethal force by the police should only apply to protect a human life, the life of the police officer or another person against attack by a suspect.

Police officers must be given an understanding of, and true appreciation for, the limitations on their authority – particularly with respect to overcoming resistance from those with whom they come in official contact. The respect and the value of human life and dignity must be stressed from initial training onwards. It is unfair to send police officers into service without not only a full operational training in the use of force and firearms, but also an understanding of the legal,



ethical and human rights aspects to the use of official force. One can hardly expect police officers to meet with human rights standards without a deliberate and systematic training and awareness programme. This manual is intended to equip trainers to build such awareness into ordinary training (see chapter 5).

#### 2.4.2. Police brutality and discrimination

Police – who wield lawful authority to act – are in the position to be able to abuse their authority. "Police brutality" generally means unnecessary, excessive and unreasonable physical and mental force, which occurs especially during arrests, detention and interrogation. Police brutality is, however, not limited to arrests, detention and interrogation. It includes all forms of physical and mental force where police officers are involved. Aside from physical force, incidents which may occur in general during policing include where a police officer displays an attitude of rudeness, arrogance, hostility and bossiness; or searches a person or their property with impropriety.

A form of police 'brutality' which occurs frequently in communities with different cultural diversities is police discrimination. A police officer discriminates if he/she decides to apply the law on the grounds of race, colour, religious conviction or any other quality other than individual merit.

Both brutality and discrimination may also occur **within the police** itself where bullying and harassment take place, or where individual members are disadvantaged or mistreated only because of their race, ethnicity, religion, language group or gender.

#### 2.4.3. Ethics and actions against corruption

Police corruption can cause an enormous amount of damage to the reputation of any police agency. The Code of Conduct stipulates that law enforcement officials shall not commit any act of corruption, and that they should rigorously oppose and combat all such acts. Unfortunately, there are police officers all over the world who will find some excuse to commit and justify acts of corruption. One of the most popular excuses is that police are underpaid.

Police corruption occurs when a police officer uses and abuses his or her position of trust and authority to his/her personal advantage. Police corruption may occur in a passive and an active form.

- Passive corruption occurs if a police officer is approached with a favour or a request. For instance, someone may offer money, gifts or liquor in exchange for a favour from the police officer, for example not to report a crime. In passive corruption, the police officer may receive an advantage without having specifically sought it. A police officer is 'bought' in such a case.
- Active corruption occurs if a police officer approaches a person with the purpose of selling a favour or a gift. This is done by intimidating a person, threatening or blackmailing him/her. In active corruption, the police officer is the hunter who wants to force a favour onto someone. In this case the police officer wants to 'sell' his/her position of authority.

Both active and passive corruption are unethical. The community expects police officers to apply the law in an unbiased manner. When a police officer abuses his/her given authority for

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personal gain, he/she places himself/herself in a position in relation to the community such that he/she cannot serve it without prejudice.

Examples of police corruption include if a police officer -

- stops a private taxi at a roadblock or elsewhere and then, instead of charging the driver for a traffic violation, accepts money and lets the person go free;
- arrests a person for a traffic violation or a minor offence and then releases him/her in return for a sum of money;
- receives money or gifts in exchange for privileged treatment;
- ignores illegal gambling rooms or unlicensed bars in exchange for money or liquor;
- blackmails prostitutes in exchange for money or sex;
- sells drugs that have been confiscated; or
- gives false evidence for personal gain.

There are some examples of procedures and regulations that should be implemented to combat corruption:

- In many countries, police officers are not entitled to engage in any industrial, commercial or professional activities which were related to, or might be influenced by, their functions or duties.
- There are countries where the law enforcement officials are not allowed to accept any gift from third parties. In some countries even the act of offering a gift is regarded as bribery or attempted bribery.
- In some countries police officers have the duty to report any gift from third parties if the value of the gift exceeds a certain amount of money.
- In some countries, anti-corruption laws have been implemented that focus on government officials (including police officers).
- Special anti-corruption units or investigation offices have been implemented in some countries.
- Independent investigating procedures exist in some countries to examine allegations of corruption against law enforcement officials.
- Internal disciplinary procedures are normally followed to deal with corruption, with sanctions ranging from fines to reduction of rank, reduction of remuneration, dismissal, suspension or imprisonment.

It is therefore important for police agencies to implement procedures to combat and oppose corruption. Human rights-based policing cannot fully succeed in a climate of corrupt and unethical behaviour by police officers.

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#### 2.4.4. Ethics and torture

Torture is another 'aspect' of policing that creates an ethical dilemma for police officers. Torture occurs where police officers sometimes feel that they have the right to exert extra pressure or use unlawful methods to extract information from suspects. There is an absolute prohibition on torture. Besides the fact that torture is inhumane and that it violates the basic human rights of a suspect, a reason for the prohibition of torture is the fact that police officers can never justify committing one crime to solve another.

Torture is discussed in more detail in Chapter 7.

#### 2.5. Summary

Police officers have a very important responsibility to uphold and respect the law and to act in an exemplary, professional way. As law enforcement officials, their behaviour should be of a high moral and ethical standard. The United Nations Code of *Conduct for Law Enforcement Officials* provides guidelines for good ethical police behaviour. Police agencies should provide guidelines and training to their members to ensure that their behaviour is in accordance with the ethical standards of their profession.

#### 2.6. Questions for self-evaluation

- *Why is the UN Code of Conduct important for police officers?*
  - *What would you describe as professional and ethical police behaviour?*
  - *Provide five examples of unethical police behaviour.*
  - *Describe what corruption means within the police?*
  - *What mechanisms are in place in your police agency to combat corruption and nepotism?*
  - *What do you do if your superior asks you to do something against an Article included in the Code of Conduct?*
  - *What do you do when you see a colleague violating one of the principles included in the Code of Conduct?*
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## CHAPTER 3

# Arrest

### **Learning objectives for Chapter 3**

After completing this chapter you should be able to:

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- *Provide a basic definition of arrest*
  - *Describe the purpose of arrest*
  - *Discuss the manner in which arrest is properly to be administered*
  - *Describe when arrest is allowed*
  - *Discuss the rights of suspects upon arrest*
  - *Provide examples of the responsibilities of police officers upon arrest*
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## Chapter 3 Arrest

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- 3.1. Introduction**
- 3.2. Definitions**
- 3.3. Purpose of arrest**
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### 3.1. Introduction

Arrest is – at least in the eyes of the public – the single defining ‘police action’. The ability to lawfully arrest is provided for in law because it is critical to the justice process. However, because of the drastic consequences for the liberty of the individual, arrest is also an area where there is scope for infringement of basic rights. These usually relate not to the fact of arrest itself, but to the manner in which the arrest is carried out: someone subject to lawful reasons for arrest has not thereby lost his right to be treated humanely, with minimal force, and with full information about his situation.

### 3.2. Definitions

Before we continue with the topic of arrest, it is important to provide basic definitions of arrest and detention (see chapter 4) from an international perspective. The following definitions have been drawn from the United Nations-devised *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. Although they may differ from country to country, these definitions may enable understanding of the basic rights during the legal processes that are followed in the course of law enforcement.

#### ‘ARREST’

*‘Arrest’ means the act of apprehending a person for the alleged commission of an offence or by the action of a lawful authority. Arrest is a lawful method to secure the attendance of a suspected criminal at his or her trial.*

#### ‘DETENTION’

*‘Detained person’ means any person deprived of personal liberty except as a result of conviction for an offence. ‘Detention’ means the condition of detained persons as defined.*

#### ‘IMPRISONMENT’

*‘Imprisoned person’ means any person deprived of personal liberty as a result of conviction for an offence. ‘Imprisonment’ means the condition of imprisoned persons as defined.*

### 3.3. Purpose of arrest

*"No one shall be deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law." (ICCPR, Article 9.1)*

This provision makes it clear that the reasons for an arrest, as well as the procedures that should be followed during an arrest, must be found in the laws of the State.

In law enforcement, the usual purposes of arrest are to:

- prevent a person from committing, or continuing to commit, an unlawful act;
- enable an investigation to be carried out in relation to alleged unlawful act committed by the person arrested; or
- present a person before a court for consideration of any charges against him or her.

It is very important for law enforcement officials to be fully aware of how the term ‘arrest’ is defined in their domestic legislation, and of the powers of arrest accorded them under that legislation. This principle of legality is violated if somebody is either arrested or detained on



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grounds which are not clearly established in, or which are contrary to, domestic law. Arbitrary arrest is, therefore, illegal.

An arrested person is always presumed to be innocent until proven guilty in a recognised court of law. For this reason, every arrested person should be treated humanely and in accordance with the law. Arrest is not a punishment or a method to temporarily remove unwanted persons in society in order to clean up the area. Instead, an arrested person should be brought before a judicial authority for the purpose of having the legality of his arrest or detention reviewed without delay, and shall be released if the detention is found to be unlawful.

### **3.4. Types of arrest**

In general, arrest – like search and seizure (see Chapter 7) – can be effected with a warrant or without a warrant.

#### ● **Arrest with a warrant**

A warrant is that formal legal document which authorises someone to take arresting action. In this case, any individual magistrate, judge, judicial officer or, in certain instances, a senior police officer (depending on domestic legislation) can issue warrants to a police officer to carry out the arrest of a named individual.

#### ● **Arrest without a warrant**

Arrest without a warrant normally takes place when a person commits a crime – or attempts to commit a crime – in the presence of a police officer. There are also some specific exceptions depending on domestic legislation.

In terms of using force to effect arrest, it is important to keep the principles of **legality, necessity and proportionality** in account when arresting a suspect without a warrant.

### **3.5. When is arrest allowed?**

Whenever a person is arrested, it must be for the alleged commission of an offence. In law enforcement practice, not every alleged commission of an offence automatically leads, or should lead, to the arrest of the person(s) responsible. There are a number of factors which influence the decision whether to effect an arrest or not. The gravity and consequences of the offence committed, combined with the personality and behaviour, at the time of apprehension, of the suspect(s), will be basic considerations. Inevitably, the quality and experience (that is, competence) of law enforcement officials involved will also have a bearing on the outcome of a particular situation in which the discretion whether or not to arrest is exercised.

Aside from the prohibition on arbitrary arrest, international human rights law does not deal as much with when arrest is allowed, so much as how the arrest process should be conducted if it is decided that it is lawful.

### **3.6. What are the rights of persons upon arrest?**

Every person arrested has certain rights immediately upon arrest and also after arrest. This places an obligation on police officers to respect and protect the basic rights of people who are arrested. These rights are clearly spelled out in the international legal instruments applicable to police, the details of which are included at the end of this manual.

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## **Rights immediately upon arrest**

- **Right to liberty/freedom and security of a person, and to freedom of movement**

A person may only be arrested on such grounds and in accordance with such procedure as are established by law. This is the principle of legality. The principle is violated if somebody is either arrested or detained on grounds which are not clearly established in, or which are contrary to, domestic law. A person may not be arrested or detained arbitrarily (without legal grounds).

- **Right to be treated with dignity and respect**

The arrested person has the right to be treated with dignity and respect. Police officers should not, for example, swear or use abusive language towards the arrested person, because this infringes on the person's dignity.

- **Right to be informed of the reasons for arrest**

Every person that is arrested has the right to be informed, at the time of the arrest, of the reasons for his or her arrest.

- **Right to remain silent (this is linked to the right against self-incrimination)**

An arrested person should have the right to remain silent. No one shall be compelled to confess or to testify against himself/herself. Every person has the right not to incriminate himself or herself. This right is affirmed by the fact that police officers may state that a person has the right to remain silent and that everything that they might say may be taken down and used afterwards as evidence in a court of law. This, however, does not mean that the suspect should not provide for example basic details like name, address and reasons for being at a specific place.

- **Right to be informed of the charges against oneself**

An arrested person also has the right to be promptly informed of any charges against him or her. There is no clear definition as to what is meant by 'promptly', and this period may differ according to domestic legislation.

- **The right to be informed of one's rights**

Although suspects have basic rights upon arrest, they also have the right to be informed about such rights by the police officer who arrested him or her. Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his or her arrest, detention or imprisonment, respectively with information on and an explanation of his/her rights and how to avail himself or herself of such rights.

- **The right to be presumed innocent**

Every arrested person has the right to be presumed innocent until proven guilty according to the law in a public trial at which he/she has had all the guarantees necessary for his or her defence. It is for the court to decide if a suspect is guilty. This can only be done after all the evidence has been heard and the person has been proven to be guilty beyond reasonable doubt.

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## Rights immediately following arrest

See also Chapter 4 on 'Detention'.

- **Right to be brought to a place of custody**

Persons should only be detained in legally accepted places of custody.

- **Right to apply for bail**

Persons have the right to apply for bail when they have been charged for committing an offence that is (under local laws) bailable.

- **Right to be brought promptly before a judge or other officer authorised by law**

Anyone who is arrested shall be brought promptly before a judicial authority. This is a right to be brought to a place of custody and to be brought promptly before a judge or other officer authorised by law to exercise judicial power, who will decide on the lawfulness and the necessity of the arrest (ICCPR, Article 9.3; Body of Principles, Principles 11 and 37). The time period for a person to be brought before a court may differ from country to country. This period is more commonly referred to and known as police custody. The period that follows it is what is known as pre-trial detention.

- **Right not be tortured or treated in a cruel, inhuman or degrading way**

The prohibition against torture applies to persons under any form of arrest, detention or imprisonment. Police officers are explicitly prohibited from taking advantage of the situation of a detained person to obtain by application or threat of force or harm a confession, to incriminate himself or herself or to testify against others.

- **Right to a fair trial within a reasonable time**

A person detained on a criminal charge shall be entitled to fair trial within a reasonable time or to release pending trial.

- **Right to notify family members and other appropriate persons about the detention**

Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his or her family or other appropriate persons of his/her choice of their arrest, detention or imprisonment or of the transfer and of the place where he/she is kept in custody.

- **Right to legal assistance and to communicate with legal representative**

An arrested person has a right to the assistance of a legal counsel and must be provided with reasonable facilities to exercise this right. Legal counsel must be provided by a judicial or other authority if the arrested person has no legal counsel of his or her own choice, and free of charge if the arrested person does not have sufficient means to pay.

The following are the rights that support the right to legal representation. Arrested persons and their legal representatives have the following rights:

- to receive prompt and full communication of any order of detention, together with the reasons therefor;

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- to communicate with each other and have adequate time and facilities for consultation in full confidence and without delay or censorship;
  - to communicate with each other within the sight but not within the hearing of a law enforcement official: such communications to be inadmissible as evidence against the detained person unless connected with a continuing or contemplated crime;
  - to have access to the recorded information on the duration of any interrogation, the intervals between interrogations, and the identity of the officials who conducted the interrogations and other persons present;
  - to have effective opportunity to be heard by a judicial or other authority;
  - to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of the detention in order to obtain the release of the detainee, if it is unlawful; and
  - to make a request or complaint regarding the treatment of the detainee, particularly in the case of torture or other cruel, inhuman or degrading treatment, to the administrative or higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.



### **3.7. What are the duties of police officers upon arrest?**

With every right there is an obligation on police officers to respect and fulfil these rights. Therefore, police officers have the following duties during and after arrest:

- **To inform the suspect of his/her rights**

This means that the police officers should inform the arrested person of his/her rights and how to avail himself or herself of such rights. It is especially important for police officers to inform arrested persons of the following rights:

- the right to remain silent and not to admit guilt, and that silence will not be interpreted as an admission;
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- the right to contact a relative or close friend and be visited by such person;
  - the right to contact a legal representative and communicate with him or her confidentially;
  - the right that a legal representative will be appointed if the suspect is unable to pay for a lawyer;
  - the right to be brought before a court within a reasonable time (as stipulated in the law of each country);
  - the right to be questioned in the presence of a legal representative, unless the right is waived; and, if the suspect is a foreign national,
  - the right to contact diplomatic or consular officials of his or her country.

● **To keep a record of relevant data**

Police officers must keep record of the following data:

- the reasons for the arrest;
- the time of the arrest;
- the time transferred to a place of custody;
- the time of appearance before a judicial or other authority;
- the identity of the law enforcement officials concerned;
- precise information concerning the place of custody;
- the details of questioning or interrogation; and
- the property of the detained person kept by the police.

To this should be added:

- the date and time that the individual was brought into custody;
- their medical condition;
- each visit by detention officers, lawyers, doctors and family or friends;
- exercise periods; and
- time and date of transfer to detention facility or release.

● **The arrest record shall be communicated to the detainee, or to his legal counsel.**

● **Where necessary, an interpreter shall be provided during interview.**

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### 3.8. The international guidelines applicable to arrest

From international standards and practice, it is possible to identify the following list of guidelines.

#### To all police officers:

- Review regularly, for a clear understanding, the extent of their powers of arrest, and of the procedures to adopt upon and following arrest.
- Participate in training to develop and maintain the necessary inter-personal skills, and especially skills of communication, and the necessary technical and tactical skills to enable the officer to effect arrests expertly, discretely and with due respect for human dignity.
- Where resistance is not evident, attempt calm, polite, disarming language when effecting an arrest, resorting to strong, authoritative tones only when necessary.
- Develop and maintain skills in use of handcuffs and other means of restraint.
- Development of self-confidence, including through self-defence skills.
- Seek an arrest order/warrant, whenever possible.
- Carry a small card in the uniform, setting forth the rights of an arrestee, and read those rights, verbatim, to the arrestee once he or she has been secured.
- Study conflict resolution techniques, through in-service training, or in available community educational programmes.
- Keep careful arrest records, with detail as the first rule.

#### To command and supervisory officials:

- Issue and enforce clear standing orders on arrest procedures.
- Provide continuous training to all officers on procedures for arrest, the rights of the arrested, and techniques for effecting arrest safely and humanely.
- Provide training in inter-personal skills, conflict resolution techniques, self-defence, and the use of restraint mechanisms.
- Develop standard forms for the recording of arrest information, based upon this chapter, and the laws and procedures for arrest in your jurisdiction.
- When arrests can be planned in advance, ensure that a range of options is available, and that planning, preparation, briefing and tactics adopted are appropriate to the circumstances and conditions under which the arrest is to be effected.
- Debrief the involved officers after every arrest, and carefully check the arrest record to be sure it is complete.
- Establish procedures to ensure the unhindered access of legal counsel to arrested persons.





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### 3.9. Summary

Arrest is a serious infringement on the liberty of any person. If conducted in a way that exceeds the power granted by law, or is accompanied by excess force, or failure to advise the arrestee of various rights and afford these to the arrestee, the police officer will be in breach of human rights standards (not to mention his or her own code of conduct and the criminal code).

Issues of public image, professionalism, law and human rights all point to using the minimum of powers available when effecting an arrest, and to police officers being thoroughly acquainted with the standards and rules in question, and the reasons why these are maintained.

### 3.10. Questions for self-evaluation

- *Provide basic definitions of arrest, detention and imprisonment.*
  - *What is the purpose of arrest?*
  - *How can a person be arrested consistently with human rights standards?*
  - *What are the rights of persons upon arrest?*
  - *Provide five examples of the duties of police officers towards the arrested person.*
  - *What are some of the practical guidelines for arrest procedures that comply with international standards of human rights?*
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## CHAPTER 4

# Detention

## Principles for Police and Prisons Officers

*Note: to increase the usefulness of this manual, this chapter includes guidance on human rights and detention for both police and prisons officers, with differentiation between their responsibilities where necessary.*

### Learning objectives for Chapter 4

After completing this chapter you should be able to:

- *Explain the rights of a detained person (persons in police custody and persons in prison awaiting trial)*
- *Explain the rights of detained persons (convicted prisoners)*
- *Explain what is meant by presumption of innocence in the context of temporary police detention before trial*
- *Describe the international legal responsibilities of police and prisons officers towards persons under their control and care*
- *Name some practical measures to give effect to these standards*



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## Chapter 4

### Detention (police and prisons)

#### Contents

- 4.1. Introduction**
- 4.2. Definitions**
- 4.3. Basic rights of persons in police detention**
- 4.4. Basic rights of persons in prison custody**
- 4.5. Practical steps for police and prisons officers on implementing international human rights standards**
- 4.6. Summary**
- 4.7. Questions for self-evaluation**



#### 4.1. Introduction

It is a fundamental principle that a person should only be detained and so deprived of their liberty by the proper exercise of a lawful authority, such as soon after an arrest, or following a criminal conviction in a court.

In addition to human rights issues dealing with when persons may validly be detained, there exist international human rights standards concerning how and in what conditions of treatment someone can be detained. The power imbalance in detention can lead to abuse of human rights: police and prisons officers owe a duty of great care to detained persons, who are vulnerable to mistreatment, especially women and children. In relation to police, persons detained in police custody are to be presumed innocent and treated accordingly: they have not yet been convicted of any crime: this certainly affects their treatment. As for prisons officers, aside from ensuring discipline prisons officers have no authority to add further suffering to the official punishment that a prison sentence represents.

##### **Source of Standards on Police and Prison Detention**

In addition to the Universal Declaration and the International Covenant on Civil and Political Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners 1977 and is a most comprehensive document with extensive guidelines.

In 1988 the UN General Assembly adopted the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment and in 1990 the Basic Principles for the Treatment of Prisoners.

The text of the 1998 and 1990 guidelines are contained in this manual.

#### 4.2. Definitions

In the various human rights instruments relating to detention, a distinction is made between those persons who are awaiting trial and those who have been convicted for committing an offence. The former group is referred to as **detainees**, whereas the latter group is referred to as **prisoners**.

Detainees who are in the custody of police officers are in most cases people who are suspected of committing a crime, whereas prisoners and those undergoing trial are usually in the custody of prison officials. The 1998 *Body of Principles* distinguishes 'detainees' from 'prisoners' (who are convicted persons). The 1977 *Standard Minimum Rules*, although applicable to both categories mentioned above, uses only the term 'prisoners' and subsequently divides them into 'convicted' and 'unconvicted' prisoners.

- On the one hand, the distinction between 'convicted' persons and those who have not been convicted of any crime may be important because the rights to which individuals in each of those groups are entitled are not exactly the same: persons yet to be convicted are suspects only and normally entitled to bail unless special reasons require their detention. But there is no case for mistreating a person just because the person is serving a sentence of imprisonment. It is for the courts, not individual officers, to decide the level and extent of someone's punishment.



- On the other hand, ALL persons in detention of whatever form are entitled to at least minimum protections that reflect the dignity of each human being.

That is why it is possible to say that there are 'standard minimum rules' and to speak of 'detention' generally. It also explains why it makes sense to speak of both prisons and police officers responsibilities in the same chapter.

#### **Lawful detention assumes lawful arrest**

It goes without saying (see chapter 3 on arrest) that the standards discussed in this chapter assume that the person has been lawfully detained in the first place.

Quite apart from the manner of treatment of someone in detention, the primary human rights violation in this context is the arbitrary or unlawful deprivation of liberty, as article 9(1) of the ICCPR states:

*"Everyone has the right to liberty and security of the person. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law."*

### **4.3. Basic rights of persons in police detention**

Laws provide authorisation for police to detain persons temporarily pending charge and pending a hearing where it is determined whether or not bail will be granted. Every detained person has basic internationally recognised rights under international human rights law. The 1997 Minimum Rules Part C relate to persons under arrest or awaiting trial. The 1998 Body of Principles, meanwhile, expressly apply to 'persons under any form of detention'.

With every basic right comes a responsibility on police officers to respect and accord that right. It is important both that police officers know their duties corresponding to these rights, and that they take steps to ensure that these rights are in fact afforded to detained persons:

#### **Right to be informed of the reasons for being detained**

- Every detained person has the right to be informed promptly of the reasons for detention. This should be done as soon as reasonably possible under the circumstances. If it can be done immediately, then it should be. A detained shall as soon as is reasonably possible be allowed to inform his family or legal representative of his detention.

#### **Right to presumption of innocence**

- Every detained person has the right to be treated humanely, with dignity and respect.
- Everyone, including those charged with a penal offence, has the right to be presumed innocent until proven guilty in a fair trial.

#### **Custody as an exception to the norm**

- Detention in custody pending trial shall be the exception rather than the rule. The normal position is that bail should be granted unless circumstances require otherwise.



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### **Access to justice**

- The right to have the lawfulness of detention challenged in a court of law and to be released if successful. This can happen, for example, when the detained person applies for bail.
- Decisions about the duration and legality of detention should be made by a judicial or equivalent authority.
- A detained person shall have the right to defend himself or herself, or to be legally represented.
- All detained persons shall have access to a lawyer or other legal representative, and the opportunity to communicate with that representative.
- The right to appear before a judicial authority, and to have the legality of the detention reviewed. Anyone who is arrested has the right to trial within a reasonable time, or to release.
- No one shall take advantage of the situation of a detained person to compel him or her to confess, or to otherwise incriminate himself/herself or another person.
- The right to be free from all forms of violence from either public or private sources. This involves not only a duty on police officers not to abuse detainees, but also a more positive duty on the part of police officers to ensure that systems are in place to prevent harm and abuse of detainees by other detainees.
- The right not to be subjected to torture or to other cruel, inhuman or degrading treatment or punishment, or to any form of violence or threats.

### **Conditions of detention**

- Persons should only be detained in officially recognised places of detention.
  - Detainees shall be kept in as humane facilities as are possible, designed to accommodate human beings, and shall be provided with adequate food, water, shelter, clothing, medical services, exercise and items of personal hygiene.
  - Untried prisoners shall, except in exceptional circumstances, be kept segregated from convicted persons and shall be subject to separate treatment. Women must be separated from men. Children should also be kept separately from adults.
  - A detained and untried person shall be immediately allowed to inform his family of his detention, and shall be given all reasonable facilities for communicating with his or her legal representatives and family and friends.
  - Untried prisoners should normally be allowed to wear their own clothing if it is clean and suitable, to have their food procured at their own expense from the outside, and to procure at their own expense books, newspapers and writing materials.
  - Untried prisoners shall always be offered the opportunity to work, but shall not be required to work.
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- The right to have the religious and moral beliefs of detainees respected.
- Persons arrested or detained without charge shall be accorded the same protections and facilities as pre-trial prisoners and those awaiting trial.

#### 4.4. Basic Rights of persons in prison custody

The United Nations 1977 *Standard Minimum Rules for the Treatment of Prisoners* provides in some detail "what is generally accepted as good principle and practice in the treatment of prisoners and the management of prisons...on the basis of the general consensus of contemporary thought". Its provisions are reinforced by the 1998 *Body of Principles* and the 1990 *Basic Principles* (see annex). By the authority of their source and by the practice of States in attempting to meet them, and with general international human rights law as a backdrop, these provisions have led to the crystallization of core international standards.

The *Standard Minimum Rules* provide a number of rules of general application, as well as differing rules applicable to special categories of prisoners.

- The rules relating to prisoners under arrest, awaiting trial or detained without charge are those outlined in section 4.3 above, on police. In particular, they are entitled to be kept separately. This is especially important for women and child prisoners.
- Insane or mentally ill persons in detention have not been dealt in this manual. Clearly, such persons are particularly vulnerable to harm and self harm and require care accordingly.

The rules of general application (Part 1 of the Rules) are that the Rules themselves are to implied impartially and without discrimination; detailed registers must be kept of all persons in detention, and different categories of prisoners are to be separated. The Rules contain a number of prescriptions as to accommodation, hygiene, bedding and clothing, food, exercise, medical services, discipline, procedures for airing complaints, contact with the outside world, books, practice of religion, personal property, etc.

A significant issue dealt with in the Rules is the importance of proper selection and training for prisons staff so that they are aware of these standards and likely to abide by them.

#### Convicted / Sentenced Persons

The following additional principles are clear from the Rules and various international standards:

- The prison system should not aggravate the punishment that the sentence represents. Discipline of prisoners for actual breach of prison regulations is permitted, but the system itself is not to allow individual officers delivering punishment merely because the persons are convicted persons.
- The prison system is primarily to protect society and punish offenders, but it is normally intended that these persons will re-enter the community. This rehabilitative and preparatory function should inform the approach taken by prisons officers to the rights of prisoners.

