





---

## 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:

11

- *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*
-



---

# Chapter 1

## International human rights standards and policing

### Contents

- 1.1. Introduction**
- 1.2. What are human rights?**
- 1.3. Some examples of human rights**
- 1.4. 'Classifications' of human rights**
  - 1.4.1. Civil and political rights
  - 1.4.2. Social and economic rights
  - 1.4.3. Environmental and developmental rights
- 1.5. The source of International Standards and the 'International Bill of Rights'**
- 1.6. International human rights instruments applicable to police**
- 1.7. Human rights in Commonwealth countries**
- 1.8. Why are human rights important for police officers?**
- 1.9. How may police officers limit the human rights of suspected criminals?**
- 1.10. Summary**
- 1.11. Questions for self-evaluation**



---

## 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 person's 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*

---

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**

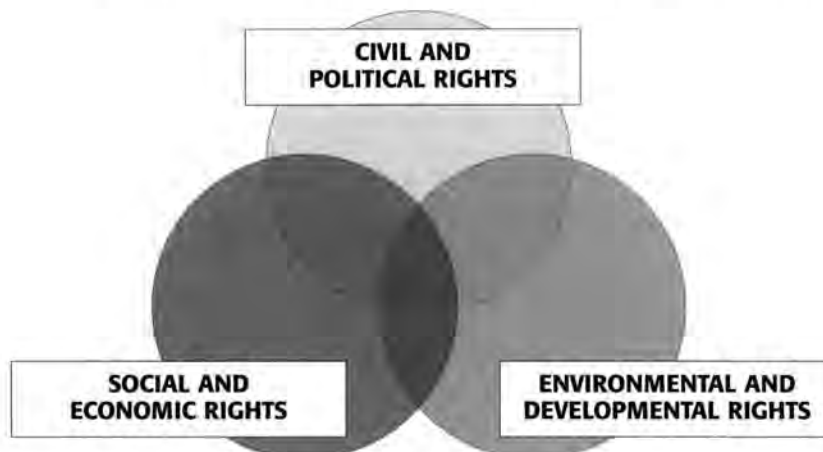
Human rights create an obligation on States (vis-à-vis the rest of the international community, and the individual), to protect, respect, fulfil, promote and ensure rights. Police officers represent 'the State' – their actions in carrying out duties are State acts in the eyes of international law.

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.



#### 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.





### 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

---

1 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.





---

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.

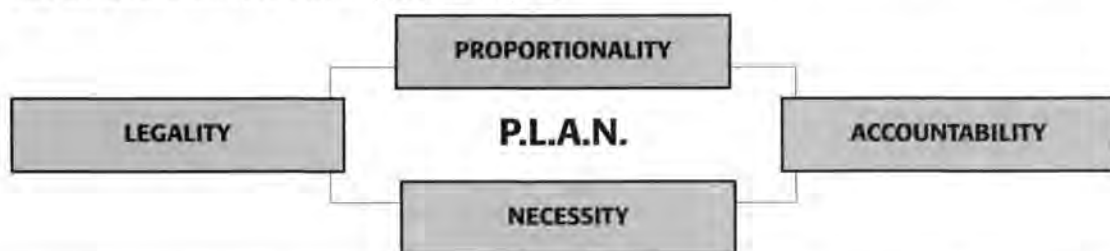


**1.9. How may police officers limit the human rights of suspected criminals?**

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?*