





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*



Chapter 6

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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.



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.



- **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.

- **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.

- 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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