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## CHAPTER 16

# Human rights violations

### **Learning objectives for Chapter 16**

After completing this chapter you should be able to:

- *Explain what is meant by a human rights violation*
- *Explain the responsibility of the state in protection of human rights*
- *Discuss the consequences of human rights violations by police*
- *Explain the rights of victims of human rights violations*



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## Chapter 16

### Human rights violations

#### Contents

- 16.1. Introduction**
- 16.2. Definition of human rights violations**
- 16.3. Role and responsibility of the state in protecting human rights**
- 16.4. Consequences of human rights violations by police officers**
- 16.5. Complaints procedures and remedies available when human rights are violated**
- 16.6. Who monitors human rights?**
- 16.7. Victims of human rights violations**
- 16.8. Summary**
- 16.9. Questions for self-evaluation**

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## 16.1. Introduction

This chapter deals with consequences of police violation of human rights. For trainers, there is a significant challenge to reinforce the positive consequences of human rights compliance while imparting a sense of the practical and principled consequences of police conduct that falls short of human rights standards.

Police are often in a very difficult position when doing their job. On the one hand, the public often want police officers to be tough on crime and criminals, while on the other, police officers are under a duty to respect and protect the human rights of suspected criminals. This difficult situation is compounded if the officers do not understand human rights standards and how to apply these in their daily activities. Where awareness levels are low, it is not surprising that it happens that police officers in their line of duty violate the human rights of others. These actions are always regarded as serious misconduct and should be dealt with severely.

As this chapter shows, another consequence of human rights violations by police is that it alienates the community in which officers must live and work, leading to cycles of distrust, and so making police work harder to do.

Some examples of human rights violations by police officers are:

- enforced or involuntary disappearance;
- extra-legal, arbitrary or summary executions;
- unlawful arrest and detention;
- excessive use of force;
- torture;
- inhuman or degrading treatment of arrested and detained persons;
- discrimination;
- unlawful search and seizure procedures;
- unlawful investigation methods;
- illegal corporal punishment;
- inhumane treatment of complaints of victims of human rights violations;
- defeating the ends of justice (covering up crime).





### **Matters of Principle and Practical Matters**

It is essential that police trainers not only emphasise the legal and principled reasons for the police to always respect human rights (and protect the rights of others), but also ensure trainees understand the practical consequences of the violation of others' human rights by police, including:

- criminal or disciplinary charges (leading to dissatisfaction with one's career as a police officer, personal problems, etc.);
- loss of respect from the community, destroying any chance of a working relationship with the community (thus preventing the effective investigation of crime).

### **16.2. Definition of human rights violations**

Human rights violations can be defined as violations of internationally recognised standards relating to human rights, whether or not these have yet been incorporated into national laws.

The UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* proposes two definitions. The first characterises them as "a violation of criminal laws operative within States, including those laws proscribing criminal abuse of power". Central to such violations is the individual or collective harm and suffering caused to persons, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that can be imputed to the State. The second definition concerns those "acts and omissions [imputable to the State] that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights."

### **16.3. Role and responsibility of the state in protecting human rights**

As set out briefly in chapter 1, international human rights law creates legally binding obligations for States. These obligations include the requirement to adapt (or create) national legislation in accordance with the international norms, as well as to refrain from practices that are in contravention of those norms. 'The State' also includes persons acting on behalf of the State, including public officials such as police officers.

**Ultimate responsibility in international law for the acts of individual officials lies with the State, which may be obliged to improve awareness of human rights among its officials and to investigate and remedy violations.**

**As the other side of this coin, the day-to-day responsibility for fulfilling the State's international human rights obligations lies partly with police officers.**



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There is a responsibility on every law enforcement official – as an agent and representative of the state – to respect, protect and promote the human rights of every person. Since human rights violations constitute a violation either of criminal laws within a State, or of internationally recognised human rights norms (or both), States are under an obligation to exert judicial control over such acts or omissions and to protect victims.

In addition, States have certain responsibilities:

- To ensure that every police officer is trained and educated in applying human rights in their daily duties and activities.
- To implement proper structures to monitor and evaluate police actions and to ensure that they adhere to human rights standards and practices.
- To create mechanisms and structures to deal with complaints, for example, internal complaints or disciplinary units, and external complaints mechanisms such as national human rights commissions, ombudsman or similar institutions.
- To develop proper complaints investigation procedures and structures.

