





## 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)

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#### 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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