- Prisoners are to be segregated (eg by gender and by degree of likely suitability for return to society) and protected from abuse by other prisoners.
- Torture is absolutely prohibited and must be prevented and punished.
- Prisoners are entitled to work within prison, within regulations. Any labour that is part of the formal sentence, or part of prison regulations, must not be of an afflictive nature or unduly punitive.
- Prisoners are entitled to medical examination and treatment must be made available to prisoners on a regular basis.
- Prisoners are entitled to facilities for education and recreation, within disciplinary and other regulations and resources.

### **Child Prisoners**

- It is exceptional that children should ever be held in prison for any extended time. In relation to children, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985, refer back to the Standard Minimum Rules 1977.
- The duty to ensure children are held separately, protected from abusive situations within the institution, and prepared as far as possible for a full contributory life after detention, are serious matters that require the direct attention of all prisons officers.

### **4.5. Practical steps for police and prisons officers on implementing international human rights standards**

It is possible to indicate some practical steps to implement some of the human rights applicable to detention and imprisonment, or to better ensure these are likely to be met. The terms 'detainee' and 'detention' is used for convenience:

#### **All police and prisons officers should:**

- Be aware of the minimum international standards applicable to detainees.
- Enrol in training programmes to sharpen counselling, riot-control, first aid, self-defence, conflict-resolution and supervisory skills.
- Study the entry review and assessment records of all detainees, to be aware of persons at risk.
- Facilitate visits by clergy, legal representatives, family members, inspectors and medical personnel.
- Study and employ modern best practice techniques for interviewing.
- Wear a clearly visible identity badge at all times.
- Not enter the detention facility carrying a firearm, except to transport a detainee outside.
- Carry out regular, periodic checks of detainees, to ensure their safety and security.





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- Consult closely with medical personnel on all matters of diet, restraint and discipline.
  - Report immediately any suspicion of mistreatment of detainees, physical or mental.
  - Never use restraint instruments for punishment. They should only be used where necessary to prevent escape on transfer; on certified medical grounds; or on the order of the director, where other methods have failed, for the purpose of preventing injury to the detainee or others, or damage to the facility.
  - Facilitate the use of recreational materials, books and writing materials.

**Command and supervisory officials (police and prisons) should:**

- Establish, disseminate and enforce, and regularly review standing orders on the treatment of detainees, and know the minimum standards themselves.
  - Provide for specialised training for all staff charged with duties in detention facilities.
  - Adopt special measures to ensure respect for religious and moral beliefs of detainees, including dietary customs.
  - Enforce a three-point notification system: notice of reason for detention (immediate); notice of charges (prompt); and notice of rights of detainee (twice: concurrent with notice of reason for detention, and again with notice of charges).
  - In arranging assignments, keep officers supervising detainees independent of arresting officers and investigating officers.
  - Meet periodically with the prosecutor, a judge, police investigators and social workers to identify persons for whom detention is no longer necessary.
  - Assign female staff to guard, search and supervise female detainees.
  - Prohibit the entry of male staff into female sections of the detention facility, except in emergencies.
  - Assign a special room, separate from family visiting areas, for detainees to meet privately with legal counsel.
  - Arrange a meeting area for normal face-to-face visits, with a grille, table or similar divider between visitor and detainee.
  - Strongly prohibit, immediately investigate and severely punish, including through the initiation of criminal action, every act of torture or cruel, inhuman or degrading treatment or punishment.
  - Provide for meals, meeting basic dietary needs, at regular times, and with no more than 15 hours between morning and evening meals.
  - Assign at least one officer with training in psychological care and counselling, including suicide prevention, to be on duty at all times.
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- Assess all detainees, upon entry, for signs of illness, injury, alcohol or drug intoxication, and mental illness.
- Handle minor matters of discipline discreetly and routinely.
- Handle more serious matters with pre-established procedures, the existence of which has been explained to all detainees upon entry.
- Instruct officers in detention facilities not to carry firearms, except when transporting detainees outside.
- Arrange for all officers assigned to detention areas to be trained in non-lethal control methods, and in riot-control techniques and equipment use.
- Require all officers in detention areas to wear clearly visible identity badges, to facilitate accurate reporting of violations.
- Establish a positive relationship with the International Committee of the Red Cross and other such organisations.
- Liaise with family and family groups in the interests of the prisoners.
- Establish, and inform staff of, penalties for violations, ranging, as appropriate, from suspension, pay docking and termination, to criminal prosecution for serious violations.

Police and prisons officers not only need to ensure awareness of their peers of these standards and practices, but also that the rights that detained persons have should actually be practically accorded to them. For example, if a detained person has the right to contact a family member, they have to be given the opportunity to do so.

### **Conditions in Prisons – the challenges**

Prisons officers and trainers often point out that they try to do the best that they can with what facilities and resources they have at their disposal. It is a fact that better awareness of human rights among prisons officers cannot, on its own, be enough to improve prison conditions in much of the Commonwealth.

However, human rights awareness and abuse prevention measures are vital. This manual does not deal with broader structural reforms in the justice sector that may be needed to alleviate the pressure of numbers in prisons or to improve the conditions in prisons.

### **4.6. Summary**

The care and custody of detainees is an extremely important human rights issue. Detained persons are extremely vulnerable to abuse by officials and to other detainees. Often, especially in remote areas, they are totally at the mercy of authorities. Human rights abuses still take place in many countries, despite the fact that the treatment of persons in detention is very closely regulated under both international law and domestic law.



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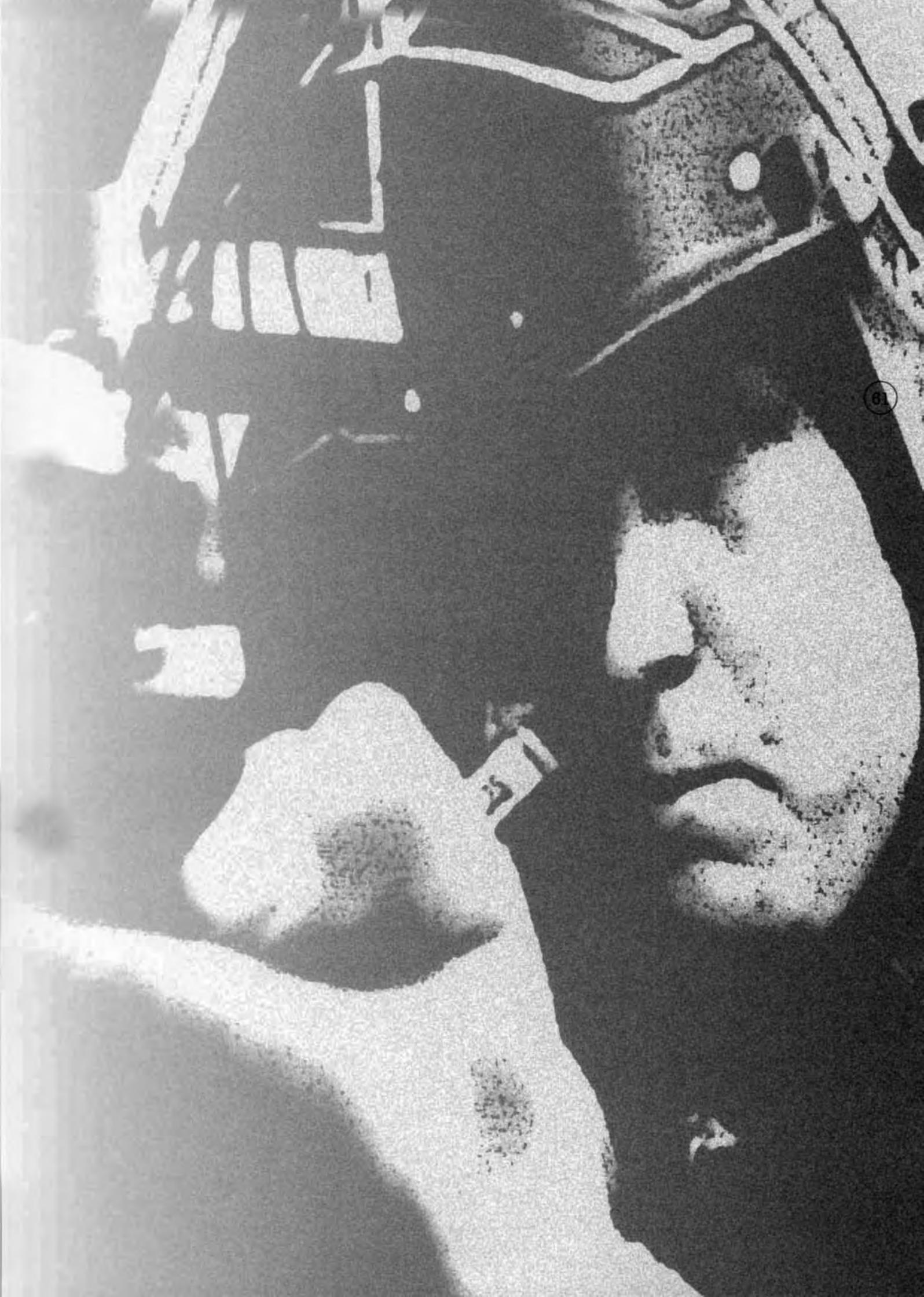
One of the reasons may be the fact that while officers are in total control of detainees, the level of awareness about human rights standards to which detainees are entitled may need regular attention. It is important to educate and train police officers about human rights and how they apply to police and prisons functions.

Every person, whatever their status, is entitled to be treated with a minimum of humanity, dignity and respect. Every person in pre-trial detention is presumed to be innocent until proven guilty in a recognised court of law, and should be treated accordingly. Especially vulnerable groups of detainees, especially women and children, are entitled to special care.

As a practical matter, detainees will for the most part re-enter the community and the reputation of the police force or prison service in the community will be affected by their relation of their experience. And it is difficult to expect a person whose experience of 'the law' has been of abuse and neglect, to then respect the law once back in the community.

#### **4.7. Questions for self-evaluation**

- *What rights can detention reasonably limit, and how far?*
  - *Name five basic rights of a detained person.*
  - *What does the 'presumption of innocence' mean in a detention context?*
  - *How are persons detained prior to any conviction in a different position to convicted persons?*
  - *Are there common minimum standards applying irrespective of category of detainee?*
  - *Name five responsibilities of police and prisons officers towards detained persons.*
  - *Name five ways in which police and prisons officers can practically take steps to implement and respect human rights.*
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## CHAPTER 5

# Use of force and firearms

### Learning objectives for Chapter 5

After completing this chapter you should be able to:

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- *Explain the standards set out in the UN Basic Principles on the Use of Force and Firearms*
- *Provide examples to explain proportionality during use of force*
- *Explain the different levels of force that can be used and tactical issues*
- *Describe the procedures to be followed before, during and after the use of firearms*



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## Chapter 5

### Use of force and firearms

#### Contents

#### **5.1. Introduction**

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#### **5.3. Methods to explain proportionality**

#### **5.4. Use of force continuum**

#### **5.5. Summary**

#### **5.6. Questions for self-evaluation**



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## 5.1. Introduction

By definition, law enforcement requires that some coercive or forceful capability exists to ensure compliance with the law. Police are authorised to use force in certain circumstances, such as in effecting certain arrests, or in self defence. From a human rights perspective, when police have authority to use force, including firearms, the most important principle is of **proportionality using minimum force**. This means that if no force is needed, for example to arrest a person, an officer should not use any force at all; if any force is used, it should be only so much as is strictly necessary to effect the arrest of that person.

The principles of **legality, necessity and proportionality** are paramount. Police officers should also act in an ethical way, and should be held **accountable** for their actions. The principle of proportionality requires that the method which employs the minimum force to achieve a goal should always be chosen. The intentional use of lethal force may be used only when strictly unavoidable in order to protect life. Excessive force cannot be used to punish or terrorise persons.

From a trainer's perspective, it is vital that any tactical or legal instruction on the use of force, as is normal in police training, include most clearly the human rights standards concerned. When violations of human rights result from the use of excessive force, it is almost always an issue that proper awareness and training might have prevented. Human rights considerations also require putting in place systems of accountability for the use of force, particularly for the use of firearms.

## 5.2. The 'right to life,' International Standards, and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

In 1990 the United Nations General Assembly adopted and proclaimed (by General Assembly Resolution 45/111) international basic principles on the use of force and firearms by law enforcement officials. These are intended to give detailed guidance to law enforcement trainers and officers - their effect is set out below.

Everyone has the right to life. What does this mean for law enforcement? There has evolved an international prohibition on the State, the protector of life, itself depriving a person of their life arbitrarily (without any cause in law: a lawful justification would be self-defence or defence of others), through the official acts of a state official. Unnecessary and unlawful use of deadly force by a police officer would therefore constitute a violation of the right to life.

From a trainer's perspective it should be noted that international bodies have explained that the right to life can place a more positive obligation on State officials: to train and equip police officers in way that reduces the risk of violations of the right to life by arbitrary use of deadly force. In doing so the State fulfils a part of its duty corresponding to the right to life.

Note also that a commander may need to take 'right to life' considerations of his or her own officers into account in planning operations: such officers require training, equipment and systems that do not unreasonably put their lives at risk during the course of duties. This of course is not simply a human rights issue but comes within a general 'duty of care' that employers owe to employees more broadly.

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In addition to this consideration, and the practical guidelines contained in the *Basic Principles*, the *UN Code of Conduct for Law Enforcement Officials*, Article 3, provides simply as follows:

*"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. "*

The right to life informs this Article. The official 'Commentary' to Article 3 explains how the 'necessity' element reinforces how law enforcement officials may be authorized to use force, but the use of force by should be exceptional, and no force going beyond what is reasonably necessary may be used. The Commentary also notes that the use of firearms is to be considered an extreme measure and not used unless a suspected offender offers armed resistance or otherwise jeopardizes the lives of police and others, where less extreme measures are not sufficient to apprehend the suspect.

### 5.2.1. The use of force

On the use of force, the following principles serve as guidelines for police officers:

- Everyone has the right to life, security of the person, and freedom from torture and other cruel, inhuman or degrading treatment or punishment.
- Non-violent means are to be attempted first.
- Force is to be used only when strictly necessary.
- Force is to be used only for lawful law enforcement purposes.
- No exceptions or excuses shall be allowed for unlawful use of force.
- Use of force is to be always proportional to lawful objectives.
- Restraint is to be exercised in the use of force.
- Damage and injury are to be minimised.
- A range of means for differentiated use of force is to be made available.
- All officers are to be trained in the use of various means for differentiated use of force.
- All officers are to be trained in the use of non-violent means.

### 5.2.2. Accountability for the use of force and firearms

Use of force and firearms are very serious infringements on people's basic human rights. Police officers should always be accountable for their actions. On the issue of accountability, the following principles serve as guidelines:

- All incidents of the use of force or firearms shall be followed by reporting and review by senior officials.
  - Superior officials shall be held responsible for the actions of police under their command if the superior official knew or should have known of abuses but failed to take concrete action.
  - Officials who refuse unlawful superior orders shall be given immunity.
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- Officials who commit abuses of these rules shall not be excused on the grounds that they were following superior orders.

### 5.2.3. Permissible circumstances for the use of firearms

The circumstances under which firearms may be used may differ from country to country. The following circumstances can be identified where the use of firearms is permissible:

- Firearms are to be used only in extreme circumstances.
- Firearms are to be used only in self-defence or defence of others against imminent threat of death or serious injury.
- To prevent a particularly serious crime that involves a grave threat to life.

OR

- To arrest or to prevent the escape of a person posing such a threat and who is resisting efforts to stop the threat.

AND

- In every case, only when less extreme measures are insufficient.
- Intentional lethal use of force and firearms shall be permitted only when strictly unavoidable in order to protect human life.

### 5.2.4. Procedures for the use of firearms

- The officer is to identify himself or herself as a police officer.

AND

- The officer is to give a clear warning.

AND

- The officer is to allow adequate time for the warning to be obeyed.

BUT

- This shall not be required if the delay would result in death or serious injury to the officer or others, or if it is clearly pointless or inappropriate in the circumstances to do so.

### 5.2.5. After the use of firearms

- Medical aid is to be rendered to all injured persons.
- The relatives or friends of those affected are to be notified.
- Investigations are to be allowed for where requested or required.
- A full and detailed report of the incident is to be provided.





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### 5.3. Methods to explain proportionality

To know which method uses the minimum force, the potential force of each method should first be identified. Measuring the method on a points scale can do this.

The potential levels of 'physical force methods' can be measured, for instance, on a points scale of 1-10. A relative point is allocated to methods which have fewer disadvantages for the community, for example 1, and a high point is allocated to methods which contain potentially serious consequences for the suspect, the community and the police officer.

This example will also explain the principle of proportionality and show the different levels of force that can be used during the arrest of a suspect. To give practical effect to the human rights considerations underlying use of force issues, these are the kind of issues that need to be emphasised alongside tactical and skills training on the use of force.

### POTENTIAL FORCE LEVELS DURING ARREST

#### I. Police officer's presence: Identification of authority

The first step is when a police officer identifies himself or herself as a police officer (visually and verbally) - being in uniform and telling the suspect that he/she is a police officer.

#### II. Verbal directions

Giving verbal directions and commands of arrest to the suspect. For instance, when a police officer tells the suspect that he/she is under arrest, or when the officer verbally instructs or commands the person to do something. (Example: When a suspect tries to flee and the police officer shouts at him or her to stop.)

#### III. Empty hand control

- Soft empty hand control

These are techniques which a police officer can use that have the minimal chance of injury. (Example: When a police officer touches the person on the shoulder and instructs him to come along, or takes hold of an arm, moving the suspect.)

- Hard empty hand control

These are techniques which a police officer can use that have a probability of injury. (Example: If there is a certain amount of resistance, to use techniques to force the suspect to submit, like pressure points on the body, 'come along' techniques, 'take down' techniques and 'joint manipulation' techniques, such as bending arms and fingers.)

#### IV. Motor dysfunction techniques

These are techniques which police can use, if there is more resistance, that are sure to cause some degree of injury. (Example: Lateral vascular neck restraints - if police officers have been trained in using these techniques - or foot/leg/arm strikes as dynamic application of pressure to nerve motor areas to cause temporary dysfunction of the limb and simultaneous mental stunning; other strikes resulting in temporary loss of mobility or mechanical control (Karate, Aikido, etc.)

#### V. Chemical agents

Chemical agents such as CO/OC gas (tear gas) or pepper gas should be used only if they have been approved by police headquarters and strictly in accordance with safety

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procedures by trained police officers, and in line with legal directives controlling these agents. (Example: Tear gas should not be used in confined or closed areas.)

#### VI. Batons and impact weapons

These impact weapons should be used only as departmentally approved and by trained police officers, and as part of a graded resort to force that is consistent with the threat level.

#### VII. Use of firearms

Firearms should be used only as the last resort. Firearms may be used only when necessary for a police officer to protect himself/herself and innocent bystanders, and while effecting an arrest. Normally, firearms should be used only in self-defence or in defence of others against imminent threat of death or serious injury. At first, a warning shot or non-fatal body shot should be attempted. Remember the purpose of arrest is to get the suspect to appear in court.

A **valuable hint** in relation to the above scheme is that the number of points for a method also suggests the amount of caution to exercise in relation to it. In other words, the higher the point the method has which the police officer wants to apply, the more cautious he or she has to be in applying it.

The principle of 'proportional use of force' should always be taken into account. Aside from the victim of the use of force, the reason for this is that, in addition to consequences such as **post-traumatic stress disorder** on the police officer because he or she has killed someone, **criminal or disciplinary charges, or large civil claims** may also be laid against the police. It can also, to a large extent, strain community relations.

#### **The "P.L.A.N" concept**

*Human rights underlie these principles in all use of policing and other powers that by their nature involve force or impact on the rights of individuals:*

**Proportionality** – a balance between the legitimate objective, and the degree of force used to achieve that objective.

**Legality** – all law enforcement actions should have their foundation in lawful powers. Upholding the law can only be done within the law.

**Accountability** – there must be review systems and reporting procedures in place for accounting for the use of forceful or intrusive measures such as firearms.

**Necessity** – strong measures should only be used where their use is necessary for the objective to be obtained: when other measures are inadequate





### 5.4. Use of force continuum

As noted above, when applying force, police officers should always take proportionality into consideration. The more the resistance, the more force one can reasonably use. This can be referred to as **escalation of force**. On the other hand, if the person submits, the police officers should stop using force or use less force. This is referred to as **de-escalation of force**.

The force used by the police officers should be in response to the behaviour of the suspect in each situation.



To enable police officers to use proportional force and to de-escalate in situations that are under control, they need to receive proper training and equipment. Police officers should constantly practise the different techniques, for example, soft and hard empty hand techniques.

### 5.5. Summary

When police have to use force and firearms, the principles of **legality, necessity and proportionality** are paramount. The right to life is the applicable international rights standard. Trainers have a responsibility to ensure that police officers understand why minimal use of force is a legal and human rights requirement (with possible consequences for exceeding reasonable limits). They also need to explain to officers how the excessive use of force, especially if widespread, systematic and not accounted for, leads to a serious breakdown in relations with the community. This makes police work a great deal harder to do.

Police officers need to feel confident in using degrees of force, depending on the level of threat. For this, they will require training in techniques to put minimal harm principles into effect. Time and money spent for training on such techniques is never wasted.

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## 5.6. Questions for self-evaluation

- *Provide examples to explain proportionality during use of force.*
- *What is meant by the use of minimum force?*
- *Describe the different levels of force that can be used during arrest, starting with minimum force and ending with maximum force.*
- *Can you confidently apply the P.L.A.N principles to hypothetical factual scenarios?*
- *Describe the procedures to be followed before, during and after the use of firearms.*
- *What is meant by escalation and de-escalation of force?*







## CHAPTER 6

# Investigation of crime

### Learning objectives for Chapter 6

After completing this chapter you should be able to:

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- *Explain the purpose of investigation of crime in human rights terms*
- *Discuss the responsibilities of police officers during investigation of crime*
- *Discuss the basic human rights of persons under investigation*
- *Discuss the rights of witnesses*
- *Define torture and explain why torture is absolutely prohibited*
- *Explain why confessions obtained under duress or force are unreliable and no substitute for 'hard evidence' obtained by proper investigation*



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## Chapter 6

### Investigation of crime

#### Contents

- 6.1. Introduction**
- 6.2. The purpose of investigation of crime**
- 6.3. UN standards and practices applicable to investigation of crime**
- 6.4. The rights of different groups of people during investigation of crime**
  - 6.4.1. The rights of witnesses
  - 6.4.2. The rights of suspects
- 6.5. Correct ways of gaining evidence**
- 6.6. Confessions**
- 6.7. Torture – an international crime**
- 6.8. Methods to ensure that human rights are respected and protected during investigation**
- 6.9. Summary**
- 6.10. Questions for self-evaluation**



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## 6.1. Introduction

Police officers, in their investigatory capacity, play a critical role in the judicial process. The detection of crime through investigation and gathering of evidence is the first step in the judicial process that can lead to the conviction and punishment of criminals.

The right to a fair trial and the presumption of innocence should form the basis for investigating every crime. A lawful and ethical investigation can protect the right to a fair trial, whereas an unlawful or unethical investigation can subvert that right even before the trial commences. There are also practical reasons for proper investigation: to avoid the possibility of a conviction being lost because of procedural 'short cuts' taken by police.

There are different methods to investigate and solve crime. The collection of evidence forms an integral part of any police investigation. There is still a tendency in many countries to rely on confessions as the primary method to solve crime. Unfortunately, this can result in human rights abuses, especially when police officers use torture as a method to extract confessions. At the same time, this form of 'investigation' is not likely to be very accurate. Confessions – however extracted – are not proper evidence.

This chapter is not an operational guideline on investigation of crime, but rather an outline of some of the important human rights issues applicable to investigation of crime. However, the intention is that its principles be worked into operational training.

## 6.2. The purpose of investigation of crime

Investigations serve to identify victims; recover evidence; discover witnesses; discover cause, manner, location and time of crime; and identify and apprehend perpetrators. The most important purpose of investigation of crime is to discover the truth.

Unfortunately, it may happen that police identify a possible suspect and then try to build a case against that particular person, instead of investigating all the evidence and then identifying the possible perpetrator.

The most basic right applicable to investigation of crime is the right of every suspected person to be presumed innocent until proven guilty in a fair trial and in a competent court of law. A fair investigation process will lay the basis for a fair trial. This presumption of innocence should influence the attitude and behaviour of police officers towards people suspected of crime or who are subject to investigation. Investigations should be competent, professional, thorough, prompt and impartial.

## 6.3. UN standards and practices applicable to investigation of crime

Although there are no specific international instruments which deal with investigation of crime, international legal standards such as are contained in the 'International Bill of Rights' (chapter 1 and annex) are applicable and relevant to the topic. During investigations, the interviewing of witnesses, victims and suspects, personal searches, searches of vehicles and premises, and the interception of correspondence and communications, the following rights should be respected and protected:

- the right to liberty and security of the person;



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- the right to a fair trial;
  - the right to be presumed innocent until proven guilty in a fair trial;
  - the right not to be subjected to arbitrary interference with privacy, family, home or correspondence;
  - the right not to be subjected to unlawful attacks on honour or reputation;
  - torture and other inhuman or degrading treatment is absolutely prohibited;
  - victims and witnesses are to be treated with compassion and consideration;
  - confidentiality and care in the handling of sensitive information is to be exercised;
  - no one shall be compelled to confess or to testify against himself or herself;
  - investigatory activities shall be conducted only lawfully and with due cause, and not for personal or bad faith purposes;
  - neither arbitrary, nor unduly intrusive, investigatory activities are permitted;
  - investigations shall be competent, thorough, prompt and impartial;
  - investigations shall serve to identify victims; recover evidence; discover witnesses; discover cause, manner, location and time of crime; and identify and apprehend perpetrators; and
  - crime scenes shall be carefully processed, and evidence carefully collected and preserved.

#### **6.4. The rights of different groups of people during investigation of crime**

There are normally three groups of people involved during the investigation of crime. They are: victims; witnesses; and suspects. Victims are dealt with in a separate chapter on victims of crime (chapter 12).

##### **6.4.1. The rights of witnesses**

Witnesses normally play a very important role in solving crime. It is important for police to realise that people who are witnesses should be dealt with as witnesses and not as perpetrators. They are there to assist the police in finding out the truth, to solve the crime and eventually to assist them to find the perpetrator guilty.

Witnesses may also be shocked by the crime that occurred and may need support from the police or other support services to deal with the crime, for example if they witnessed a serious violent crime. The witness to a crime may often be a victim of the crime.

When interviewing witnesses, they should be treated with dignity and respect. They should not be abused by police officers. Unlike suspects, witnesses do not have the right to remain silent and they have an obligation to assist the police in solving crime.

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When witnesses are to give evidence in court it is important that they should be briefed about legal procedures. They should also be briefed before giving evidence as to what will be expected of them.

Witnesses too have basic human rights during investigation of crime. Some of these rights are as follows:

- **The right to security of the person**

Witnesses have the right to be protected against reprisals from suspected criminals. In some countries, governments even have special witness protection programmes, especially when it concerns serious crimes where their lives may be in danger if they testify against suspects. The privacy and safety of witnesses should be protected.

- **Dignity and respect**

Every person should be treated with dignity and respect. Police officers should ensure that they treat witnesses as witnesses, and not as suspects.

- **Victims and witnesses are to be treated with compassion and consideration**

No pressure, physical or mental, shall be exerted on suspects, witnesses or victims in attempting to obtain information. Police officers should deal with witnesses in such a way as not to cause unnecessary discomfort and inconvenience.