#### **16.4. Consequences of human rights violations by police officers**

**Violations of human rights by police officers can only make the already difficult task of law enforcement even more difficult.** When the law-enforcer becomes the law-breaker, the result is not only an assault on human dignity, and on law itself, but also the creation of obstacles which prevent the progress of effective policing.

Negative effects of police violations of human rights include:

- they destroy, little by little, public confidence in the police;
- they isolate the police from the community;
- they can lead to civil unrest;
- they often prevent effective prosecutions in court (for example, if evidence grounding the prosecution has been obtained by torture in violation of a suspect's human rights);
- they result in police officers becoming merely 'enforcers' instead of 'law enforcers' (removing the element of 'law' from 'law enforcement');
- they force the police to be reactive, rather than preventative in their approach to crime;
- they can damage the international standing and credibility of the State and lead to increased scrutiny from international bodies, in particular human rights monitoring mechanisms.

In contrast to this, respect shown by the police for human rights actually improves police effectiveness. In this sense, as has been noted, respect for human rights by police, in addition to being a legal and ethical obligation, also makes practical sense.

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When police are seen to respect, uphold and protect human rights:

- (i) public confidence in the police grows and community co-operation with the police increases;
- (ii) a contribution is made to the peaceful resolution of conflicts and complaints;
- (iii) prosecutions of offenders are more likely to be successful;
- (iv) police are seen as part of the community, performing a valuable social function;
- (v) the fair administration of justice is served and, consequently, confidence in the system increases;
- (vi) an example is set for others in society to respect the law;
- (vii) police get closer to the community and are accordingly better able to prevent crimes through proactive policing;
- (viii) the media begin to support the police, and the police receive support from the international community and local politicians; and
- (ix) professional pride in the police service is maintained, with the flow-on this has for job satisfaction, institutional reputation and recruitment.

**Police services which respect human rights receive benefits that result in more effective policing, while at the same time a law enforcement structure is built which does not rely on fear and physical force, but rather on honour, professionalism and legality.**

### **16.5. Complaints procedures and remedies available when human rights are violated**

As a backdrop to the international framework of standards within which all policing takes place, there are a variety of international reporting, review and complaints mechanisms existing either under the United Nations system or the specialised bodies establishing under human rights treaties. These bodies also provide elaboration on the nature and extent of States' duties in relation to particular rights. It is an international obligation of governments to provide mechanisms for 'effective remedies' of human rights violations. This means the State is obliged to have complaints procedures and remedies available to people when their human rights are violated.

It is not necessary to expand on these mechanisms in this chapter, other than to note that trainers ought to set the individual responsibilities of police officers by reference to international standards, against the wider context of the State's duties in international law to protect its own population. Violations of human rights committed by law enforcement officials are detrimental to the integrity of the entire law enforcement organisation, and may even reflect on the credibility of governments. Their occurrence must be prevented through training and awareness. If a violation was impossible to prevent, the State should be prepared to deal with

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such situations by investigating all complaints promptly, thoroughly and impartially. Individual law enforcement officials must be held accountable for their actions. This requires internal monitoring and review procedures. In the event of human rights violations, adequate disciplinary measures and/or legal proceedings must be initiated.

International standards provide that:

- superior officers should be held responsible for abuses if they knew, or should have known, of their occurrence and did not take action.
- police are to receive immunity from prosecution or discipline for refusing unlawful superior orders.
- obedience to superior orders shall not be a defence for violations committed by the police.

National remedies can include legal proceedings, whether criminal or civil, arbitration or conciliation mechanisms, independent complaints procedures, a national ombudsman or national human rights commission. The names and responsibilities of these organisations may differ from country to country. Their functions are normally regulated in domestic legislation.

