

POLICA

POLL



CHAPTER 2

Human rights and police ethics

Learning objectives for Chapter 2

After completing this chapter you should be able to:

27

- *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*



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.



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.



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

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.



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?*
-