- **Right to be informed of their role in the legal proceedings**

Police officers should carefully explain to witnesses their role in formal proceedings, the scope, timing and progress of proceedings, and ensure that there is no unnecessary inconvenience. This relates to building a good community relationship through a culture of respect for witnesses among the police.

#### 6.4.2. The rights of suspects

The important thing to remember when dealing with suspects of crime is the fact that, during the investigation stage of the legal process, they are suspects only – they have the right to be presumed innocent. All suspects have basic human rights that should be respected by police officers. Some of the important rights described in international legal instruments are the following:

- **The right to security of the person**

Every person has the right to security. Police officers should ensure the safety of suspects, especially when they are in their custody. Police officers should also ensure that they do not abuse their powers when dealing with suspects.

- **Presumption of innocence**

Every suspected criminal has the basic right to be presumed innocent until proven guilty in a court of law following a fair and just legal process. Police should, therefore, ensure that they treat these persons as suspects who have not yet been found guilty in a court. The role of police officers is to discover the truth and not to judge suspected criminals.

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- **Dignity and respect**

Every suspected criminal is still a human being and should be treated in a professional manner, with respect and with due regard to their dignity. No one shall be subjected to unlawful attacks on his or her honour or reputation.

- **Right to privacy**

Article 17.1 of the *International Covenant on Civil and Political Rights* (ICCPR) states that: "No one shall be subjected to arbitrary or unlawful interference with his [or her] privacy, family, home or correspondence, nor to unlawful attacks on his [or her] honour and reputation." Every person has a basic right to privacy; however, if there is reasonable suspicion that a person committed a crime, this right can be limited through investigation. Almost every investigation conducted by law enforcement officials for the prevention or detection of crime leads to situations in which actions taken result in an invasion of the private sphere of individuals.

- **Right to a fair trial**

Article 14.1 of the ICCPR states that: "... In the determination of any criminal charge against him [or her], or of his [or her] rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law ..."

The significance for police officers is that the right to a fair trial starts at the moment of arrest and detention. The way police officers investigate crime has a huge impact on the right to a fair trial. Unlawful investigative methods will impact on the right to a fair trial for the suspect. Critically, they may also result in the case being discharged by a judge because of abuse of process by the investigating officer, or unreliability of evidence. Thus there is not only a human rights obligation to investigate with propriety – it avoids the frustration of seeing a conviction lost due to 'short cuts' taken by police in the investigation process.

- **Right to be informed of the charge**

Every person who is arrested and detained has the right to be informed, promptly and in detail in a language which he [or she] understands, of the nature and cause of the charge against him [or her]. This is normally a job for the police. It is among the most basic of any civil rights.

- **Right to be tried without undue delay**

Every suspect has the right to be tried without undue delay.

- **Right against self-incrimination**

Every suspect has the right not to be compelled to testify against himself or herself or to confess guilt. No pressure, physical or mental, shall be exerted on suspects, witnesses or victims in attempting to obtain information. This right is closely linked to the right not to be tortured.

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- **Right not to be tortured**

Torture and other inhuman or degrading treatment are absolutely prohibited. Police officers can never justify committing one crime (torture) in order to solve another crime. This is discussed in more detail below.

- **Investigatory activities shall be conducted only lawfully**

In different countries there might be different procedures to be followed. Police should always ensure that they act in a lawful manner when conducting an investigation and follow the prescribed procedures. Neither arbitrary, nor unduly intrusive, nor bad faith investigatory activities shall be permitted.

### **6.5. Correct ways of gaining evidence**

Police officers are law enforcement officials. They are there to uphold the law. When police officers break the law for the purposes of law enforcement, this subverts the rule of law. It violates human rights, leads to miscarriage of justice and undermines the confidence of the public in the police. It is, therefore, imperative for police officers to always act in a lawful and ethical manner when investigating crime.

Police agencies in some countries have access to more sophisticated methods and equipment to investigate and discover evidence than others. The basic human rights applicable to investigation of crime are the same no matter where an officer works or what methods are used to collect evidence and to detect crime.

- The most important thing to impart in training is that every suspect is presumed to be innocent until proven guilty in a court of law following a fair and just legal process. Therefore, the focus of any investigation should be to discover the truth. It is a fact-finding mission that starts with an investigation of the scene of the crime, as well as the sites where that crime has left traces, for the purpose of gathering material evidence in relation to the crime committed.
- Crime scenes shall be carefully processed, and evidence carefully collected and preserved. These practical and scientific procedures have a human rights implication in terms of the fairness of the trial a suspect may receive.
- Subsequent attention is focused on those persons who may have witnessed the crime as it was being committed, or who may have other relevant information. Only this dual investigative approach and an analysis of the information obtained thereby might enable the police, by assembling sufficient facts, to establish a reasonable suspicion against an individual as having committed this crime (if a suspect/suspects was/were not arrested in the act).
- The questioning of suspects requires preparation on the part of the law enforcement officials involved. These officials must have a clear picture of the facts that have been established so far, which help to determine the order of events as they happened. The purpose of an interview is clarification of facts already established as well as the establishment of new facts in relation to the crime committed.





- It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him/her to confess, to incriminate himself/herself otherwise, or to testify against any other person.
- No detained person while being interviewed shall be subjected to violence, threats or methods of interview which impair his capacity of decision or his judgement.
- The duration of any interview of a detained or imprisoned person and of the intervals between interviews, as well as the identity of the officials who conducted the interviews and other persons present, shall be recorded and certified in such form as may be prescribed by law.
- Every interview must be clearly recorded. Statements by the suspect that contain a confession of guilt should be taken down as far as possible in his or her own words. The duration of the interview and the people present at it, as well as the length of time between two interviews, must also be clearly recorded.
- Furthermore, a suspect is entitled to withdraw or alter statements made during any stage of the proceedings. It is evident that in many situations, material evidence and witness statements will be more valuable than information obtained through interview of a suspect.
- Suspected and accused persons have a right to be presumed innocent until proven guilty in a court of law. Therefore, the interrogating law enforcement officials do not establish innocence or guilt through their questioning - their task is to establish facts. From some of the practical examples given above, it is already clear that the prevention and detection of crime is an area in law enforcement which demands high standards of morality and ethics from law enforcement officials.

### **6.6. Confessions**

Valid confessions are not uncommon. However, law enforcement officials must refrain from any action that can be interpreted as aiming to extract a statement from an arrested or accused person which therefore cannot be said to have been given of his or her free will. Pressure on the suspect to compel him or her to testify can result in a false confession, given by the suspect in order to prevent further pressure. It should be noted, however, that the phenomenon of false confessions is not limited to situations where people have been subjected to torture or ill-treatment. Law enforcement agencies around the world are familiar with individuals confessing to crimes they did not commit, often for complex personal and psychological reasons.

### **6.7. Torture – an international crime**

As a matter of logic as well as high principle, police officers may never commit a crime in order to solve another crime.

Torture by State officials is one of the most serious human rights violations. As Article 4 of the ICCPR and many international courts and bodies have made clear, the right not to be tortured is one of a few rights that may never be limited, under any circumstances. The right not to be tortured is viewed in such serious light that a separate Convention was developed to deal with

the issue of prevention and punishment of officials who engage in torture. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) entered into force in 1987, and a good number of Commonwealth member countries are parties to this instrument.

Torture is defined in Article 1 of the CAT as –

*"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."*

The prohibition on torture by State officials is universally recognised and condemned as an international criminal act attracting universal jurisdiction. This means that any country who has custody of a State official who has committed torture can try that person under international law. The defence of superior orders is not available. The fact that a separate instrument like the CAT exists (it has been ratified by over 80 countries) does not mean that the prohibition on torture does not apply to officials in countries that have not ratified the CAT. The right not to be tortured is also included in the following international instruments:

- *Universal Declaration of Human Rights* (UDHR, Article 5).
- *International Covenant on Civil and Political Rights* (ICCPR, Article 7).
- *African Charter on Human and Peoples' Rights* (ACHPR, Article 5).
- *Geneva Conventions*, 1949.
- *Additional Protocols to the Geneva Convention*, 1977.
- *Rome Statute of the International Criminal Court*, 1998 (Article 8).
- *United Nations Code of Conduct for Law Enforcement Officials* (Article 5).
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (Principle 6).

"Torture is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the *Universal Declaration of Human Rights* [and other international human rights instruments]."

United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly (Resolution 3452 (XXX) of 9 December 1975).





In the last two decades, national courts applying international law (most recently and comprehensively the United Kingdom House of Lords in the 1998 – 1999 *Pinochet* extradition proceedings), have upheld the position that "the torturer has become, like the pirate or slave trader before him, *hostis humani generis*: an enemy of all mankind". Cases in various courts around the world, including regional courts such as in the Inter-American and European human rights systems, have reaffirmed this position. It was first expressed in this way in the case of *Filartiga v Pena-Irala* (1980) 630 F.2d 876 (US Court of Appeals). This was a civil suit brought in a US court by the family of Filartiga, kidnapped and tortured to death in Paraguay by Pena, when Pena was an Inspector General of Police in that country.

Finally, the 'products' of torture (confessions) are usually inadmissible in court. They are inadmissible because of the way they are obtained, but also because they are not a very reliable source of evidence. This shows, again, how human rights principles in criminal investigation are also practically the right thing to do. This dual message is something that trainers should aim to impress in ordinary training programmes.

### **The 'product' of torture – inadmissible as evidence**

Consider this statement by an authoritative Commonwealth court:

"The common law (as well as international law) and the importance a civilised society attaches to proper behaviour by the police compel the exclusion of 'evidence' obtained by torture. It is excluded as inherently unreliable, unfair, offensive to ordinary standards of humanity and decency and incompatible with principles which should inform a tribunal seeking to administer justice."

This is made clear in the cases of *A v Secretary of State Home Affairs* (UK House of Lords, December 2005) *R v Mushtaq* (UK House of Lords, 2005); *Lam Chi-Ming v The Queen* (Privy Council, 1991).

See also Article 69 of the *Rome Statute of the International Criminal Court* 1998 (rules of evidence) and the *Rules of Procedure* of the International Criminal Tribunals (Former Yugoslavia and Rwanda), and Article 9 of both the *Universal Declaration* and the *International Covenant on Civil and Political Rights*.

## **6.8. Methods to ensure that human rights are respected and protected during investigation**

The personal awareness and attitude of police officers who are involved in the investigation of crime and their individual standards of behaviour is one of the most important safeguards to ensure respect for human rights. There are some mechanisms of internal monitoring and supervision to ensure that police officers respect and protect the rights of persons under investigation. They are the following:

- Develop standardised procedures for the recording of information during investigations.



- When in doubt about the legality of an investigatory activity, enquire with superiors, where possible, before proceeding.
- Treat all suspects as innocent persons, politely, respectfully and professionally.
- Keep a detailed record of all interviews conducted.
- Enrol in in-service training to sharpen investigation skills.
- Always advise the victim, witness or suspect of his or her rights before interviewing.
- Before proceeding to any investigatory action, ask:
  - Is it legal?
  - Will it hold up in court?
  - Is it necessary?
  - Is it unduly intrusive?
- Never seek or rely on a confession as the basis for a case. Rather, the purpose of investigation should be to secure independent evidence.
- Seek a warrant, or court order, whenever possible, before conducting searches. Search without a warrant should be the exception, carried out only when reasonable and with due cause: when incidental to a lawful arrest; when free consent is granted; or when obtaining a warrant in advance would be impossible in the circumstances.
- Get to know and work with the community to which one is assigned: it can make investigation so much easier.
- Develop proactive strategies for preventing crime, including thorough awareness of risks existing in your community.

### **Trainers and the Prevention of Torture**

Article 5 of the 1975 UN Declaration on Torture provides:

"The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons."



There are also guidelines for command and supervisory officials. They are as follows:

- Establish administrative mechanisms to expedite the investigatory process.
- Establish standing orders emphasising legal safeguards for investigations.
- Provide training programmes on legal standards and effective scientific techniques for investigations.
- Establish strict supervisory procedures for the management of confidential information.
- Establish, in concert with relevant social agencies, victim-support mechanisms.
- Establish policies which limit reliance on confessions.
- Develop community policing strategies, enabling police to be closer to the community and, therefore, to information vital to the prevention and solving of crimes.
- Solicit technical co-operation, including, where necessary, from international technical policing programmes, on current techniques and technologies for police investigations.
- Announce and enforce strict penalties for violations of regulations regarding the legality of investigatory practices.

#### **The international legal prohibition against torture -**

- **Is absolute: there are no exceptions**
- **Torture can never be lawful**
- **There is no legal defence for torture**
- **State officers who engage in torture are vulnerable to universal jurisdiction**
- **Convictions obtained by torture and confession are not accurate and may not stand in court**

#### **6.9. Summary**

- Investigation and detection of crime are very important elements in solving crime. The focus of any investigation should be on discovering the truth and keeping in mind that the suspect is presumed innocent until proven guilty. The focus should therefore be on the facts and not the person.
- Police should always ensure that they respect and protect the basic human rights of every person during the investigation process, for example during investigations, the interviewing of witnesses, victims and suspects, personal searches, searches of vehicles and premises, and the interception of correspondence and communications.

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- Police should also not rely on confessions as primary evidence to solve crime. Evidence obtained under duress is quite possibly inaccurate. It may be excluded later in court. A reliance on confessions is an inaccurate, unscientific and unprofessional way to investigate. It may lead to human rights abuses such as torture and inhuman or degrading treatment of suspects. Police officers should always fulfil their duties in a professional and ethical manner with due regard to the basic rights of every person.

- Torture by State officials attracts a universal prohibition in international law and is punishable as an international crime. The defence of 'following superior orders' is not allowed.



#### **6.10. Questions for self-evaluation**

- *What is the purpose of investigation of crime?*
  - *Name three basic human rights of persons under investigation.*
  - *Name three responsibilities of police officers during investigation of crime.*
  - *Why is crime scene management important for police officers?*
  - *What are the rights of a suspect under interview?*
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- *What is the significance of the presumption of innocence for an investigation?*
  - *What is meant by the right to a fair trial?*
  - *What is meant by the right not to incriminate oneself?*
  - *Why do you think torture is absolutely prohibited during the investigation of crime?*
  - *What are the problems with the use of torture as a method to solve crime?*
  - *Is it ever justifiable for a police officer to commit a crime in order to solve another crime?*
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## CHAPTER 7

# Search and seizure

### **Learning objectives for Chapter 7**

After completing this chapter you should be able to:

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- *Explain the prohibition on arbitrary interference with privacy*
  - *Explain the responsibilities of police officers during searches, and the role of police officers in respecting and protecting the right to privacy*
  - *Describe the rights of persons whose person, property or buildings are being searched*
  - *Explain the use of force during searches*
  - *Explain the consequences of unlawful searches*
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## Chapter 7

### Search and seizure

#### Contents

- 7.1. Introduction**
  - 7.2. Searches – ‘P.L.A.N.’**
  - 7.3. Search with a warrant**
  - 7.4. Search without a warrant**
  - 7.5. Results of unlawful searches**
  - 7.6. Searching persons**
  - 7.7. Use of force during search and seizure**
    - 7.7.1. Use of force to enter and search premises and property
    - 7.7.2. Use of force to search persons
  - 7.8. Seizure of property**
  - 7.9. Summary**
  - 7.10. Questions for self-evaluation**
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## 7.1. Introduction

Police actions of search and seizure are often fundamental to the investigation, prevention or apprehension of crime. However, the conduct involved in such cases carries the potential for very serious infringements of a person's rights. Fundamental rights include the right to freedom and security of the person, and to privacy. In Article 12 of the *Universal Declaration of Human Rights* (also Article 17, ICCPR) it is stated that:

*"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*

The existence of these rights means that the State (that is, police officers) may not search a person's home, property or body and cannot seize their belongings, or (for example) open their mail or tap their phones, without being authorised by law to do so.

It is important to realise that these rights are not absolute as they can be, and are, limited by the same law that creates the power to search. Police officers have lawful powers to search and seize property. The power to search persons, private property and buildings is a power essential to prevention and detection of crime, and other police functions.

As a matter of general principle, if police officers have reasonable suspicion that a person has committed a crime, or there are reasonable grounds to believe that a specific article was used to commit a crime or can provide evidence that a crime was committed or that it will be used in the commission of a crime, a person's right to privacy and freedom and security may be limited by police officers, by conducting searches or by seizing property according to the applicable law. All interference with privacy should be reasonable in each particular circumstance and should, therefore, only take place when absolutely necessary, taking into account the principle of proportionality.

Police officers should always act in an ethical and dignified manner. Search and seizure, especially on a large scale, has the potential to disrupt and frustrate people, who might then be less inclined to then or later help the police with their investigations.

What follows below is not a lesson on the operational aspects of how to conduct a search or seize operation, but rather a focus on the human rights principles applicable during these police activities. Domestic legislation may differ on specific procedures and guidelines.

## 7.2. Searches – 'P.L.A.N.'

When searching a person or property, police officers should always act within the law (**Legality**). They should only act when it is necessary to act (**Necessity**); they should, for example, only search when absolutely necessary, using only the minimum force or action that is required to solve or deal with each situation or problem (**Proportionality**). It is also important for police officers to act in an ethical way and to realise that after any action of a police officer there will be the question of accountability for these actions (**Accountability**). Altering the order of these phrases, one encounters the 'P.L.A.N.' concept again.

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### 7.3. Search with a warrant

Depending on domestic legislation, when a police officer wishes to conduct a search, he or she must normally have a pre-issued warrant to search. This is a basic safeguard for the rights of individuals, and to ensure that police officers act lawfully.

The warrant is normally obtained from a judicial officer (judge, magistrate or even a commissioned police officer, depending on domestic legislation). The judicial officer will assess the information placed before him or her in the form of affidavits and use his/her discretion to decide if the search is justified, in which case a search warrant will be issued. A search warrant serves as a safeguard against unreasonable and unjustified infringements of the right to privacy, as the information on which a search will be conducted will be subject to independent scrutiny.

The search warrant will normally authorise the search of a specific person or premises or specific article. Where the operation allows the opportunity, it is always better to search with a warrant than without one. This has consequences for obtaining or not obtaining a conviction on any evidence uncovered.

The following procedures should be followed when effecting a search warrant:

- A warrant will normally be executed by day unless otherwise stated and where good reasons were given why it must be done at night.
- A warrant will normally be in force until executed, unless cancelled by the person who issued the warrant or a person with the same authority.
- After a search has been executed, all the items that were recovered should be listed on the warrant and a witness should sign the warrant. This will normally be the owner or occupier of the premises.
- A warrant should be executed only within the strict specifications mentioned within the warrant.
- A search must, as a general principle, be conducted in the presence of the owner or occupier of the premises.

There are, however, exceptions, which will be discussed under the following sections.

### 7.4. Search without a warrant

The general rule, as noted above, is that searches should be conducted with a warrant as a safeguard against unnecessary infringement on a person's basic human rights, especially the right to privacy. However, if the police officer believes on reasonable grounds that a search warrant will be issued to him or her if he/she applies for such warrant, and that the delay in obtaining such warrant would defeat the object of the search, he or she can execute the search.

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Reasonable grounds can be described as follows:

*"A police officer will be considered to have 'reasonable grounds' (grounds or facts) to suspect something or to believe that something is necessary to achieve a particular purpose only if:*

- (a) He or she truly 'suspects' or 'believes' it;
- (b) His or her suspicion or belief is based on 'reasonable grounds'; and
- (c) Any reasonable person in the same circumstances, and in the light of the grounds that exist, would have entertained the same suspicion or would have believed the same thing.
- (d) Where a police officer searches under a specific legislative provision that does not require a search warrant."

There are also other instances in which a police officer can search without a warrant:

● **Upon arrest**

Police officers may search a person upon arrest. The reason for this is to secure the situation, to secure the arrested person in order to prevent him or her to injure himself or herself, to prevent a situation in which a police officer or any other person may be attacked, and to gain evidence against the arrested person. A search of any person must be conducted with strict regard to decency and order.

● **Consent**

Persons can consent to being searched. The courts would normally make very sure that all the requirements were met when acting without a warrant. The courts will be stricter because of the fact that an independent party did not form part of the decision-making process and so as to avoid unnecessary infringements on basic human rights.

**7.5. Results of unlawful searches**

Searching individuals and their property can be degrading to human dignity. Unlawful searches can amount to harassment of individuals or groups, and can also undermine trust in the police. The infringement will only be tolerated if it is reasonable, justifiable and necessary.

Unlawful searches may result in civil actions against the police, or even criminal charges against the police officer for common law crimes such as assault, malicious damage to property and theft, or disciplinary action against the police officers who conducted the unlawful search. The procedures and consequences may, however, differ from country to country.

Evidence obtained through unlawful searches may be deemed to be inadmissible in a court of law because of the fact that it was obtained in violation of an entrenched right and must, therefore, be excluded. Admission of evidence obtained in such a way would render a trial unfair and will be detrimental to the administration of justice. The result of unlawful searches can be acquittal of the accused person.

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## 7.6. Searching persons

Searches should always be carried out having due regard to respect the human dignity of the person being searched.

The most common instance where persons are searched is after arrest (see 7.4. above). There are a few important aspects to remember when searching a person.

- A woman must be searched by a woman only, and if no female police officer is available, the search must be made by any woman designated for the purposes by a police officer. Men should also be searched by men.
- Personal searches (for example, cavity searches like vaginal and anal ones) may be undertaken only in private, and only by a medical practitioner. This is a very serious infringement on a person's right to privacy and human dignity. Such searches may be undertaken only if there are reasonable grounds to believe that an article that was involved in a crime, or that may be used in committing a crime, is hidden in that part of the body. This depends on domestic legislation. Modern technology like X-rays or non-intrusive measures may lower human rights infringements.

The principles of legality, necessity and proportionality should always be taken into consideration when searching a suspect. The principle of minimum force should also be taken into account during searches.

## 7.7. Use of force during search and seizure

Police who may lawfully search a person or property, or who may enter premises for the purposes of obtaining evidence, may use the reasonable force necessary to overcome any resistance against such search and entry to seize property. This means that police officers may use such force as may be reasonably necessary in the circumstances. The principles of proportionality and minimum force should lead the actions of the police.





### 7.7.1. Use of force to enter and search premises and property

Before any force may be used by police officers, they should first audibly demand entrance and provide reasons why they wish to enter the premises. If the circumstances permit, police may break down a door or a window to gain entrance. Police should not cause unnecessary damage to property. Force should be used only when resistance is offered, and then only as a last resort. It is not always necessary to damage property or use force in order to enter premises to conduct a search. Such conduct, as well as being wrong, puts the community off-side vis-à-vis the police. Police may, afterwards, have to give reasons to show why it was necessary, that it was proportional, and that they acted legally under the circumstances.

Use of force can only be lawful if the search was lawful.

#### **Search of Premises and the Use of Force - Notes**

- Do not cause unnecessary damage to property.
- If you do not need to use force, you should not use force at all.
- Search only in places where articles may possibly be found.
- Inform the owner or occupier that you intend to conduct a search.
- Searches should normally take place in day-time.
- Provide a copy of the search warrant to the occupier of the building upon request or after the search.
- Minimum force and proportionality should guide the actions of police officers.

### 7.7.2. Use of force to search persons

As noted, police officers may search an arrested person upon arrest. If an officer needs to use force to search the person, it should only be the force necessary to overcome any resistance and to conduct the search. The principle of minimum force should, therefore, always be observed. Escalation of force and de-escalation of force should lead police actions. The more the resistance, the more force that can be used; if the person submits, police should immediately use less force (de-escalate).

### 7.8. Seizure of property

Seizure of property should be conducted in accordance with domestic legislation, and taking into account the basic rights of the person whose property is seized.

### 7.9. Summary

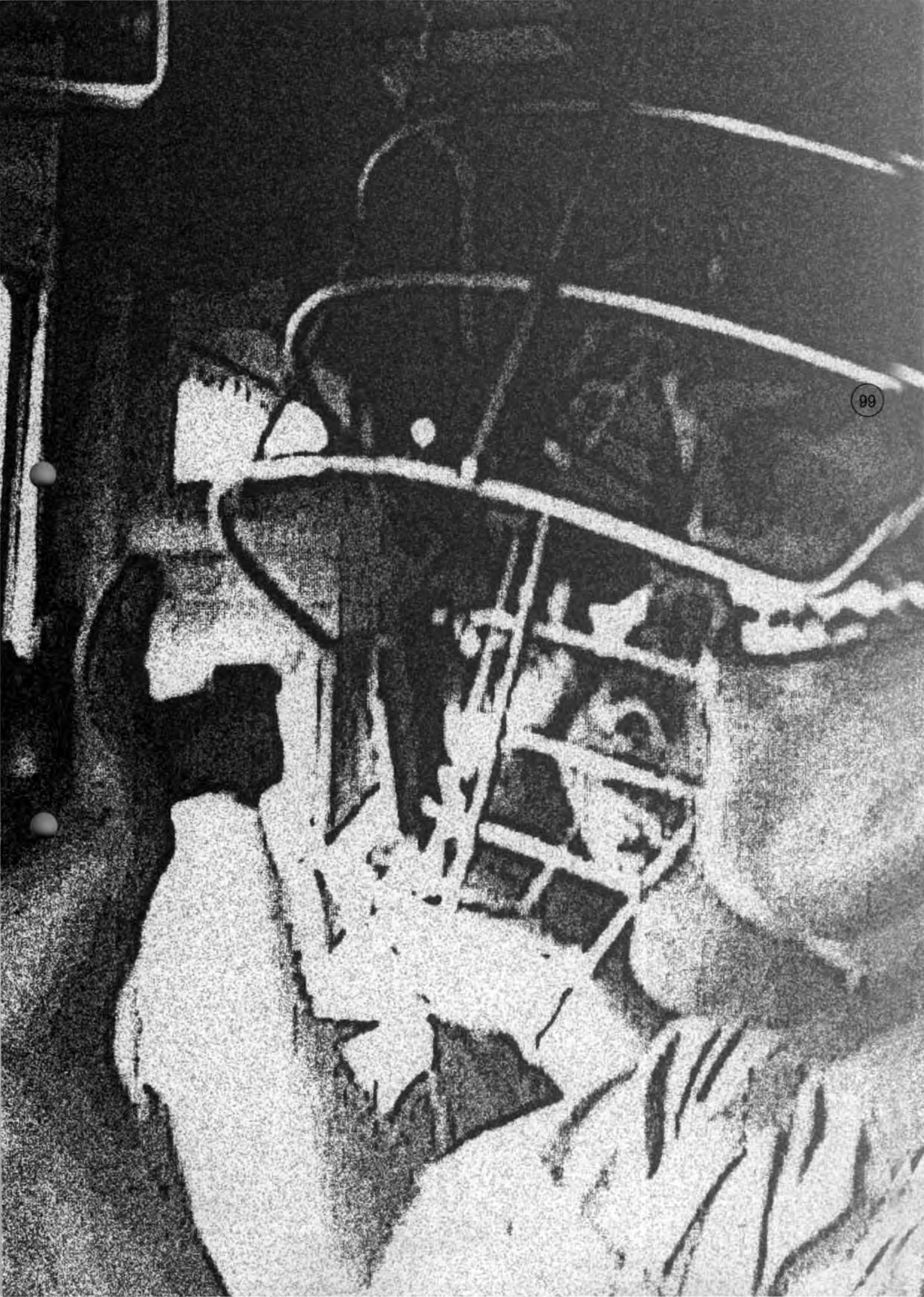
Search and seizure are important police functions, enabled by law but also limited by law and by human rights considerations. Searches can be executed with or without a warrant, depending on the circumstances. Police officers should always respect and protect the basic rights of the person being searched.