#### **16.6. Who monitors human rights?**

There are various governmental and non-governmental groups at the national, regional and international levels which can monitor the police. The implementation of human rights standards is closely watched at several levels. At the national level, human rights are monitored by:

- (a) concerned government agencies and services, including the police;
- (b) national human rights institutions (such as a Human Rights Commission or an Ombudsman);
- (c) human rights and other non-governmental organisations (NGOs);
- (d) the courts;
- (e) parliament;
- (f) the media;
- (g) professional organisations (such as lawyers, doctors, etc.);
- (h) trade unions;
- (i) religious organisations; and
- (j) centres at universities.

At the regional and international levels, organisations have developed mechanisms to monitor human rights within the relevant countries. There are many regional mechanisms including the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the

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Council of Europe. At the international level, States' compliance with human rights are also 'monitored' by an elaborate monitoring mechanism in the United Nations, as well as by a number of international NGOs, such as Amnesty International, Human Rights Watch and the Commonwealth Human Rights Initiative. There is considerable media interest in such issues too.

Within the UN system, four principal review functions of State conduct exist. The first is treaty-based monitoring, such as by the Committee against Torture, the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The second is 'Charter-based monitoring, such as by the UN Human Rights Commission (replaced by the Human Rights Council), the special procedures mechanisms (Special Rapporteurs), and other expert working groups within the UN. The third is monitoring that occurs through peacekeeping and human rights field operations. The fourth is monitoring which is carried out by the Office of the UN High Commissioner for Human Rights, under a global mandate to promote and protect human rights. It is also possible to see the UN Security Council, with its mandate to consider and make binding resolutions on 'threats to international peace and security', as having a monitoring role over large-scale human rights abuses. The Commonwealth Ministerial Action Group (CMAG), formed under the *Millbrook Declaration* 1995, can consider widespread and systematic abuses as a factor in deciding whether a member country has persistently failed to meet Commonwealth principles.

### **16.7. Victims of human rights violations**

It is important to realise that victims of human rights violations committed by police officers are sometimes in an even more difficult position than other victims due to the fact that police officers – who are supposed to protect and respect human rights, and investigate abuses – are themselves the perpetrators.

Victims should be treated with compassion and respect for their dignity. The manner in which police deal with victims and complainants reflects readily on their image and their reputation for professionalism. Victims also have the right to access the mechanisms of justice and to prompt redress, and police need to know these matters in order to be in a position to assist and advise victims.

Some standards and practices that can serve as a basic guideline for dealing with victims of human rights abuses by police include:

- Effective mechanisms to ensure internal discipline and external control, as well as the effective supervision of law enforcement officials.
- Law enforcement officials who have reason to believe that a violation has occurred, or is about to occur, should report the matter.
- Provisions should be made for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of those provisions shall be publicised.
- Investigations into violations should be prompt, competent, thorough and impartial.

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- Investigations shall seek to identify victims, recover and preserve evidence, discover witnesses, discover cause, manner, location and time of the violation, and identify and apprehend perpetrators.

### **16.8. Summary**

- States have an international obligation and responsibility to take legislative and other measures to respect, protect and promote the human rights of every person.
- Police as representatives of the state have to ensure that these responsibilities are met. Such responsibilities include responding to the needs of victims of crime and of abuse of power.
- States should implement structures, procedures and processes to deal with complaints of human rights violations. All complaints of human rights abuses should be investigated promptly, thoroughly, impartially and in a professional manner. Perpetrators should be dealt with through proper legal proceedings. Victims of human rights violations should be treated with compassion and respect for human dignity.
- Violations of human rights by police officers can only make the already difficult task of law enforcement even more difficult.
- Respect for human rights by the police actually improves police effectiveness. In this sense, respect for human rights by police, in addition to being a legal and ethical obligation, also makes practical sense.

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

- *What is a violation of human rights?*
  - *What is the role and responsibility of the state in the protection of human rights?*
  - *What remedies exist at the national level for human rights violations?*
  - *What is the role and responsibility of a national ombudsman?*
  - *What is the role and responsibility of a national human rights commission?*
  - *What are the consequences – in principle or law, and the practical policing consequences – when law enforcement officials violate human rights?*
  - *Is there a duty to investigate such violations?*
  - *Who is accountable for human rights violations by law enforcement officials?*
  - *What are the international monitoring mechanisms in place?*
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- *Who monitors human rights?*
  - *What are the rights of victims of human rights violations?*