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### 7.10. Questions for self-evaluation

- *Why is it good practice to obtain a search warrant before a search is undertaken?*
- *What can be the results of an unlawful search?*
- *May police officers search without a warrant?*
- *May police officers use force to conduct a search or to enter property in order to seize property? If so, what principles have to be taken into consideration?*
- *Why may male police officers not search female suspects?*





## CHAPTER 8

# Maintenance of public order

### Learning objectives for Chapter 8

After completing this chapter you should be able to:

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- *Discuss the international human rights principles applicable to the use of force by police in maintaining or restoring public order*
- *Explain the responsibilities of police officers in maintaining public order within the framework of citizens' freedom to associate and demonstrate*
- *Describe the rights of people to peacefully demonstrate, assemble and to express themselves*
- *Appreciate the significance of these rights to enabling peaceful democratic participation and expression by all citizens*
- *Describe the legitimate limits on these rights: how the exercise of basic expression and assembly rights might be limited, within the law, in order to protect the rights of others (the safety or dignity of the general public and the protection of property)*



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## Chapter 8

### Maintenance of public order

#### Contents

- 8.1. Introduction**
- 8.2. Maintaining law and order: basic policing principles and use of force – the 'P.L.A.N.' principle**
- 8.3. Maintenance of public order: international standards applicable**
- 8.4. Policing in States of Emergency and military conflict situations**
- 8.5. Summary**
- 8.6. Questions for self-evaluation**



## 8.1. Introduction

The phenomenon of people taking to the streets to express their feelings and opinions publicly is common enough in most countries of the world. Such events, rallies, protests, assemblies or demonstrations, or whatever they may be called, may occur spontaneously (as a result of a significant event) or after planning and publicity by certain citizens or groups. Such events – conducted peacefully and within the law – may be understood as logical, essential consequences of liberty and democracy, as well as of individual and collective freedom. Freedom of assembly and expression on matters of concern to citizens is necessary for the existence of an open, participatory democracy where people can contribute to determining the sort of society they wish to live in. Such freedoms are also a fruit or benefit of an open democracy founded on respect for human rights.

As well as the fundamental rights listed below, member countries of the Commonwealth have committed themselves in the 1971 Singapore Declaration to ensuring and protecting the freedom of citizens to peacefully assemble, associate, express oneself and demonstrate:

*"We believe in the liberty of the individual...and in their inalienable right to participate ... in framing the society in which they live."*

What does this mean for policing and police training? At a day-to-day level, it falls to police officers to respect the rights that underlie this commitment, and to give it practical, tangible and visible effect. It is the role of police to secure, maintain and, when disrupted, to restore peace and security in a country. This role is highlighted during and in the run-up to elections, when citizens become actively involved in the process of election campaigns, marches, assemblies and other activities, and where they express themselves and associate themselves with specific political parties or groups.

To give effect to the rights of freedom of assembly, association and expression, it is important for police to be impartial (non-political) and to allow people to express themselves, within the parameters of the law. Essential to this is an understanding that the ideal position is not: "You may not assemble or demonstrate unless permitted." Instead, it is: "You may – you have a right to – assemble or demonstrate, unless you threaten others or property."

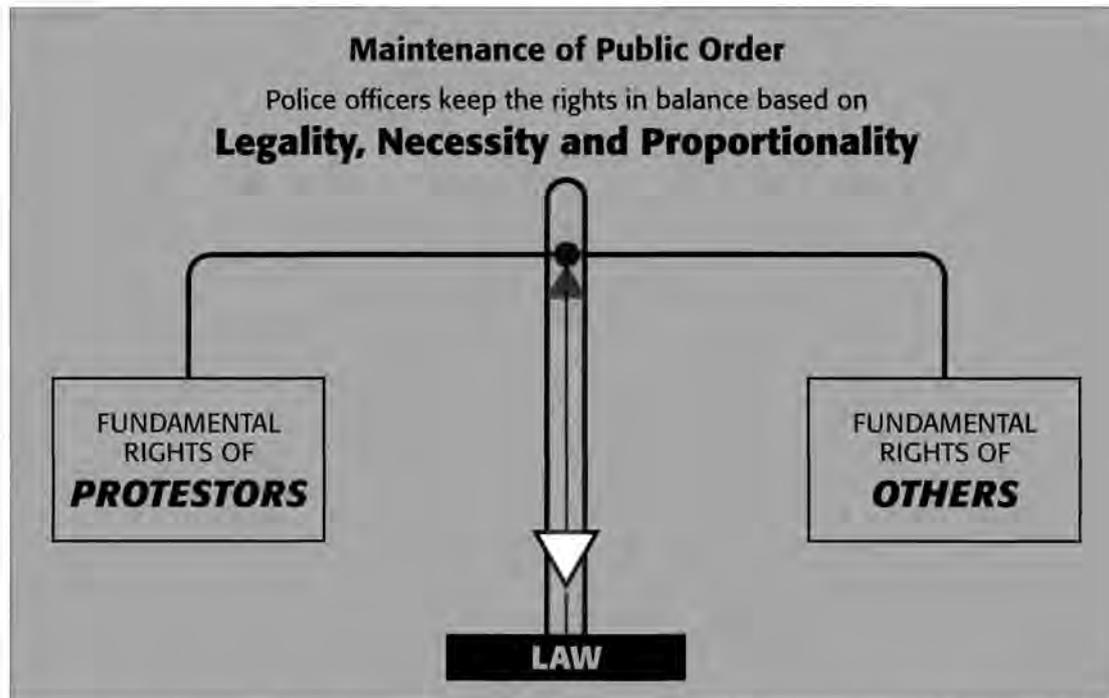
Since their role is intricately related to maintaining peace, police officers should be encouraged to see demonstrations not just as a function of people's rights, but within the wider context of what contributes to a peaceful country. They can see public assemblies as a form of democratic 'safety valve'. If people feel the police are not enabling them to peacefully express themselves without fear, they may resort to more violent means of expression.

Equally important is to instil an understanding that demonstrators can be loud, enthusiastic, taunting and boisterous, but still be counted as 'peaceful'. The right to demonstrate peacefully does not mean people must shuffle along quietly. People do not break the law and surrender their free expression rights by being vocal, dancing, etc. Many crowd control situations deteriorate because police seek to prematurely shut down peaceful but enthusiastic demonstrations. The restraint needed comes from self and group confidence in the police officers themselves. This is about confidence in the competence and calm of their chain of command as the situation develops. It is helped by having the right equipment and training to deal with grades of force as might be necessary (see below).



A rights-based approach to public order means that police should not themselves escalate tension or provoke deterioration of the situation. Police should take the initiative and co-ordinate with march organisers, and involve them in planned marches so that they understand that they are jointly responsible for whatever occurs.

Maintenance of public order deals mainly with the difficult balance between free political expression in groups, and protecting public safety and good order – between different people's rights. When policing major public events, police officers require more than just an understanding of the legal rights and responsibilities of participants at such events. They also require an understanding of the rights, freedoms and obligations, under the law, of those people who do not participate.



There should always be a balance between the rights of people to exercise their legal rights of expression and assembly, and the rights of non-participant members of the public not to be threatened, assaulted or have their property damaged.

## **8.2. Maintaining law and order: basic policing principles and use of force – 'P.L.A.N.'**

Sometimes, force is required to maintain public safety and order. However, even when force is applied, human rights principles dictate the manner and extent of the use of force.

As is set out in chapter 5, 'force' can have varying grades, and should be applied only insofar as it is necessary. The purpose for which it is used is also informed by human rights – force is

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to be used not to punish, provoke or persecute protestors, but to protect the public and property. It may be that police need to preserve a deterrent effect, but a reputation for 'fairness but firmness' is to be preferred. The regular disproportional use of force, provocation or punitive policing actions is, experience shows, likely to lead to loss of public respect for the police and an expectation of violence on the part of the public, and can make the job of the police harder to do. This can lead to a threat to the lives of police officers.

When police officers are present during marches, meetings or processions, and particularly when force is to be applied in a deteriorating situation, it is important to take the following 'P.L.A.N.' principles, encountered in chapter 5, into consideration:

- **P**roportionality
- **L**egality
- **A**ccountability
- **N**ecessity

### **'PROPORTIONALITY'**

The principle of proportionality requires that the police consider the purpose of the limitation, its nature and extent as well as the **relationship** between the limitation and its purpose. It concerns the relationship between the means the police apply during a public order situation, and the end sought to be achieved. The police should suitably equip members according to the circumstances before they are deployed. Already during the planning phase, the police should determine which methods and equipment may be regarded as least forceful in the circumstances. This process should logically lead to a decision to use the **least forceful** (restrictive) methods to attain the lawful goal of maintaining public order. When the use of force is unavoidable, it must cease immediately once police members attain the objective of the operation.

### **'LEGALITY'**

Before the police undertake any action, the operational commander will ask whether he or she has any legal authority to intervene. In other words: whether the police have the necessary mandate according to local legislation. The authority to intervene and the restrictions on such intervention must be clear to the police **before** they take any measures. The principle of legality requires a clear legal framework **justifying** intervention by the police.

### **'ACCOUNTABILITY'**

Police officers may expect to be held **accountable** in law (and as a matter of internal discipline) for their use of force where it is **not necessary** to use such force, **not lawful**, or **out of reasonable proportion** to the threat.

### **'NECESSITY'**

This principle of 'situational appropriateness' requires that the police assess the prevailing circumstances of any particular situation to be able to respond appropriately and within a framework of legality. Every situation where a crowd needs to be managed will be different. Operational decisions should be based on the actions of the crowd, which should be anticipated and planned for, rather than rigid, pre-prescribed procedures. The principle of

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'optimisation' concerns the optimal use of equipment and personnel to reach or obtain the goal set out in the planning phase, when different crowd behaviour is anticipated and catered for. The principle of situational appropriateness requires that police actions should be **reasonable** and **justifiable** and that all factors must be taken into account. Force should only be used when necessary to protect the person or property of others (including police officers), and even then, should be proportionate to the threat faced.

Basic Principle 14 of the UN's *Basic Principles on the Use of Force and Firearms by Law Enforcement Officers* is of particular importance for 'policing' assemblies and demonstrations, and states that:

- In dispersing UNLAWFUL but NON-VIOLENT assemblies, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict the use of force to the minimum extent necessary.
- In dispersing VIOLENT assemblies law enforcement officials may use firearms only when less dangerous means are not practicable AND only to the minimum extent necessary AND ONLY under the conditions stipulated in Basic Principle 9:

Law enforcement officials shall not use firearms against persons except:

- in self-defence or defence of others against the imminent threat of death or serious injury;
  - to prevent the perpetration of a serious crime involving grave threat to life;
  - to arrest a person presenting such a danger and resisting their authority; or
  - to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.
  - In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
- Basic Principle 14 does NOT allow indiscriminate firing into a violent crowd as an acceptable tactic for dispersing that crowd.

### **8.3. Maintenance of public order: international standards applicable**

As noted in the introduction, it is proper for a trainer to build into tactical and other training on crowd management not only the right to life and related principles, but also the background human rights and freedoms applicable to assemblies, demonstrations, rallies (etc.):

- The right to hold opinions without interference (*International Covenant on Civil and Political Rights*, Article 19.1).
- The right to freedom of expression (ICCPR, Article 19.2).
- The right of peaceful assembly (ICCPR, Article 21).
- The right to freedom of association (ICCPR, Article 22.1).

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The exercise of those rights is not without limits. Restrictions on the exercise of such rights can be imposed on it, provided that:

- (a) they are lawful; and
  - (b) necessary:
    - for respect of the rights or reputation of others; or
    - for the protection of national security, public order, or public health or morals.
- (ICCPR, Articles 19.3, 21 and 22.2)

From the various international legal sources and guidelines, it is possible to compile a list of applicable human rights-related standards on police management of crowds:

### **Human rights standards**

- All measures for the restoration of order shall respect human rights.
- Restoration of order shall be achieved without discrimination.
- Any limitations on rights shall be only those determined by law.
- Any action taken and any limitations on rights shall be solely for the purpose of securing respect for the rights and freedoms of others, and for meeting the just requirements of morality, public order and the general welfare.
- Any action taken and any limitations on rights shall be only those consistent with the requirements of a democratic society.
- No exceptions are permitted with regard to the right to life; the right to freedom from torture; the prohibition of slavery; the prohibition of imprisonment for failure to fulfil a contractual obligation; the prohibition on retrospective laws; the recognition of everyone as a person before the law; or the right to freedom of thought, conscience and religion.
- Non-violent means shall be attempted before the use of force.
- Force shall be used only when strictly necessary.
- Force shall be used only for lawful law enforcement purposes.
- Force applied shall be proportional to the lawful law enforcement objectives.
- Every effort shall be made to limit damage and injury.
- A range of means for the differentiated use of force shall be available.
- No unnecessary limitations on the rights to free speech, assembly, association or movement shall be imposed; limitations should not be imposed on freedom of opinion.
- The independent functioning of the judiciary shall be maintained.
- All wounded and traumatised persons shall be immediately cared for.





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It is also possible to compile a list of practical conduct that police officials can engage in, in order to give practical effect to these standards.

### **Human rights practice**

#### **All police officials should:**

- Adopt community policing strategies, and monitor levels of social tensions between various groups in society, and between those groups and the authorities.
- Be alert as to any preparations for unlawful demonstrations.
- Be tolerant of unlawful, but peaceful, non-threatening assemblies, so as not to escalate the situation unnecessarily.
- Establish contacts with representatives and individuals in the crowd.
- Where it is necessary to disperse a crowd, always leave a clear and obvious corridor of escape.
- Deal with a crowd as a group of independently thinking individuals, not as a single-minded mass.
- Avoid unnecessarily provocative tactics.
- Develop crowd-control techniques which minimise the need for the use of force.
- Enrol in training programmes to improve skills in first aid; self-defence; the use of defensive equipment; the use of non-lethal instruments; the use of firearms; crowd behaviour; conflict resolution; and personal stress management.
- Acquire and practice the use of shields, defensive vests, helmets and non-lethal instruments.
- Acquire, practice with and utilise a range of means for the differentiated use of force, including non-lethal incapacitating weapons.
- Study and employ techniques for persuasion, mediation and negotiation.
- Plan in advance for the gradual, progressive use of force, beginning with non-violent means.

#### **Command and supervisory officials should:**

- Issue clear standing orders on respect for peaceful, free assembly.
  - Introduce community policing strategies, and monitor levels of social tensions between various groups in society, and between those groups and the authorities.
  - Instruct officials to be tolerant of unlawful, but peaceful, non-threatening assemblies, so as not to escalate the situation unnecessarily. The paramount objectives to be remembered in developing crowd control strategies are the maintenance of order and safety and the protection of human rights, not the enforcement of legal technicalities regarding permits or unlawful but non-threatening behaviour.
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- Establish and enforce clear standing orders on the use of force and firearms.
  - Provide regular training in first aid; self-defence; the use of defensive equipment; the use of non-lethal weapons; the use of firearms; crowd behaviour; conflict resolution; stress management; and persuasion, mediation and negotiation.
  - Acquire and issue defensive equipment, including helmets, shields, bullet-proof vests, gas masks and bullet-proof vehicles.
  - Acquire and issue non-lethal incapacitating and crowd-dispersal instruments.
  - Acquire the broadest possible range of means for the differentiated use of force.
  - Establish clear reporting guidelines for every incidence of the use of force or firearms.
  - Strictly regulate the control, storage and issuing of firearms, including procedures for ensuring that officers are accountable for arms and ammunition issued to them.
  - Prohibit the use of weapons and ammunition which cause unwarranted injury, damage or risk.
  - Develop strategies to reduce the risk that officers will be forced to use firearms.

Police agencies should develop a proper crowd management policy and guidelines that can form a framework within which the police can define their powers. This can prevent arbitrary police action, the overzealous use of force and violent dispersal of 'illegal' gatherings.

#### **8.4. Police in States of Emergency and military conflict situations**

##### **What is the status of human rights standards in States of Emergency?**

- States of emergency may only be declared in conformity with national constitutional law and international law and must be officially declared before exceptional measures may be taken.
  - International law (ICCPR, Article 4) declares that states of emergency may only be declared where a public emergency threatens the life of the nation, and where ordinary measures are plainly inadequate to address the situation.
  - Any exceptional measures must be strictly required by the demands ('exigencies') of the situation and must not be inconsistent with other requirements under international law.
  - Any exceptional measures must not discriminate solely on the basis of race, colour, gender, language, religion or social origin.
  - No exceptions are permitted with regard to the right to life; the prohibition of torture and cruel, inhuman or degrading treatment; the prohibition of slavery; the prohibition of imprisonment for failure to fulfil a contractual obligation; the prohibition on retrospective laws; the recognition of everyone as a person before the law; or the right to freedom of thought, conscience and religion.
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- No one may be held guilty of any criminal offence which was not an offence at the time it was committed.
- No one may be subjected to a heavier penalty than that which was applicable at the time the offence was committed.

### **Police, human rights standards and armed conflict**

Existing in parallel to international human rights law is international humanitarian law (IHL), the branch of international law that commences to apply when a situation of armed violence degenerates into international or internal armed conflict (which entails a certain level of intensity, spread and prolonged nature). The best known IHL treaties are the four *Geneva Conventions* of 1949 and their two *Additional Protocols* of 1977. The requirement to distinguish between civilians and combatants, and the prohibition of attacks on civilians or indiscriminate attacks, lies at the heart of humanitarian law.

As IHL applies only in situations of armed conflict, it does not regulate police activities in peacetime. These are regulated by international human rights law. There is never a legal vacuum since either (or both) of these legal regimes will apply in any one situation. The onset of armed conflict does not mean that international human rights law no longer applies.

- During armed conflicts and occupation, police are to be considered non-combatants, unless formally incorporated into the armed forces.
- Police have a right to abstain from fulfilling their functions under occupation, by reason of conscience, and this shall not result in an alteration of their status.
- Humanitarian law applies in all situations of armed conflict.
- Principles of humanity must be safeguarded in all situations.
- Non-combatants and persons put out of action by injury, sickness, capture or other cause must be respected and protected.
- Persons suffering from the effects of war must be aided and cared for without discrimination.

### **During 'armed conflict', acts prohibited in all circumstances include:**

- murder; torture; corporal punishment; mutilation; outrages upon personal dignity, including rape; hostage-taking; collective punishment; executions without regular trial; cruel, inhuman or degrading treatment or punishment; and
- reprisals against the wounded, sick and shipwrecked; medical personnel and services; prisoners of war; civilians; civilian and cultural objects; the natural environment; and works containing dangerous forces.

Commission of some of these offences may be a crime in international law and attract the jurisdiction of the International Criminal Court.

No one may renounce or be forced to renounce protection under humanitarian law. Protected persons must at all times have resort to a protecting power (a neutral state safeguarding their

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interests) or to the International Committee of the Red Cross (ICRC) or any other impartial humanitarian organisation.

### **Human rights practice**

#### **All police officials should:**

- (a) undergo training in the requirements of human rights and humanitarian law during armed conflict;
- (b) undergo training in first aid, disaster management and civil defence procedures;
- (c) learn their agency's strategies for the maintenance of order and protection of the civilian population during periods of conflict;
- (d) co-operate closely with medical services, firefighters, civilian authorities and the military; and
- (e) pay special attention to the special needs of particularly vulnerable groups during such periods, including refugees and displaced persons, children and the injured.

#### **Civilian police commanders and supervisors should:**

- (a) provide training to all officials on the above matters and develop standard emergency co-operative procedures for co-ordinated action with medical services, firefighters, civilian authorities and the military; and
- (b) issue clear instructions on the civilian status of the police during armed conflict.

#### **Police incorporated into armed forces during armed conflict should learn and apply the 'soldier's rules', as follows:**

- 'Be a disciplined soldier. Disobedience of the laws of war dishonours your army and yourself, and causes unnecessary suffering. Far from weakening the enemy's will to fight, it often strengthens it.'
- 'Fight only enemy combatants and attack only military objectives.'
- 'Destroy no more than your mission requires.'
- 'Do not fight enemies who are "out of combat" or who surrender. Disarm them and hand them over to your superior.'
- 'Collect and care for the wounded and sick, be they friend or foe.'
- 'Treat all civilians, and all prisoners in your power, with humanity.'
- 'Prisoners of war must be treated humanely and are bound to give information only about their identity. No physical or mental torture of prisoners of war is permitted – you too may be a prisoner if fortunes reverse.'
- 'Do not take hostages.'
- 'Abstain from all acts of vengeance.'





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- 'Respect all persons and objects bearing the emblem of the Red Cross or the Red Crescent, the white flag of truce, or emblems designating cultural property.'
  - 'Respect other people's property. Looting is prohibited.'
  - 'Endeavour to prevent any breach of the above rules. Report any violation to your superior. Any breach of the laws of war is punishable.'

### 8.5. Summary

- The basic human right to assemble in groups and express oneself through peaceful mass demonstration is (within the limits acknowledged by international human rights law) the natural product of a working democracy, and vital to the functioning of a participatory democracy.
- Police officials play a critical role when it comes to the maintenance of public order in such situations. They should be encouraged to see the right to assemble peacefully to express oneself (including with great enthusiasm) as ultimately necessary to maintaining overall peace. Police face a difficult challenge to ensure a balance between the rights of people to exercise their legal rights and freedoms by peaceably assembling or demonstrating (protestors), and the rights of others (non-protestors) not to be threatened, injured, or have their property damaged.
- When police officials act positively or use force to maintain or restore public order, their actions should always be **legal, necessary, proportional** and they have to act in an ethical manner, and be **accountable** to the populace and to superiors for their actions: '**P.L.A.N.**'
- The situation of police in military or armed conflict is regulated by international law. There is never a 'legal vacuum' where no law applies.

### 8.6. Questions for self-evaluation

- *Do people have the right to demonstrate, assemble and express themselves?*
  - *Describe the balance between the rights of people to exercise their legal rights and freedoms without infringing the rights of others, and observance of the law by all parties.*
  - *What role do police officers play to ensure the rights of protestors while protecting the rights of the public? When may police stop an assembly?*
  - *What are the responsibilities of police officers in maintaining public order?*
  - *What human rights principles are applicable to use of force to disperse assemblies?*
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## CHAPTER 9

# Vulnerable groups: Children

### **Learning objectives for Chapter 9**

After completing this chapter you should be able to:

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- *Provide a definition of who is a 'child' in international standards*
  - *Explain why it is important for police officers to respect and protect the human rights of children*
  - *Explain how police officers should treat child victims of crime*
  - *Explain how police officers should treat children who are suspected of committing a crime*
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## Chapter 9

### Vulnerable groups: Children

#### Contents

- 9.1. Introduction**
- 9.2. Children as a vulnerable group**
- 9.3. Children as suspects of crime**
- 9.4. Children as victims of crime**
- 9.5. Summary**
- 9.6. Questions for self-evaluation**



### 9.1. Introduction

Children are the future of every nation. All children have the right to be protected, and to be treated with care, dignity and respect. They are a vulnerable group in society who need special care, attention and protection. Police officers deal with children on a regular basis, on the one hand as victims of crime and abuse (requiring perhaps more attention than adult victims), and on the other as perpetrators of crime. Children who are suspected of criminal conduct should be treated with care. There are likely to be societal and behavioural reasons for childhood criminal activity, and children who are treated by police as if they were already fully-grown hardened criminals are quite likely to become such criminals. While the same legal procedure may apply as with adults, in addition there may be special rules that apply to children.

In encouraging the development and protection of children, it is vital for police to afford the community a role, through proactive liaison and recognition by police of the special role and expertise of child protection institutions, religious institutions, non-governmental organisations, community organisations, charitable organisations, and educational institutions.

The concept of 'protection of children' is well known, in a general sense, in the laws and cultures of many Commonwealth countries, and refers to all activities designed to guarantee and protect children and their rights so that they may live, grow, develop and participate optimally in society in accordance with the dignity to which they are entitled as human beings, and so that they may be protected against violence and discrimination in order to ensure the moral values and well-being of all children.

### 9.2. Children as a vulnerable group

Children are special to, and play a very important role in, every community. Police officers might see themselves as having a national duty to protect and respect children as especially vulnerable. Children can also play a very important role in community policing. If police officers have a good relationship with children, through for example school projects and sports projects, and they are trusted and respected by the children, officers may gain access to valuable information about criminal activities in the communities which can contribute to the improvement of the safety and security situation in communities.

Children are one of the most vulnerable groups in every society. The UN Convention on the Rights of the Child (1989), which has been ratified by every Commonwealth member country, defines a child as a human being under the age of 18 years.

When dealing with children (victims or suspects), police officers should always:

- be extremely patient;
- establish a relationship of trust with the child;
- be aware of the signs of abuse and exploitation;
- take into consideration that children, especially young or ignorant children, may in many instances not realise that they have been or are being abused or exploited; and
- accept that sexual and serious physical abuse of children occurring in the home is not a 'private' matter, but criminal conduct and a human rights abuse.



### 9.3. Children as suspects of crime

Children who are involved in crime have often been earlier subjected to violence and abuse, particularly within the family environment, or have been neglected (emotional or physical neglect, especially during infancy) or abandoned. This leads to children being involved in crimes such as prostitution, the sale and possession of drugs, theft and acts of violence.

Children, especially young children, are sometimes ignorant of the fact that they are being abused or exploited. Whatever the appearances, police should not take it for granted that children are willing participants in crime, for example in prostitution – the child may have little real choice, or become involved in the activity after being abused or exploited. Police must see the rehabilitation and re-socialisation of such children (rather than simply punishment) as the ultimate objective.

According to the accumulation of international human rights laws, standards and practices for the protection of children, children are to benefit from all the human rights guarantees available to adults. In addition, the following protective rules shall be applied to children:

Σ Children shall be treated in a manner that promotes their sense of dignity and worth; that facilitates their reintegration into society; which reflects the best interests of the child; and which takes into account the needs of a person of that age.

- Children shall not be subjected to torture; to cruel, inhuman or degrading treatment or punishment; to corporal punishment; or to life imprisonment without a chance of release.
- Detention or imprisonment of children shall be an extreme measure of last resort, and detention shall be for the shortest possible time.
- Children shall be separated from adult detainees.
- Detained children shall be allowed to receive visits and correspondence from family members.
- A minimum age for criminal responsibility shall be established.
- Non-judicial proceedings and alternatives to institutional care shall be provided for.
- The child's privacy shall be respected, and complete and secure records are to be maintained and kept confidential.
- The use of physical restraints and force on children is to be exceptional, employed only when all other control measures have been exhausted and have failed, and shall be employed for the shortest possible time. Weapons shall not be carried in juvenile institutions.
- Discipline shall respect the child's dignity, and shall instil in the child a sense of justice, proportionality, self-respect and respect for human rights.
- Officials dealing with juveniles shall be specially trained and personally suited for that purpose.

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- Periodic, as well as unannounced, visits by inspectors to juvenile facilities shall be provided for.
  - Parents are to be notified of any arrest, detention, transfer, sickness, injury or death.

#### **9.4. Children as victims of crime**

Police officers should provide special attention and protection to children who are victims of crime. All children should be treated equally, regardless of their social standing, and with dignity. A poor child who has been abused should be treated in the same way as a child from a rich family.

Children have to be treated with respect and dignity as human beings. Therefore, children have to be protected against torture and cruel, inhuman or degrading treatment or punishment.

Children should be protected against sexual exploitation and abuse. Police officers can play an important role in the protection of children. The State should take measures to protect children from being encouraged or forced to take part in any unlawful sexual activities or practices, prostitution, pornographic performances or material. The police should also assist the State in preventing children from being stolen or sold for any purpose whatsoever. Children should be protected from drug abuse. The State – and so the police – should take special measures to prevent children from being used to produce or traffic drugs.

#### **Governments can take the following measures in order to prevent child abuse:**

- Develop a nationwide capacity to provide a rapid, effective, and measured investigative response to crimes involving the victimisation of children.
- Enhance the capabilities of state and local law enforcement investigators through training programmes, investigative assistance, and task force operations.

#### **In order to prevent crimes against children, the police should:**

- use multi-disciplinary resource teams to investigate and prosecute crimes against children that cross legal, geographical, and jurisdictional boundaries;
- promote and enhance inter-agency sharing of intelligence information, specialised skills, and services;
- increase the provision of victim/witness assistance services;
- investigate online child pornography/child sexual exploitation; and
- investigate the possession, production, and/or distribution of child pornography facilitated by an online computer.

Police should be encouraged to enlist community and organisational support.

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### 9.5. Summary

The *Convention on the Rights of the Child* is the most widely accepted of all international human rights instruments. However, children are still forced to take part in armed conflicts, and still forced into prostitution and slave labour. In recognition of the seriousness of these issues, in the year 2000 two special 'Optional Protocols' (international instruments) to the *Convention* were promulgated on each of these issues.<sup>2</sup> Police prioritisation of child abuse and preventing police abuse of child suspects is similarly of great importance.

Children have the same basic human rights as adults, but because of their age and vulnerability they need extra measures to protect them. The police are legally and morally situated in an important role in this regard and need to see themselves as protectors of children and their rights as especially vulnerable persons. Police training should emphasise the human rights aspect of this.

### 9.6. Questions for self-evaluation

- *Who, in international law, is considered a 'child'?*
- *What are the basic human rights of children?*
- *What are the responsibilities of police officers when dealing with children who are suspected of committing a crime?*
- *Why is it important to provide special protection to children who have been victims of crime?*
- *What are some of the social and community organisations whose help the police should seek in ensuring a comprehensive response to the problem of criminal acts against children?*

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<sup>2</sup> Some Commonwealth countries have ratified these: the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (adopted and for ratification by UN General Assembly resolution A/RES/54/263 of 25 May 2000, entry into force 12 February 2002) and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography* (adopted and opened for ratification by UN General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 18 January 2002).





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## CHAPTER 10

# Vulnerable groups: Women

### **Learning objectives for Chapter 10**

After completing this chapter you should be able to:

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- *Explain why women are seen as a vulnerable group*
  - *Discuss how police officers should treat women who are victims of crime*
  - *Discuss how police officers should treat women suspected of crime*
  - *Explain the role of female police officers in a democratic society*
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## Chapter 10

### Vulnerable groups: Women

#### Contents

- 10.1. Introduction**
- 10.2. Women as a vulnerable group**
- 10.3. Women as victims of crime**
- 10.4. Domestic violence**
- 10.5. International standards and practices applicable when dealing with violence against women**
- 10.6. Trafficking and exploitation of women**
- 10.7. Women as suspects of crime**
- 10.8. Women police officers**
- 10.9. Summary**
- 10.10. Questions for self-evaluation**



### 10.1. Introduction

It is an unfortunate indictment of our world that even in the 21st century, in many countries there are still laws, cultures, religions, practices and systems that systematically discriminate against women. In some countries women are excluded from political participation and public life, segregated in their daily lives, raped in armed conflict, sexually abused and beaten in their own homes, denied equal divorce or inheritance rights, forced to marry, assaulted for not conforming to gender norms, or sold and trafficked into forced labour or prostitution.

The police are best positioned to address the particular problem of violence against women. Police understandably find violence in the home a difficult area to deal with. It is important for police to realise that most violence against women is not simply a 'private domestic matter' – it constitutes criminal conduct. And all physical, sexual and psychological abuse and discrimination of women is an issue of human rights.

Police officers should always ensure that their actions guarantee that women are treated with the same dignity and respect as men. However, in recognition that women are a vulnerable group in society, there are certain extra measures that police officers should take to ensure the protection of women's rights.

The test of a modern, professional police force concerns not only how police deal with women who might have been victims of crime or may have themselves committed a crime. The test is also about the way police agencies treat women who are themselves police officers. The rights of women will be discussed in this chapter.

### 10.2. Women as a vulnerable group

Unfortunately women are still discriminated against, mistreated and abused in many societies, most commonly by those known to them. The vulnerability of women is evident in the discrimination, neglect and violence against women that takes place in many forms all over the world.

Many of these abuses are as a result of (or are sometimes justified as) cultural practices. Controversial examples include female genital mutilation; honour killings; the pledging of girls for economic and cultural appeasement; witch-hunting or witch-burning; caste; child-girl marriage; unequal divorce rights; etc. But what passes as shared culture is often a poor disguise for power relations that have no cultural validity.

Police officers have a very important role to play in the protection of women, beginning with recognition of their exclusion from many areas of life, their inadequate voice, and their vulnerability to abuse within and outside of the family. Girls and young women are particularly vulnerable.

#### **Police – protecting the vulnerable**

The police have a crucial role to play in curtailing violence against women, thus protecting the human rights of women. This role is both a result of State mandated responsibilities and it is facilitated by the organisational base of the police.

The police are often the only 24 hour, seven days a week emergency service available to battered or otherwise abused women, and may be the only source of medical care. Unlike other social services, the police may be the only service that



offers comprehensive geographical cover through its stations and communications system.

As a frontline in the criminal justice system, policing can combine the authority of the State with prevention strategies. These strategies should include liaison and coordination with social services, women's groups and others able to help alleviate the load that police carry in certain ways.

### 10.3. Women as victims of crime

When women are victims of crime police officers should take special care. The following principles can be emphasised:

- Police officers should always respect the victim's dignity. This is reflected in the way police talk and deal with victims.
- If possible a female police officer should assist a woman victim, especially when she has been the victim of a violent crime or abuse. Where possible, statements should be taken in private.
- In the case of a victim of abuse, the police officer should remember that he or she is dealing with a person who has already been impaired, who has been ill-treated and humiliated, and who will therefore be much more vulnerable than other members of the community. The police should not exacerbate the primary suffering by adding to it with their own conduct. This refers to the problem of 'repeat victimisation' if a female victim of crime experiences insensitive or traumatic treatment once she seeks help from police after the crime (note the contents of Chapter 12 on 'Victims of crime'.)
- Police officers are usually the first point of contact for female victims. The welfare and well-being of the victim should be the police officer's highest priority. The crime occurring cannot be reversed, but adequate help and assistance to the victim will definitely contribute towards limiting the negative consequences of that crime.

Domestic violence and trafficking of women are two important issues which will now be discussed in more detail.

### 10.4. Domestic violence

Domestic violence is something which happens in all countries across the globe. It happens not only within families, but also among people who are in a relationship with each other. The problem for police is that it happens within an environment where many societies view the relationship between husband and wife or partners as a private matter. Police the world over recognise domestic disputes as a very difficult area to work in. If anything at all, they often prefer to mediate rather than to treat domestic violence as a normal crime.

Violence against women can be physical, sexual or psychological, and includes battery, sexual abuse, marital rape, harmful traditional practices, non-spousal rape and violence, sexual harassment, forced prostitution, trafficking in women, acid-throwing, female genital mutilation, and exploitation-related violence. Violence against women, in all its forms, violates and impairs

or nullifies the enjoyment by women of human rights and fundamental freedoms. Women who are victims of domestic violence are mostly denied equality before the law, and this reinforces their subordinate social status.

### **Domestic violence: not a private matter**

It is important to recognize that domestic violence is a crime, and that police should normally investigate it as a crime. Women are often wary of reporting the matter, and afraid of the sort of treatment the police might give their case.

The police have the potential to make a major contribution to the public perception of violence through police responses that unambiguously identify violence both inside as well as outside the family as unacceptable behaviour. Police can educate the community by their response. They should seek to liaise with community groups. This will contribute to the recognition that the human rights of women in the home are no different to those of men.



### **10.5. International standards and practices applicable when dealing with violence against women**

The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979), ratified by many Commonwealth countries, defines 'gender-based violence' as:

*"... Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."*

*"Violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts and other deprivations of liberty ..."*

Here are some of the international human rights standards and practices applicable when dealing with violence against women:

- Police shall exercise due diligence to prevent, investigate and make arrests for all acts of violence against women, whether perpetrated by public officials or private persons, in the home, the community and in official institutions.
- Police shall take rigorous official action to prevent the victimisation of women, and shall ensure that re-victimisation does not occur as a result of the omissions of police or gender-insensitive enforcement practices. Police should deal with all the cases of domestic violence in a compassionate way, supporting the victims.



- Violence against women is a crime and must be treated as such, including when it occurs within the family. Police officers must refrain from viewing the issue of domestic violence as a private family matter. Police officers are required to act upon a complaint of domestic violence as with any other crime occurring within their jurisdiction. All cases of domestic violence should be investigated in a proper and professional way if the complainant desires this.
- Victims of domestic violence are often afraid of reprisals should they press charges, and therefore the treatment of the crime may require special measures including protection against further victimisation, referral to shelters and for specialised medical care.

### **Violence Against Women – an international concern**

Both recommendation 19 on the *Convention on the Elimination of All Forms of Discrimination Against Women*, an important protective instrument ratified by the majority of Commonwealth countries, and the UN Declaration on the Elimination of Violence Against Women (UN General Assembly Resolution 48/104 of 20 December 2003) emphasise the urgent need for States to prevent violence against women and prosecute those who commit such violence.

Violence against women was one of the priority areas identified in the Commonwealth Plan of Action adopted by Heads of Government in Auckland in 1995. That plan encouraged the elimination of violence against women, protection of the girl child, and outlawing of all forms of trafficking. The more specific *Commonwealth Plan of Action for Gender Equality 2005 – 2015* maps out measures by Commonwealth countries to achieve gender equality, partly in order to reduce the incidence of violence against women, which is a function of their unequal status in many societies. Gender-based violence and gender equality are the subject of the UN 'Millennium Development Goals' (2000) as well as the milestone UN Fourth World Conference on Women's *Beijing Declaration and Programme of Action* 1995.

These international initiatives emphasise the problem of violence against women. Police officers need to bear in mind that such violence is criminal conduct.

Police attention to violence against women should be given a priority accordingly, including in training. In 1989 the Commonwealth Secretariat published its *Guidelines for Police Training on Violence Against Women and Child Abuse*, which consist of samples of actual training modules from various Commonwealth countries on rape and other sexual offences, domestic violence and child abuse. This sort of comparative experience is what the Secretariat, through the Human Rights Unit, can provide to national police services.



## 10.6. Trafficking and exploitation of women

Trafficking and exploitation of women is on the increase all over the world. This creates a new challenge to police officers across the globe.

The United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000), which supplements the UN *Convention against Transnational Organised Crime*, defines trafficking in persons as follows:

- (a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- (b) The consent of a victim of 'trafficking in persons' to the intended exploitation set forth in sub-paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used.
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in sub-paragraph (a) of this article.
- (d) 'Child' shall mean any person under eighteen years of age.

Under this comprehensive definition, it will be seen that trafficking of persons takes various forms. The most common forms of trafficking include those women and children who are trafficked (or often trapped and deceived) into migrant work, domestic work, bonded labour, prostitution, servile marriage in the form of mail order brides, and child labour. Some of the most common types of abuse suffered by these trafficked victims include: long working hours; no time off; illegal confinement; debt bondage; sexual assault; physical and psychological abuse; denial of food; and non-payment of wages or reduced wages.

Trafficking is still a relatively new field of study in police agencies all over the world, and there are not many guidelines yet. The Human Rights Unit of the Commonwealth Secretariat has produced an Expert Group's Guidelines for Best Practice Strategies for Combating Trafficking in Women and Children. Two of the most important aspects for police are to:

- Treat victims of trafficking as victims, rather than as criminals.  
*(This is especially difficult when women were forced into prostitution, as prostitution may be against the law. In cases of trafficking, these women are the victims who are being abused by unscrupulous persons.)*
- Treat women encountered in trafficking, or its consequent activities, with compassion, understanding for their vulnerable status, and respect for their dignity.



### 10.7. Women as suspects of crime

Women are entitled to the same rights as men upon arrest and detention. However, there are additional protections and considerations offered to women in an arrest situation, as outlined in relation to police detention below.

One of the most serious human rights concerns is the prevalent violence against female detainees by police officers all over the world. When female suspects are placed in police custody, they are especially vulnerable to abuse by police officers. In many cases this happens because these women are poor or are migrants. Women detainees are entitled to the same rights as male detainees and cannot be discriminated against. International standards provide that women detainees are to be extended special measures of protection. Such measures include:

- That women are only interrogated or detained under supervision of female police officers.
- Women detainees shall be supervised and searched by female officers.
- Women shall be detained separately from male detainees.
- Specialised medical facilities.
- Special measures for child-care and treatment during pregnancy.

Training must reinforce that sexual assault of a woman in detention by a police officer is a gross breach of duty, of the duty of care, and a serious criminal act not to be tolerated under any circumstances. Procedures and preventative measures should be introduced at a station level that protect female detainees and do not worsen their vulnerability. If it comes to the notice of police that a colleague is sexually abusing a detainee, he or she must be reported immediately.



### 10.8. Women police officers

The presence of women in police institutions is of enormous importance for the effectiveness, legitimacy and acceptability of general police functions and activities, especially when dealing with female or child perpetrators, or with female or child victims. Women can play an extremely important role in policing, in particular (but not only) when dealing with victims of crime.

The problem in many police agencies around the world is that women are largely under-represented. Women are also sometimes discriminated against once in the police force, and sometimes might be excluded from high-ranking jobs or employed in administrative support or reception positions only. Women's presence happens to be particularly scarce at strategic, managerial and policy-making levels.

There is also the phenomenon of sexual harassment in the workplace and the maintenance of policies and attitudes which marginalise women officials and their impact on the organisation. Law enforcement agencies are often very isolated from the society within which they operate, and are often the last institutions to respond to changing social norms.

The UN *Code of Conduct for Law Enforcement Officials* states that:

- Law enforcement agencies shall not discriminate against women in recruitment, hiring, training, assignment, promotion, salary or career and administrative matters.
- Law enforcement agencies shall recruit sufficient numbers of women to ensure fair community representation and the protection of the rights of female suspects, arrestees and detainees.

Other problems faced by female officers include lack of child-care provision; the selection criteria not being gender-neutral enough; and selectors themselves not being women, or being untrained in the need for female representation.

### 10.9. Summary

Women are a significant vulnerable group in society, who need special protection and care. When dealing with female victims or perpetrators, police should take special measures to ensure their rights are respected.

Violence against any person is criminal behaviour. That it takes place in the home does not change this. Given gender-sensitive training and information, the police can be effective in supporting women who are victims of violence. This can break down some of the mind-set which leads to expectations that violence against women is a private matter for the home only. The police can play a very important role in educating the community about the problems of trafficking sexual abuse and violence against women. This can be seen as crime prevention work, in addition to helping improve protection of human rights.

Women should also play an important part in every police agency. They should be able to work without any discrimination and with equal enjoyment of all the basic rights as their male counterparts.



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### 10.10. Questions for self-evaluation

- *Why would you describe women as a vulnerable group?*
- *How should police officers treat women who are victims of crime?*
- *How should police officers treat perpetrators of crime?*
- *What special measures have to be taken by police officers when dealing with female suspects?*
- *What assistance can police get from other agencies and community groups that will ease the burden of investigating domestic violence?*
- *Why is it important to have female police officers?*





## CHAPTER 11

# Vulnerable groups: Displaced Persons

Refugees, Aliens, Internally  
Displaced Persons

### **Learning objectives for Chapter 11**

After completing this chapter you should be able to:

- *Describe what is meant by a 'refugee' 'asylum seeker', 'non-national', and 'internally displaced person'*
- *Outline the human rights protections relating to these groups*
- *Explain why these groups need special protection from the police*



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## Chapter 11

### Vulnerable Groups: Displaced Persons

(Refugees, Aliens and Internally Displaced Persons)

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**11.1. Introduction**

**11.2. Non-nationals**

**11.3. Permitted persons**

**11.3.1. Permanent residents**

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11.3.3. Asylum seekers

11.3.4. Refugees (see 11.5)

**11.4. Prohibited persons**

11.4.1. Unauthorised migrants

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**11.5. Refugees**

11.5.1. Essential elements of refugee status

11.5.2. Who cannot be a refugee? When does the status cease?

11.5.3. The rights of a refugee

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**11.6. Internally Displaced Persons**

11.6.1. The rights of IDPs

11.6.2. Responsibilities of police officers towards IDPs

**11.7. Summary**

**11.8. Questions for self-evaluation**

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### 11.1. Introduction

People have moved, or been moved, from place to place since the dawn of time, for all sorts of reasons (war, civil war, persecution, criminal activities or opportunities, natural disasters, drought, better economic opportunities), and not always by choice.

It is very important for police officers to be sensitised to the different categories of persons who are non-nationals, including asylum-seekers and refugees. Of course, international minimum standards will still apply to the treatment of all persons, nationals or not, even before their particular status is determined. This chapter examines the various categories of such vulnerable groups.

### 11.2. Non-nationals

Many countries host large numbers of foreigners, who may be fairly settled and contribute greatly and peacefully to the local life and economy. However, when times get harder, or high profile crimes are committed by non-citizens, this group are normally the first to feel pressure from the host population. Police are then often pressured to act in some way against these groups.

'Xenophobia' is defined as a deep dislike of non-nationals. It is often based on fear of the unknown and unfamiliar. Xenophobia may manifest itself in various ways, from derogatory names for foreigners, to discrimination, to violent attacks. It is also true that many countries have to deal with organised crime often run by foreigners. But it is clearly a myth that often tends to generalize foreigners or non-nationals as 'criminals'. Some of them may have been trafficked into the country and into forced prostitution (see the chapter on 'Vulnerable Groups: Women'). Such persons are already victims of a crime and ought not to be unduly victimised further. There is usually a lot of pressure from local citizens on the police to be tough on foreigners. This said, the way that the most vulnerable groups are treated, is a yardstick for measuring the commitment to democratic values of the specific State. The police have a part to play in raising community awareness and promoting harmony.

Non-nationals (migrants) are usually divided into two groups: documented migrants and undocumented migrants. These people are sometimes referred to as 'aliens' by government officials, and even in legislation.

Non-nationals are normally defined as persons who are not citizens of the country they are in. This is a broad definition (nationality and citizenship can be technical terms) and includes widely different groups, for example permitted non-citizen persons (permanent and temporary residents, asylum seekers, refugees) and prohibited persons (such as unauthorised migrants who are not seeking or have been determined ineligible for asylum/refugee status).

The police should have a very clear understanding of the different categories, and of the different legal regimes (international and national) that cover these categories of persons. It should be remembered as a matter of general approach that police have a very important role to play in relations with immigrant communities or non-national individuals. Aside from the fact that international law dictates minimum standards of treatment of persons whatever their legal status, police treatment of members of such groups can often directly contribute (positively or negatively) to their country's international relations with its neighbours.

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### **11.3. Permitted persons**

Such persons have the legal right or government permission to be in the country. Non-nationals lawfully within the territory may be expelled only if decided by law, if the decision is not arbitrary or discriminatory, and if procedural guarantees have been afforded.

#### **11.3.1. Permanent residents**

Such persons are also known as long-term residents and are people who have lived in a country for a long time and have been granted the right to live in that country on a permanent basis by the local authorities. This is the group of people who are normally issued with a permanent residence permit.

#### **11.3.2. Temporary residents**

Such persons are also known as 'legal migrants' and are permitted to reside in a country temporarily. The permit or visa (if required) will usually state the period and reason for which residence has been granted. Temporary residents usually enjoy the right to work. Holiday makers can sometimes be considered temporary residents but are normally thought of as visitors only.

#### **11.3.3. Asylum seekers**

This category is used to describe persons who have moved to a new country and intend to seek asylum (protection) or refugee status (permission to remain), on the basis that they have a 'well founded fear of persecution' in their own country because of their race, ethnic group, religion, nationality, political opinion or membership of a particular social group. An asylum seeker is someone yet to be considered for refugee status under immigration laws. In most legal systems, such a person will normally receive temporary permission to reside in the country, while his or her application to receive refugee status is being studied. Such persons may have entered the country unlawfully, but once they have submitted an application under the legal system, they are to be considered a permitted person, for that period of time until it is decided if the basis of their application (fear of persecution if returned) is well founded or not.

#### **11.3.4. Refugees**

While the term 'refugee' is used loosely, it describes a legal category of internationally protected persons under the Refugees Convention 1951. Police treatment of persons accepted in law as refugees should acknowledge this. Someone with decided refugee status is by definition in a vulnerable position, away from their known environment and usually in a destitute situation. Refugee children and women are particularly vulnerable and require special protection and treatment at times. See the section below for detailed discussion.

### **11.4. Prohibited persons**

This group of people are usually those residing in the country illegally and have no authorisation to be there.

#### **11.4.1. Unauthorised migrants**

Popularly referred to as 'illegal aliens', these are people who have no permission to enter or to reside in the country. It is important to realise that although the legal and immigration status of these various categories of persons may differ, they are entitled to be treated in a manner that is consistent with their human dignity.

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In arresting a non-national, a police officer has the same duty he or she has in any other circumstances to treat the suspect with respect and dignity. A non-national has the same rights as a citizen to be respected (except certain political rights, for example, the right to vote) and to be informed of his/her rights when being arrested and to have those rights respected and protected. Often, a police officer will not know the person's real legal or immigration status at the time of dealing with that person.

#### 11.4.2. The role of police in dealing with irregular migrants

It is somewhat problematic to refer to the 'arrest' of a person suspected of being a prohibited person, irregular, or unauthorised migrant. In view of the fact that they are often not brought before a court, they are never, in law, actually arrested but rather apprehended. An inquiry will be conducted as a means of establishing whether such a person is an irregular migrant. Organisations like the International Organisation for Migration (IOM) can play an active role in identifying irregular migrants.

When a person is under investigation for being in the country illegally the following principles should always be taken into consideration:

- (1) All actions of public officials should be lawful.
- (2) Actions should be reasonable under the circumstances.
- (3) The correct and fair procedures should be followed.

Furthermore, the person who is subject to this investigation has other, additional rights:

- (1) the right to be given written reasons for being apprehended; and
- (2) the right to have the decision reviewed by a court.

If an irregular migrant commits a crime, he or she should be dealt with in the same way as police officers will deal with any other suspected criminal. These persons should have the same basic human rights as any other citizen who is suspected of committing a crime. If a person is suspected of being an irregular migrant and apprehended, they may be detained. They are entitled to the same minimum legal rights as other detained persons (see Chapter 4).

#### 11.5. Refugees

The 1951 UN *Convention relating to the Status of Refugees and Stateless Persons* defines a refugee as:

*"... a person who, owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence)."*

A person receives the special dispensation of refugee status when he or she is determined under national laws based on the *Refugees Convention* 1951 (or by the United Nations mechanisms) to have a well founded fear of persecution in his or her homeland. By conferring refugee status to a certain person, the State assumes the obligation to protect and receive the



person. Country practices tend to differ within the parameters of the Convention, but generally refugees may hold an exemption certificate and may be issued with travel documents, are entitled to travel within the country, work and attend school. Some countries even provide specific grants and benefits to refugees.

The rather legal definition of 'refugee' must be understood in the context of actual practice in relation to very large displacements of persons as a result of conflict. In countries with very large numbers of persons who have fled conflict or disaster elsewhere, the authorities might grant some form of temporary permission to remain in the country (or put aside strict immigration rules), because of the logistical problem of processing large numbers of persons.

#### 11.5.1. Essential elements of refugee status

From the 1951 Convention definition above, in order to be recognised as a refugee, an asylum seeker must show that he or she has a well-founded fear of persecution based on one or more of five different grounds, including:

- (i) Political beliefs, where a person's political views are not tolerated and as a result has suffered or been threatened with persecution;
- (ii) Race or ethnic origins, in other words differential treatment based on colour, descent, national or ethnic origin;
- (iii) Membership of a social group, which normally comprises of persons of similar background, habits or social standards who have suffered persecution because of their membership, for example women or trade unions;
- (iv) Religious beliefs, for example preventing people to worship or from receiving religious instruction; and that he/she is outside his or her country of origin, and is not protected by his/her country of origin, either because it's unable or unwilling to protect him or her; or
- (v) that he/she was compelled to flee his or her country in order to seek refuge in another country as a result of:
  - (1) external aggression;
  - (2) occupation;
  - (3) foreign domination; or
  - (4) events seriously disturbing public order.

#### 11.5.2. Who cannot be a refugee? When does the status cease?

There are, however, certain categories of persons who will not qualify for refugee status, and this would include those who have committed:

- (i) crimes against peace, for example planning and initiating a war of aggression;
- (ii) war crimes, for example murder, torture, wanton destruction of property during war time;
- (iii) crimes against humanity, same as war crimes just on a bigger scale;
- (iv) genocide;
- (v) serious non-political crimes outside his or her country which if committed in that country would lead to imprisonment; or

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- (vi) acts contrary to the object and principles of the UN, for example drug trafficking; or
  - (vii) enjoys the protection of a safe third country.

The point at which a refugee loses his or her refugee status or protection is called cessation. This normally happens as a result of certain events or changes that have taken place in his/her country of origin but can also occur as a consequence of certain acts.

In this regard a refugee's status may be withdrawn for the following reasons:

**Voluntary acts of a refugee who:**

- voluntarily obtains the protection or nationality of his or her country of origin; or
- obtains the nationality of a new country; or
- voluntarily returns to the country where he/she felt in fear, and takes up residence there with the intention to settle permanently.

**Involuntary acts when:**

- A refugee cannot refuse to return to his or her country of origin, or to take on the protection of that country again because the circumstances in that country have changed to the extent that the reasons for the risk of persecution no longer exist.

**11.5.3. The rights of a refugee**

- Refugees have the right to seek, and if appropriate to enjoy, in another country, asylum from persecution.
- Refugees are entitled to all basic human rights, with the exception of certain political rights, but, if unlawfully within the territory, certain limitations on movements may be applied in the interests of public order and health.
- Refugees shall be given treatment which is at least as favourable as that given to nationals in the exercise of basic rights, such as free association; religion; elementary education; public relief; access to courts; property; and housing.

There is a clear relationship between the refugee problem and the issue of human rights. Violations of human rights are not only among the major causes of mass exoduses, but also rule out the option of voluntary repatriation for as long as they persist. Violations of rights of minorities and ethnic conflicts are increasingly at the source of both mass exoduses and internal displacements.

Disregard for the minimum rights of refugees and internally displaced persons are another dimension of the relationship between the two issues. Refugees have rights which should be respected prior to, during, and after the process of seeking asylum.

**11.5.4. International principles applicable to refugees**

- No one shall be returned to a country where his or her life or freedom would be threatened, or where he or she would be persecuted, nor to a third country likely to return the refugee to such a country.
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- Refugees unlawfully within the territory of a state, who have come directly from a country of persecution and who present themselves without delay to the authorities, shall not be penalised.
- Refugees coming directly from a country of persecution shall not be refused at least temporary entry.
- Refugees lawfully in the territory of a state have the right to freedom of movement and residence.
- Persons seeking asylum should be informed of the necessary procedures, shall be provided with the necessary facilities to do so, and shall be allowed to remain pending a final decision.
- No refugee shall be expelled except on grounds of national security or public order, and only on the basis of a decision reached in accordance with due process of law.
- Before expulsion, a refugee shall be given an opportunity to offer evidence, to be represented, and to appeal to a higher authority.

### 11.6. Internally Displaced Persons

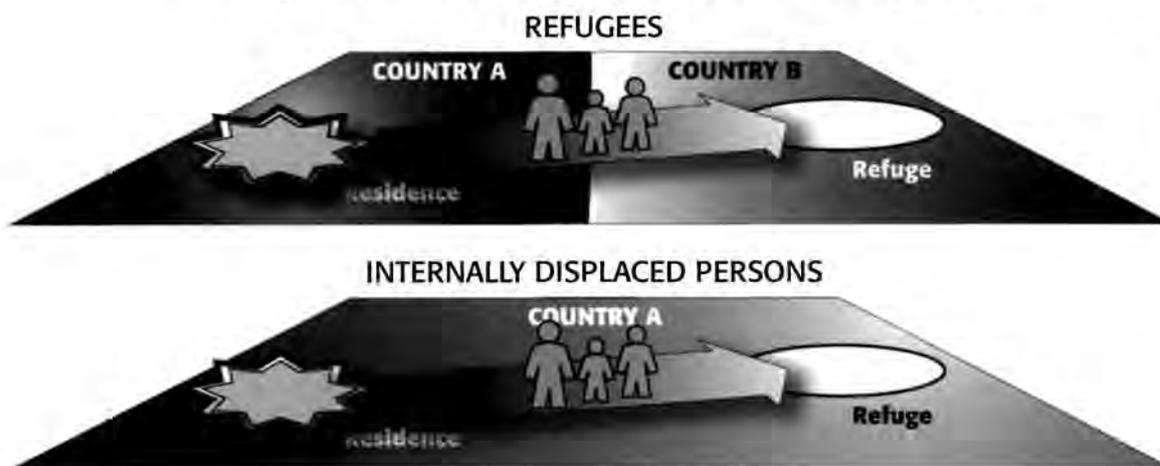
In the case of internally displaced persons (IDPs), police officers deal with citizens of their own country. Many factors, sometimes in combination, create IDPs. The most important are internal armed conflicts, economic upheaval and natural or environmental disasters, such as earthquakes and tsunamis. Most of the millions of persons displaced by these forces endure squalid conditions and disease, daily hardships to obtain basic necessities, and the threat of violence from locals. IDPs are a major issue in some countries, including in some Commonwealth member countries. There are no reliable statistics, but it is usually estimated that there are one and a half times the number of IDPs as refugees. It is important to sensitise police officers to the special care needs of IDPs as another vulnerable group in society.

The United Nations' 1998 *Guiding Principles on Internal Displacement* defines internally displaced persons (IDPs) as:

*"Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence suddenly or unexpectedly as a result of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border."*

The main difference between IDPs and refugees is that IDPs keep within the borders of their own country, whereas refugees cross national borders into other countries. When dealing with IDPs, police are working with citizens of their own countries. However, most of the human rights standards applicable are the same.

## Refugees & Internally Displaced Persons (IDPs)



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### 11.6.1 The rights of Internally Displaced Persons (IDPs)

The 1998 Guidelines provide for the following IDP rights, among others:

- IDPs enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
- National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.
- The application of the principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
- Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition, and to treatment which takes into account their special needs.
- Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

The prohibition of arbitrary displacement includes displacement:

- (a) when it is based on policies of apartheid, 'ethnic cleansing' or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;



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- (b) in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (c) in cases of large-scale development projects, which are not justified by compelling and overriding public interests;
  - (d) in cases of disasters, unless the safety and health of those affected requires their evacuation; and
  - (e) when it is used as a collective punishment.

Under other international provisions, States may be under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

### 11.6.2 Responsibilities of police officers towards IDPs

Because, like other vulnerable persons, law enforcement officials are most often the first point of contact between a refugee and a receiving state, it is of the utmost importance that law enforcement officials are aware of the rights of refugees and IDPs:

- Law enforcement officials must be aware of the fact that these persons remain nationals of their country of residence and that they remain fully entitled to all the rights and protection of national and international law as if they were still in their homes.
  - Law enforcement officials are to respect and protect human dignity and to maintain and uphold the human rights of all persons, without any adverse distinction. It is at the hands of individual law enforcement officials to implement this rule and to make it a truth in practice rather than a theoretical notion.
  - In their functions, the police officers must know that IDPs should be protected against attacks from outside the group, and protected within the group.
  - Police officers must know and apply the principle that internally displaced persons shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
  - Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
  - Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.
  - Police should be conscious that although some limits are justifiable in the interests of public health and order, in general IDPs have a right to move freely in and out of camps or other settlements, the right to seek safety in another part of the country, the right to
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leave their country, the right to seek asylum in another country, and the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

### 11.7. Summary

The police play a key role in ensuring that human rights of all persons are respected and protected: especially when dealing with foreigners, as they represent the State and should conduct themselves in the highest standard of behaviour. Many non-nationals who come into contact with police, whether as victim or witness or suspect, are possibly in a situation of great vulnerability. It is also important for police officers to know how to treat IDPs, and the protective nature of their duty in relation to them, in order to prevent re-victimisation of them in their already vulnerable situation. Police who violate the human rights of non-nationals or certain displaced national groups may also seriously contribute to regional or provincial tensions that increase the chances of armed conflict.

It is clear how the various principles set out in this chapter should inform police policies and conduct in relation to such persons. It is therefore very important for trainers to ensure police have a clear understanding that the treatment of non-nationals is something of direct concern to the international community and is covered in various ways by international law.

The primary issue is for police officers to be aware that while there are different legal categories of non-nationals and displaced persons, from a policing and human rights perspective the same international minimum standards of treatment always apply. Also, persons in these groups are particularly vulnerable.

### 11.8. Questions for self-evaluation

- *Define a refugee. Name four international principles regarding refugees.*
- *How should police officers deal with a non-national who has committed a crime? Why should all non-nationals be treated with dignity?*
- *How should police officers treat IDPs?*







## CHAPTER 12

# Vulnerable groups: Victims of crime

### Learning objectives for Chapter 12

After completing this chapter you should be able to:

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- *Describe or define what a victim of crime is*
- *Discuss the UN international standards for law enforcement officials on how to deal with victims of crime*
- *Describe the basic rights of victims of crime*
- *Understand that not all victims of human rights abuses have been victims of crime, and vice-versa*
- *List the responsibilities that police officers have towards victims of crime*
- *Understand how police responses to crime victims affect public perception of and confidence in police, affecting their effectiveness*
- *Consider how police officers can also be victims of crime*
- *Describe the difference between victims of crime and victims of abuse of power*



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## Chapter 12

### Vulnerable groups: Victims of crime

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- 12.1. Introduction**
- 12.2. Definition of victims of crime**
- 12.3. Rights of victims of crime**
- 12.4. Responsibility of police towards victims of crime**
- 12.5. Victims of abuse of power**
- 12.6. Summary**
- 12.7. Questions for self-evaluation**

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## 12.1. Introduction

Victims of crime are a neglected but very important element in criminal justice and law enforcement systems. Often, one finds that it is the police services that draw public attention to the significance of the victim's interests. However, in the investigation and prosecution of crime, victims are sometimes overlooked, poorly protected or even mistreated by police officers. In many countries, police are not provided with adequate training regarding the impact of violent crime on victims, nor with methods of ensuring that victims are informed of their rights and referred to essential services. Therefore, police are often not sensitive enough when dealing with emotionally distraught victims. Actions like this impair relations between the police and the community, and undermine the confidence of victims (and their families) in the police service and their willingness to participate in the criminal justice process.

During the past few years, consciousness and recognition of the place of victims of crime has been enhanced. Progress has been made in improving police responses to victims. In many countries, victim support programmes for the police have developed, and police officers have been specially advised and trained on how to deal with victims of crime. This is extremely important given that in a significant number of crimes, no perpetrator is ever apprehended: then the only hope for victim assistance from the criminal justice system is at the police level.

In 1985, the United Nations General Assembly adopted the *Declaration on Principles of Justice for Victims of Crime and Abuse of Power*. This is the only instrument offering guidance to member states on the issue of protection and redress for victims of crime and abuse of power. Some Commonwealth countries have taken significant legislative and other steps to protect the rights of victims of crime. In 2002, an Expert Group set up by the Human Rights Unit of the Commonwealth Secretariat produced the *Commonwealth Guidelines on Best Practice for the Treatment of Victims of Crime*, which provides a model framework for member states to address the needs of victims of crime.

In this chapter the rights of victims of crime, and the responsibilities of police officers towards such victims, will be discussed. There is an echo with the chapters dealing with vulnerable groups.

## 12.2. Definition of victims of crime

Any person – including police officers – can become victim of a crime.

A victim can be defined as anybody who has individually suffered unlawful harm (physical, sexual or psychological injury, fear or emotional suffering, damage to property, or other impairment. (Note that from a human rights perspective, 'victims' include those who suffer violations of internationally recognised norms of human rights whether or not the relevant abusive conduct is also provided for in national criminal laws.) It is useful to think of 'victims' in a broad way so that attention is given not only to the primary victim of an assault (for example) but also to the person's children or family.

Police must ensure that they treat every victim with dignity, respect and compassion, irrespective of the victim's race, status, sex, age, etc.

Apart from the hazards they face from direct unlawful conduct against them, police officers can also be seen indirectly as victims of crime. Some police officers work on traumatic or violent cases, for example, murders, robberies, rapes, violence against children or people being killed

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in motor accidents, on a regular basis. This may have a serious effect on these police officers. Police commanders should ensure that police are provided with the necessary training and support to deal with such difficult circumstances.

### **12.3. Rights of victims of crime**

The rights of victims of crime are closely linked to the responsibilities of police officers. The set of standards developed by the United Nations applicable to the police when dealing with victims of crime are as follows:

- Victims shall have access to mechanisms of justice and prompt redress.
- Redress procedures shall be expeditious, fair, inexpensive and accessible.
- Victims shall be informed of their rights in seeking redress and protection.
- Victims shall be informed of their role in formal proceedings, of the scope, timing and progress of such proceedings, and of the disposition of their cases.
- Victims shall be allowed to present their views and feelings on all matters where their personal interests are affected.
- Victims shall receive all necessary legal, material, medical, psychological and social assistance, and shall be informed of their availability.
- Inconvenience to victims shall be minimised in the handling of cases.
- The privacy and safety of victims shall be protected.
- Unnecessary delay in the handling of victims' cases shall be avoided.
- Offenders should, where appropriate, make restitution.
- Governments should make restitution where public officials are at fault.

Finally, a most importantly in relation to the purpose of this manual:

- Police shall be trained in the needs of victims, and should be provided with guidelines to ensure proper and prompt aid.

### **12.4. Responsibilities of police towards victims of crime**

Police officers should always avoid treating victims of crime in a way that compounds the initial suffering resulting from the crime itself ('re-victimisation'). Such people are already victims at the time police attend, and have suffered because of the actions of someone else. Therefore, police should not treat them in such a way that they effectively become victims for a second time. All victims of crime or abuse of power shall be treated with compassion and respect. Police officers should receive proper training on how to deal with and support victims of crime. At a station level, systems and information for referring victims to supportive agencies should exist.

It is important for trainers to instil in police officers the understanding that part of effective community relations (resulting in effective police operations) is the manner in which police treat victims of crime and their families.

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Using the above international standards and practices as the basis, here are some guidelines on actions that can be followed by police, beginning with immediate on-site crisis intervention, which is one of the first steps in victim support:

- Promptly providing crisis intervention at the scene of the crime, securing of emergency medical assistance, and providing physical and psychological first aid.
  - Accompanying victims to emergency medical services in cases involving injury.
  - Informing victims of the possibility of pregnancy or infection with diseases as a result of a crime.
  - Immediately referring victims, verbally or with a written supporting reference, to community agencies that offer emergency services to victims, together with information about different forms of assistance (for example, a brochure should be developed in different languages and given to victims that includes information about emergency and long-term services, victim compensation, likely reactions to crime victimisation and information about the investigative process).
  - In addition, police should provide victims with information regarding their rights, and with referrals to services and resources that can help the victim to heal. Police should refer victims to medical and/or counselling and support services in the community, for example, psychologists, welfare officers, women's support groups for domestic violence and rape, etc.
  - Victims/complainants/witnesses should be treated courteously, with dignity and with respect.
  - Statements from people approaching police as victims should be taken in a sensitive and professional manner. The victim's right to privacy should be respected by, if possible, taking statements in private.
  - In cases of sexual or domestic violence against women, a female police officer might be selected to take statements and provide referrals.
  - Cases should be investigated swiftly, in a professional manner – this should include regular feedback to victims and their families about the course of the investigation (where appropriate).
  - Confidential information is to be handled securely.
  - Police should provide advice on crime prevention.
  - Informing victims about how to protect evidence.
  - Providing information to crime victims about their rights, as well as the availability of crime victim compensation.
  - Ensuring that the victim is personally contacted by telephone or in person 24 to 48 hours following the initial response, in order to see whether assistance has been sought and/or received.
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- Ensuring that the property of the victim is secured so that personal safety is not compromised as a result of crime.

Where appropriate, the police should provide to victims of crime the following information about police procedure (investigations) and criminal procedure, as soon as possible, and, if possible, in writing:

- the name and details of the investigating officer;
- regular feedback during the investigation on the status of investigation – this is especially important in cases where a person was the victim of violent crime;
- the date of the trial of his or her case;
- cancellation of any trial, and new dates;
- the date on which the convicted person will be sentenced;
- the outcome of the trial and the sentence that was passed;
- the place where and time when, and the person from whom, any confiscated property of the victim may be collected; and
- any provisions that exist for public victim's compensation, support services, etc.

**Police commanders should:**

- ensure that systems exist at station level for proper communication with and referral of crime victims;
- establish and enforce strict property return protocol and procedures – this should be a standardised, jurisdiction-wide programme (closely co-ordinated with prosecutors' offices and the courts) designed to eliminate potential confusion as to exactly which property return rights and procedures are enforced by different law enforcement agencies; and
- establish protocols for proper detention and investigation of suspects in order to protect the safety of victims.

**12.5. Victims of abuse of power**

The *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* defines 'victims of abuse of power' as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that may not constitute violations of national criminal laws as such, but which are the result of officials exceeding their authority.

Police officers are sometimes responsible for abuse of the authority that is granted to them under the law. A person who is a victim of police abuse of power is in a very difficult situation – to whom does such a person go to in order to make a complaint? Who will protect that person? In many countries, organisations such as Human Rights Commissions, the Office of

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the Ombudsman, External Complaints Mechanisms or Internal Complaints Mechanisms may be available. Non-governmental organisations will often assist victims. These actions may in many instances result in findings, disciplinary or criminal action, or civil suits against the state or police.

The responsibilities of police towards victims of crime apply equally for those subject to non-criminal abuses of power: the existence of complaints mechanisms; complaints should be recorded and properly investigated; victims should be treated with compassion to ensure that they are not re-victimised; in case of injury to a victim he/she should be provided with medical treatment; etc.

### **12.6. Summary**

- Police are normally the first group of people to get in contact with victims of crime and, thus, have a critical role to play. Their behaviour may determine if victims feel protected and respected, or if they feel re-victimised and neglected. Apart from the rights of victims, negative treatment can also affect public perceptions of the police and impact on community relations.
- Victims can also play an important role in solving the crime and apprehending the perpetrators, and should be treated with respect and care as victims and witnesses.
- Police officers should receive proper training on how to deal with victims of crime and they should understand their basic role and responsibilities towards victims.
- On the other hand, police officers can also be direct and indirect victims of crime and they should receive the necessary support to deal with it.

### **12.7. Questions for self-evaluation**

- *Can you describe in your own words who is a 'victim of crime'?*
- *Can police officers also be victims of crime?*
- *List the basic rights of victims of crime.*
- *Name the responsibilities that police officers have towards victims of crime.*
- *What is the difference between 'victims of crime' and 'victims of abuse of power'?*





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## CHAPTER 13

# Community policing

### **Learning objectives for Chapter 13**

After completing this chapter you should be able to:

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- *Define community policing, stating its main components*
  - *Describe how community policing is different from 'traditional' policing*
  - *Give four advantages for the community when community policing is implemented, and the human rights impact of this approach*
  - *Explain how community policing would help police officers in enforcing the law and solving local problems*
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## Chapter 13

### Community policing

#### Contents

- 13.1. Introduction**
- 13.2. Features of community policing**
- 13.3. Why community policing?**
- 13.4. Principles of community policing**
- 13.5. International standards applicable to community policing**
- 13.6. Summary**
- 13.7. Questions for self-evaluation**



### 13.1. Introduction

The 21st century has brought many new challenges for police services all over the world. Criminal methods are becoming more sophisticated, and traditional policing methods of combating crime may not be as effective. The 'traditional' police model of preventative patrols, response to criminal incidents and investigative follow-up are certainly necessary, but by themselves they are not sufficient to effectively fight crime. Furthermore, the dependence on high technology to fight crime is helpful and important, but is also not, on its own, enough (and police resources especially in developing countries are often inadequate to support the 'high tech' approach to fighting crime). There are complex problems of finding better ways make policing relevant in mixed societies.

As a result, in many countries police services have 'discovered' that they need to form partnerships with the community in order to fight crime more effectively. This should not really come as a surprise – common sense dictates that the prevention and investigation of criminal behaviour, and other policing functions, are most effective when carried out with the full co-operation of the local community. Indeed, while some traditional methods of policing are outdated, it is fair to say that police services have 're-discovered' a central element of 'old style' policing, which was premised on trusting, supportive relationships with local communities at station level.

Community policing forms an integral part of the notion of any human rights-based approach to policing. By working closely with the community to prevent and solve crime, police are in a position to better protect the rights of the community, in particular of vulnerable groups. On the other hand, the community is in a good position to ensure that the police act in a professional and transparent way, and that they respect basic human rights.

Law enforcement is fundamentally about people – about personal relationships and management of people. It is about serving and protecting people and their basic human rights. It includes ensuring that police themselves are not vulnerable and are welcome in their communities. Hence, law enforcement cannot take place in isolation. Community policing has been developed as an operational strategy in response to the realities of change confronting police forces. It is also a strategy and principle which supports human rights, wider good governance and democratic policing.

### 13.2. Features of community policing

There are many different definitions of community policing. There are a few basic ingredients that are universal:

- One of the most important ingredients is the partnership between police and the community.
- The main aims of community policing are to prevent and reduce criminal behaviour and the criminalisation of youth, and to combat and solve crime.
- Community policing promotes better relationships between the police and the community and promotes respect for human rights.



Community policing is an institutional philosophy, a management style, and an organisational strategy that promotes proactive partnerships between the police and the community to address the causes of crime, fear of crime and other community issues. It accepts that the police can only effectively and efficiently solve problems related to crime, fear of crime, social and physical disorder, and neighbourhood decay, if the citizens and the police enjoy mutual trust, respect and co-operation. The ultimate goal is an active and equal partnership between the police and the public through which crime and other community safety issues can be jointly determined, and solutions designed and implemented.

### **Two points on Community Policing**

- 1.** From a trainer's perspective, the idea of community policing should be made to relate to the habits and behaviours of individual officers and at station command level – it is not only a macro-philosophy applicable only to senior police management levels.
- 2.** The police should not wait for the community to engage with them. Instead, police officers at all levels should reach out to the community and lead the way.

### **3.3. Why community policing?**

There are many reasons for implementing community policing as an operational strategy. The most important include the following:

- The so called 'democratic imperative' – that police serve the community. There is a growing demand by the public for more professional, responsive and 'customer oriented' policing. Police are expected to be more accountable to the community as well as more transparent.
- There are unrealistic expectations on the part of the community about the effectiveness of traditional police responses. There is a gap between what the police know they can manage to do, and what the community expect of them, which suggests the need for better educational outreach by the police.
- There is growing evidence of the shortcomings of current policing approaches in providing a long-term answer to crime and problems of disorder.
- Criminals live in the community. The community is therefore the best source of intelligence and information and even evidence. Poor community relations can seriously affect the quality of police work.
- There is a growing realisation that in the absence of close community support, no increase in authority, money, personnel, or technology will enable the police to deal with the burden of crime. In any case, there is strong evidence that police resources will become ever more scarce in the future, and that the police will be forced to do more with less.

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- There is an increase in awareness of societal and economic factors as drivers of criminal conduct and criminalisation of youth.

Experience from countries where deliberate community policing initiatives have been implemented indicates that it offers several distinct advantages:

- reduced incidence of crime and a reduction in fear of victimisation;
- increased citizen satisfaction with the services provided by the police;
- better co-ordination and allocation of responsibilities between the police and other criminal justice and social service agencies;
- more opportunities for proactive action;
- the full support of the community for the efforts of the police;
- the support of the community for efforts aimed at supplementing or obtaining more police resources;
- the active participation of the community in crime prevention and problem-solving activities;
- a greater willingness on the part of the community members to report crime, give information and co-operate in investigations;
- enhanced partnership between the police and the public generally leads to a better appreciation of the constraints and problems confronting the police; and
- increased job satisfaction for police personnel – especially patrol officers – and better recruitment and retention.

### **3.4. Principles of community policing**

Some of the basic principles of community policing are as follows:

- Community policing should promote the reassessment of the question 'who is responsible for public safety?', and it redefines the roles and relationships between the police and the community.
  - It should promote openness and respect for human rights.
  - Community policing requires shared ownership, decision-making and accountability, as well as a sustained commitment from both the police and the community.
  - It reinforces the role of the police officer as providing law enforcement through serving the community rather than through threat or use of force.
  - It also establishes new public expectations of the police and standards whereby the effectiveness of the work done by the police is measured – for example, response time and arrest/crime statistics, including quality of service, customer (community) satisfaction, responsiveness to community-defined issues, and cultural sensitivity indicators.
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- It increases understanding and trust between the police and members of the community.
  - Community policing empowers and strengthens community-based efforts.
  - It also requires an ongoing commitment to developing long-term and proactive programmes or strategies to address the underlying conditions that create problems in the community.
  - It requires knowledge of which resources and skills are available in the community and how they can be obtained and used, as well as the ability to develop new resources within the community.
  - Community policing requires commitment from the top management of the police and other local government agencies, as well as sustained personal commitment from all levels of management and other key personnel.
  - It decentralises police services, operations and management, relaxes the traditional 'chain of command', and encourages innovative and creative problem-solving, thereby making fuller use of the knowledge, skills and expertise of the members of the organisation.
  - It also shifts the focus of police work from responding to individual incidents, to addressing problems that are identified by the community and the police, stressing the use of problem-solving approaches to implement traditional law-enforcement methods.
  - It requires a commitment to the development of new skills through training – for example, problem-solving, networking, mediation, facilitation, conflict resolution, cultural competency or literacy.

Community policing challenges police and civil officials to provide the leadership that is necessary to address the issues which communities face. Community policing focuses on neighbourhood maintenance and revitalisation if necessary, and it advances creative, proactive and comprehensive responses to social epidemics such as gangsterism, drug-dealing and social disorders (for example, alcohol abuse, domestic violence and child molestation).

### **3.5. International human rights standards applicable to community policing**

There are some basic international standards or guidelines for police officers that can be applied when implementing community policing: They are the following:

- **Establish a partnership between police and the community**  
It is important for police to establish a partnership with community members. This can be done in different ways. In some countries community and police work together in community police forums or crime prevention forums. The important element of this guideline is that police and community should work together in a proactive way to prevent and also solve crime.
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- **Adopt a community relations policy and plan of action**  
Police should develop and adopt policies and plans of action on how to implement community policing and how to improve police-community relations.
  - **Recruit from all sectors of the community**  
Police should represent all sectors of the community. This will help to create better communication and relations with all sectors of the community. It will also promote the principles of equality and non-discrimination.
  - **Train officers to deal with diversity**  
The world is becoming a smaller place. With modern transport and communication, more and more people are moving and migrating to different countries all over the world. Communities are becoming more diverse. Police officers have to deal with diverse societies and should be trained in how to deal with cultural diversity.
  - **Establish community outreach and public information programmes**  
Police should promote the principles of community policing by educating the public and informing them about the police and their role in society. This can be done through community outreach and public information programmes.
  - **Liaise regularly with all groups in the community**  
There should be good and effective communications between the police and the community. One way is to develop proper channels of communication with groups in the community, and then make sure that there is continuous and regular communication. This can be done through, for example, community policing or crime prevention forums. The names and functions of these forums may differ from country to country.
  - **Build contacts with the community through non-enforcement activities**  
Police should also get involved in other activities in the community, for example, social or recreational events. This will create trust and familiarity between police and the community.
  - **Assign officers to a permanent neighbourhood beat**  
Community policing is a philosophy that should apply to every police officer. Every police officer should promote and apply the principles of community policing and respect for human rights. It is important, however, that certain police officers should be involved in permanent neighbourhood beats.
  - **Increase community participation in policing activities and community-based public safety programmes**  
The role of police is to protect and serve the community. It is important for the community to have a say in their own protection and safety. Therefore, it is necessary for community members to participate in policing activities and to assist the police in developing community-based public safety programmes.
  - **Involve the community in identifying problems and concerns**  
Community members should be given the opportunity to provide inputs to the police on their problems and concerns for the area where they stay.
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- **Use a creative problem-solving approach to develop responses to specific community problems, including non-traditional tactics and strategies**

With a more sophisticated criminal element, police have to come up with more creative ideas to solve problems in the community. Police should always strive to develop new innovative approaches and tactics to cope with new trends, developments and crime.

- **Co-ordinate policies, strategies and activities with other government agencies, and with non-governmental organisations**

There are many agencies and organisations which are also involved in community projects, crime prevention, and the study of crime and related subjects. Police should co-ordinate with these organisations to develop policies, strategies and activities to deal with crime.

### **The Media – A Resource for Police**

Members of the media are one very important resource in a comprehensive rights-based crime prevention and investigation strategy. Trainers should consider discussing with police trainees how more proactive engagement by police with the media might contribute positively to their operational needs. In cases of missing persons, or where information is sought from the community, the media may be indispensable and a proactive outreach to them is suggested.

### **3.6. Summary**

The community is a resource in the prevention and investigation of crime. It is also the level at which police officers must live and work. Community policing focuses on the establishment of a partnership between the police and the public (including the media). It supports a human rights-based approach to policing and helps to create an open and transparent police. It recognises and accepts a role of the community in determination of priorities and delivery of police services. See also Chapter 15 on 'Police command and management'.

### **3.7. Questions for self-evaluation**

- *What do you understand about the term 'community policing'?*
- *Describe some of the basic principles of community policing.*
- *Name five advantages of community policing for police officers and for the community, and five initiatives that can be taken.*





## CHAPTER 14

# Countering Terrorism while Respecting Human Rights

### Learning objectives for Chapter 14

After completing this chapter you should be able to:

- *Appreciate the international legal framework of human rights standards and principles within which any State counter-terrorism measures (and the conduct of individual officials and officers) must be understood.*
- *Explain the content and effect of some of the main human rights protections arising in a counter-terrorism context.*
- *Explain the principled, practical and professional consequences of lack of respect for human rights in a counter-terrorism context.*
- *Proactively building human rights components into any counter-terrorism training measures, in line with international requirements.*



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## Chapter 14

# Countering Terrorism while Respecting Human Rights

## Contents

- 14.1. Introduction**
- 14.2. Human Rights in counter-terrorism – a hindrance to effective action?**
- 14.3. International legal frameworks on policing and counter-terrorism**
- 14.4. What rights and principles related to counter-terrorism measures?**
- 14.5. What is the place of international humanitarian law (IHL)?**
- 14.6. The consequences of violations**
- 14.7. Summary**
- 14.8. Points for self evaluation**

## 14.1 Introduction

*"States must ensure that any measure taken to combat terrorism comply with all their obligations under international law...in particular, international refugee, human rights and humanitarian law."*

United Nations Security Council Resolution 1456 (2003) [6]

*"[In cooperating against terrorism in response to Security Council Resolution 1373]...our actions will reflect the fundamental values upon which the Commonwealth is based, including democracy, human rights, the rule of law, freedom of belief, freedom of political opinion, justice and equality..."*

Commonwealth Heads of Government, 25 October 2001

Given the phenomenon of international terrorism, police officers in Commonwealth countries may be required to be involved in the prevention and investigation of terrorist activity. It is vital for trainers to impart to such officers that any counter-terrorist measures taken by a Commonwealth country take place within the framework of international human rights law. This affects the permissible conduct of police involved in this field.

There are those who might argue that terrorism is such an exceptional issue that normal standards, including human rights standards, do not apply. While terrorism raises some unique challenges, this is overall a false argument, as the international community and the Commonwealth Heads of Government have made clear. And it is clear that the most effective counter-terrorism measures are not exceptional: they involve ordinary police investigation and community liaison.

In order to acknowledge, anticipate and deal with such issues, and to provide officers with relevant and applicable information that can help guide their conduct, training on human rights and counter-terrorism for police should emphasise three things:

1. Human rights standards are not 'soft' on terrorism, unduly restrictive to the State, or 'pro-terrorist' at the expense of victims. International minimum standards have resulted from an international legal consensus by States themselves, which have jointly given careful expression balancing interests and rights. It is important to create this awareness in training so that police accept and implement human rights. Human rights considerations do not always only limit what States can do – in fact, they require and enable a State to take counter-terrorism measures to protect the public.
2. Terrorist activity is first and foremost criminal activity. Even if there are political motives involved, the methods used are criminal. It follows that most counter-terrorism policing involves ordinary civil policing methods. The normal methods of prevention and investigation apply, and work best.





3. It is imperative that police officers understand the human rights limitations on counter-terrorism activities, and the practical ways in which these affect what they can and cannot do. Just as importantly, the trainer has a responsibility to develop in the trainee an understanding of the broad strategic and societal framework of policing counter-terrorism. Laws aim to strike a balance between community security and civil freedoms, to preserve our societies' basic features. Police conduct that is abusive or indistinguishable from terrorist conduct undermines the campaign.

In addition to setting the framework of standards and applicable rights, this chapter aims to equip trainers to encourage law enforcement officials to recognise that upholding human rights is not merely compatible with a successful counter-terrorism strategy, but an essential element of any such strategy. The following section addresses this point.

### **"It is still just core policing skills"**

From a human rights perspective, law enforcement action should not look very different just because it takes place in a counter-terrorism context. Terrorist activities are crimes and should be approached first and foremost as crimes.

Some modifications are needed, but the basic principles of crime scene management, for example, are the same. The community remains the best source of intelligence, information, cooperation and support. This requires human-rights based policing that treats the community accordingly.

## **14.2 Human Rights in Counter-Terrorism: a hindrance to effective action?**

It is useful to consider two of the many misconceptions and misgivings about human rights that might be anticipated from a law enforcement perspective in a counter-terrorism context. These might be stated as follows:

- (i) that the human rights system gives undue precedence to the rights of terrorist suspects over the safety of innocent civilians or law enforcement agents – that human rights advocates unduly focus on what the State does or does not do; and
- (ii) that the imperatives of the struggle against terrorist behaviour make human rights considerations inapplicable, less useful, unrealistic ('human rights law is soft on terrorists') or unworkable.

These two points will now be dealt with briefly:

### **"Rights for terrorists? What about terrorist victims?"**

- As noted in the introduction, the law governing the limits of permissible State conduct has been arrived at by an international legal consensus. This makes clear that acts of terrorism are among the gravest violations of human rights. Those who plan, finance and carry out acts of terrorism have, particularly by their indiscriminate attacks on civilians, attacked these very values and freedoms.

- It therefore goes almost without saying (and international human rights considerations dictate this) that States not only have the right but indeed the duty to take positive measures against terrorists. For example, the right to life includes an obligation on States to act (within the Rule of Law) to protect their populations against all threats to life and property.
- Of course, there will be 'hard cases' where the balance between public security and not interfering with individual rights is very difficult. But that is not to say, as one sometimes hears, that terrorist suspects have 'more' rights than their victims.

**“Human rights standards are unworkable or unrealistic in a counter-terrorism context”**

- While difficult balancing issues arise, it would not be correct to suggest that the human rights system cannot accommodate the necessities of counter-terrorism (and therefore should be put aside). The balancing tensions are not new, and the system has developed detailed precedents and guidelines to recognise the different imperatives. Answers to dilemmas raised by the peculiar challenges of combating terrorism can be found within the existing body of law, which sets the outer boundaries and minimum standards of permissible official conduct. An effective international strategy to counter terrorism should use human rights as its unifying framework.

*"If there is a question of dilemmas in combating terrorism, these dilemmas can be phrased in terms of the application of various human rights...the international regulations...themselves provide to a great extent the guidelines for resolving the questions concerning the acceptable and unacceptable measures in the fight against terrorism"*

*A Resolvable Conflict - Declaration of the International Helsinki Federation for Human Rights (the Hague, 15 September 2003) and Human Rights – A Uniting Framework (United Nations High Commissioner for Human Rights, 27 February 2002, para [5]).*

**14.3 International legal frameworks on policing and counter-terrorism**  
**General international human rights law**

The most important matter to bear in mind is that the existence of a counter-terrorism environment does not change the applicability of international legal standards as a whole. The provisions of the *Universal Declaration and the International Covenant on Civil and Political Rights*, for instance, adequately cover the counter-terrorism context (see below and the annex). There are some variations to international standards that account for the challenges of countering terrorism, as below.





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### **The UN Security Council**

The significance of human rights in any State counter-terrorism measures is made clear by United Nations Security Council Resolution 1456 (2003). This Resolution, which was passed under Chapter 7 of the UN Charter which is binding on all member countries, clearly directed that States have a duty to ensure that “any measure taken to combat terrorism comply with all their obligations under international law...in particular, international refugee, human rights and humanitarian law”. The effect for police officers, as representatives of the State, is that they are obliged to act in a way consistent with the international obligations of their State.

### **Other UN and international bodies**

The General Assembly has a number of times expressed unequivocally the importance of protecting human rights and fundamental freedoms while combating terrorism. The various special procedures mechanisms and expert bodies of the UN Human Rights Commission have also stressed the importance of ensuring that country responses to terrorism are compliant with human rights obligations. The same is true of the reports of treaty bodies, such as that of the Committee Against Torture (under the Convention Against Torture), and the Human Rights Committee under the ICCPR. Detailed comments by such committees have gone a long way towards defining more precisely where the legal limits of counter-terrorist measures lie.

### **The Commonwealth and regional organisations**

The Commonwealth Heads of Government’s Statement on terrorism, issued shortly after September 11, 2001, addressed the need to preserve basic liberties while combating terrorism.

The same message is echoed in some statements, conventions and protocols of other international or regional organisations, such as the formal statements of the Organisation of American States (2002), the Council of Europe (Resolution 1271 of 2002), and the South Asia Association for Regional Cooperation (SAARC) Additional Protocol (2004). Some of these organisations, as well as national governments or institutions, have produced extensive guidelines on human rights in counter-terrorism.

### **14.4 What principles and rights relate to counter-terrorism measures?**

From the international sources above, it is possible to describe the basic legal principles, in particular those related to human rights which form the parameters within which police counter-terrorism conduct should take place.

#### **Lawfulness and Non-arbitrariness**

All measures taken by States to combat terrorism must be lawful. Measures and actions should not be ‘arbitrary’ and based only on an official’s discretion. For the law enforcement official, this means acting only when certain that one’s actions are legally permitted and covered by law.

Any limits on rights must be within the law, which should define limiting scenarios as precisely as possible. Limitations should be necessary and proportionate to the aim that is sought to be achieved.

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### **Non-discrimination and equality**

It is a fundamental principle of international human rights law that all persons have a right to be recognised as a person before the law, are to be treated as equal before the law, and are entitled without any discrimination to equal protection of the law.

### **Principles of proportionality and necessity**

In effecting arrest, search, interview, imprisonment or detention; or any legal use of force, law enforcement officials are obliged only to use as much force as is necessary and proportionate to the degree of threat present. To act unnecessarily and with excessive force takes the act, and the official doing it, outside the law.

### **Rule of Law issues: independent oversight and judicial review**

Official actions that deal with the fundamental rights of persons (arrest, detention, etc) require a process of independent and impartial review, even if this is adapted suitably where sensitive information is involved.

### **Right to Life**

Everyone has the right to life. There is an international legal prohibition on the State depriving a person of their life without any cause in law (a lawful justification would be self-defence or defence of others). It is easy to imagine how those involved in counter-terrorist operations require very clear instructions on the use of lethal force so as to act always within the law.

The right to life can place a more positive obligation on State officials not only to refrain from the intentional and unlawful taking of life, but to also to take appropriate steps to safeguard the lives of those within its jurisdiction. Thus the right to life both justifies State measures (eg positive obligations) and limits the arbitrary or excessive use of lethal force by state officers.

### **Torture (and inhuman, cruel and degrading treatment)**

As chapter 6 makes clear, there is a clear rule of international law (capable of attracting consequences in international criminal tribunals) that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Torture is absolutely prohibited in international law.

In the famous case of *Chahal v United Kingdom* (1996), the European Court of Human Rights held as follows:

“The Court is well aware of the immense difficulties faced by States in protecting their communities from terrorist violence.

However, even in these circumstances, the [*European Convention on Human Rights*] prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct.”

It is worth repeating that evidence obtained by torture is inadmissible and may prejudice the chances of a conviction. In addition to principled reasons why the ‘products’ of torture are generally inadmissible in court, the fact is that such admissions are practically speaking ‘bad evidence’ and unreliable: they are obtained under duress. Such persons might say anything to escape suffering. Objective evidence or intelligence is preferable to admissions, in any event.

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### **Arrest, search and seizure**

Normal international rules apply, as set out in earlier chapters – that no-one is to be deprived of their liberty by arrest or detention except on grounds and procedures provided for by law. So, no one shall be subjected to arbitrary arrest, and everyone has the right to be informed of the reasons for their arrest, and to challenge the legality of it in court. Search of persons and property should be undertaken within the law and with respect for dignity and humanity of individuals.

### **Arbitrary, prolonged, and indefinite detention**

Detention by police (pre-trial detention) should be only be for a reasonable period of time provided for by law. A person arrested or detained for terrorist activities must be allowed to challenge the lawfulness of the arrest and detention before a court and should be brought without undue delay before a competent and independent tribunal. See chapter 4 for details.

Any person suspected of terrorist activities and detained pending trial is entitled to regular supervision of the lawfulness of the detention by a court. What counts as 'reasonable time' before a person is brought before a court depends on all the circumstances, but is something courts are capable of deciding.

### **Conditions of Detention**

All persons are to be treated with at least the minimum protections consistent with the requirements of human dignity.

The special imperatives of the fight against terrorism may justify that persons detained under counter-terrorism laws may be subject to more stringent conditions than other prisoners (eg access to information and exchange of information), but from a legal point, they are entitled to no lesser rights than other prisoners generally.

### **Due Process / Access-to-Justice / Fair Trial Rights**

Terrorist suspects are entitled to the presumption of innocence of criminal charges against them as is applicable under a fair trial process. Article 14.3 of the ICCPR provides in full the minimum standards of justice and fairness for a person facing trial on criminal charges.

Some restrictions however, on normal fair trial rights may be justifiable in the counter-terrorism context. These do not affect police officers so much as they do prosecutors and courts. The imperatives of the fight against terrorism may justify certain restrictions to the right of defence, in particular with regard to arrangements for access to lawyers, family, the case file, and to allow for the use of anonymous testimony. Such restrictions to the right of defence must be strictly proportionate to their purpose.

### **Privacy, confidentiality and personal information issues**

It should be remembered that counter-terrorism operations often intrude into the lives of persons and their personal information. As with interference with liberty, clear legal justification must exist for interfering with the privacy of individuals, by whatever technological means.

Measures such as searches, bugging, telephone tapping, surveillance and use of undercover officers, and all measures to collect and process what may be private personal information must be legally authorised, proportional to the information being sought, and subject to a form of independent review. It must be possible to challenge the lawfulness of such measures in court.

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## Background rights

Law enforcement officers should be conscious that it is not intended that counter-terrorism measures interfere with basic guarantees of freedom of opinion and expression, assembly and association, religious conviction, and so forth.

*"...We must never, in the fight against terrorism, lower our standards to theirs...to compromise on the protection of human rights would...hand terrorists a victory they cannot achieve on their own..."*

UN Secretary General Kofi Annan, New York, September 2003

### 14.5 What is the place of international humanitarian law (IHL)?

International humanitarian law (IHL) is the branch of international law that deals with international or internal armed conflict by reference to the *Geneva Conventions* of 1949 and their two *Additional Protocols* of 1977.

Terrorist acts may occur during armed conflicts or in time of peace. As IHL applies only in situations of armed conflict, it does not regulate terrorist acts committed in peacetime. Counter-terrorism operations would only be governed by IHL when terrorist activities reach a level of intensity, frequency and spread such that an armed conflict situation exists. When armed violence is used outside the context of an armed conflict in the legal sense or when a person suspected of terrorist activities is not detained in connection with any armed conflict, humanitarian law does not apply. Instead, domestic laws, as well as international criminal law and human rights govern.

That is, unlike the conduct of military operations, most counter-terrorism operations would be normal civil policing operations (perhaps with some military and other assistance) premised on ultimately achieving a prosecution in a court of law.<sup>1</sup> The creation of special legal regimes resulting from particular conflicts should not be taken as supporting the view that, in a counter-terrorism context, the normal legal regime is not applicable. In any event, fundamental protections of international human rights law do not cease to apply in an armed conflict. IHL and human rights law complement each other.

International human rights (and humanitarian) law define the boundaries of permissible political (and military) conduct. At any one time, at least one of these two bodies of legal safeguards apply.

However, prevention, investigation and prosecution of terrorism is primarily a law and order (policing) function to which criminal law and process should apply, including human rights safeguards.

<sup>1</sup> For further information, see the website of the International Committee of the Red Cross, which supervises the Geneva Conventions: <http://www.icrc.org/eng/ihl>



## 14.6 The consequences of violations

It is useful for law enforcement officers (and particularly trainers) to consider human rights issues in counter-terrorism from the perspective of the consequences of a lack of compliance with human rights by officials. These consequences can be listed as three "P's" – principled, practical and professional consequences (see also chapter 16).

**"Principled consequences"** – measures that violate national and international law are wrong as a matter of legal principle.

It is important to note that the State remains responsible in international law for the acts of an officer in violation of fundamental rights. The operational conduct of an officer might have international legal consequences for the State.

As a matter of principle, the conduct of counter-terrorism operations must be according to certain standards, no matter what the behaviour of the 'other side'. If one descends to the level of those with no respect of basic rights and the rule of law, and adopt unjustifiable measures, law enforcement officers become indistinguishable from those they are combating, and lose sight of what sort of society, and values, they are seeking to defend.

**"Practical consequences"** – as covered in the previous chapter (13), the community is a resource in efforts to prevent and investigate terrorist activity. Indeed, it is the most useful resource:

- Most counter-terrorist operations rely on ordinary policing skills, and
- ordinary policing skills are heavily reliant on community cooperation, and
- community cooperation requires a good human rights record.

As a practical matter, then, community policing that has respect for human rights at its centre helps in the overall strategic effort to prevent and prosecute.

It is obvious that (especially over time), a heavy-handed approach to law enforcement generally, will lead to a breakdown in community relations. This may impact upon effective counter-terrorism action: unduly firm treatment of the community that creates resentment can result in disillusioned members of the community identifying with terrorists.

**"Professional consequences"** – Enforcement agencies should consider how history shows that a failure to self-regulate (ensure that one's methods and practices are compliant with human rights principles) can lead to public outcry and, as a consequence, the imposition of external, intrusive regulation by other agencies. If an agency abuses its powers, it is likely to find those powers taken away, or heavily supervised from outside.

Other 'professional' consequences to consider are the morale, inter-agency and public reputation, and discipline of agencies where a human rights-compliant culture is lacking. And there are of course disciplinary, civil and criminal (and perhaps even international criminal) consequences for individual officials who break the law (and violate human rights unjustifiably) in the course of trying to enforce it.



The day-to-day conduct of officials and officers involved in counter-terrorism must be viewed in the context of the wider strategic picture. A disproportionate or reckless approach towards human life and liberty undermines counter-terrorism measures.

Consider the following statement of the Secretary-General of the Council of Europe, made in September 2002:

*"...The temptation for governments and parliaments in countries suffering from terrorist action is to fight fire with fire, setting aside the legal safeguards that exist in a democratic state. But...while the State has the right to employ to the full its arsenal of legal weapons to repress and prevent terrorist activities, it may not use indiscriminate measures which would only undermine the fundamental values they seek to protect. For a State to react in such a way would be to fall into the trap set by terrorism for democracy and the rule of law.*

*It is precisely in situations of crisis, such as those brought about by terrorism, that respect for human rights is even more important, and that even greater vigilance is called for."*

In a similar vein is a statement in October 2002 of UN Secretary General Kofi Annan:

*"...to pursue security at the expense of human rights is short-sighted, self-contradictory, and (in the long run), self-defeating."*



### **Key Points on Human Rights and Policing in a Counter-Terrorism context:**

International human rights law recognises the threat that terrorists represent to the population and requires and authorises the State to act to combat terrorism.

At the same time, international human rights law imposes certain limits on what actions the State and its officials can legitimately take, or how it can take them.

By international legal consensus, there are outright prohibitions against the arbitrary use of lethal force and against State torture. There are also fairly clear limits on manner of arrest and detention, the interception of private communications, etc.

The terrorism context does not fundamentally alter basic human rights standards. All actions that impinge on human rights should pass the 'P.L.A.N' test of proportionality, legality, accountability and necessity.

At any one time, international human rights law, international humanitarian law, or international refugee law may be in application. There is no legal 'vacuum' where no law applies to conduct.

It is particularly important for trainers to note the strategic consequences of non-compliance with human rights – in terms of principle, practicality (the effect of abuse by officials on community relations and safe prosecutions) and professionalism (the effects of a poor human rights culture on the integrity, discipline and morale of the agency).

### **14.7 Summary**

There are internationally-recognised and clear minimum standards of conduct that govern the actions of State officials engaged in counter-terrorism efforts at all stages. These standards have been developed over time by the consent and consideration of States themselves. They give justification to protective measures and set limits to State action. They are more than capable of accommodating the requirements of security. Adherence to international human rights principles by investigators should be seen not as a handicap but as further reinforcing the overall responses of democratic countries.

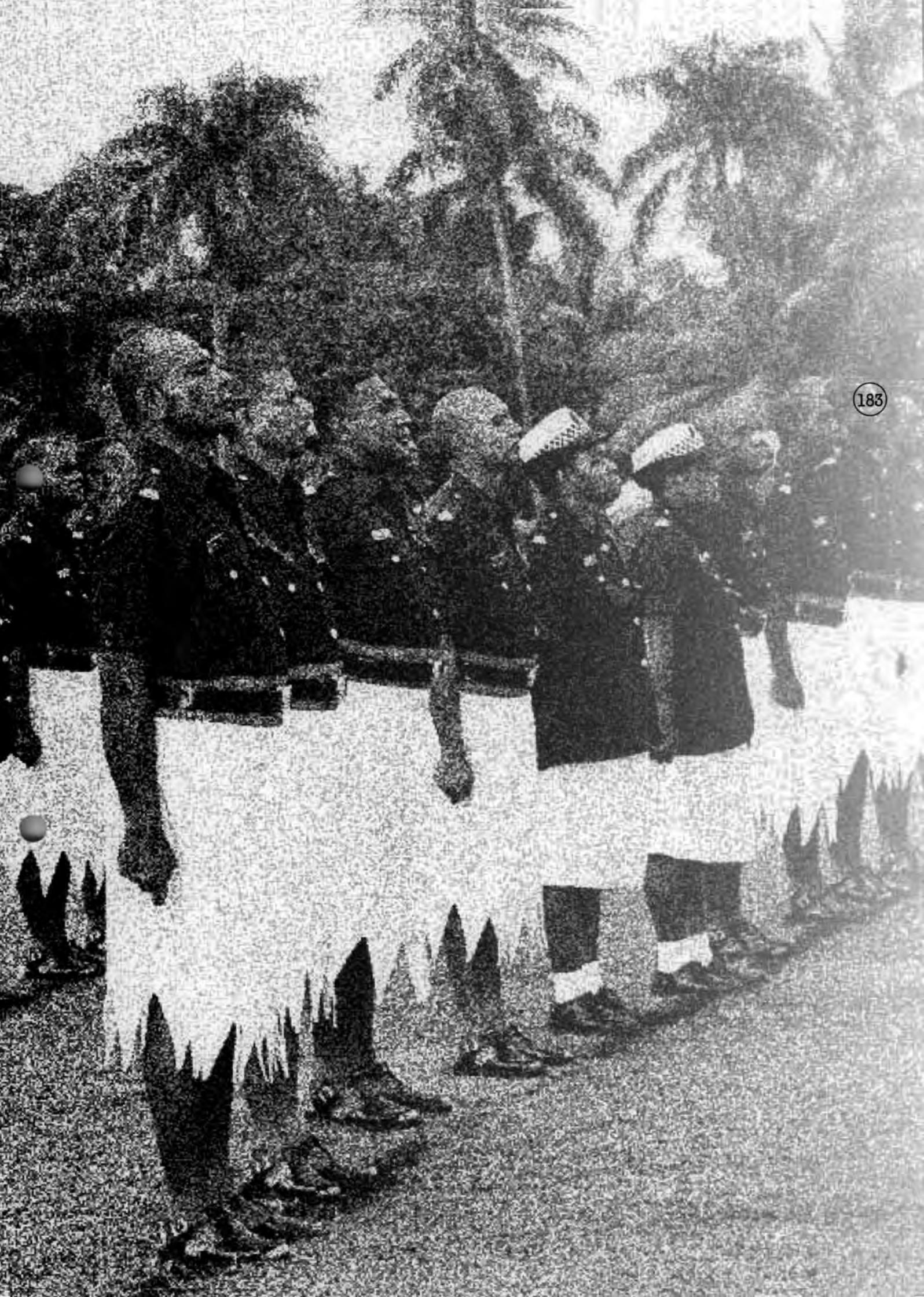
Respect for these basic human rights standards is an indispensable element of long-term, effective, law-based counter-terrorism responses. It is respect for the rule of law, and for minimum standards for the humane treatment, that clearly distinguishes the conduct of law enforcement officials from that of terrorists themselves. Law enforcement that is inconsistent with human rights is, in the long term, likely to be counter-productive.

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#### 14.8 Questions for evaluation

- *In what way, if any, is the policing function different in a counter-terrorism environment?*
- *What is the place of human rights standards and which are the most significant standards that apply?*
- *What international moves have there been for the application of human rights standards to State counter-terrorism measures?*
- *What are some of the consequences of non-compliance with human rights in this context?*
- *Why is it so important for trainers to include human rights issues in counter-terrorism training?*







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## CHAPTER 15

# Police command and management

### Learning objectives for Chapter 15

After completing this chapter you should be able to:

- *Explain the role of police commanders in ensuring that police officers subject to their control apply human rights standards and practices*
- *Discuss the international human rights standards and practices for law enforcement officials in a command or management position*



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## Chapter 15

### Police command and management

#### Contents

#### **15.1. Introduction**

#### **15.2. Law enforcement organisations**

#### **15.3. International standards and practices applicable to command and management**

15.3.1. Human rights standards for commanders

15.3.2. Human rights practices for commanders

#### **15.4. Summary**

#### **15.5. Questions for self-evaluation**



### 15.1. Introduction

Police commanders play a vital role in managing and administering any police organisation. Part of their role is also to implement and manage any necessary changes in their organisation. Commanders provide guidance and leadership and ensure that correct procedures are followed. An equally important part of their role is to ensure that they themselves and all police officers under their command at all times fulfil the duty imposed on them by the law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

A commander's responsibility includes ensuring those under them respect, protect and promote human rights in their daily activities. Commanders have a responsibility to ensure that all reports of human rights violations by police officers are investigated in a prompt, thorough and effective manner, and that action is taken accordingly, with an appreciation for the rights of the victim concerned. Moreover, there is a command responsibility to develop systematic human rights education for police officers so as to prevent or minimise the occurrence of such abuse.

#### **Wider police management reform?**

As part of a training manual, this chapter attempts only to give an outline of the particular human rights considerations that apply to police commanders and management. This is in anticipation of trainers building human rights elements into continuation training for senior officers. Wider issues of structural reforms to police procedures (such as review processes) are policy matters of another kind.'

### 15.2. Law enforcement organisations

The general characteristics of police agencies are the following:

- The majority of police agencies are of a civilian nature (some are of a paramilitary nature).
- All police agencies are strictly hierarchical (a system of ranks), often with as many functional levels as there are ranks in the organisation.
- Police agencies are inward-oriented, with a focus on internal review and top-down decision-making.
- In many police agencies promotion is generally based on seniority rather than quality.
- All police agencies experience public scrutiny.
- Most agencies do not have a structured relationship with the community they serve.

One traditional view of policing is that the emphasis should be on law, order, authority, and enforcement tactics. In recent years, however, there has been a shift in view on policing and

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1 For some input on these issues, reference might be made to some of the practical suggestions in the 2005 report on 'Police Accountability' of the Commonwealth Human Rights Initiative (CHRI - see [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)). Note that the CHRI is a non-governmental organisation and not in any way a part of the Commonwealth Secretariat.



the role of police officers, as is set out more fully in Chapter 13. The modern view of 'community policing' is for a focus on police officers who have social skills and apply principles of proactive policing, with community co-operation and trust and crime prevention as a goal.

The focus on **public relations and the media** (as a part of community outreach) is becoming increasingly important:



Law enforcement is a community service, and as such there is a need to be service-oriented and pay due regard to the appropriateness and adequacy of services being offered. It is true that policing is a public service of a different sort. If anything, this increases the responsibility placed on police officers.



Relations with the media are becoming more important. The media are a resource in crime control – police services should cultivate good working relations with the media, including to better inform the community. However, police should avoid seeking to create a particular public image that is an image only: it is through doing their work openly, accountably, and with respect for the law and human rights that the profile of police services and their public image is improved. This leads to better community relations, easier police work, and higher levels of job satisfaction among police officers.



In many Commonwealth countries, police are working closely with national human rights institutions in educational, promotional and other programmes.



In order to improve levels of police compliance with human rights standards, a relationship has to be carefully and deliberately created between the citizens and their law enforcement officials, to provide easy accessibility and foster mutual trust. It is for police managers and commanders to set the tone for this relationship, by their example and their programmes. This relationship can only grow if law enforcement organisations are:

(a) responsive; and

(b) accountable (including an efficient mechanism to investigate complaints about police officers and law enforcement practices).

### 'Responsiveness'

This quality refers to the capacity of law enforcement organisations to respond – whether reactively or proactively (preventatively) – to the wants and needs of society.

The requirement of responsiveness is only recently leading to attempts by law enforcement organisations to take community opinions into account, and to design proactive rather than reactive responses.

### 'Accountability'

There are different levels of accountability:

#### **Abroad – international accountability**

According to international human rights law, individual States can be held accountable in the various mechanisms of the international community for situations in which there



exists, within the territory of the State, "a consistent pattern of gross and reliably attested violations of human rights".

Moreover, as chapter 1 sets out, the international legal obligations of States (through Conventions they have signed, or as a matter of customary international law) translate into duties of the State to ensure measures are taken to afford protection and fulfilment of human rights of persons under the state's control. In turn, this translates at the practical level into a duty on the police to prevent, protect and remedy human rights violations. For police commanders, the content of this duty is to ensure systems and procedures are in control to enable such measures.

As well as 'formal' accountability in international human rights reporting and review mechanisms, it may be seen that police services are held to be 'informally' accountable through the international media and non-governmental human rights organisations. This has an impact on the international image of the country and the international reputation of the police service for professionalism.

#### **At home – external accountability**

Police – and often police commanders – are also accountable through a range of national legal and political review mechanisms, and the ordinary criminal laws of the country. This accountability includes commissions of inquiry (permanent or ad hoc) and, as above, includes an element of 'informal' accountability where the police are held to 'account' by the community which they protect and serve, and in the national media.

#### **Internal accountability**

This concerns the existing individual responsibility of every law enforcement official to respect and strictly observe the requirements of the law. There are distinct requirements as to attitudes and skills, in combination with required knowledge to guarantee prompt, adequate and appropriate application of the law without any adverse distinction.

### **15.3. International standards and practices applicable to command and management**

There are some basic human rights standards and practices that have been developed for, and are relevant to, commanders and managers. The 'standards' section below can be drawn out of the *Code of Conduct for Law Enforcement Officials*, as well as general international rules and guidelines. The 'practice' section also considers some practical ways in which some of these guidelines can be given effect by command decisions.<sup>1</sup>

Of course, police officers are at all times governed by laws in force in their area, and internal disciplinary codes.

#### **15.3.1. Human rights standards for commanders**

- Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

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<sup>1</sup> These standards and practice guidelines are provided in the Office of the United Nations High Commissioner for Human Rights publication 'Human Rights and Law Enforcement' (HR/P/PT/5, Geneva, 1997, Chapter 20).



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- Law enforcement officials shall not commit any act of corruption. They shall rigorously oppose and combat all such acts.
  - Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.
  - Law enforcement agencies shall be representative of and responsive and accountable to the community as a whole.
  - The recruitment, hiring, assignment and promotions policies of police agencies shall be free from any form of unlawful discrimination.
  - Clear, complete and accurate records shall be maintained on matters of investigation, arrest, detention, the use of force and firearms, victim assistance, and all matters of police activity.
  - Training and clear guidelines shall be made available on all matters of police activity affecting human rights.
  - Law enforcement agencies shall make available a range of means for the differentiated use of force, and shall train officers in their use.
  - All incidents of the use of force or firearms shall be followed by reporting and review by superior officials.
  - Superior officials shall be held responsible for the actions of police under their command if such superior officials knew or should have known of abuses but failed to take action.
  - Law enforcement officials who refuse unlawful superior orders shall be given immunity.
  - Confidential information is to be handled securely.
  - All law enforcement candidates shall be of appropriate mental and physical character.
  - All law enforcement officials are to be subject to continuous and effective report and review procedures.
  - Law enforcement agencies shall develop strategies for law enforcement which are effective, lawful and respectful of human rights.

### 15.3.2. Human rights practices for commanders

The following practices can serve as a guideline for police commanders and supervisory officials:

- Develop a voluntary ethical code of conduct for law enforcement officials.
  - Issue clear and binding standing orders on respect for human rights in all areas of police work.
  - Provide entry-level and continuous in-service training to all officials, emphasising the human rights aspects of police work contained in this manual.
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- Develop careful screening processes for new recruits and periodic assessments of all officers, to determine appropriate character for law enforcement duties.
- Develop community policing strategies, as indicated in this manual.
- Establish and enforce strict guidelines for record-keeping and reporting.
- Establish an accessible mechanism for receipt of complaints made by members of the community, and fully investigate and redress all such complaints.
- Develop a plan to ensure that the composition of the police agency is representative of the entire community, including fair and non-discriminatory recruitment and management policies.
- Solicit technical assistance from international and bilateral programmes, to develop techniques and technical policing skills and capacities for proper and effective law enforcement.
- Establish and announce an appropriate range of penalties for police violations, from suspension, pay-docking and termination, to criminal prosecution for serious violations.
- Strictly regulate the control, storage and issuing of weapons and ammunition.
- Carry out periodic, unannounced spot checks on detention facilities, police stations and sub-stations, and also inspect weapons and ammunition being carried by police to ensure that they comply with official regulations.
- Establish close co-operative relationships with other law enforcement agencies, judges and prosecutors, national human rights institutions, medical facilities, social service agencies, emergency services, the media and community organisations.
- Develop specialised units to professionalise police attention to juveniles, victims, crowd situations, women's detention facilities, border control, and so on.
- Develop a public information strategy that helps to inform the community about the police and their functions, challenges and possibilities.

#### **15.4. Summary**

Police commanders play an important role in ensuring respect for and protection of human rights. They have an important role in managing and administering the police, and also in monitoring and evaluating police behaviour. In addition to the significance of commanders supporting human rights awareness for officers, there are many positive consequences that can come from a decision to engage with the media, national human rights institutions, civil society and of course the community, in order to improve policing standards, increase public understanding about the difficulties faced by police, and to improve the overall climate in which police activities take place.





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### 15.5. Questions for self-evaluation

- *What practical steps can trainers suggest that police commanders take to ensure that police officers respect and protect human rights when fulfilling their duties?*
- *What are some of the institutions that police command and management might consider in support of a comprehensive implementation of human rights-based policing?*





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## CHAPTER 16

# Human rights violations

### **Learning objectives for Chapter 16**

After completing this chapter you should be able to:

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- *Explain what is meant by a human rights violation*
  - *Explain the responsibility of the state in protection of human rights*
  - *Discuss the consequences of human rights violations by police*
  - *Explain the rights of victims of human rights violations*
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## Chapter 16

### Human rights violations

#### Contents

- 16.1. Introduction**
- 16.2. Definition of human rights violations**
- 16.3. Role and responsibility of the state in protecting human rights**
- 16.4. Consequences of human rights violations by police officers**
- 16.5. Complaints procedures and remedies available when human rights are violated**
- 16.6. Who monitors human rights?**
- 16.7. Victims of human rights violations**
- 16.8. Summary**
- 16.9. Questions for self-evaluation**

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## 16.1. Introduction

This chapter deals with consequences of police violation of human rights. For trainers, there is a significant challenge to reinforce the positive consequences of human rights compliance while imparting a sense of the practical and principled consequences of police conduct that falls short of human rights standards.

Police are often in a very difficult position when doing their job. On the one hand, the public often want police officers to be tough on crime and criminals, while on the other, police officers are under a duty to respect and protect the human rights of suspected criminals. This difficult situation is compounded if the officers do not understand human rights standards and how to apply these in their daily activities. Where awareness levels are low, it is not surprising that it happens that police officers in their line of duty violate the human rights of others. These actions are always regarded as serious misconduct and should be dealt with severely.

As this chapter shows, another consequence of human rights violations by police is that it alienates the community in which officers must live and work, leading to cycles of distrust, and so making police work harder to do.

Some examples of human rights violations by police officers are:

- enforced or involuntary disappearance;
- extra-legal, arbitrary or summary executions;
- unlawful arrest and detention;
- excessive use of force;
- torture;
- inhuman or degrading treatment of arrested and detained persons;
- discrimination;
- unlawful search and seizure procedures;
- unlawful investigation methods;
- illegal corporal punishment;
- inhumane treatment of complaints of victims of human rights violations;
- defeating the ends of justice (covering up crime).





### **Matters of Principle and Practical Matters**

It is essential that police trainers not only emphasise the legal and principled reasons for the police to always respect human rights (and protect the rights of others), but also ensure trainees understand the practical consequences of the violation of others' human rights by police, including:

- criminal or disciplinary charges (leading to dissatisfaction with one's career as a police officer, personal problems, etc.);
- loss of respect from the community, destroying any chance of a working relationship with the community (thus preventing the effective investigation of crime).

### **16.2. Definition of human rights violations**

Human rights violations can be defined as violations of internationally recognised standards relating to human rights, whether or not these have yet been incorporated into national laws.

The UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* proposes two definitions. The first characterises them as "a violation of criminal laws operative within States, including those laws proscribing criminal abuse of power". Central to such violations is the individual or collective harm and suffering caused to persons, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that can be imputed to the State. The second definition concerns those "acts and omissions [imputable to the State] that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights."

### **16.3. Role and responsibility of the state in protecting human rights**

As set out briefly in chapter 1, international human rights law creates legally binding obligations for States. These obligations include the requirement to adapt (or create) national legislation in accordance with the international norms, as well as to refrain from practices that are in contravention of those norms. 'The State' also includes persons acting on behalf of the State, including public officials such as police officers.

**Ultimate responsibility in international law for the acts of individual officials lies with the State, which may be obliged to improve awareness of human rights among its officials and to investigate and remedy violations.**

**As the other side of this coin, the day-to-day responsibility for fulfilling the State's international human rights obligations lies partly with police officers.**



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There is a responsibility on every law enforcement official – as an agent and representative of the state – to respect, protect and promote the human rights of every person. Since human rights violations constitute a violation either of criminal laws within a State, or of internationally recognised human rights norms (or both), States are under an obligation to exert judicial control over such acts or omissions and to protect victims.

In addition, States have certain responsibilities:

- To ensure that every police officer is trained and educated in applying human rights in their daily duties and activities.
- To implement proper structures to monitor and evaluate police actions and to ensure that they adhere to human rights standards and practices.
- To create mechanisms and structures to deal with complaints, for example, internal complaints or disciplinary units, and external complaints mechanisms such as national human rights commissions, ombudsman or similar institutions.
- To develop proper complaints investigation procedures and structures.

#### **16.4. Consequences of human rights violations by police officers**

**Violations of human rights by police officers can only make the already difficult task of law enforcement even more difficult.** When the law-enforcer becomes the law-breaker, the result is not only an assault on human dignity, and on law itself, but also the creation of obstacles which prevent the progress of effective policing.

Negative effects of police violations of human rights include:

- they destroy, little by little, public confidence in the police;
- they isolate the police from the community;
- they can lead to civil unrest;
- they often prevent effective prosecutions in court (for example, if evidence grounding the prosecution has been obtained by torture in violation of a suspect's human rights);
- they result in police officers becoming merely 'enforcers' instead of 'law enforcers' (removing the element of 'law' from 'law enforcement');
- they force the police to be reactive, rather than preventative in their approach to crime;
- they can damage the international standing and credibility of the State and lead to increased scrutiny from international bodies, in particular human rights monitoring mechanisms.

In contrast to this, respect shown by the police for human rights actually improves police effectiveness. In this sense, as has been noted, respect for human rights by police, in addition to being a legal and ethical obligation, also makes practical sense.

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When police are seen to respect, uphold and protect human rights:

- (i) public confidence in the police grows and community co-operation with the police increases;
- (ii) a contribution is made to the peaceful resolution of conflicts and complaints;
- (iii) prosecutions of offenders are more likely to be successful;
- (iv) police are seen as part of the community, performing a valuable social function;
- (v) the fair administration of justice is served and, consequently, confidence in the system increases;
- (vi) an example is set for others in society to respect the law;
- (vii) police get closer to the community and are accordingly better able to prevent crimes through proactive policing;
- (viii) the media begin to support the police, and the police receive support from the international community and local politicians; and
- (ix) professional pride in the police service is maintained, with the flow-on this has for job satisfaction, institutional reputation and recruitment.

**Police services which respect human rights receive benefits that result in more effective policing, while at the same time a law enforcement structure is built which does not rely on fear and physical force, but rather on honour, professionalism and legality.**

### **16.5. Complaints procedures and remedies available when human rights are violated**

As a backdrop to the international framework of standards within which all policing takes place, there are a variety of international reporting, review and complaints mechanisms existing either under the United Nations system or the specialised bodies establishing under human rights treaties. These bodies also provide elaboration on the nature and extent of States' duties in relation to particular rights. It is an international obligation of governments to provide mechanisms for 'effective remedies' of human rights violations. This means the State is obliged to have complaints procedures and remedies available to people when their human rights are violated.

It is not necessary to expand on these mechanisms in this chapter, other than to note that trainers ought to set the individual responsibilities of police officers by reference to international standards, against the wider context of the State's duties in international law to protect its own population. Violations of human rights committed by law enforcement officials are detrimental to the integrity of the entire law enforcement organisation, and may even reflect on the credibility of governments. Their occurrence must be prevented through training and awareness. If a violation was impossible to prevent, the State should be prepared to deal with

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such situations by investigating all complaints promptly, thoroughly and impartially. Individual law enforcement officials must be held accountable for their actions. This requires internal monitoring and review procedures. In the event of human rights violations, adequate disciplinary measures and/or legal proceedings must be initiated.

International standards provide that:

- superior officers should be held responsible for abuses if they knew, or should have known, of their occurrence and did not take action.
- police are to receive immunity from prosecution or discipline for refusing unlawful superior orders.
- obedience to superior orders shall not be a defence for violations committed by the police.

National remedies can include legal proceedings, whether criminal or civil, arbitration or conciliation mechanisms, independent complaints procedures, a national ombudsman or national human rights commission. The names and responsibilities of these organisations may differ from country to country. Their functions are normally regulated in domestic legislation.

#### **16.6. Who monitors human rights?**

There are various governmental and non-governmental groups at the national, regional and international levels which can monitor the police. The implementation of human rights standards is closely watched at several levels. At the national level, human rights are monitored by:

- (a) concerned government agencies and services, including the police;
- (b) national human rights institutions (such as a Human Rights Commission or an Ombudsman);
- (c) human rights and other non-governmental organisations (NGOs);
- (d) the courts;
- (e) parliament;
- (f) the media;
- (g) professional organisations (such as lawyers, doctors, etc.);
- (h) trade unions;
- (i) religious organisations; and
- (j) centres at universities.

At the regional and international levels, organisations have developed mechanisms to monitor human rights within the relevant countries. There are many regional mechanisms including the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the

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Council of Europe. At the international level, States' compliance with human rights are also 'monitored' by an elaborate monitoring mechanism in the United Nations, as well as by a number of international NGOs, such as Amnesty International, Human Rights Watch and the Commonwealth Human Rights Initiative. There is considerable media interest in such issues too.

Within the UN system, four principal review functions of State conduct exist. The first is treaty-based monitoring, such as by the Committee against Torture, the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The second is 'Charter-based monitoring, such as by the UN Human Rights Commission (replaced by the Human Rights Council), the special procedures mechanisms (Special Rapporteurs), and other expert working groups within the UN. The third is monitoring that occurs through peacekeeping and human rights field operations. The fourth is monitoring which is carried out by the Office of the UN High Commissioner for Human Rights, under a global mandate to promote and protect human rights. It is also possible to see the UN Security Council, with its mandate to consider and make binding resolutions on 'threats to international peace and security', as having a monitoring role over large-scale human rights abuses. The Commonwealth Ministerial Action Group (CMAG), formed under the *Millbrook Declaration* 1995, can consider widespread and systematic abuses as a factor in deciding whether a member country has persistently failed to meet Commonwealth principles.

### **16.7. Victims of human rights violations**

It is important to realise that victims of human rights violations committed by police officers are sometimes in an even more difficult position than other victims due to the fact that police officers – who are supposed to protect and respect human rights, and investigate abuses – are themselves the perpetrators.

Victims should be treated with compassion and respect for their dignity. The manner in which police deal with victims and complainants reflects readily on their image and their reputation for professionalism. Victims also have the right to access the mechanisms of justice and to prompt redress, and police need to know these matters in order to be in a position to assist and advise victims.

Some standards and practices that can serve as a basic guideline for dealing with victims of human rights abuses by police include:

- Effective mechanisms to ensure internal discipline and external control, as well as the effective supervision of law enforcement officials.
- Law enforcement officials who have reason to believe that a violation has occurred, or is about to occur, should report the matter.
- Provisions should be made for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of those provisions shall be publicised.
- Investigations into violations should be prompt, competent, thorough and impartial.

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- Investigations shall seek to identify victims, recover and preserve evidence, discover witnesses, discover cause, manner, location and time of the violation, and identify and apprehend perpetrators.

### **16.8. Summary**

- States have an international obligation and responsibility to take legislative and other measures to respect, protect and promote the human rights of every person.
- Police as representatives of the state have to ensure that these responsibilities are met. Such responsibilities include responding to the needs of victims of crime and of abuse of power.
- States should implement structures, procedures and processes to deal with complaints of human rights violations. All complaints of human rights abuses should be investigated promptly, thoroughly, impartially and in a professional manner. Perpetrators should be dealt with through proper legal proceedings. Victims of human rights violations should be treated with compassion and respect for human dignity.
- Violations of human rights by police officers can only make the already difficult task of law enforcement even more difficult.
- Respect for human rights by the police actually improves police effectiveness. In this sense, respect for human rights by police, in addition to being a legal and ethical obligation, also makes practical sense.

### **16.9. Questions for self-evaluation**

- *What is a violation of human rights?*
  - *What is the role and responsibility of the state in the protection of human rights?*
  - *What remedies exist at the national level for human rights violations?*
  - *What is the role and responsibility of a national ombudsman?*
  - *What is the role and responsibility of a national human rights commission?*
  - *What are the consequences – in principle or law, and the practical policing consequences – when law enforcement officials violate human rights?*
  - *Is there a duty to investigate such violations?*
  - *Who is accountable for human rights violations by law enforcement officials?*
  - *What are the international monitoring mechanisms in place?*
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- *Who monitors human rights?*
  - *What are the rights of victims of human rights violations?*





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## CHAPTER 17

# Training Methodologies

### **BUZZ GROUPS**

So-called "buzz-groups" is a method that can be used at any time in a seminar, training session or workshop, to get people sharing ideas on any topic for a few minutes, before reverting to single group discussion. The name comes from the noise given by the groups or teams at work.

A question relating to a human rights issue is given to the entire group and participants are asked to discuss it with the person or persons next to them (resulting in groups of two or three). Buzz groups are excellent for maximum participation for large groups in a short period of time. In this method, the trainer poses questions or hands out case histories. Then each buzz group work on one problem. Feedback to the group should be given by the groups after the exercise. Some common issues, agreements or themes can be drawn out.

#### **Some advantages**

- All the participants are involved
- Many ideas can be generated in a short period of time
- Stimulates participation and interaction
- Non-threatening exercise and even the shy participants can take part

#### **Some disadvantages**

- Can get out of hand
- May stray from the topic if not well managed

### **GROUP DISCUSSIONS**

Group discussion is an obvious teaching or training method where the students or participants are divided (for a longer period than with buzz groups) into small groups in order to discuss a specific topic or questions. It is a very interactive process where all the participants are involved and can give inputs. Again, groups should report back to the whole group. One can select a reporter.

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## **GROUP DISCUSSIONS**

### **Some advantages**

- Many ideas can be generated in a short period of time
- Stimulates participation and interaction
- All the participants are involved
- Inexperienced participants mix with experienced participants

### **Some disadvantages**

- Can get out of hand
- Some participants may dominate the groups causing others not to participate
- May stray from the topic if not well managed

## **FISH BOWLS**

The fishbowl is a dynamic training technique that can be used in any training intervention. The most common configuration is an "inner group", which is the discussion group, surrounded by an "outer ring", which is the observation group or the fish bowl. Just as people observe the fish in a fishbowl, the "outer ring" observes the "inner group". Another method is to use an outer circle with one or two persons in the inside discussing a topic, giving different participants the opportunity to express their ideas or give inputs.

### **Some advantages**

- Controlled situation
- Can be used to discuss controversial or sensitive issues
- Enhance dynamic individual involvement
- Individual differences are respected
- Dynamic group involvement

### **Some disadvantages**

- Can be time consuming if not managed properly
  - Not everybody will participate
  - Fear of ridicule
  - Fear of failure
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## **ROLE PLAY**

Role-plays are intended to imitate a real situation and encourage trainees to think about what they would do or feel in that situation. In a role-play, people in the group participate in roles assigned to them without practicing beforehand. They perform the action watched by others, and part of the exercise is to assess afterwards their response to being thrown into a situation. An example is a hypothetical press conference after a crowd control incident that has turned violent. Role-plays can help police officers to see things from others' point of view. The emphasis is not on problem solving but rather on skill development and attitude change.

### **Some advantages**

- Good if the situation is similar to the actual work situation.
- Trainees receive feedback which may give them confidence.
- Good for interpersonal skills and changes of attitudes.
- Can teach individuals how to act or react in a real situation.

### **Some disadvantages**

- Trainees may be shy – they are not actors.
- Trainees sometimes are not serious or too comic.<sup>o</sup> Some situations cannot be implemented in role playing.
- Uncontrolled role playing may not lead to any sufficient results.
- It may not be convincingly similar to a 'live' situation.
- It may produce adverse reactions or aggression.

## **SIMULATION EXERCISES**

These are also role-playing training techniques in which the trainee gets to experience and respond to an environment that is a reproduction of real-life conditions or issues or decisions.

A simulation exercise attempts to create realistic situations of the kind that will be faced in practice, and provides an opportunity for exercising the skills required in dealing with them. Through such a simulation one can re-examine previous behaviour, try out behaviours just acquired, or experiment with behaviours that strike trainees as potentially useful.

### **Some advantages**

- Controlled situation
- Develops practical experience for the trainees in a non-threatening environment where non-consequential mistakes can be made
- Helps in transferring knowledge and giving experience of decision-making
- Helps to evaluate and correct the trainees' behaviour



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## **SIMULATION EXERCISES**

### **Some disadvantages**

- Can be time consuming
- Some teams may not take it seriously

## **LECTURE**

A lecture is a speech by a lecturer (instructor), with limited discussions.

It is the traditional method of teaching, and is used in many training programs. The lecture is an efficient means of transmitting large amounts of factual information and comment to a relatively large number of people at the same time. A skilled lecturer can organize material and present it in a clear and understandable way. A well-prepared lecture may allow questions from the learners, or be followed by a question-and-answer session, buzz groups or other activity.

### **Some advantages**

- Clear and direct methods of presentation
- Good if there are more than 20 participants / trainees
- Necessary if there is a large amount of content to cover
- Materials can be provided to trainees in advance to help in their preparation
- Trainer has control over time
- Cost effective (cheap)

### **Some disadvantages**

- It is a one-way communication process, it provides no practice, no feedback, no knowledge of results, and it may inhibit the transfer of learning
- Since there is no discussion, it is easy to forget
- Trainees may not have done required preparatory reading
- Requires a high level of quick understanding by trainees

## **BRAINSTORM / BOARD BLAST**

The brainstorm is a quick way to get ideas or proposals from a big group. The purpose of a brainstorm is to generate as many ideas on a specific topic as possible, as quickly as possible, and to get 'first reactions' so that as many possible ideas are thrown in. All these ideas are then written down on newsprint or a board. After all the ideas are written down, the topic is opened up for discussion, comments or questions.

Educator Alex F Osborne introduced the concept of brainstorming during the 1930's. He realised that collective thinking led to greater creative thinking. Thinking on your own about a

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problem is not as productive as when a group of people work together in solving it. Collective thoughts are always more stimulating. A brainstorming group is a group with singleness of purpose who apply their creative thoughts to find of a solution to a specific problem. The brainstorm is also referred to as a board blast.

**Some advantages**

- Many ideas can be generated in a short period of time
- Stimulates participation

**Some disadvantages**

- Can get out of hand
- Some may not participate



**ICE-BREAKERS & INTRODUCTIONS, WARM UPS & 'ENERGIZERS'**

The tone to a training group can affect its overall impact, and setting the right tone at the start is very important. 'Ice breakers' or introductions are games or activities that can be used to introduce participants or trainees to each other at the start of the activity. By using ice breakers or introductions we can create a warm, friendly, personal learning environment, one in which trainees will feel comfortable to participate in and learn from.

Warm-ups and energizers are quick games (5-10 minutes) that generate a lot of energy and laughter in the group. These get the participants to relax, laugh, connect with each other and learn while enjoying themselves. Games can warm the group up to the topic and create an atmosphere that is ideal for learning. They do not necessarily have any relation to the topic.

**Some advantages**

- Good techniques to help people feel part of the programme, at ease, and more comfortable with themselves and with others and feel more "at home" in a group.
- They break up the "cliques" invite people to form random groups, and help individuals meet others in a non-threatening and fun way.
- They can set a tone for the time a group will be together, encourage people to feel "safe," and hopefully evoke lots of laughter and release tension. These create a good atmosphere to conduct training
- Energize trainees for example in the afternoons or during long sessions

**Some disadvantages**

- Can get out of control
  - Can take a long time if not properly managed
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## TALKING CIRCLES / WORD WHEELS

Participants are divided in two groups, one sitting in a circle facing outward and the other facing inward so that each person faces someone else. The participants are given a topic or a few questions that they have to work on beforehand and then discuss with each other. These pairs then exchange views on an announced topic or questions. After a set period, the facilitator asks everyone on the inside to move one or two seats to the right and discuss with the new person sitting opposite. The participants can then have the opportunity to discuss different questions with different people. This process continues until each person has changed views with several others.

### Some advantages

- Interactive
- Good to share ideas
- Everyone participates in the exercise
- The occasional movement energizes the participants

### Some disadvantages

- Can get out of control
- People can talk about other topics or conduct side discussions
- Can take a long time
- Ideas are confined to two persons if you do not get group feedback



POLICE



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**ANNEXURE**

**Extracts from  
main international  
instruments  
concerning law  
enforcement**

## 1. Universal Declaration of Human Rights

Adopted by UN General Assembly Resolution 217 A (III) of 10 December 1948

### Article 3

Everyone has the right to life, liberty and security of person.

### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### Article 6

Everyone has the right to recognition everywhere as a person before the law.

### Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

### Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

### Article 11

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed...

### Article 20

Everyone has the right to freedom of peaceful assembly and association.

No one may be compelled to belong to an association.

### Article 29(2)

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

## 2. International Covenant on Civil and Political Rights

Adopted by UN General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons

and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### **Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### **Article 15**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed...

#### **Article 16**

Everyone shall have the right to recognition everywhere as a person before the law.

#### **Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.



## UN Code of Conduct for Law Enforcement Officials

Adopted by UN General Assembly resolution 34/169 of 17 December 1979

### Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

#### Commentary:

(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

### Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

#### Commentary:

(a) The human rights in question are identified and protected by national and international law.

### Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

#### Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be

respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

### Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

#### Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

### Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

#### Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows: "... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on

a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

#### **Article 6**

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

#### **Commentary:**

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

#### **Article 7**

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

#### **Commentary:**

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of

these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

#### **Article 8**

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

#### **Commentary:**

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.



### 3. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

*Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders 1990.  
Adopted and proclaimed by General Assembly Resolution 45/111 of 14 December 1990.*

#### Preamble

Whereas the work of law enforcement officials is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials, Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole...

#### General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
  - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

#### Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

#### **Policing unlawful assemblies**

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

#### **Policing persons in custody or detention**

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

#### **Qualifications, training and counselling**

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

#### **Reporting and review procedures**

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f).

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.



#### 4. Basic Principles for the Treatment of Prisoners

*Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.*

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

See also *Standard Minimum Rules for the Treatment of Prisoners*, May 1977

#### 5. Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment

*Adopted by General Assembly Resolution 43/173 of 9 December 1988.*

##### Scope of the Body of Principles

These principles apply for the protection of all persons under any form of detention or imprisonment.

##### Use of Terms

(b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;

(c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence...

##### Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

##### Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

##### Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

##### Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory.

##### Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

##### Principle 7

1. States should prohibit by law any act contrary to

the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers...

**Principle 8**

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

**Principle 9**

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

**Principle 10**

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

**Principle 11**

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

**Principle 12**

1. There shall be duly recorded:

(a) The reasons for the arrest;

(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

**Principle 13**

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority

responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

**Principle 15**

Communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

**Principle 16**

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

**Principle 17**

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

**Principle 18**

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.



2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel...

**Principle 19**

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

**Principle 20**

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

**Principle 21**

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.

**Principle 22**

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

**Principle 23**

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law...

**Principle 24**

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

**Principle 28**

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

**Principle 29**

1. In order to supervise the strict observance of relevant laws and regulations, places of detention

shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment...

**Principle 30**

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

**Principle 31**

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

**Principle 32**

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

**Principle 33**

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers...

**Principle 34**

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case...

### **Principle 36**

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence...

### **Principle 37**

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

### **Principle 38**

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

### **Principle 39**

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

### **General clause**

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

## **6. Declaration of Basic Principles of Justice for Victims of Crime**

*Adopted by General Assembly Resolution 40/34 of 29 November 1985.*

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

### **Access to justice and fair treatment**

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;



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(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

**Restitution**

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted...

**Assistance**

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental...means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid...



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